

REGISTERED CLUBS (TAXATION) AMENDMENT ACT 1993
No. 56

NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS

REGISTERED CLUBS (TAXATION) AMENDMENT ACT 1993
No. 56

NEW SOUTH WALES



Act No. 56, 1993

An Act to amend the Registered Clubs Act 1976 to make further provision with respect to registration fees, duty in respect of poker machines and cancellation of registration; to repeal the Gaming and Betting (Poker Machines) Taxation Act 1956; and for other purposes. [Assented to 24 September 1993]

Registered Clubs (Taxation) Amendment Act 1993 No. 56

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Registered Clubs (Taxation) Amendment Act 1993.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Registered Clubs Act 1976 No. 31

3. The Registered Clubs Act 1976 is amended as set out in Schedule 1.

Amendment of Registered Clubs Regulation 1983

4. (1) The Registered Clubs Regulation 1983 is amended by repealing clauses 19 and 20H and Part 4B (Duty on Poker Machines) except clause 20ZB, and clause 7A of Schedule 2.

(2) Different days may be appointed for the commencement of subsection (1) for the purpose of repealing on different days the provisions repealed by that subsection.

Repeal of Gaming and Betting (Poker Machines) Taxation Act 1956 No. 18

5. The Gaming and Betting (Poker.Machines) Taxation Act 1956 is repealed.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 15 (**Fees**):

Omit section 15 (9), insert instead:

(9) Regulations may be made for or with respect to the times for payment of registration fees and the payment of those fees by instalments.

SCHEDULE 1—AMENDMENTS— *continued*

- (2) Section 17 (**Determination of complaints against registered clubs**):

Omit section 17(1AA) (a) (xia), insert instead:

(xia) the club has failed to pay a penalty for late payment of the fee for the certificate of registration of the club or a penalty for late payment of an instalment of that fee;

- (3) Part 2, Division 1A:

After section 17AA, insert:

Division 1A—Penalties for failure to pay fees

Interpretation

17AB. For the purposes of this Division, a failure to pay in full by the due date the fee payable for a certificate of registration is to be treated as a failure to pay by the due date the first instalment of that fee.

Penalty for late payment of registration fee

17AC. (1) The penalty for a failure to pay an instalment of registration fee by the due date is \$250, plus 0.15% of the amount of the instalment for each day by which the payment is late.

(2) A penalty resulting from a failure to pay an instalment by the due date may be recovered by the Board as a debt due to the Crown.

(3) The Board may, in a particular case or class of cases, remit or waive the whole or part of any penalty payable under this section.

Cancellation for late payment after 2 months

17AD. (1) If an instalment of registration fee is not paid within 2 months after the due date, the certificate of registration is cancelled.

(2) The former holder of a certificate of registration which has been cancelled by the operation of this section must forward the certificate of registration to the Principal Registrar without delay.

Maximum penalty: 2 penalty units.

SCHEDULE 1—AMENDMENTS— *continued*

- (3) The regulations may specify circumstances in which:
- (a) the period of 2 months specified in subsection (1) is to be a longer period determined as provided by the regulations or specified by the Minister; and
 - (b) a penalty payable under this Division is to be waived or reduced or payment of the penalty is to be deferred.
- (4) If a certificate of registration is cancelled under this section:
- (a) the penalty provided for by section 17AC stops accruing on the date of cancellation or on such other day as the Board may determine under subsection (5) but cancellation of the certificate of registration does not prevent the Board from recovering the penalty; and
 - (b) the Board may recover from the former registered club, as a debt due to the Crown, the used portion of the unpaid instalment (calculated as provided by section 17AG (2)).
- (5) If the Board is satisfied that trading in exercise (or purported exercise) of a certificate of registration cancelled under this section ceased on a particular day, the Board may determine that the penalty provided for by section 17AC stops accruing on that day rather than on the date of cancellation. The day determined by the Board may be before or after the date of cancellation.

Application for reinstatement of certificate of registration

17AE. (1) Application may be made to the Licensing Court for the reinstatement of a certificate of registration cancelled by the operation of section 17AD.

(2) Such an application must be made within 2 months after the cancellation of the certificate of registration and can only be made by or on behalf of the former holder of the cancelled certificate.

(3) An application must be accompanied by payment of the unpaid registration fee instalment concerned.

SCHEDULE 1—AMENDMENTS—*continued*

(4) The regulations may make provision for or with respect to the manner in which an application is to be made and lodged, the documents required to accompany the application and requiring payment of a fee in respect of the application.

Order for reinstatement

17AF. (1) On application under this Division, the Licensing Court may order reinstatement of the certificate of registration but only if satisfied that there is a reasonable explanation for the failure to pay the instalment of registration fee concerned. The Licensing Court is not to order reinstatement if of the opinion that the certificate of registration should not be reinstated.

(2) If the Licensing Court orders reinstatement:

- (a) a penalty is payable for late payment of the instalment of registration fee concerned; and
- (b) any further instalment of registration fee that would have become payable (prior to reinstatement of the certificate of registration) had the certificate of registration not been cancelled becomes due and payable.

(3) The penalty payable under this section is \$250, plus 0.15% of the amount of each such instalment for each day by which payment of the instalment was late.

(4) The certificate of registration is reinstated on and from the day ordered by the Licensing Court or on and from the day on which any penalty and further instalment of registration fee payable under this section has been paid, whichever is later.

(5) Any penalty and further instalment of registration fee payable under this section must be paid within one month after the Licensing Court makes the order for reinstatement of the certificate of registration, otherwise the Licensing Court's order lapses and is of no effect.

(6) The Licensing Court can order in a particular case that a penalty provided for by this section is to be wholly or partly waived.

SCHEDULE 1—AMENDMENTS—*continued*

(7) The penalty provided for by this section is in place of any penalty payable under section 17AC in respect of the registration fee instalment concerned. There is to be credited towards any penalty payable under this section any penalty paid under section 17AC in respect of the instalment.

Partial refund of instalment when reinstatement refused

17AG. (1) If an application for reinstatement of a certificate of registration is made under this Division and is not successful, the Board is to refund the amount of the instalment of registration fee paid with the application, after deducting the following amounts:

- (a) the amount (if any) that is the used portion of the instalment, calculated as provided by subsection (2); and
- (b) a penalty of \$250, plus 0.15% of the amount of the instalment for each day by which payment of the instalment was late.

(2) The “**used portion**” of an instalment is calculated in accordance with the following formula:

$$\text{used portion} = \left[\text{full fee} \times \frac{\text{trading days}}{\text{the number of days in the licensing period concerned}} \right] - \text{previous instalments}$$

where:

“**full fee**” is the full amount of registration fee payable under section 15 in respect of the registration period concerned;

“**trading days**” is the number of days since the start of the registration period current when the certificate of registration was cancelled up to and including the date of cancellation or up to and including such other day as the Board may determine under subsection (3);

“**previous instalments**” is the total of any instalments of registration fee already paid in respect of the registration period current when the certificate of registration was cancelled (not including the instalment paid with the reinstatement application).

SCHEDULE 1—AMENDMENTS— *continued*

(3) If the Board is satisfied that trading in exercise (or purported exercise) of the certificate of registration ceased on a particular day, the Board may determine that the number of trading days is to be calculated up to and including that day rather than up to and including the date of cancellation. The day determined by the Board may be before or after the date of cancellation.

(4) If the used portion of an instalment is a negative amount, there is to be no deduction under subsection (1) (a).

(5) The Licensing Court can order in a particular case that a penalty provided for by this section is to be wholly or partly waived.

(6) The penalty provided for by this section is in place of any penalty payable under section 17AC in respect of the instalment of registration fee concerned. There is to be credited towards any penalty payable under this section any penalty paid under section 17AC in respect of the instalment.

(4) Section 71A:

After section 71, insert:

Date of payment to Board by direct deposit

71A. A payment made to the Board for the purposes of this Act by means of payment to a bank for direct deposit to the credit of the Board is taken to have been paid to the Board on the date of payment to that bank.

(5) Part 10, Division 2, heading:

Omit the heading, insert instead:

Division 2—Duty on poker machines(6) Section 85 (**Duty on poker machines**):

Omit section 85 (1) and (2), insert instead:

(1) There is payable to the Board by a registered club the duty imposed by this Division in respect of poker machines kept and operated on the defined premises of the club.

SCHEDULE 1—AMENDMENTS—*continued*

(2) The regulations may make provision for or with respect to the deferral of the payment of duty, refunds of duty and exemption from the payment of duty, but any such regulations may only be made with the consent of the Treasurer.

(7) Sections **86–87H**:

Omit section 86, insert instead:

Definitions

86.(1) In this Division:

“cancelled credits payment” means payment (otherwise than directly from the machine) of an amount by way of redemption of credits accumulated by a poker machine player in the course of play;

“duty period” means a period of 12 months commencing on 1 December;

“jackpot payment” means payment of an amount to which a poker machine player is entitled:

- (a) for the achievement by the player, at the end of a play, of a combination of symbols that is designated, in the original design of the machine or in a subsequent modification approved by the Board, as a jackpot combination; or
- (b) on the happening of any other event or contingency which the Board, by instrument in writing, approves as being a due occasion of a jackpot payment for the purposes of this definition;

“outgoings” means cancelled credits payments, jackpot payments, refills and short pays;

“profits” means the excess of revenue over outgoings;

“refill” means an amount of money inserted by a club into the hopper of a poker machine;

“revenue” from a poker machine means:

- (a) money cleared from the machine; and
- (b) money invested by players of the machine in order to play the machine (but not being money inserted into the machine);

SCHEDULE 1—AMENDMENTS—*continued*

“short pay” means a payment made to a poker machine player of an amount to which the player is entitled and which would, except for a malfunction of the machine, have been paid to the player by the machine.

(2) For the purposes of the definition of **“cancelled credits payment”** in subsection (1):

- (a) credits accumulated by a poker machine player in the course of play include credits accumulated as a result of the investment of money by the player before proceeding to play the machine or while playing it; and
- (b) a player’s credits are completely redeemed on payment to the player of an amount equal to the amount that a player would have to invest in the machine concerned, when showing a nil credit balance, in order (without playing the machine) to be credited with that number of credits.

Rate of duty

87. (1) If the profits from all poker machines kept by a registered club in a duty period do not exceed \$100,000, duty is payable on those profits at the rate of 1%.

(2) If the profits from all poker machines kept by a registered club in a duty period exceed \$100,000, duty is payable:

- (a) in the sum of \$1,000; and
- (b) on so much of the profits as exceeds \$100,000—at the rate of 22.5%.

Payment by instalments

87A. (1) For the purposes of this Division, every duty period is divided into 4 periods of 3 months each (in this Division called **“instalment periods”**) commencing on 1 December, 1 March, 1 June and 1 September.

(2) Quarterly instalments of duty are payable by each registered club in respect of each instalment period.

(3) If the profits from all poker machines kept by a registered club in an instalment period do not exceed \$25,000, the instalment payable is an amount equal to 1% of those profits.

SCHEDULE 1—AMENDMENTS—*continued*

(4) If the profits from all poker machines kept by a registered club in an instalment period exceed \$25,000, the instalment payable is:

- (a) the sum of \$250; and
- (b) an amount equal to 22.5% of the amount by which the profits exceed \$25,000.

(5) An instalment is payable within 21 days after the end of the relevant instalment period.

Adjustments

87B. (1) Following the end of each duty period, and after payment by a registered club of the instalment payable in respect of the instalment period ending on 30 November, a comparison is to be made of the duty payable in respect of that duty period and of the total of the relevant 4 quarterly instalments paid.

(2) If the total of the instalments paid exceeds the duty payable for the duty period, the excess is to be credited to the club in the accounts of the Board.

Application of amounts credited

87C. (1) The liability of a registered club to pay any instalment or other amount of duty under this Division is reduced to the extent of any amount standing to the credit of the club in the accounts of the Board at the date the payment is due.

(2) Money credited to a registered club in the accounts of the Board may be appropriated by the Board in satisfaction of the whole or part of any duty or penalty payable by the club under this Division, but may not be otherwise appropriated by the Board for or toward the discharge of any debts of the club.

Penalty for late return or late payment of duty

87D. (1) The penalty for not paying a duty instalment in the amount required and within the time allowed under this Division is an amount of \$100 plus a daily penalty, until payment is made, of 0.15% of the duty in arrears on the due date.

SCHEDULE 1—AMENDMENTS— *continued*

(2) The penalty for not submitting a return in accordance with section 87H (5) is an amount of \$100 plus a daily penalty, until the return is submitted, of 0.15% of the duty instalment payable for the quarter concerned.

(3) A registered club which, but for this subsection, would be liable to pay a penalty under both subsections (1) and (2) in respect of the same quarterly period is by this subsection excused from its liability to pay the lesser of those penalties (or, in a case where the penalties are in equal amounts, one of those penalties).

(4) A penalty under this section is payable by the club concerned to the Board and if not paid may be recovered on behalf of the Crown as if it were duty payable under this Division.

(5) The Board may, in a particular case or class of cases, remit or waive the whole or part of any penalty payable under this section.

Board may estimate profits when return not provided

87E. (1) If a registered club does not submit a return in accordance with section 87H (5), the Board may, taking into account any previous known profits of the club from poker machines and such other evidence as may be available to it, make an estimate of such profits derived by the club during the period in respect of which the return was required.

(2) Until the contrary is proven, the Board's estimate under this section is, for the purposes of any proceedings for the recovery of duty or a penalty payable under this Division, taken to be the profits of the club from poker machines during the period in question.

Duty refund for welfare expenditure

87F. (1) If the Board is satisfied that the amount disbursed by a registered club during a duty period for approved welfare purposes was not less than the relevant proportion of the profits from poker machines derived by the club during that period, a refund of so much of the duty paid by the club under this Division as is the lesser of:

- (a) an amount equal to one-third of the amount that the Board is satisfied was so disbursed; and

SCHEDULE 1—AMENDMENTS—*continued*

(b) the amount of the duty payable under this Division in respect of that duty period,

is to be paid to the club by the Board if application for the payment is made to the Board not later than 21 December next following that duty period or before such later date as the Board may allow.

(2) In this section:

(a) a reference to an amount of money disbursed by a registered club for an approved welfare purpose does not include a reference to an amount of money:

(i) collected by the club by way of donations or the proceeds of donations; or

(ii) comprising the proceeds of any special fund-raising activity conducted by the club; and

(b) a reference to an approved welfare purpose is a reference to a purpose approved by the Board for the purposes of this section as a purpose promoting community welfare, whether the approval is given generally or in a particular case; and

(c) a reference to the relevant proportion of the profits from poker machines is a reference to a proportion of those profits determined by the Board in respect of a duty period.

Special provision for amalgamation of clubs

87G. (1) In this section, “amalgamated club” means a registered club formed from the amalgamation, on or after 1 December 1991, of 2 or more registered clubs (in this section called the “unamalgamated clubs”).

(2) The profits of an amalgamated club, being profits derived from poker machines kept by the amalgamated club in a duty period or instalment period, are to be notionally divided into portions, in proportion to the relative profits from poker machines derived by the unamalgamated clubs in the duty period that immediately preceded the duty period during which the amalgamation took place.

(3) The provisions of this Division, in so far as they relate to the profits of an amalgamated club derived during a duty

SCHEDULE 1—AMENDMENTS—*continued*

period or instalment period in which the amalgamation takes place, or during any subsequent duty period or instalment period, are to be applied as follows:

- (a) amounts resulting from an apportionment, in accordance with subsection (2), of the profits of the amalgamated club from poker machines in the period concerned are to be allocated to the unamalgamated clubs with respect to which they were respectively calculated;
- (b) liability for duty, or an instalment of duty, in respect of the period concerned is to be assessed as though the unamalgamated clubs still existed and as though their profits during the relevant period had included the portions allocated under paragraph (a);
- (c) liabilities assessed under paragraph (b) are liabilities of the amalgamated club.

(4) This section has effect in respect of the profits of an amalgamated club derived before the end of the duty period in which falls the fifth anniversary of the date of amalgamation, but has no effect in relation to profits subsequently derived.

Records and returns

87H. (1) A registered club must keep such records relating to poker machines as may be directed by the Board.

(2) A registered club must lodge with the Board:

- (a) returns relating to poker machines in a form approved by the Board; and
- (b) an auditor's report in a form approved by the Board; and
- (c) a statutory declaration by the secretary of the club made in a form approved by the Board.

(3) A registered club must not, under subsection (2), lodge with the Board a return that is false or misleading in a material particular.

(4) Proceedings for an offence under subsection (3) may be commenced at any time within the period of 3 years that next succeeds commission of the offence.

SCHEDULE 1—AMENDMENTS—*continued*

(5) A return required under subsection (2) in relation to quarterly poker machine performance and duty payable under this Division is to be submitted by a registered club to the Board at the time when each quarterly instalment is payable in accordance with this Division.

(6) A registered club is to retain a copy of each return lodged under subsection (2) for a period of not less than 3 years after the date on which it was lodged.

Maximum penalty: 20 penalty units.

(8) Sections 105A–105C:

After section 105, insert:

Cancellation for late payment of licence fee

105A. (1) If the fee payable for a licence under this Part has not been paid before the expiration of 2 months after the due date for payment, the licence is cancelled.

(2) The former holder of a licence which has been Cancelled by the operation of this section must forward the licence to the Principal Registrar without delay.

Maximum penalty: 2 penalty units.

Application for reinstatement of cancelled licence

105B. (1) The former holder of a licence cancelled by the operation of section 105A may apply to the Licensing Court for the reinstatement of the licence.

(2) Such an application must be made within 2 months after the cancellation of the licence. The application must be accompanied by payment of the unpaid licence fee concerned.

(3) The regulations may make provision for or with respect to the manner in which such an application is to be made and lodged, the documents required to accompany the application and requiring payment of a fee in respect of the application.

(4) The Licensing Court may order reinstatement of the licence but only if satisfied that there is a reasonable explanation for the failure to pay the licence fee that resulted in cancellation of the licence. The Licensing Court is not to order reinstatement if of the opinion that the licence should not be reinstated.

SCHEDULE 1—AMENDMENTS—*continued*

(5) The licence is reinstated on and from the day ordered by the Licensing Court.

(6) If the application for reinstatement is not successful, the Board is to refund the licence fee paid with the application after deducting the amount (if any) that is the used portion of the licence fee, calculated in accordance with the following formula:

$$\text{used portion} = \text{full fee} \times \frac{\text{trading days}}{\text{the number of days in the licensing period concerned}}$$

where:

“**full fee**” is the full amount of licence fee payable under section 105 in respect of the licensing period concerned;

“**trading days**” is the number of days since the start of the licensing period current when the licence was cancelled up to and including the date of cancellation or up to and including such other day as the Board may determine under subsection (7).

(7) If the Board is satisfied that trading in exercise (or purported exercise) of the licence ceased on a particular day, the Board may determine that the number of trading days is to be calculated up to and including that day rather than up to and including the date of cancellation. The day determined by the Board may be before or after the date of cancellation.

Board may refund licence fees

105C. On the suspension or cancellation of a licence, the Board may, if it thinks fit, authorise the refund of the whole or such part of any licence fee as the Board determines.

(9) Section 108 (**Summons to show cause against taking of disciplinary action**):

Omit section 108 (2) (d), insert instead:

(d) that the licensee has failed to make due payment of a penalty for late payment of a fee in accordance with this Act;

SCHEDULE 1—AMENDMENTS—*continued*(10) Schedule 2 (**Transitional provisions**):

At the end of the Schedule, insert:

**Part 4—Registered Clubs (Taxation) Amendment Act
1993**

Definitions

30. In this Part:

“**the amending Act**” means the Registered Clubs (Taxation) Amendment Act 1993;

“**the Regulation**” means the Registered Clubs Regulation 1983.

Purpose of provisions

31. The purpose of this Part is to ensure a continuity of operation (as provisions of this Act) of those provisions of the Regulation that are repealed by the amending Act and re-enacted as provisions of this Act.

Regulations

32. (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the amending Act.

(2) A provision referred to in subsection (1) may, if the regulations so provide, take effect from the date of assent to that Act or from a later date.

(3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

Amendments etc. do not affect existing liabilities

33. (1) The amendments made to this Act and the Regulation by the amending Act and the repeal of the Gaming and Betting (Poker Machines) Taxation Act 1956 do

SCHEDULE 1—AMENDMENTS—*continued*

not affect any existing right, entitlement or obligation, in particular:

- (a) any existing liability to pay registration fee, duty, tax or penalty or any instalment of registration fee, duty or tax; and,
- (b) any existing entitlement to a reduction of registration fee, duty or tax or to a refund or credit of registration fee, duty or tax paid; and
- (c) any existing liability to submit a return.

(2) Any registration fee, duty, tax, instalment or penalty so payable or paid under a provision of the Regulation repealed by the amending Act is taken to be payable or to have been paid under the corresponding provision of this Act as amended by the amending Act.

(3) Anything done or omitted to be done under or for the purposes of a provision of the Regulation repealed by the amending Act is taken to have been done or omitted under or for the purposes of the corresponding provision of this Act as amended by the amending Act.

Transitional regulations for club amalgamations

34. (1) Clause 20ZB (Effect of amalgamation before 1 Dec. 1991 on duty) of the Regulation (as in force immediately before the repeal by this Act of the other provisions of Part 4B (Duty on Poker Machines) of the Regulation is taken to be in force as a regulation under this Act.

(2) That clause operates as if references in it to duty were references to both the duty payable under Division 2 of that Part and the duty payable under Division 2 of Part 10 of this Act.

(3) This clause does not prevent the repeal of clause 20ZB of the Regulation.

Validation of registration and licence cancellations

35. (1) Clauses 19 and 20H of the Regulation are taken at all times prior to their repeal to have been valid for the purposes of effecting the cancellation of a certificate of registration or licence in accordance with the terms of those clauses.

SCHEDULE 1—AMENDMENTS—*continued*

(2) Accordingly, a certificate of registration or licence purportedly cancelled by clause 19 or 20H of the Regulation is taken to have been validly cancelled.

(3) However, clauses 19 and 20H of the Regulation are taken never to have operated to cancel a registration certificate or licence for failure to pay the registration fee, or an instalment of the registration fee, or for failure to pay the licence fee, payable in respect of the registration period commencing in January 1993 or the prescribed period commencing in February 1993.

(4) This clause does not apply in respect of any registration certificate or licence in respect of which proceedings challenging the validity of a cancellation under clause 19 or 20H of the Regulation were commenced in the Supreme Court before the Bill for the amending Act was introduced into Parliament.

(5) The repeal of clauses 19 and 20H of the Regulation does not operate to revive a cancelled certificate of registration or licence.

(6) Neither the Crown nor the Board incurs any liability (in particular, any liability to pay compensation) by reason of the operation of this clause or clauses 19 and 20H of the Regulation.

Grounds for complaint—late payment of fee

36. The amendments made to sections 17 and 108 by the amending Act do not apply in respect of the failure to pay an instalment of registration fee or a licence fee due before the commencement of the amendment.

Records and returns

37. Anything done or omitted to be done under or for the purposes of section 86 immediately before the commencement of section 87H is taken after that commencement to have been done or omitted under section 87H.

SCHEDULE 1—AMENDMENTS— *continued***Continuation of existing regulations**

38.(1) A regulation in force under a provision of this Act that is amended or substituted by the amending Act and which could be made under that provision (as so amended or substituted) continues in force and is taken to have been made under that provision as so amended or substituted.

(2) Subclause (1) does not apply to a regulation repealed by section 4 of the amending Act and does not apply to prevent the subsequent amendment or repeal of a regulation continued in force by subclause (1).

*[Minister's second reading speech made in—
Legislative Assembly on 20 May 1993
Legislative Council on 15 September 1993]*