



New South Wales

Registered Clubs Regulation 2009

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*.

KEVIN GREENE, MP
Minister for Gaming and Racing

Explanatory note

The object of this Regulation is to remake, with some amendments, the provisions of the *Registered Clubs Regulation 1996*, which is repealed on 1 September 2009 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation includes some additional offences under the *Registered Clubs Act 1976* (*the Act*) and this Regulation as offences in respect of which penalty notices may be issued.

This Regulation makes provision with respect to the following:

- (a) the amalgamation of registered clubs under the Act,
- (b) the application for, and granting of, authorisations under the Act,
- (c) the accountability of registered clubs,
- (d) the rules of registered clubs,
- (e) notification that a person has ceased to be the secretary of a registered club,
- (f) the display of notices in registered clubs,
- (g) evidentiary matters with respect to criminal proceedings under the Act,
- (h) the persons authorised to make complaints under Part 6A of the Act,
- (i) the issue of penalty notices and the amounts of the fines payable under such notices,
- (j) savings, transitional and formal matters.

This Regulation is made under the *Registered Clubs Act 1976*, including sections 17AE (2), 17AEA (1), 17AI (3) (definition of *major assets*), 23A (2), (5) and (9) (a) (ii), 30 (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).

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Registered Clubs Regulation 2009

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Clause 1 Registered Clubs Regulation 2009

Part 1 Preliminary

Registered Clubs Regulation 2009

under the

Registered Clubs Act 1976

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Registered Clubs Regulation 2009*.

2 Commencement

This Regulation commences on 1 September 2009 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Registered Clubs Regulation 1996* which is repealed on 1 September 2009 by section 10 (2) of the *Subordinate Legislation Act 1989*.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.
 - Director-General* means the Director-General of Communities NSW.
 - 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) 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 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 Director-General 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 Memorandum of understanding between 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,
 - (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,

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Part 2 Amalgamations

- (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 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.

7 "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 Applications and authorisations

8 Fees to accompany application for certain authorisations

For the purposes of section 23A (2) (b) of the Act, \$50 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.

9 Notice to be given to local consent authorities and police

- (1) If an application is made to the Authority for an authorisation referred to in clause 8, the applicant 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.

10 Club functions authorisation notice to be fixed to premises

- (1) If an application for a club functions authorisation under section 23 of the Act is made to the Authority, a notice relating to the application that is in the form approved by the Authority must, within 2 working days of making the application, be fixed by the applicant to the club premises to which the application relates.
- (2) The notice must be fixed to the club premises until such time as the application is determined by the Authority.
- (3) If the club premises have not been erected, the requirement to fix a notice relating to an application may be satisfied by fixing the notice to a notice board erected on the land on which it is proposed to erect the premises.
- (4) A notice is not fixed to premises or land in accordance with this clause unless:
 - (a) it is fixed to the premises or land in such a position that it is legible to members of the public passing the premises or land, and
 - (b) if the Authority has directed that it also be fixed in another specified position—it is also fixed in that other position.

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Part 3 Applications and authorisations

11 Submissions in relation to applications

- (1) Any person may make a submission to the Authority in relation to an application referred to in clause 8.
- (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.

12 Advertising of other applications

- (1) If an application (other than an application referred to in clause 8) is made to the Authority under the Act or this Regulation, the Authority may require the application 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.

13 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 4 Accountability

14 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.

15 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 Director-General.
- (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.

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Part 4 Accountability

- (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.

16 Register of disclosures, declarations and returns

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

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

Maximum penalty: 50 penalty units.

18 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 Director-General, 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

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- (c) indicate, by displaying a notice in the form approved by the Director-General 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-General on the request (in writing) of the member or the Director-General.

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)),

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- (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.

19 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 Director-General 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 Director-General's approval must:
- (a) be in the form and manner approved by the Director-General, and
 - (b) be accompanied by such information as may be required by the Director-General.
- (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

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Part 4 Accountability

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.

20 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, *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 5903, 5904 and 5905),
 - (c) the Statistical Local Area of Lake Macquarie (Statistical Local Areas 4651 and 4653),
 - (d) the Statistical Local Area of Wollongong (Statistical Local Areas 8451 and 8454).

21 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 5 Miscellaneous

22 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 Director-General 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 Director-General 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 Director-General and be accompanied by such information as may be required by the Director-General.
- (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 Director-General 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 Director-General, and
 - (b) may be varied or revoked at any time by the Director-General.
- (7) Without limiting the conditions to which an approval may be subject, the Director-General 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.

23 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.

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Clause 24 Registered Clubs Regulation 2009

Part 5 Miscellaneous

- (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-General in relation to the rule.

24 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.

25 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 Communities NSW.
- (3) Until 31 March 2011, a registered club is taken to comply with subclauses (1) and (2) if the club instead complies with clause 12 of the *Registered Clubs Regulation 1996* as in force immediately before the repeal of that Regulation.

26 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.

27 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.

28 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.

29 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 the commencement of that section and the lease included an option to renew that would take effect after that commencement.

30 Savings

Any act, matter or thing that, immediately before the repeal of the *Registered Clubs Regulation 1996*, had effect under that Regulation continues to have effect under this Regulation.

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Schedule 1 Penalty notice offences

Schedule 1 Penalty notice offences

(Clause 28)

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 41ZA (2)	\$1,100
Section 43A (1)	\$1,100
Section 43A (2)	\$1,100

Offences under the Act

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

Offences under this Regulation

Column 1	Column 2
Offence	Penalty
Clause 16	\$1,100
Clause 17	\$1,100
Clause 18 (1)	\$1,100