

# Registered Clubs Amendment Act 2003 No 93

[2003-93]



New South Wales

## Status Information

### Currency of version

Repealed version for 10 December 2003 to 9 December 2004 (accessed 18 November 2024 at 21:11)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2004 No 91*, Sch 3 with effect from 10.12.2004.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Registered Clubs Amendment Act 2003 No 93



New South Wales

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# Registered Clubs Amendment Act 2003 No 93



New South Wales

An Act to amend the *Registered Clubs Act 1976* in relation to the accountability of registered clubs, the appointment of managers for premises of registered clubs, and for other purposes.

## 1 Name of Act

This Act is the *Registered Clubs Amendment Act 2003*.

## 2 Commencement

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

## 3 Amendment of *Registered Clubs Act 1976 No 31*

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

## Schedule 1 Amendments

(Section 3)

### [1] Section 10 Requirements to be met by clubs

Omit section 10 (1) (m). Insert instead:

(m) The club must comply with any requirements imposed on the club by Part 4A.

### [2] Sections 34A-34E

Insert after section 34:

#### 34A Appointment of managers

- (1) A registered club that has more than one set of premises must appoint a different manager, approved by the Board under section 34C, for each set of premises of the club at which the secretary of the club is not in attendance.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply:

- (a) to premises of a registered club if the club has 2 sets of premises only and the premises concerned:
  - (i) are within 10 kilometres of the other premises of the club in a case where the main premises of the club are situated in the metropolitan area (as defined in section 17AC (1)) or are within 50 kilometres of the other premises of the club in a case where the main premises of the club are not situated in the metropolitan area, or
  - (ii) are staffed by less than 5 full-time employees, or
- (b) in such other circumstances as are prescribed by the regulations.
- (3) Despite subsection (1), a registered club may appoint a person to act as a manager of any premises of the club for the purposes of that subsection even though the person has not been approved by the Board if the club has applied to the Board for the approval of the person to be appointed manager and the appointment complies with the requirements of section 34B (1) (b) and (c).
- (4) A person's authorisation to be appointed under subsection (3) to act as manager of a registered club expires on the determination by the Board of the relevant application for approval.

### **34B Restrictions on who may be appointed as manager**

- (1) The following restrictions apply to the appointment of a manager of any premises of a registered club:
  - (a) A person may not be appointed as the manager of premises unless the person is approved by the Board to manage the premises or premises of the class concerned.
  - (b) Only a natural person may be appointed to manage the premises.
  - (c) A person cannot be appointed as manager of the premises if at the time of the appointment he or she already holds an appointment as manager of premises of another registered club.
- (2) Subject to section 34A (3), an appointment in contravention of this section is void for the purposes of section 34A.

### **34C Board approval of manager**

- (1) An application for the Board's approval of a person to manage any premises of a registered club is to be made in the form approved by the Board.
- (2) The Board is not to give its approval unless it is satisfied that the person concerned:

- (a) is a fit and proper person to manage the premises, and
  - (b) understands his or her responsibilities in relation to, and is capable of implementing, practices in place at the premises for ensuring the responsible sale, supply and service of liquor and the prevention of intoxication, and
  - (c) understands his or her responsibilities under the *Gaming Machines Act 2001* in relation to the conduct of gambling on the premises.
- (3) If the Board is satisfied on the information before it that there is nothing that might preclude it from giving its approval, but requires more information before making a final decision, the Board may give a provisional approval of the person to be such a manager.
- (4) A provisional approval is sufficient to authorise the appointment of the person, in accordance with section 34A, as manager of the premises concerned for a period specified by the Board. Any such appointment lapses, however, unless the Board confirms its approval within that period (or within such extension of that period as the Board may allow).
- (5) An approval or provisional approval may be given so as to apply in relation to particular premises, to all premises of a specified class or to all premises of all registered clubs, as the Board thinks fit.

### **34D How appointments are made and revoked**

- (1) A registered club must give the Board notice of the appointment of a person as manager of any premises of the club.
- Maximum penalty: 20 penalty units.
- (2) The appointment of a manager is not in force until the registered club has given the Board notice of the appointment as required by this section, accompanied by the declaration referred to in subsection (5) (b).
- (3) The appointment of a manager is revoked by the registered club giving notice under this section of the appointment of a new manager or by the registered club or manager giving the Board notice of the manager's ceasing to act as manager.
- (4) A notice of appointment of or of ceasing to act as manager may specify a day that is later than the day the notice is given as the day the notice is to take effect, and the notice takes effect accordingly.
- (5) A notice under this section:
- (a) must be completed in writing in the form approved by the Board, and

(b) must be accompanied by a declaration in writing, in a form approved by the Board, of the person to be appointed as manager of the premises concerned:

(i) signifying his or her acceptance of the appointment, and

(ii) certifying such matters as the form of notice may require (including matters relating to the person's responsibilities in relation to, and capacity to implement, practices in place at the premises for ensuring the responsible sale, supply and service of liquor, and the prevention of intoxication, on the premises and the responsible conduct of gambling on the premises).

(6) This section also applies to the appointment of a person to act as manager under section 34A (3).

### **34E Responsibilities and liabilities of managers of premises of registered clubs**

(1) A person appointed as manager of any premises of a registered club is responsible at all times for the personal supervision and management of the conduct of the business of the club at those premises in accordance with this Act and the *Gaming Machines Act 2001*, including ensuring that the following conditions are complied with:

(a) any condition on the certificate of registration of the club in so far as it relates to those premises,

(b) any condition on the registered club's authorisation to keep or dispose of gaming machines under the *Gaming Machines Act 2001*.

(2) If an element of an offence under a relevant management provision is an act or omission by a secretary of a registered club in relation to any premises of the club, a person who is manager of those premises is, while responsible under subsection (1), responsible in respect of the offence as though that person were also the secretary and is liable for the offence accordingly.

(3) This section does not affect any liability of a secretary for a contravention by the secretary of a provision of this Act or the *Gaming Machines Act 2001*.

(4) In sections 17, 33A, 35 and 35A, a reference to the secretary of a registered club or a person who was the secretary of a registered club includes a reference to a person appointed under section 34A as the manager (or to act as manager) of any premises of a registered club or a person who formerly held such a position, respectively.

(5) In this section, **relevant management provision** means:

(a) a provision of Part 6 (other than section 49) of this Act, or

- (b) a provision of Division 2, 3 or 4 of Part 4 of the *Gaming Machines Act 2001*,  
or
- (c) any other provision of either of those Acts, or the regulations made under those Acts, as is prescribed by the regulations for the purposes of this subsection.

**[3] Section 35A Investigations by Director**

Insert “or whether a registered club or member of the governing body or employee of a registered club is complying with the provisions of Part 4A” after “registered club” in section 35A (1).

**[4] Section 35A (2)**

Omit the subsection. Insert instead:

- (2) The Commissioner of Police is to inquire into, and report to the Director on, such matters as the Director may request concerning a person who is the subject of an investigation under this section.

**[5] Section 35A (3)**

Insert “, or is a member of the governing body of or an employee of a registered club that is the subject of such an investigation,” after “under this section”.

**[6] Section 35A (5)**

Insert after section 35A (4):

- (5) A person must not fail to comply with a requirement of the Director contained in a notice under subsection (3).

Maximum penalty (subsection (5)): 20 penalty units.

**[7] Section 39 Disclosure of interests of members of governing body of registered club**

Omit the section.

**[8] Section 39A Requirement to declare financial interest in hotels**

Omit the section.

**[9] Part 4A**

Insert after Part 4:

## Part 4A Accountability of registered clubs

### Division 1 Interpretation

#### 41B Definitions

(1) In this Part:

**close relative** of a person means:

- (a) a parent, child, brother or sister of the person, or
- (b) a spouse of the person or of a person referred to in paragraph (a), or a person with whom the person or a person referred to in paragraph (a) has a de facto relationship (within the meaning of the *Property (Relationships) Act 1984*).

**contract** includes commercial arrangement.

**gift** includes money, hospitality or discounts.

**land** of a registered club means any land owned or occupied by the club.

**top executive** of a registered club means a person who is one of the five highest paid employees of the club at each separate premises of the club.

(2) A reference in this Part to a matter being approved by the governing body of a registered club is a reference to the matter being approved at a meeting of the governing body of the registered club at which a majority of the votes cast supported the approval.

### Division 2 Disclosure of interests of members of governing body and employees of registered clubs

#### 41C Disclosure of interests in contracts

(1) A member of the governing body of a registered club (other than a co-operative) who has a material personal interest in a matter that relates to the affairs of the registered club must, as soon as practicable after the relevant facts have come to the member's knowledge, declare the nature of the interest at a meeting of the governing body.

Maximum penalty: 50 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that:

- (a) at the time of the alleged offence there were guidelines prescribed by the

regulations and in force under section 41X, and

(b) those guidelines included provisions to the effect that the material personal interest concerned was not of a type that was required to be declared under that subsection.

(3) The provisions of sections 191 (2) and 192 of the *Corporations Act 2001* of the Commonwealth apply to and in respect of a declaration under subsection (1) (with necessary modifications and as if those provisions were a law of this State) in the same way as they apply to and in respect of a notice under section 191 (1) of that Act.

#### **41D Declaration of financial interests in hotels**

(1) A member of the governing body of a registered club or top executive of a registered club who, on or after the commencement of this subsection, acquires a financial interest in respect of a hotel must give a written declaration of that interest to the secretary of the club within 14 days after acquiring the interest.

Maximum penalty: 50 penalty units.

(2) A person who, at the commencement of this subsection, is a member of the governing body of a registered club or top executive of a registered club and holds a financial interest in respect of a hotel must give a written declaration of that interest to the secretary of the club within 14 days after that commencement.

Maximum penalty: 50 penalty units.

(3) A person who becomes a member of the governing body of a registered club or top executive of a registered club after the commencement of this section and who, at the time of becoming a member of the governing body or top executive, holds a financial interest in respect of a hotel must give a written declaration of that interest to the secretary of the club within 14 days after becoming a member of the governing body or top executive.

Maximum penalty: 50 penalty units.

(4) Nothing in subsection (2) or (3) requires a person to declare an interest if the person has already declared the interest and the declaration has been recorded by the club.

(5) This section does not apply to the secretary of a registered club or a person appointed as manager of any premises of a registered club under section 34A.

#### **Note—**

Section 33A prohibits a secretary of a registered club from holding a hotelier's licence under the *Liquor Act 1982* or acquiring any financial interest in respect of a hotel. Section 34E (4) applies

section 33A to managers of registered clubs.

#### **41E Disclosure of gifts from affiliated bodies**

- (1) A member of the governing body of a registered club or a top executive of a registered club must, in accordance with this section, declare any gift received by the member or top executive after the commencement of this section from an affiliated body if the value of the gift exceeds \$500.

Maximum penalty: 50 penalty units.

- (2) A declaration under this section in relation to a gift must:
  - (a) be in a form approved by the Director, and
  - (b) contain the particulars required by the form, and
  - (c) be submitted to the secretary of the registered club concerned within 14 days of receipt of the gift.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that he or she did not know, and could not reasonably be expected to have known, that the body from which the gift was received was an affiliated body.
- (4) In this section, a reference to a gift received from an affiliated body of a registered club is a reference to a gift received from a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth, or any other body, that within the period of 12 months immediately preceding the receipt of the gift obtained a grant or subsidy from the club.

#### **41F Disclosure of gifts from persons or organisations with contracts with registered club**

- (1) 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 club, in accordance with the regulations, declaring any gift received by the member or employee from a person or organisation that is a party to a contract with the club.

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that:
  - (a) at the time of the alleged offence there were guidelines prescribed by the regulations and in force under section 41ZC, and
  - (b) those guidelines included provisions to the effect that the gift concerned was

not of a type that was required to be declared in a return under that subsection.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that he or she did not know, and could not reasonably be expected to have known, that the person or organisation from whom or which the gift was received was a party to a contract with the registered club concerned.

## **Division 3 Register of interests and reporting requirements of registered clubs**

### **41G Secretary to keep register**

The secretary of a registered club must:

- (a) in accordance with the regulations (if any), keep a register of disclosures, declarations and returns made to the club under Division 2 (including a declaration recorded as referred to in section 41D (4)), and
- (b) provide a copy of the register to the Director each year and at other times on the written request of the Director, and
- (c) make the register available for inspection by a member of the club on the written request of the member.

Maximum penalty: 100 penalty units.

### **41H Annual reporting requirements**

- (1) A registered club must, in accordance with the regulations, send to each of its members in written form the following information in relation to each financial year of the club ending after the commencement of this section:
- (a) disclosures, declarations and returns received by the club under Division 2 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 or of any controlled contract (within the meaning of section 41O) entered into by the club within the reporting period,
  - (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 in the report 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 period of 12 months ending on 30 November in the year to which the report relates (**the gaming machine tax 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*.
- (2) For the purposes of subsection (1) (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.

- (3) In this section, **reporting period** means the relevant financial year of the registered club in relation to which the information is provided.

#### **41I Exhibition on premises of registered club of certain disclosures**

- (1) If a declaration is made at a meeting of the governing body of a registered club under section 234 (1) of the *Co-operatives Act 1992* or section 41C of this Act, the registered club must cause particulars of the declaration (including the name of the member of the governing body who made the declaration and the nature of the interest declared):
- (a) to be exhibited in a conspicuous position on the premises of the club within 48 hours after the declaration is made, and
  - (b) to be so exhibited for a continuous period of not less than 14 days.
- (2) A registered club must, within 1 month after its annual general meeting (**the latest meeting**), lodge with the secretary of the Board a copy of all particulars required to be exhibited in accordance with subsection (1) during the period commencing on the day of the annual general meeting of the club that last preceded the latest meeting and ending on the day of the latest meeting.

Maximum penalty: 10 penalty units.

### **Division 4 Contracts with registered club**

#### **41J Disposal of land of registered club**

- (1) A registered club must not dispose of any land of the club unless:
- (a) the disposal has first been approved at a general meeting of the ordinary members of the club at which a majority of the votes cast supported the approval, and
  - (b) the disposal is by way of public auction or open tender conducted by an independent real estate agent or auctioneer (subject to the requirements of any other Act or law), and
  - (c) in the case of a sale of land, the club has first obtained a valuation of the land from an independent registered real estate valuer within the meaning of the *Valuers Registration Act 1975*.
- (2) In this section, **disposal of land** by a registered club includes:
- (a) the granting by the club of a lease or licence of the land, or an easement over the land, for a period of more than 3 years (including any option to renew), or

- (b) the granting by the club of an option to buy the land, or
- (c) the termination by the club of a lease or licence held over land by the club or the granting by the club of a sublease or sublicence over land.

**41K Contracts in which member of governing body or top executive has interest**

- (1) A registered club must not enter into a contract with a member of the governing body of the club 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 of the club.
- (2) Subsection (1) does not apply to a pecuniary interest if there are guidelines prescribed by the regulations and in force under section 41ZC at the time the relevant contract is entered into that include provisions to the effect that pecuniary interests of the type concerned are not pecuniary interests to which that subsection applies.
- (3) Before entering into a contract, a registered club must make all reasonable inquiries to ensure that the provisions of subsection (1) are not contravened.
- (4) When making any such inquiries as to whether a party to the proposed contract is or is not a person, company or body referred to in subsection (1), a registered club is entitled to rely on a statutory declaration from the party to the proposed contract (or, in the case of a company or other body that is a party to the proposed contract, from the chief executive officer of the company or body) that the party is or is not such a person, company or body.
- (5) This section is subject to sections 41L, 41M and 41N.

**41L Contracts with secretary, manager, close relatives and others**

- (1) A registered club must not enter into a contract with any of the following:
  - (a) the secretary of the club, a manager appointed under section 34A for any premises of the club or any other person prescribed by the regulations for the purposes of this section,
  - (b) any close relative of a person referred to in paragraph (a),
  - (c) a company or other body in which a person referred to in paragraph (a) or (b) has a controlling interest.
- (2) For the purposes of this section:
  - (a) a person referred to in subsection (1) (a) is taken to have a controlling interest in a company or body if the person's interest in the company or

body, when added to the interest in the company or body held by one or more close relatives of the person, is a controlling interest in the company or body, and

- (b) a close relative of a person referred to in subsection (1) (a) is taken to have a controlling interest in a company or body if the relative's interest in the company or body, when added to the interest in the company or body held by any other close relative or relatives of the person, is a controlling interest in the company or body.
- (3) For the purposes of this section, a person has, or persons have, a **controlling interest** in a company or body if the person has, or persons have, the capacity to determine the outcome of decisions about the financial and operating policies of the company or body.
- (4) Before entering into a contract, a registered club must make all reasonable inquiries to ensure that the provisions of subsection (1) are not contravened.
- (5) When making any such inquiries as to whether a party to the proposed contract is or is not a person, company or body referred to in subsection (1), a registered club is entitled to rely on a statutory declaration from the party to the proposed contract (or, in the case of a company or other body that is a party to the proposed contract, from the chief executive officer of the company or body) that the party is or is not such a person, company or body.

#### **41M Remuneration of top executives**

A registered club must not enter into a contract for the remuneration by the club of a top executive of the club unless the proposed contract has first been approved by the governing body of the club.

#### **41N Loans to members of governing body and employees**

- (1) A registered club must not lend money to a member of the governing body of the club.
- (2) A registered club must not lend money to an employee of the club unless:
- (a) the amount of the proposed loan (together with the amount of any other loan to the employee by the club that has not been repaid to the club) is \$10,000 or less, and
- (b) the proposed loan has first been approved by the governing body of the club.
- (3) Subsection (2) (a) does not apply to any amount of money lent to the employee in accordance with the terms and conditions of the employee's contract of

employment with the registered club.

#### **41O Controlled contracts**

- (1) In this section, **controlled contract** means:
  - (a) a contract referred to in section 41K, or
  - (b) any other contract to which a registered club is a party that is prescribed by the regulations, or is of a class of contracts prescribed by the regulations, for the purposes of this section.
- (2) A controlled contract entered into by a club is taken to include the terms and conditions (if any) prescribed by the regulations in relation to the type of controlled contract concerned.
- (3) A registered club must, within 14 days of entering into a controlled contract, provide a copy of the contract to the Director.
- (4) This section does not extend to a contract entered into before the commencement of this section.

#### **41P General provisions**

- (1) Nothing in this Division (except section 41M), applies to the following:
  - (a) a contract of remuneration of a member of the governing body of a registered club as such a member,
  - (b) a contract of employment between a registered club and an employee of the club,
  - (c) honorariums paid to members of the governing body of a registered club or employees of a registered club.
- (2) Nothing in this Division renders a contract void or illegal.

### **Division 5 Enforcement provisions**

#### **41Q Director may apply for orders in relation to disposal of land of registered club**

- (1) If land of a registered club is disposed of otherwise than in accordance with section 41J, the Director may make an application to the Supreme Court for an order in relation to the disposition of the land.
- (2) In determining an application under subsection (1), the Supreme Court may make such of the following orders as it thinks fit if it is of the opinion that the disposal of the land has not been generally to the benefit of the members of the

registered club:

- (a) an order declaring a contract for the disposal of the land void,
  - (b) where the land had been owned by the club when it was disposed of, an order directing that the land be transferred back to the registered club,
  - (c) an order directing the payment of an amount or a further amount in relation to the disposal of the land by the person to whom the club disposed of the land or any person who benefited from the disposal of the land,
  - (d) such other orders as the Supreme Court considers necessary or appropriate in the circumstances.
- (3) The Supreme Court is not to make an order under this section that, in the opinion of the Supreme Court:
- (a) would unfairly and materially prejudice an interest or right of a person who acted in good faith and with no reasonable grounds to suspect that the disposal of the land concerned was in contravention of this Act, or
  - (b) would result in the extinguishment of an interest in the land (without proper compensation) held by a person who had no knowledge that the land had been disposed of in contravention of this Act or no means of preventing the disposal of the land.

#### **41R Termination of certain contracts**

- (1) This section applies to the following contracts (other than a contract for the disposal of land of a registered club):
  - (a) a contract that was entered into by a registered club in contravention of a provision of Division 4,
  - (b) a contract that is subject to a term or condition prescribed by the regulations referred to in section 41O if a party to the contract is failing, or has failed, to comply with the term or condition.
- (2) If the Director is of the opinion that a contract is a contract to which this section applies, the Director may serve on each party to the contract a notice in writing affording the party an opportunity to show cause within 14 days why the contract should not be terminated.
- (3) The notice is to specify the provision of Division 4 that the Director considers has been contravened or the term or condition of the contract that the Director considers is not being, or has not been, complied with.
- (4) A party to the contract may, within the period specified in the notice, arrange

with the Director for the making of submissions as to why the contract should not be terminated.

- (5) After considering any submissions so made, the Director may, by notice in writing served on each party to the contract, declare that the contract will be terminated on a day specified in the notice.
- (6) A contract the subject of a notice under subsection (5) is terminated by force of this section at and from the date specified in the notice for the termination of the contract.
- (7) The Director is not to issue a notice under subsection (5) if the Director considers that the registered club concerned may be affected adversely by the termination of the contract.
- (8) The Director may take action under this section in relation to a contract whether or not proceedings have been instituted against any person with respect to the purported contravention of Division 4, or purported failure to comply with a term or condition of the contract, that the Director believes is the ground for taking the action.
- (9) This section extends to a contract entered into by a registered club before the commencement of this section if the club would have contravened a provision of Division 4 by entering into the contract after that commencement and so extends as if the contract was entered into in contravention of the provision.

#### **41S Effect of termination**

If a contract is terminated in accordance with this Division:

- (a) the termination does not affect a right acquired, or a liability incurred, before that termination by a person who was a party to the contract, as a result of the performance before that termination of any obligation imposed by the contract, and
- (b) no liability for breach of contract is incurred by a person who was a party to the contract by reason only of that termination, and
- (c) neither the Crown nor the Director incurs any liability by reason of that termination.

#### **41T Offence of giving effect to terminated contract**

Subject to section 41S (a), a party to a contract terminated in accordance with this Division must not give any further effect to any part of the contract.

Maximum penalty: 20 penalty units.

#### **41U Notification to top executives and defence**

- (1) When a person becomes a top executive of a registered club, the registered club must, as soon as practicable, give written notice to the person informing the person that he or she is a top executive and has responsibilities under this Part.
- (2) It is a defence to a prosecution for an offence against section 41D or 41E (1) in respect of a person who is a top executive of a registered club if the person establishes that at the time the offence was committed:
  - (a) the person had not received a notice under subsection (1) from the club, and
  - (b) the person could not reasonably have been expected to know that he or she was a top executive of the club without having received such a notice.

#### **41V Offences by secretary and members of governing body of registered club in relation to contracts**

If a registered club contravenes, whether by act or omission, any provision of Division 4 or section 41U (1), the club is not guilty of an offence but each person who is the secretary of the club, a member of the governing body of the club or a close associate of the club is guilty of an offence punishable on conviction by a maximum penalty of 100 penalty units unless the person satisfies the court that:

- (a) the club contravened the provision without the knowledge actual, imputed or constructive of the person, or
- (b) the person was not in a position to influence the conduct of the club in relation to its contravention of the provision, or
- (c) the person, if in such a position, used all due diligence to prevent the contravention by the club.

### **Division 6 Inquiries in relation to registered clubs**

#### **41W Definition**

In this Division:

***inquiry*** means an inquiry that is held under section 41X.

#### **41X Inquiry may be held**

- (1) For the purposes of investigating an allegation about any corrupt or other improper conduct in relation to a registered club, the Director may arrange for the holding of an inquiry to be presided over by a person appointed by the Director.
- (2) The Director is to determine the following:

- (a) the matters that are to be the subject of an inquiry,
  - (b) the procedures to be adopted at an inquiry (including whether the inquiry is to be held in public or in private),
  - (c) the time within which the person presiding at the inquiry is required to report to the Director on the findings of an inquiry.
- (3) The matters that may be the subject of an inquiry may include matters relating to the termination of employment of members of staff of a registered club.
- (4) Evidence may be taken on oath or affirmation at an inquiry, and for that purpose:
- (a) the person presiding at the inquiry may require a person appearing at the inquiry who wishes to give evidence to take an oath or to make an affirmation in a form approved by the person presiding, and
  - (b) a member of staff of the Department of Gaming and Racing may administer an oath or affirmation to a person so appearing at the inquiry.
- (5) The person presiding at an inquiry is not bound by the rules or practice of evidence and may inform himself or herself on any matter in such manner as the person considers appropriate.

#### **41Y Nature of inquiry**

- (1) The person presiding at an inquiry:
- (a) has the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923*, and
  - (b) if the person is a Judge of the Supreme Court, or is a legal practitioner of at least 7 years' standing whose instrument of appointment to preside at the inquiry expressly so provides, has the powers and authorities conferred on a commissioner by Division 2 of Part 2 of the *Royal Commissions Act 1923* (except for section 17 (4) and (5)).
- (2) The *Royal Commissions Act 1923* applies to any witness summoned by or before the person presiding at an inquiry (except for section 13 and, subject to subsection (1) (b), Division 2 of Part 2).

#### **41Z Findings of inquiry and referral of certain matters**

- (1) The person presiding at an inquiry is required to report to the Director on the findings of the inquiry (including any information obtained in the course of the inquiry).

- (2) If the Director is satisfied that any matter contained in the report:
- (a) relates or may relate to a breach of a law of the State (including this Act) or of another State or Territory or the Commonwealth, or
  - (b) constitutes or may constitute grounds for taking proceedings of any kind (including a complaint under this or any other Act) against a registered club,
- the Director may refer the matter to a law enforcement agency or to any other person or body who may have an interest in the matter.

- (3) In this section:

**law enforcement agency** has the same meaning as in section 12A of the *Royal Commissions Act 1923*.

#### **41ZA Orders in relation to registered clubs**

- (1) The Director may, if satisfied that the findings of an inquiry justify doing so, make either or both of the following orders:
- (a) an order requiring the registered club that is the subject of the inquiry to provide each member of the club with information about the findings of the inquiry within such time as is specified in the order,
  - (b) an order requiring the club to hold an election of the governing body of the club within such time as is specified in the order.

- (2) A registered club must comply with any such order.

Maximum penalty: 100 penalty units.

- (3) An order under this section has effect despite any other provision of this Act or the rules of the registered club concerned.

### **Division 7 Ancillary provisions**

#### **41ZB Regulations for purposes of Part**

The regulations may make provision for or with respect to the following:

- (a) the period to which a return under section 41F is to relate and the form and manner of making any such return,
- (b) the method of determining the value of a gift for the purposes of Division 2,
- (c) exemptions from any of the provisions of this Part.

### **41ZC Guidelines**

- (1) The regulations may prescribe guidelines for or with respect to determining what constitutes an interest to be declared under section 41C (1), a gift to be disclosed under section 41F (1) or a pecuniary interest to which section 41K (1) applies.
- (2) The Minister is to ensure that consultation with the registered clubs industry is undertaken when any proposals for prescribing guidelines referred to in this section are being developed.

### **[10] Schedule 2, heading**

Omit the heading. Insert instead:

Schedule 2 **Savings, transitional and other provisions**

### **[11] Schedule 2, clause 1A**

Insert at the end of clause 1A (1):

*Registered Clubs Amendment Act 2003*