NSW Legislative Assembly Hansard

Registered Clubs Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 14 November 2006.

Second Reading

Mr GRANT McBRIDE (The Entrance—Minister for Gaming and Racing, and Minister for the Central Coast) [11.42 p.m.]: I move:

That this bill be now read a second time.

The Registered Clubs Amendment Bill provides for amendments to the Registered Clubs Act that have emerged from the deliberations of the club industry working group. The amendments are a package of reforms developed in partnership with the New South Wales clubs industry. The club industry working group is a joint Government and club industry body that I established in May this year. The industry working group includes representatives of the club industry, the New South Wales Office of Liquor, Gaming and Racing, and a representative of the Premier, as well as members of my staff. The role of this working group is to examine, discuss and develop proposals for amendments to the Registered Clubs Act arising from issues of concern for the government and the industry. In the coming months the group will continue to examine other significant issues facing the club industry. This was a genuine participatory process, a real partnership that will protect and enhance the rights of clubs members. The hard work and commitment of the working group has achieved a number of practical solutions for the industry.

The bill includes a number of measures that will improve club governance, cut red tape and help sustain the club industry into the future. It represents the way forward for the Government and the club industry to develop a shared vision for the future of the industry. The first stage of the working group process is consolidated in this bill. Particular emphasis has been placed on the importance of maintaining transparency and accountability. The bill deals specifically with the provision of recommendations for legislative amendments to club governance, probity and various reporting requirements. I will now briefly address the detail of the legislation. The bill includes proposals that will improve the probity of club elections, provide greater consistency in the election process and help ensure skilled club directors. The way in which registered clubs are managed is central to their survival. Club members have a right to expect their club to be properly managed. It is therefore disturbing when any complaints about club elections come to light and allegations are made about elections being conducted in a less than professional manner. This leads to perceptions that some clubs may be engaged in improper practices.
The club industry, through the club industry working group, is seeking changes to the election process to improve the probity of elections. The bill introduces new procedures that will provide a more consistent approach for the conduct of club elections. I should also note that the State Electoral Office has been consulted about these procedures and strongly supports the new approach. Clubs with more than 10,000 members will be required to use an accredited independent returning officer for election of club directors. Around 175 clubs in New South Wales fall into this category. The Office of Liquor, Gaming and Racing will be responsible for accrediting private sector organisations to provide the function of independent returning officer. The use of an accredited independent returning officer will also be an option for clubs with fewer that 10,000 members. To provide guidance, a set of rules or procedures for clubs with fewer than 10,000 members will be developed by the Office of Liquor, Gaming and Racing in close consultation with the State Electoral Office and club industry representatives. In addition anyone who nominates for election as a club director will be required to receive a pre-election education package.

This change will increase awareness of the responsibilities involved in being a club director, and is an important step toward more informed participation in club governing bodies. Clubs New South Wales has developed an excellent education package and it will be made freely available to clubs, including clubs that are not members of that association. Another important practical change concerns the number of club members who must be full voting members. There have been some difficulties arising from existing requirements in the Registered Clubs Act concerning voting rights of club members, in particular the requirements in section 9 of the Act regarding a majority of all club members being full voting members. This effectively places limits on how many social or non-voting members a club could have. The bill will rectify this matter by clearly stating that only 25 per cent of the members of the club must be full voting members. This will be of enormous benefit to many RSL, bowling and golf clubs in particular because it allows them to expand their membership and generate additional revenue from an enhanced membership base.

Finally, with regard to election probity we are also strengthening the current prohibition that exists to ensure that only club members should be able to determine who should be on the governing body of their club. This is an entirely appropriate approach to adopt towards such matters and this bill will ensure that the rights of club members are protected. The bill seeks to provide greater flexibility for the disposal or leasing of club property,

while maintaining transparency of the process and probity standards. Processes were introduced in early 2004 to enhance accountability in the disposal of club land or property. However, clubs have encountered problems with that process for various reasons—including the requirement for the disposal of club land to be approved by members at a general meeting. The number of arrangements already in place, such as shared development ventures as well as other unique and complex circumstances involving the use and disposal of club land and property, have also given rise to unforeseen difficulties.

To clarify and simplify this situation the bill will introduce a definition of "core property", which will include a club's defined premises and any facility used by club members. It will also provide for club members to determine what other club property is to be classed as core property. Other club property will be regarded as non-core property, for example, land purchased by a club as an investment property with a view to selling or developing the land at a later date. These changes will not diminish accountability and transparency. Clubs will be required to report to their members what property is being classed as core and non-core, and the disposal of core property will require agreement by club members. Greater flexibility will also be built into the Act through appropriate exemptions. For example, clubs will be able to dispose of core property but only if the members of a club at a general meeting have approved the disposal of core property and the parties, price, property and valuation have been disclosed.

Leases, licences, subleases and sub-licences of core property with terms not exceeding six years and which are supported by a valuation will also be exempted from current requirements. In addition, regulations will provide for exemptions to the disposal requirements. For example, the regulations will provide for sale by private treaty in the case of a club that has followed the required open tender procedure and is still unable to dispose of the land in question. These exemptions will be the subject of consultation and discussion with the club industry prior to the commencement of the new provisions.

To explain this new classification, at the moment all club property is effectively core property and the existing disposal requirements must be followed. They are quite specific and require an independent valuation, public auction, or open tender process, and the approval of club members. An example would be a club that had a small area of land that a neighbour wished to purchase and the club was willing to sell, but the value of the land exceeded the costs the club would have had to incur to go through the required process.

Under this new approach, such an area, with the approval of club members, could be classed as "non-core" and sold directly to the interested party via private treaty, thereby facilitating the disposal of land while not incurring significant cost. This would result in benefits for the club members, the club, and the person purchasing the parcel of land. The new measures would mean that at a general meeting a club would provide members with full details of its land holdings and which areas are proposed to be classed core and non core. This would provide members with the opportunity not only to determine what land is core and non-core but also to seek further information if required as to the reasons why the land would be classed as such. This new arrangement means club members will have a much greater say in the process for both the classification of land and its disposal. Clubs will be allowed a period of time up until the next reasonable opportunity, for example their annual general meeting, before they will be expected to have all of their property divided into core and non-core property.

Another example of the importance of this reform is where a club and a developer may want to swap parcels of land of equal size as part of a development. Current provisions under section 41J would prohibit or significantly hinder this type of arrangement even though it would benefit the club. Another example illustrating the importance of this change is that the current provisions do not even envisage the type of shared or joint development ventures that some clubs may seek to enter into to capitalise on the value of land holdings that were never intended to be used for club members. This bill is also about reducing red tape and the compliance burden for clubs. The reporting requirements for clubs have increased over the years. As a result, some of those requirements now overlap or are redundant or obsolete. While it is acknowledged that club members and others need to be informed about a club's operations and financial status, the current requirements are cumbersome and require reform.

The bill removes many of the reporting requirements from the Act and transfers them to the regulation. The requirements will be streamlined and updated and then consolidated into a single section of the regulation. This will also enable reporting requirements to be updated in the future to reflect improved processes of information collection and any changes to the type of reports required. It is important to note that these changes will not impact on accountability or the transparency of the reporting process. Information will still be available for club members and appropriate reporting processes will be maintained.

Following the passage of this legislation, the New South Wales Office of Liquor, Gaming and Racing will also seek to improve the reporting process by the club industry to Government. A similar example of such an improvement is the one introduced this year for the Community Development and Support Expenditure [CDSE] scheme, whereby reports by clubs are now done in a consistent manner electronically.

The bill will also improve the operation of the five-kilometre rule particularly for clubs whose location makes the application of the rule problematic. A long-standing requirement for clubs has been that anyone living within five

kilometres of a registered club must be a member of that club in order to enter and use the club's facilities. The way in which the five kilometres is measured is not specified in legislation but the policy has been that a direct five-kilometre radius from a club is used. This was considered to be easy for patrons to understand and simple for clubs, the police and departmental inspectors to administer. While many clubs are strongly supportive of the five-kilometre rule, for a number of clubs their location or nearby geographical obstacles have created some problems concerning the manner in which the five kilometres is measured, particularly in rural and regional areas.

A prime example of the importance of this change is the Yamba Bowling and Recreation Club that is situated on one side of a river. For people living on the opposite side of the river the most feasible means to get to the club is a 55-kilometre road trip. Although they live well within five kilometres of the club as the crow flies in this case that does not mean they need to travel only that distance to reach the club. As a result, even though people may visit the club on a rare occasion they are obligated to become a full member of the club and cannot take advantage of temporary membership status.

In such cases the bill will provide for those clubs to seek exemptions from the five-kilometre rule on application to the Director of Liquor and Gaming. To clarify the situation the bill will provide for the regulation to create exceptions to this rule. Any such exception will not automatically apply to all clubs, but will involve a prescribed process whereby a club will have to apply to the Director of Liquor and Gaming for a variation in the way the five-kilometre distance is measured.

The bill will also reduce current restrictions on club amalgamations to allow for an increased number of amalgamations between clubs. The Act has long provided for the amalgamation of registered clubs. Amalgamation can make the difference between the preservation or permanent loss of the community assets that have been established by a club, for example, sporting grounds or community meeting areas. The Government moved to put in certain limitations on the amalgamations process to ensure club groups did not get too large or lose touch with their local communities. Therefore the existing amalgamation process does prevent some clubs that would be interested in amalgamating from doing so. The Government has listened to clubs' concerns and has agreed a new direction is needed. The new amalgamation procedures will provide for a club to have a much wider choice of potential amalgamation partners.

The maximum number of amalgamations will be increased from four to 10, keeping the intent of some limit but to keep the number at a manageable size. This new cap has been suggested by the club industry. The Government acknowledges that many club groups that sit at the current cap of four are operating very well and may be in a position to partner with additional clubs. The new processes will also provide assurance to the Government and local communities that amalgamations will only occur when they are in the best interests of the community, and that community facilities will be preserved. This is a very important point. Therefore proposed amalgamations will be subject to the completion of a community impact statement, which will bring together relevant information regarding the maintenance of facilities and services at both clubs, accessibility to those facilities and the impact on the local economy in terms of employment and impact on local suppliers.

Another requirement would be the preparation of a memorandum of understanding stating both clubs' position on any proposed amalgamation. Both of these documents would be made available to club members. These strengthen the integrity of the amalgamation process and will ensure that club members get a fair deal out of an amalgamation. The details of the new process will be subject to further consultation with the club industry. One recent example of how club amalgamations preserve community facilities is the amalgamation of the Mounties and Harbord Diggers clubs. While they are two very different types of registered clubs, the amalgamation has resolved whatever financial difficulties are faced by Harbord Diggers Club and will also facilitate the renovation and revitalisation of the Harbord Diggers Club premises. This, of course, is of great benefit to members of Harbord Diggers Club and the local community, and also to the members of the Mounties group of clubs in general.

There are many other examples of smaller clubs, particularly bowling clubs, that have been saved by amalgamation with a larger parent club. The new club amalgamation provisions will expand the potential for amalgamations by relaxing the current restrictions on the number of amalgamations a club may enter into. This measure is being introduced specifically because there are clubs who are willing and ready to assist smaller clubs preserve their long-held community assets through an amalgamation, but have already reached their limit of four amalgamations and are therefore unable to assist. I understand that many of the more profitable clubs within the State are frequently approached by smaller clubs seeking an amalgamation partner. The current restrictions mean that the more profitable clubs often have no choice but to turn down those requests.

I also want to touch on some of the transitional arrangements and miscellaneous provisions in the bill. The bill takes account of club amalgamations that might already be under way through appropriate transitional provisions; that is, the changes to club amalgamations in the bill will not apply to pending applications for an amalgamation. This is the standard approach taken in such circumstances. By way of miscellaneous provision it has been a long-standing requirement that clubs have been required to include the statement "for the information of members and their guests" on all visible and audible promotional and advertising material relating

to club facilities.

This requirement was introduced at a time when there were concerns about some clubs operating an open door policy. Clubs are now more vigilant about this issue and many clubs are proactive in promoting membership requirements through their web sites. Also, there is now more of a focus on the sign-in procedures at clubs. As a result, the broader community is better informed about the need to be a club member if they live within five kilometres of a registered club. It is considered that this statement no longer serves any real purpose and is little more than a compliance burden for the clubs. The bill removes this outdated requirement.

In addition, the existing definition of "top executive" in section 41B was inserted to help clarify the application of certain reporting and disclosure requirements as part of the club accountability and governance measures introduced in April 2004. Since the commencement of the relevant reporting and disclosure provisions there have been difficulties arising from the broad reach of this definition. In some cases employees with no managerial responsibilities have been captured by the definition. This is not what was intended. The bill inserts an amended definition that will rectify this situation and limit the application of the term "top executive" to the appropriate persons.

In summary, the bill introduces measures that will produce direct and long-term benefits for registered clubs and their members. The changes are supported by the club industry, club employee associations, the Government, and other stakeholders. Through the Club Industry Working Group the Government is working in partnership to deliver the much-needed reforms and an industry plan to ensure the future viability of registered clubs in a competitive marketplace. The bill is the first stage of that new partnership. The Iemma Government understands the importance of the club industry to its membership and the broader community. Clubs provide important social, sporting and other facilities for their communities. Through the Community Development Support Expenditure Scheme, clubs provide crucial funding for local projects. Clubs also make an enormous contribution to employment in New South Wales and the New South Wales economy in general.

It is therefore essential that the club industry is in a position to be viable and strong into the future. That is what this bill is all about. It delivers practical solutions in the best interests of clubs and their members across New South Wales. I commend the bill to the House.