



New South Wales

# Registered Clubs Amendment (Accountability and Amalgamations) Bill 2018

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Liquor and Gaming Legislation Amendment Bill 2018*.

## Overview of Bill

The object of this Bill is to amend the *Registered Clubs Act 1976* (the **principal Act**) and the *Registered Clubs Regulation 2015* (the **principal Regulation**) as follows:

- (a) to require clubs to comply with the Registered Clubs Accountability Code (the **Code**) that is to be set out in the principal Regulation,
- (b) to transfer to the Code existing provisions of the principal Act and Regulation relating to the accountability of clubs (including requirements relating to the disclosure of financial and other interests, restrictions on contracts, loans and the use of club property, the provision of information to club members and reporting requirements),
- (c) to authorise the Independent Liquor and Gaming Authority (**ILGA**) to take disciplinary action against the secretary of a club or a member of the governing body of a club rather than only against the club itself,
- (d) to provide that the disciplinary action that ILGA may take against a secretary or member of a governing body of a club includes imposing a monetary penalty not exceeding 100 penalty units (currently \$11,000) or removing the person from that office,
- (e) to permit clubs to call for expressions of interest from, and amalgamate with, clubs outside their local area,

- (f) to make it clear that the limitation on the number of other clubs that a club is permitted to amalgamate with does not include any de-amalgamated club or club that has ceased to trade,
- (g) to make other miscellaneous amendments of a minor or consequential nature.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

## Schedule 1 Amendment of Registered Clubs Act 1976 No 31

### Amendments relating to club accountability

**Schedule 1 [14]** repeals existing provisions of the principal Act relating to the accountability of clubs and inserts a new Part 4A containing the following provisions:

- (a) **Proposed section 41B** inserts definitions of terms used in the proposed Part (including defining *director* as a member of the governing body of a club).
- (b) **Proposed section 41C** authorises the regulations to prescribe a Registered Clubs Accountability Code that will contain provisions relating to club accountability (including disclosure requirements, restricting clubs from entering into certain contracts or requiring clubs to amend or terminate such contracts, restricting clubs from lending money to directors, top executives and employees, restricting the use and disposal of club property and reporting requirements).

The proposed section makes it an offence for a person to contravene any provision of the Code that is specified as an offence provision (with a maximum penalty of 50 penalty units, currently \$5,500). The proposed section also includes a provision (similar to existing section 41V of the principal Act) that makes the secretary or a director of a club, or a close associate of the club, liable for any contravention by the club of an offence provision of the Code.

- (c) **Proposed section 41D** (which is similar to existing section 41R of the principal Act) authorises the Secretary of the Department of Industry (the *departmental Secretary*) to terminate contracts (other than contracts for the disposal of real property owned or occupied by a registered club) entered into in contravention of the Code.
- (d) **Proposed section 41E** (which is similar to existing sections 41J and 41Q of the principal Act) restricts the disposal of core property of a club (which includes the club premises, facilities provided by the club for the use of its members and their guests and property declared by the members of the club to be core property of the club). The proposed section prohibits a club from disposing of any core property of the club unless the property has been valued by a qualified valuer, the disposal has been approved by a majority resolution of ordinary members of the club and any sale is by way of public auction or open tender conducted by an independent real estate agent or auctioneer. The proposed section also authorises the departmental Secretary to apply to the Supreme Court for an order if a club has disposed of core property in contravention of that requirement. The Supreme Court, if it is of the opinion that the disposal of the core property has not been generally to the benefit of the members of the club, may make orders in relation to the contract (including declaring the contract to be void).
- (e) **Proposed section 41F** (which is similar to existing section 41S of the principal Act) specifies the effect of the termination of contract under the proposed Part, including that 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. The proposed section makes it an offence for a party to a contract that is terminated under the proposed Part to give any

further effect to any part of the contract (with a maximum penalty of 20 penalty units, currently \$2,200).

- (f) **Proposed section 41G** authorises the regulations to provide for exemptions from the provisions of the proposed Part.

**Schedule 1 [1]** is a consequential amendment that inserts a definition of the *Code*.

**Schedule 1 [3]** makes it clear that the requirements under the principal Act that must be met by clubs will include the requirements imposed by the Registered Clubs Accountability Code.

**Schedule 1 [4]** ensures that any management contract for a person who is exercising functions relating to the management of the business or affairs of a club is entered into in accordance with the Registered Clubs Accountability Code.

**Schedule 1 [10]** updates a cross-reference to a provision in Part 4A of the principal Act that has been renumbered.

**Schedule 1 [13]** ensures that the departmental Secretary may carry out investigations and inquiries to ascertain whether the provisions of the Registered Clubs Accountability Code have been complied with.

### **Amendments relating to club amalgamations**

**Schedule 1 [6]** provides that the limit on the number (currently 10) of other clubs with which a club is permitted to amalgamate with does not include any club that has de-amalgamated from it or has ceased to trade.

**Schedule 1 [7]** removes the restriction on clubs being permitted to amalgamate only if they are situated in the same area (currently defined as a radius of 50 kilometres from the main premises of the “parent” club). **Schedule 1 [5]** is a consequential amendment.

**Schedule 1 [8]** allows clubs that have been amalgamated to negotiate a longer period during which the parent club must not dispose of any of the major assets of the dissolved club than the 3-year period currently required.

**Schedule 1 [9]** provides that, when an amalgamated club is de-amalgamated, the members of the dissolved club (ie the club that was dissolved as a result of the amalgamation) who have continued to be members of the parent club up until the de-amalgamation are entitled to become members of the club that is formed as a result of the de-amalgamation. At present, the membership of the de-amalgamated club is taken to include the members of the former dissolved club.

**Schedule 1 [32]** provides that this amendment does not apply to de-amalgamations that have already taken effect.

### **Amendments relating to disciplinary action against club secretaries and directors**

**Schedule 1 [15]** provides that complaints may be made to ILGA under Part 6A of the principal Act in relation to the secretary of a club or a member of the governing body of a club.

**Schedule 1 [16]–[20]** provide that the grounds on which ILGA may take disciplinary action under Part 6A of the principal Act in relation to a club will also apply to the secretary of a club or a member of the governing body of a club.

**Schedule 1 [21]–[24]** make consequential amendments to provisions relating to the procedure for taking disciplinary action against a club, the secretary of a club or a member of the governing body of a club.

**Schedule 1 [26] and [27]** provide that the disciplinary action that ILGA may take against the secretary of a club or a member of the governing body of a club includes the making of an order that the person pay a monetary penalty not exceeding 100 penalty units (currently \$11,000) and the removal of the person from office. **Schedule 1 [25] and [28]–[31]** are consequential amendments relating to the taking of disciplinary action against the secretary of a club or a member of the governing body of a club.

### Miscellaneous amendments

**Schedule 1 [11]** omits a requirement that a person who ceases to be the secretary of a club must notify ILGA within 7 days.

**Schedule 1 [12]** restates the existing provision that makes it an offence for a person to act as the secretary of a club, or for a club to appoint a person as secretary, if the person has not been approved by ILGA to act as the secretary of the club. **Schedule 1 [2]** is a consequential amendment that describes when a person is acting as the secretary of a club.

## Schedule 2 Amendment of Registered Clubs Regulation 2015

### Amendments relating to club accountability

**Schedule 2 [15]** sets out the text of the Registered Clubs Accountability Code. The Code will be part of the principal Regulation and may only be amended by an Act or by further regulation under the principal Act. **Schedule 2 [10]** is a formal provision that gives effect to the Code.

**Schedule 2 [5]** omits Part 5 of the principal Regulation as a consequence of the amendment made by **Schedule 1 [14]** and the insertion of the Code in the Regulation. However, one existing provision of Part 5 (which establishes exceptions to the restrictions on the disposal of core property of a club) is transferred by **Schedule 2 [6]** to another part of the principal Regulation.

**Schedule 2 [1], [7], [8] and [11]** update cross-references as a consequence of the amendments made by **Schedule 1 [14]**.

### Amendments relating to club amalgamations

**Schedule 2 [3]:**

- (a) ensures that a club that is seeking to amalgamate may approach any other club at any time (including by way of an expression of interest) about the possibility of amalgamating, and
- (b) requires a club, at each annual meeting of the club, to give notice of each expression of interest about an amalgamation (which includes unsolicited merger offers) received from another club within the previous 12 months, and
- (c) requires a club to give its members notice of each expression of interest or merger offer it has received from another club before proceeding with any amalgamation with that club.

**Schedule 2 [4]** imposes an additional requirement about the memorandum of understanding that clubs must enter into and must provide to members before any meeting is held to vote on any proposed amalgamation. The memorandum of understanding will be required to address the risks of not meeting any specified intentions regarding the preservation of the core property of the dissolved club and how those risks are to be addressed if realised.

### Miscellaneous amendments

**Schedule 2 [2]** updates a reference to a Department.

**Schedule 2 [9] and [12]** are consequential on the amendment made by **Schedule 1 [11]** which removes the offence of failing to notify ILGA when a person ceases to be the secretary of a club.

**Schedule 2 [13] and [14]** update the list of offences the principal Act and Regulation prescribed as penalty notice offences as a consequence of the amendments made by **Schedule 1 [12] and [14]** and **Schedule 2 [5]**.

## Schedule 3 Consequential amendment of Gaming and Liquor Administration Act 2007 No 91

**Schedule 3** provides that directions given to a club by the departmental Secretary under the proposed Registered Clubs Accountability Code will be reviewable by ILGA.