

**REGISTERED CLUBS (MANAGEMENT) AMENDMENT
BILL 1993**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Registered Clubs Act 1976 so as:

- (a) to remove the existing power of the Licensing Court when determining a complaint against a registered club to disqualify the club from holding a certificate of registration for a period of time (see Schedule 1 (1), (2) (a), (c), (f) and (4));
 - (b) to empower the Licensing Court when determining a complaint against a registered club to order that a specified person is ineligible to be the secretary or a member of the governing body of a registered club (see Schedule 1 (2) (e) and (3));
 - (c) to add as a ground of complaint against a registered club the ground that a member of the governing body of the club is not a fit and proper person to hold that position (there is currently provision for such a complaint to be made only about the secretary of the club) (see Schedule 1 (2) (b));
 - (d) to increase from 500 to 2,500 penalty units the maximum monetary penalty that the Licensing Court can impose on a club when determining a complaint against the club (see Schedule 1 (2) (d));
 - (e) to enact transitional provisions (see Schedule 1 (5)) that will:
 - require any existing registration disqualifications to be remitted to the Licensing Court for redetermination on the basis of the new provisions (except the increase in monetary penalty); and
 - require pending matters to be determined on the basis of the new provisions (except the increase in monetary penalty); and
 - apply an amendment to the Act made in 1989 to any such pending or remitted matters even if they relate to a complaint made before the 1989 amendment (the amendment enabled the Licensing Court to impose *any one or more* of the available disciplinary measures whereas before the amendment it was limited to imposing *only one* of those measures).
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Registered Clubs (Management) Amendment 1993

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 gives effect to the Schedule of amendments to the Registered Clubs Act 1976.

Schedule 1 makes the amendments to the Registered Clubs Act 1976 explained above.

FIRST PRINT

**REGISTERED CLUBS (MANAGEMENT) AMENDMENT
BILL 1993**

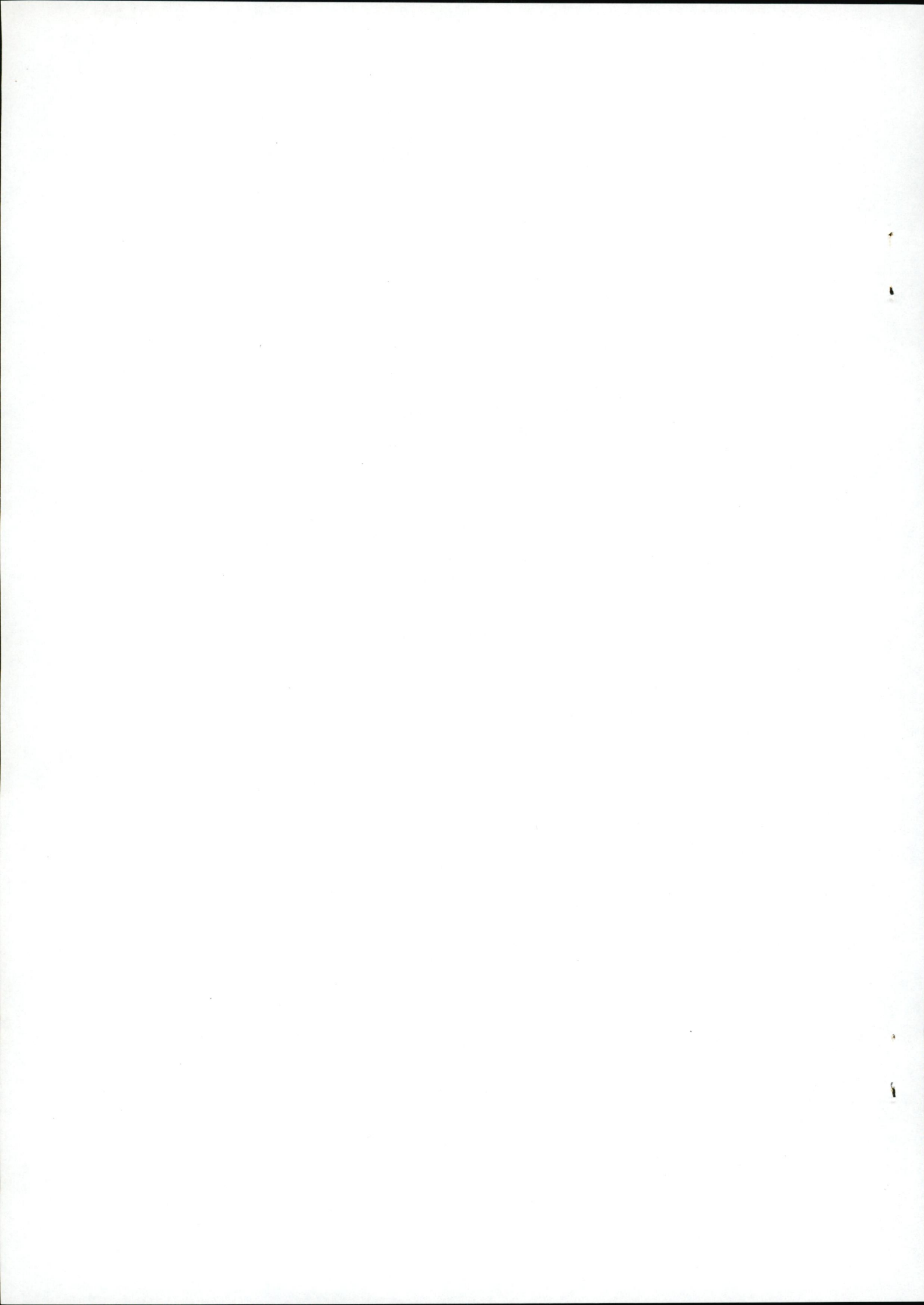
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Registered Clubs Act 1976 No. 31

SCHEDULE 1—AMENDMENTS



**REGISTERED CLUBS (MANAGEMENT) AMENDMENT
BILL 1993**

NEW SOUTH WALES



No. , 1993

A BILL FOR

An Act to amend the Registered Clubs Act 1976 in relation to the powers of the Licensing Court in respect of complaints about registered clubs; and for other purposes.

Registered Clubs (Management) Amendment 1993

The Legislature of New South Wales enacts:

Short title

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

5 Commencement

2. This Act commences on the date of assent.

Amendment of Registered Clubs Act 1976 No. 31

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

SCHEDULE 1—AMENDMENTS

10

(Sec. 3)

(1) Section 16 (**Duration of certificate of registration**):

- (a) At the end of section 16 (2) (a), insert "or".
- (b) Omit section 16 (2) (b).

15

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

(a) Section 17 (1):

Omit "or why the club should not be disqualified for a period from holding a certificate of registration".

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

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(vii) the secretary of the club or one or more members of the governing body of the club are not fit and proper persons to act as such;

(c) Omit section 17 (2) (b).

(d) Section 17 (2) (c):

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Omit "500 penalty units", insert instead "2,500 penalty units".

Registered Clubs (Management) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

- (e) Renumber section 17 (2) (f) as paragraph (g), and after section 17 (2) (e), insert:
- (f) declare (subject to section 17AAA) that each person specified in the declaration is, for such period as is specified in the declaration, ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body (or both of those positions) of:
- (i) the club; and
- (ii) if the Licensing Court so declares—all other registered clubs or such other registered clubs as are specified or as are of a class specified in the declaration;
- (f) Omit section 17 (6).
- (3) After section 17, insert:
- Declarations concerning ineligibility of persons to be secretary or member of governing body**
- 17AAA. (1) This section applies to the power of the Licensing Court to make a declaration under section 17 (2) (f) in connection with a complaint about a registered club.
- (2) The Licensing Court must not make a declaration in relation to a person unless:
- (a) it is satisfied that the person was the secretary of the club or a member of the governing body of the club at a relevant time or was materially involved in the management of the affairs of the registered club at a relevant time; and
- (b) the person has been given an opportunity to show cause why the declaration should not be made.
- (3) The Licensing Court may make a declaration in relation to a person regardless of whether the grounds on which the complaint under section 17 was made included the ground that the person was not a fit and proper person to act as secretary or member of the governing body of the registered club.

Registered Clubs (Management) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

(4) The Licensing Court may make a declaration in relation to a person regardless of whether a complaint has been made under section 35 in relation to the person.

5 (5) If the Licensing Court makes a declaration in relation to a person, the position of the person as secretary or member of the governing body of any registered club to which the declaration relates immediately becomes vacant.

10 (6) A person must not, during the period for which the person is declared ineligible for a position, stand for election or accept appointment to, or hold office in, that position.

Maximum penalty: 10 penalty units.

15 (7) Despite any other law, if the Licensing Court makes a declaration in relation to a person, the person is not, in consequence of the declaration or of anything done to give effect to the declaration, entitled to compensation or damages from the club of which he or she was the secretary or a member of the governing body, unless the Licensing Court specifies in the declaration that the declaration does not affect the rights, if any, of the person to compensation or damages from the club.

20 (8) A vacancy in the position of a member of the governing body of a registered club resulting from a declaration may be filled as a casual vacancy.

25 (4) Section 36 (**Conduct of club elections by Electoral Commissioner**):

From section 36 (11), omit “is disqualified from holding a certificate of registration or”.

(5) Schedule 2 (**Transitional Provisions**):

30 At the end of Schedule 2, insert:

Part 5—Provisions relating to enactment of Registered Clubs (Management) Amendment Act 1993

Existing disqualifications remitted to Licensing Court for redetermination

35 39. (1) On the commencement of the Registered Clubs (Management) Amendment Act 1993, any matter determined under section 17 that resulted in the disqualification of a registered club under section 17 (2) (b) (being a

Registered Clubs (Management) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

disqualification in force immediately before that commencement or that is not operative because the decision of the Licensing Court is subject to an appeal) is by this clause remitted to the Licensing Court for redetermination. 5

(2) Until that redetermination takes place, the decision of the Licensing Court on the matter is for the purposes of section 16 (Duration of certificate of registration) taken to be subject to an appeal that has not been finally disposed of.

Certain amendments apply to existing matters and matters remitted for redetermination 10

40. The following amendments made by the Registered Clubs (Management) Amendment Act 1993 extend to any matter pending before the Licensing Court at the commencement of that Act and also extend to any matter heard and determined by the Licensing Court before that commencement that as a result of any appeal or the operation of clause 39 is remitted to the Licensing Court for redetermination: 15

(a) the amendments with respect to the disqualification of a registered club from holding a certificate of registration (namely the amendments made by Schedule 1 (1), (2) (a), (c) and (f) and (4) to that Act); 20

(b) the amendments with respect to the power of the Licensing Court to make a declaration that a person is ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body of a registered club or registered clubs (namely the amendments made by Schedule 1 (2) (b) and (e) and (3) to that Act). 25 30

Penalty increase does not apply to existing matters and matters remitted for redetermination

41. The increased maximum penalty effected by Schedule 1 (2) (d) to the Registered Clubs (Management) Amendment Act 1993 does not apply in relation to anything done or omitted to be done before the commencement of the amendment or in relation to complaints made before the commencement of the amendment. This clause does not affect the generality of section 55 of the Interpretation Act 1987. 35 40

Registered Clubs (Management) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

1989 amendment extends to pending and remitted matters

5 42. (1) The amendment made to section 17 (2) by
Schedule 1 to the Statute Law (Miscellaneous Provisions)
Act (No. 3) 1989 extends to any matter pending before the
Licensing Court at the commencement of this clause and also
10 extends to any matter heard and determined by the Licensing
Court before that commencement that as a result of any
appeal or the operation of clause 39 is remitted to the
Licensing Court for redetermination, even if the matter
relates to a complaint made before the commencement of that
amendment.

15 (2) The amendment referred to in this clause enabled the
Licensing Court to take any one or more of the actions
specified in section 17 (2) when hearing and determining a
complaint about a registered club (prior to the amendment it
was limited to any one of those actions).

20 (3) This clause applies despite the transitional provision
enacted by the Statute Law (Miscellaneous Provisions) Act
(No. 3) 1989 in respect of the amendment.

REGISTERED CLUBS (MANAGEMENT) AMENDMENT

BILL 1993

SECOND READING SPEECH

LEGISLATIVE COUNCIL

MR PRESIDENT,

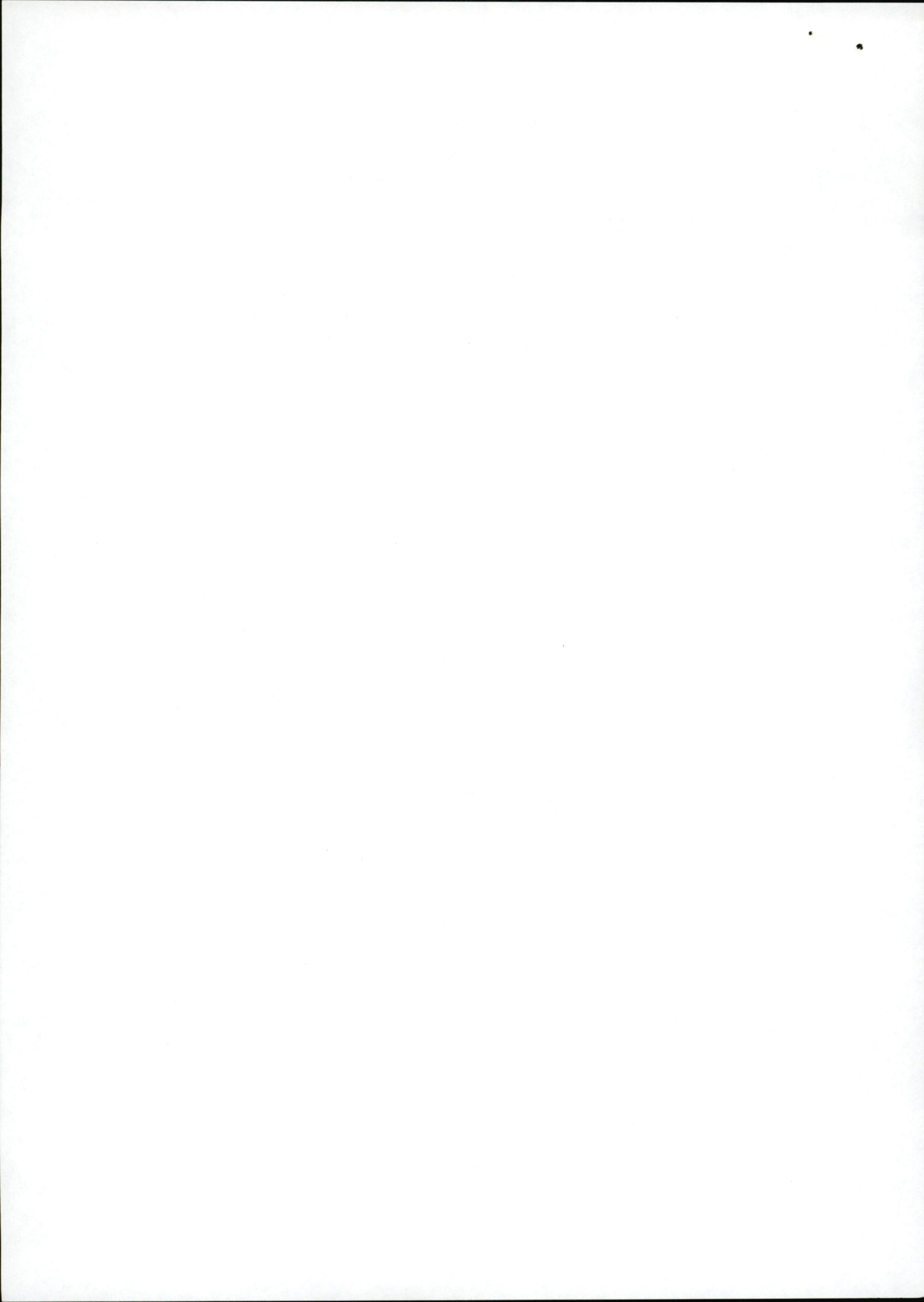
I MOVE THAT THIS BILL BE NOW READ A SECOND TIME.

THE PURPOSE OF THIS BILL IS TO AMEND THE REGISTERED CLUBS ACT OF 1976 TO DEAL WITH SOME SPECIFIC MATTERS OF PUBLIC INTEREST.

IN BROAD TERMS THE OBJECT OF THE BILL IS TO AMEND THE ACT SO AS TO:

- * REMOVE THE EXISTING POWER OF THE LICENSING COURT TO DISQUALIFY A CLUB FROM HOLDING A CERTIFICATE OF REGISTRATION FOR A PERIOD;
- * EMPOWER THE COURT TO DECLARE THAT A SPECIFIED PERSON IS INELIGIBLE TO BE THE SECRETARY OR A MEMBER OF THE GOVERNING BODY OF A CLUB;
- * ADD A GROUND OF COMPLAINT THAT A MEMBER OF THE GOVERNING BODY OF A CLUB IS NOT A FIT AND PROPER PERSON TO HOLD THE POSITION;
- * INCREASE THE MAXIMUM MONETARY PENALTY IN COMPLAINT PROCEEDINGS FROM 500 TO 2500 PENALTY UNITS; AND
- * ENACT TRANSITIONAL PROVISIONS TO REQUIRE THAT EXISTING REGISTRATION DISQUALIFICATIONS BE REMITTED TO THE LICENSING COURT TO DECIDE ON THE BASIS OF THE NEW PROVISIONS (EXCEPT THE INCREASE IN MONETARY PENALTY).

IT MAY BE OF SOME ASSISTANCE TO MEMBERS IF I GIVE SOME BACKGROUND TO THESE AMENDMENTS.



THE RECENT AND SOMEWHAT UNFORTUNATE HISTORY OF THE SEAGULLS RUGBY LEAGUE FOOTBALL CLUB AT TWEED HEADS HAS BEEN VENTILATED IN THE MEDIA BOTH IN SYDNEY AND ON THE FAR NORTH COAST.

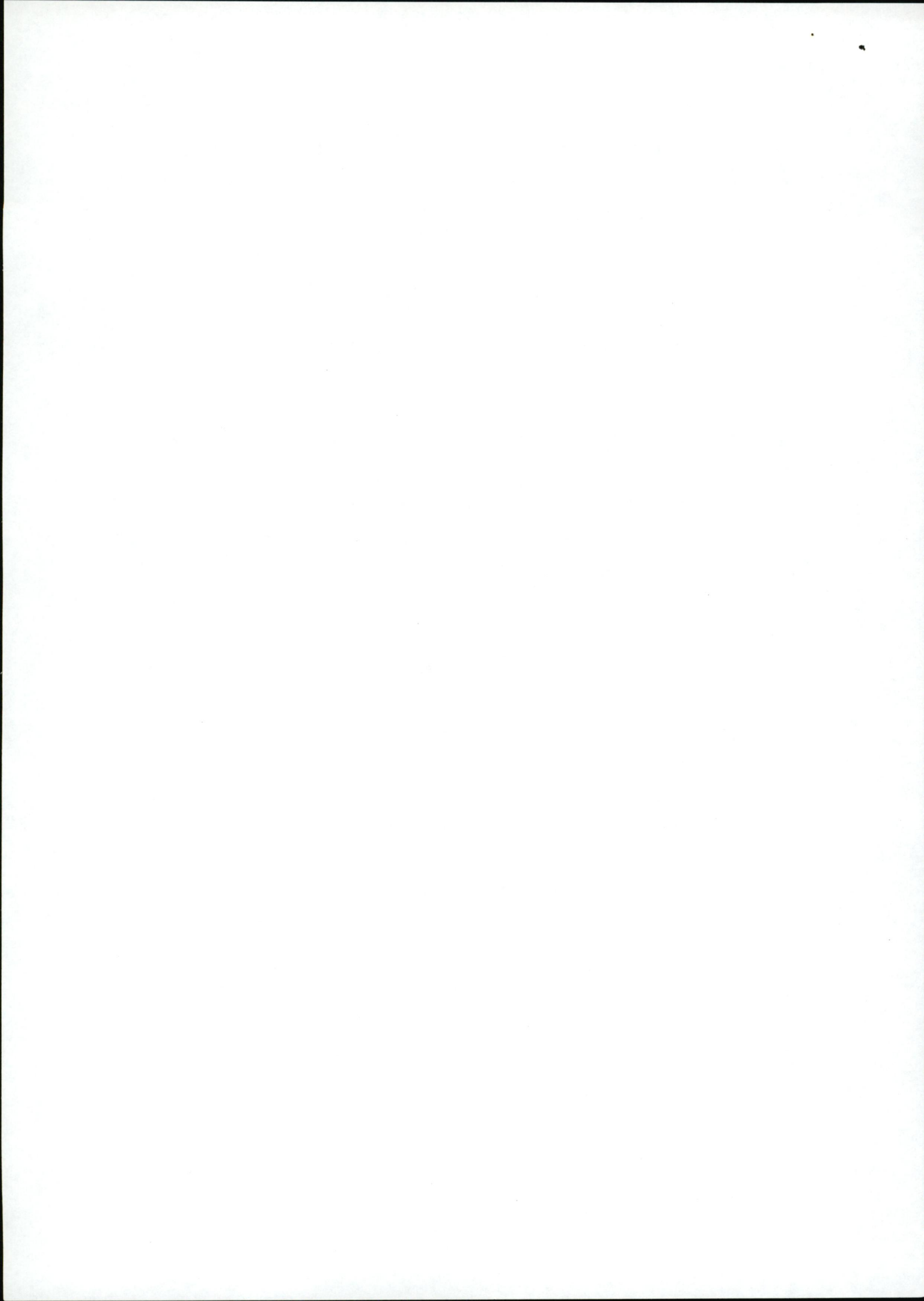
AS A CONSEQUENCE OF ITS OWN ACTIONS SOME YEARS AGO, THIS CLUB IS FACING THE PROSPECT OF CLOSING ITS DOORS FOR TWO WEEKS. THIS FLOWS FROM A DETERMINATION OF THE LICENSING COURT OF NEW SOUTH WALES.

THIS CASE HAD ITS ORIGINS IN THE MID 1980'S AND CULMINATED IN A COMPLAINT IN 1988 BY THE SUPERINTENDENT OF LICENCES TO THE LICENSING COURT OF NEW SOUTH WALES. THIS LED TO A DECISION OF A LICENSING MAGISTRATE IN 1989 TO DISQUALIFY THE CLUB FROM HOLDING A CERTIFICATE OF REGISTRATION FOR A PERIOD OF TWO MONTHS.

I WILL NOT GO INTO THE DETAILS OF THOSE COMPLAINTS AT THIS TIME BECAUSE THAT IS ALL PAST HISTORY AND NOT ALL OF THE INITIAL FINDINGS OF THE MAGISTRATE SURVIVED THE SUBSEQUENT COURT PROCESSES.

WHAT IS SIGNIFICANT HERE IS THE AMOUNT OF TIME AND COST ABSORBED IN THE COURTS IN COMING TO GRIPS WITH THIS CASE.

IT MAY ASSIST IF I QUOTE FROM THE DECISION OF THE COURT OF APPEAL IN THIS MATTER ON 22 DECEMBER 1992.



THE HONOURABLE JUSTICE P KIRBY SAID AND I QUOTE:

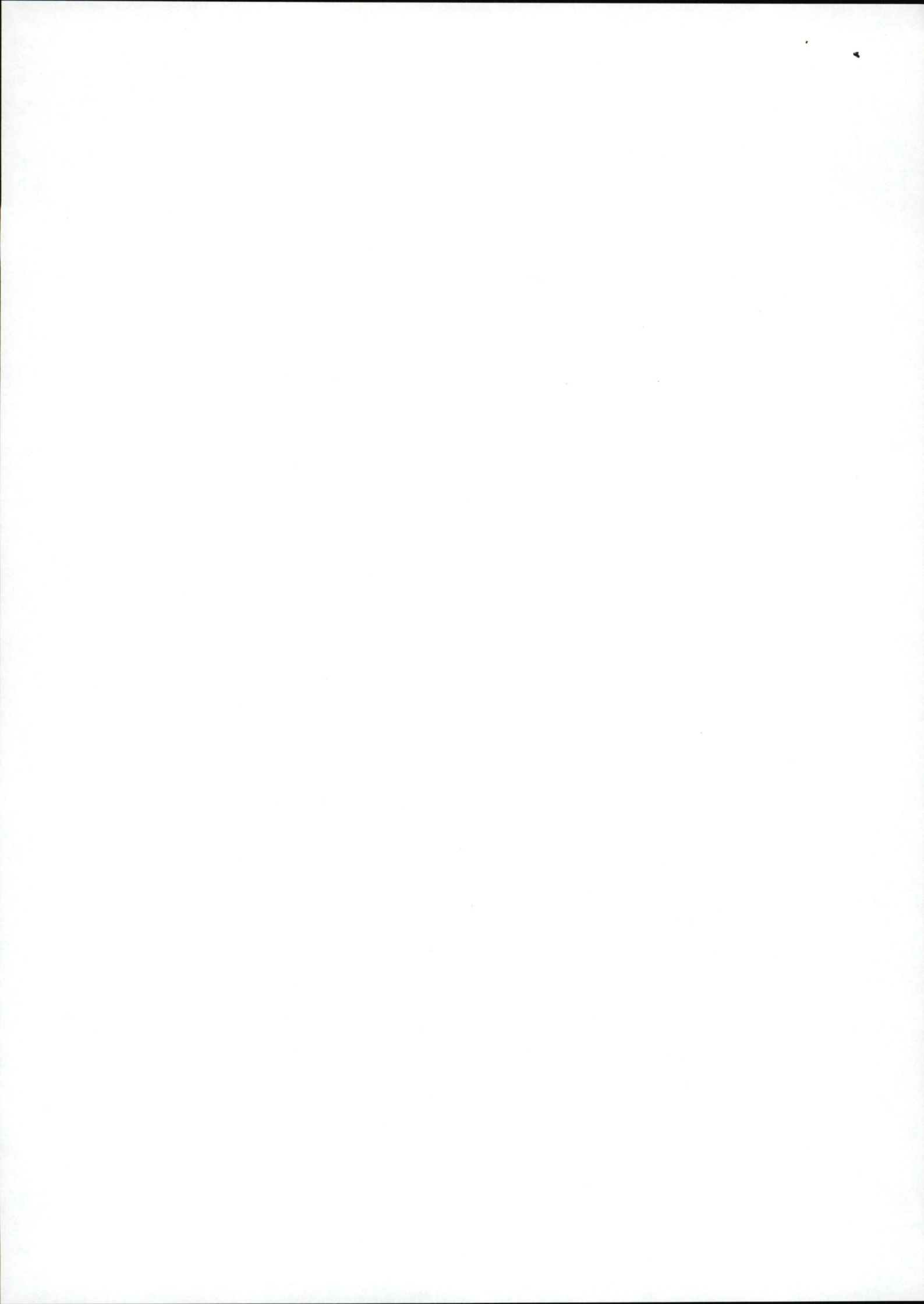
"I PAUSE TO REFLECT UPON THE PROTRACTED NATURE OF THIS LITIGATION, ITS COSTS AND ITS DELAYS. WHAT BEGAN AS A FAIRLY SIMPLE CONCERN OF THE SUPERINTENDENT ABOUT THE CONTINUING INVOLVEMENT OF MR HAYES IN THE ACTIVITIES OF THE CLUB AND THE BELIEF THAT THE CLUB'S BUS PAK PROMOTION CONTRAVENED THE ACT, BLEW OUT INTO FOUR SUBSTANTIAL HEARINGS, SEVEN LARGE APPEAL BOOKS AND VERY SUBSTANTIAL COSTS, PUBLIC AND PRIVATE. ONE IS BOUND TO QUESTION WHETHER THERE IS NOT A MORE EFFECTIVE WAY THAN THIS OF DEALING WITH THE LEGITIMATE PUBLIC CONCERNS ABOUT THE MANAGEMENT OF A LARGE CLUB IN COUNTRY NEW SOUTH WALES."

MR PRESIDENT, THIS LAST COMMENT OF THE JUDGE WAS TO BE A TELLING AND GUIDING COMMENT.

THE 1992 HEARING WAS NOT TO BE THE END OF THE MATTER. THE COURT OF APPEAL RETURNED THE CASE TO THE LICENSING COURT TO DECIDE ACCORDING TO THE LAW HAVING DETERMINED THAT THERE HAD BEEN AN ERROR OF LAW TO THE DISADVANTAGE OF THE APPELLANT CLUB.

THE LICENSING COURT IN JULY 1993 REDETERMINED THE MATTER AND DISQUALIFIED THE CLUB'S CERTIFICATE OF REGISTRATION FOR A LESSER PERIOD THAN BEFORE - BEING ON THIS LAST OCCASION A PERIOD OF TWO WEEKS.

THE CLUB HAS ONCE MORE APPEALED TO THE SUPREME COURT CLAIMING THAT THE LICENSING COURT HAS ERRED AT LAW AGAIN. THE MATTER IS SCHEDULED FOR HEARING BEFORE THE SUPREME COURT ON 20 SEPTEMBER 1993.



I DIGRESS HERE TO INDICATE THAT THE CURRENT LEGAL OPINION AVAILABLE TO ME SUGGESTS THAT THERE IS A REAL PROSPECT THAT THE DETERMINATION OF THE FULL BENCH IN THE SEAGULLS MATTER WILL BE SET ASIDE BY THE SUPREME COURT. THAT OF COURSE WILL BE DECIDED BY THAT COURT.

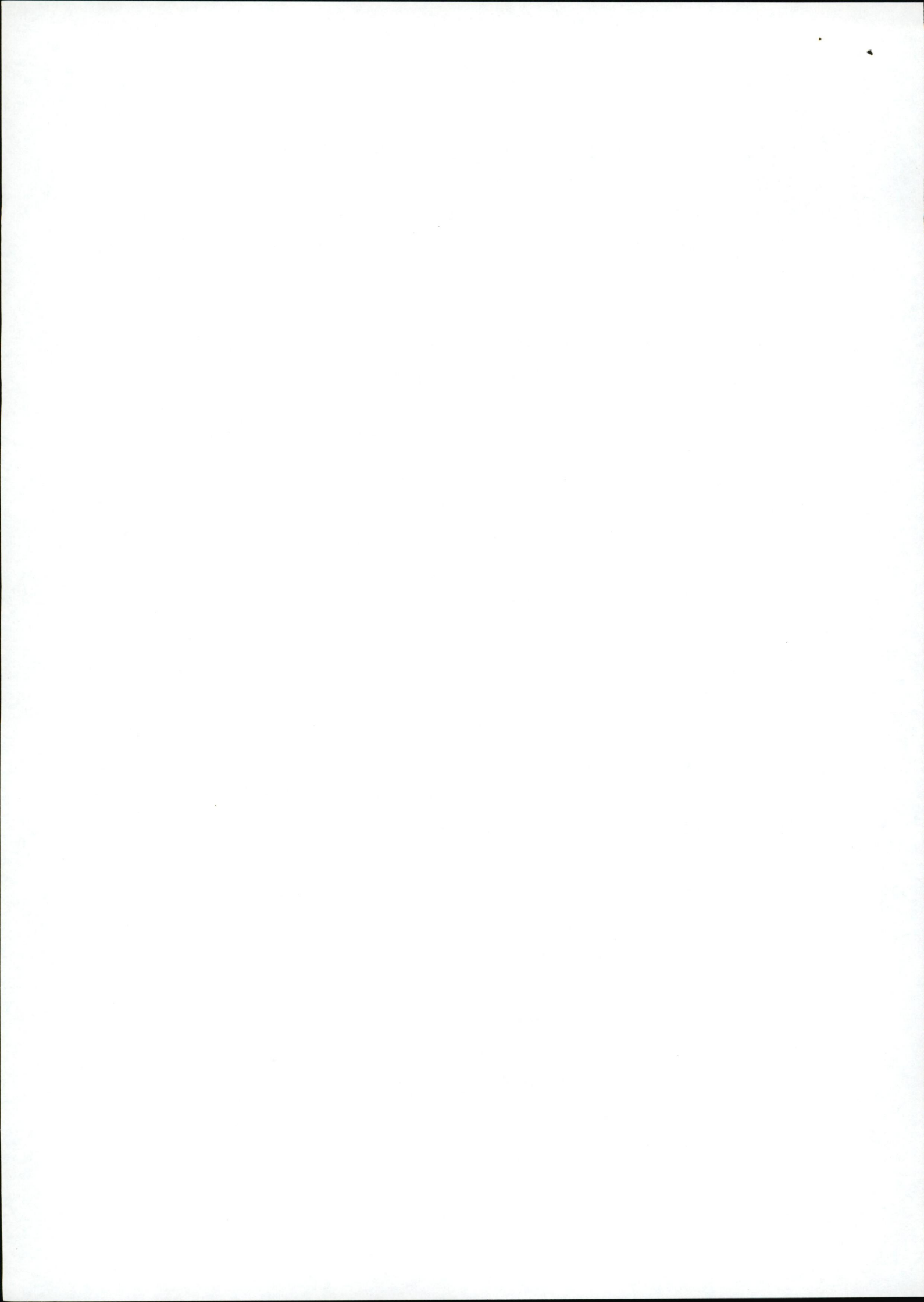
SO NOW THE CLUB IS FACING THE PROSPECT OF AT LEAST TWO MORE COURT APPEARANCES, ONE BEFORE THE SUPREME COURT AND, POSSIBLY, BACK BEFORE THE LICENSING COURT.

MR PRESIDENT, I HAVE OUTLINED THE HISTORY OF THIS CASE AS AN EXAMPLE OF THE PROBLEMS WHICH THE AMENDMENTS NOW BEFORE THE PARLIAMENT SEEK TO OVERCOME.

IT IS ABUNDANTLY CLEAR TO ME THAT THE PROVISION OF THE ACT WHICH ALLOWS THE LICENSING COURT TO ORDER THE TEMPORARY CLOSURE OF A CLUB IS A CRUDE WEAPON OF CONTROL. IT HAS THE CAPACITY TO PENALISE THE EMPLOYEES OF A CLUB WHO MAY BE STOOD DOWN DURING THE PERIOD OF THE CLOSURE OF THE CLUB. EMPLOYEES WHO MAY HAVE NO INKLING OR INVOLVEMENT IN THE PROBLEMS WHICH LED TO THE CLOSURE AND WHO MAY SUFFER THROUGH A LOSS OF WAGES.

BUT IT IS NOT JUST THE EMPLOYEES WHO ARE DISADVANTAGED. WITH THE CLOSURE OF A CLUB COMES THE INCONVENIENCE TO THE MEMBERS OF THE CLUB AND THEIR GUESTS.

THE MEMBERS OF THIS PARLIAMENT WILL BE WELL AWARE OF THE SERVICES AND FACILITIES PROVIDED BY THE CLUBS IN THEIR OWN ELECTORATES. THEY CAN NO DOUBT IMAGINE THE DISRUPTION WHICH THE CLOSURE OF ANY ONE OF THESE CLUBS WOULD CAUSE.



SHOULD THERE BE ANY DOUBT THEY MIGHT SPEAK TO THE HONOURABLE MEMBER FOR MURWILLUMBAH, THE ELECTORATE IN WHICH THE SEAGULLS CLUB IS LOCATED. A MEMBER WHO HAS WORKED UNCEASINGLY WITH ME IN RECENT MONTHS TO UNRAVEL THE WEB ENTANGLING THE CLUB.

MR PRESIDENT, THE BLUNT WEAPON OF CLOSURE OF A CLUB INVITES ANY CLUB THREATENED IN THIS WAY TO ENGAGE IN WHAT MAY WELL BE A BATTLE FOR THEIR VERY SURVIVAL - A BATTLE IN WHICH THEY MUST EXPEND THEIR ENERGY AND THEIR RESOURCES TO STAVE OFF THE CLOSURE. THEY WILL, AS DID THE SEAGULLS, USE EVERY LEGITIMATE AVENUE AT THEIR DISPOSAL TO PROTECT THEIR CLUB, THEIR MEMBERS AND THEIR COMMUNITY SERVICES.

I HAVE OUTLINED THE DEVASTATING EFFECT THAT CLOSURE OF A CLUB CAN HAVE ON THE EMPLOYEES AND MEMBERS OF THE CLUB AND THEIR GUESTS. YET DESPITE THIS THOSE WHO MAY HAVE BEEN INVOLVED IN THE CONDUCT WHICH LED TO THE CLOSURE MAY ESCAPE UNSCATHED.

THE AMENDMENTS WHICH I NOW PUT FORWARD WILL OVERCOME THESE DEFICIENCIES AND INJUSTICES.

FIRST, THE POWER OF DISQUALIFICATION OF A CLUB'S CERTIFICATE OF REGISTRATION FOR A PERIOD WILL BE REMOVED FROM THE ACT. NO MORE WILL THIS BE AVAILABLE AS A SANCTION TO THE COURT.

I WOULD MAKE THE POINT, THAT THIS POWER HAS BEEN RARELY USED. THERE ARE ONLY THREE CASES OF WHICH I AM AWARE WHERE A CLUB HAS BEEN FORCED BY A COURT TO CLOSE FOR A PERIOD. SUCH IS THE IMPACT OF THIS PENALTY THAT EVEN THE COURTS SEEM LOATHE TO USE IT.

TO PROTECT THE PUBLIC INTEREST THERE MUST, OF COURSE, BE PENALTIES AVAILABLE WHICH ARE CAPABLE OF SENSIBLE APPLICATION.



TO INTRODUCE MEANINGFUL SUBSTITUTES TO CLOSING A CLUB, I PROPOSE THAT THERE BE FURTHER CHANGES TO THE LAW.

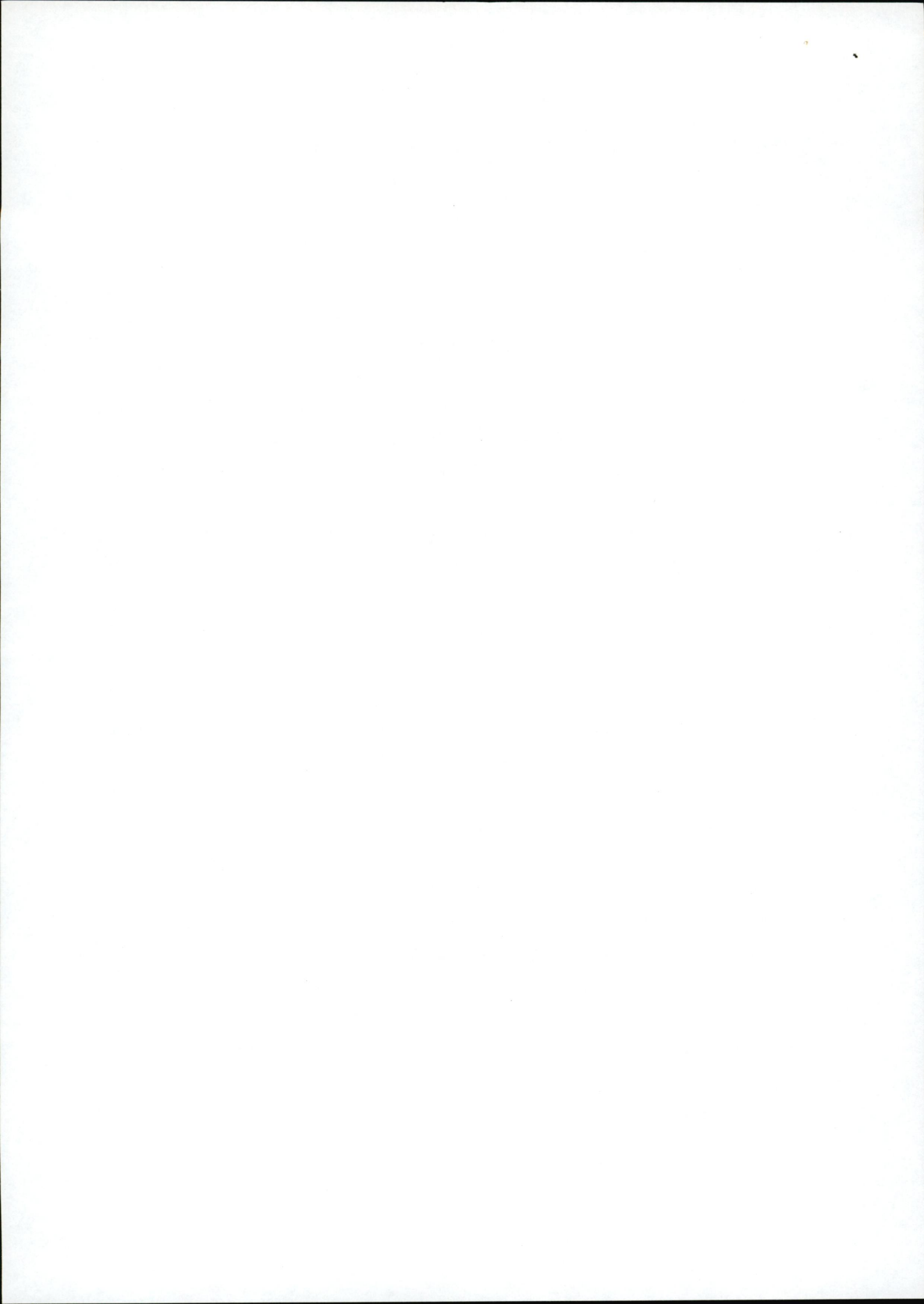
FIRST, THE EXISTING MONETARY PENALTY WHICH MAY BE IMPOSED IS \$50,000.

THIS WILL BE INCREASED TO \$250,000. IT WILL BE EXPRESSED AS A MAXIMUM MONETARY PENALTY SO AS TO GIVE THE LICENSING COURT A DISCRETION TO TAKE INTO ACCOUNT THE MAGNITUDE OF THE WRONG LEADING TO THE COMPLAINT AND THE SIGNIFICANCE OF THE PENALTY IN RELATION TO THE SIZE OF A CLUB AND ITS RESOURCES.

SECOND, A NEW PROVISION WILL BE INSERTED INTO SECTION 17 OF THE ACT WHICH WILL ALLOW THE COURT, WHEN DETERMINING A COMPLAINT, TO DECLARE THAT A SPECIFIED PERSON IS INELIGIBLE TO BE THE SECRETARY OR A MEMBER OF THE GOVERNING BODY OF A REGISTERED CLUB.

THIS WILL BE ACCOMPANIED BY A PROVISION THAT A GROUND OF COMPLAINT MAY INCLUDE THAT A MEMBER OF THE GOVERNING BODY IS NOT A FIT AND PROPER PERSON. THERE IS ALREADY A GROUND OF COMPLAINT THAT THE SECRETARY IS NOT A FIT AND PROPER PERSON.

MR PRESIDENT, THESE NEW PROVISIONS RELATING TO A SECRETARY AND MEMBER OF THE GOVERNING BODY WILL MEAN THAT IF IT BECOMES APPARENT TO THE COURT DURING COMPLAINT PROCEEDINGS AGAINST THE CLUB THAT IT WAS THE MANAGEMENT OF THE CLUB, OR A PERSON MATERIALLY INVOLVED IN THE MANAGEMENT, WHO WERE DIRECTLY RESPONSIBLE FOR THE WRONG-DOING THEN THE COURT WILL BE ABLE TO DEAL WITH THOSE PERSONS. THEY WILL NOT BE ABLE TO ESCAPE UNSCATHED.



THERE IS A PROCEDURAL FAIRNESS PROVISION FOR INSERTION INTO THE ACT WHICH WILL OBLIGE THE COURT TO GIVE THE PERSON AN OPPORTUNITY TO HAVE THEIR CASE HEARD AND TO SHOW CAUSE WHY THE COURT SHOULD NOT DECLARE THEM INELIGIBLE FOR FURTHER OFFICE.

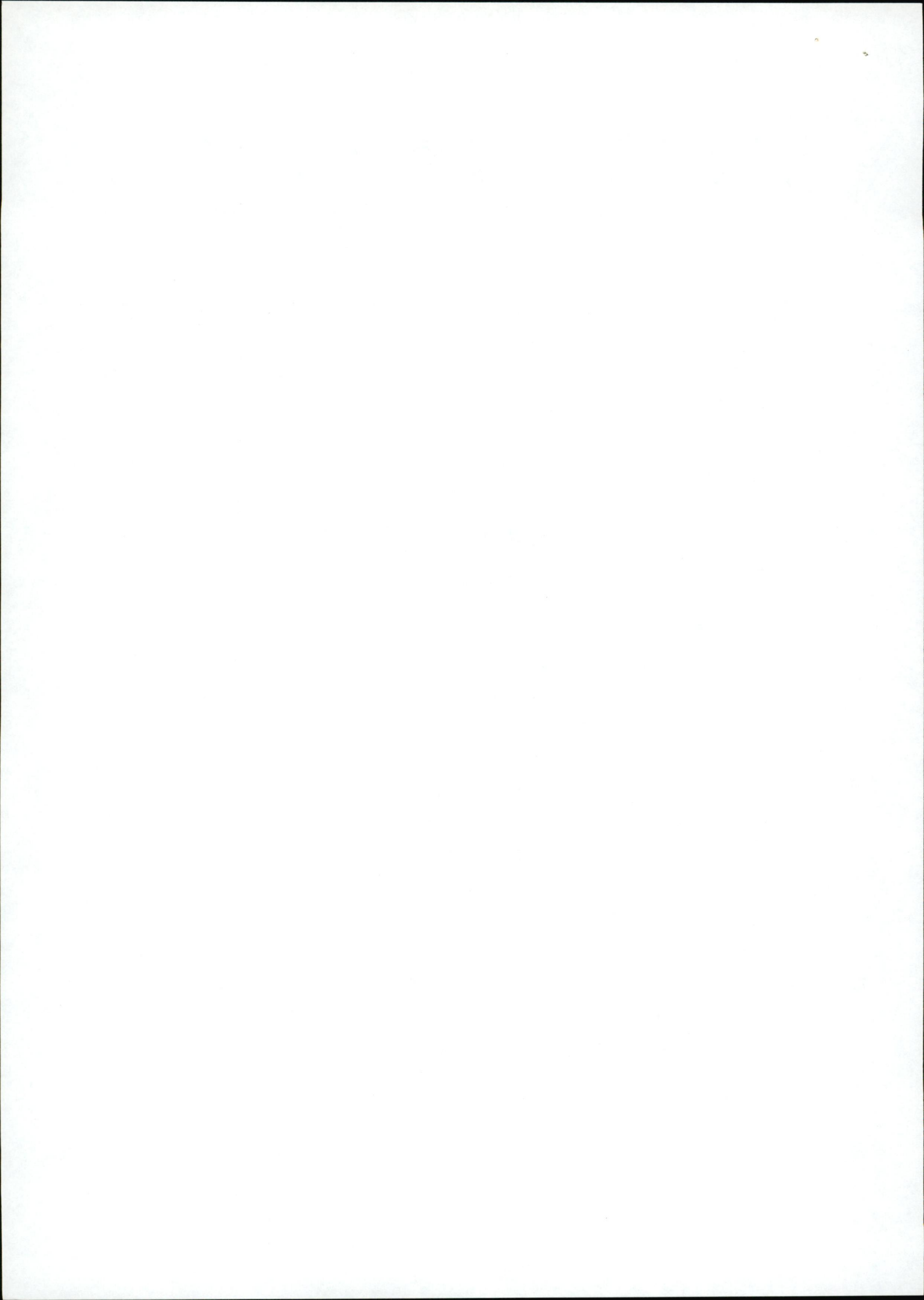
THERE IS ALREADY A PROVISION IN SECTION 35 OF THE ACT WHICH ALLOWS FOR A PERSON WHO IS A SECRETARY OR A DIRECTOR OF A CLUB TO BE CALLED UPON TO SHOW CAUSE WHY THEY SHOULD NOT BE REMOVED FROM THEIR POSITION.

INCORPORATING A SIMILAR PROVISION INTO THE COMPLAINT PROCEEDINGS WILL MEAN THAT ALL MATTERS OF CONCERN CAN BE DEALT WITH AT THE SAME TIME RATHER THAN REQUIRING SEPARATE, AND COSTLY, PROCEEDINGS.

THE POWER OF THE COURT TO APPOINT AN ADMINISTRATOR TO A CLUB WAS INTRODUCED BY THIS GOVERNMENT IN 1990 AND IT WILL REMAIN AS AN OPTION. I AM ADVISED THAT THIS OPTION WAS AVAILABLE TO THE LICENSING COURT IN THE SEAGULLS MATTER ALTHOUGH IT WAS NOT USED.

MR PRESIDENT, THE POWER FOR THE LICENSING COURT TO CANCEL A CLUB'S CERTIFICATE OF REGISTRATION WILL REMAIN. THIS MUST BE AVAILABLE AS A PENALTY OF A LAST RESORT.

HOWEVER, I SEE THIS POWER BEING USED PRIMARILY WHERE IT IS SHOWN BEFORE THE COURT THAT A CLUB NO LONGER MEETS A GENUINE AND SUBSTANTIAL NEED, OR WHERE UNDUE COMPETITION AND ECONOMIC WASTE WILL RESULT IF THE CLUB CONTINUES TO OPERATE. THESE ARE TWO EXISTING GROUNDS OF COMPLAINT.



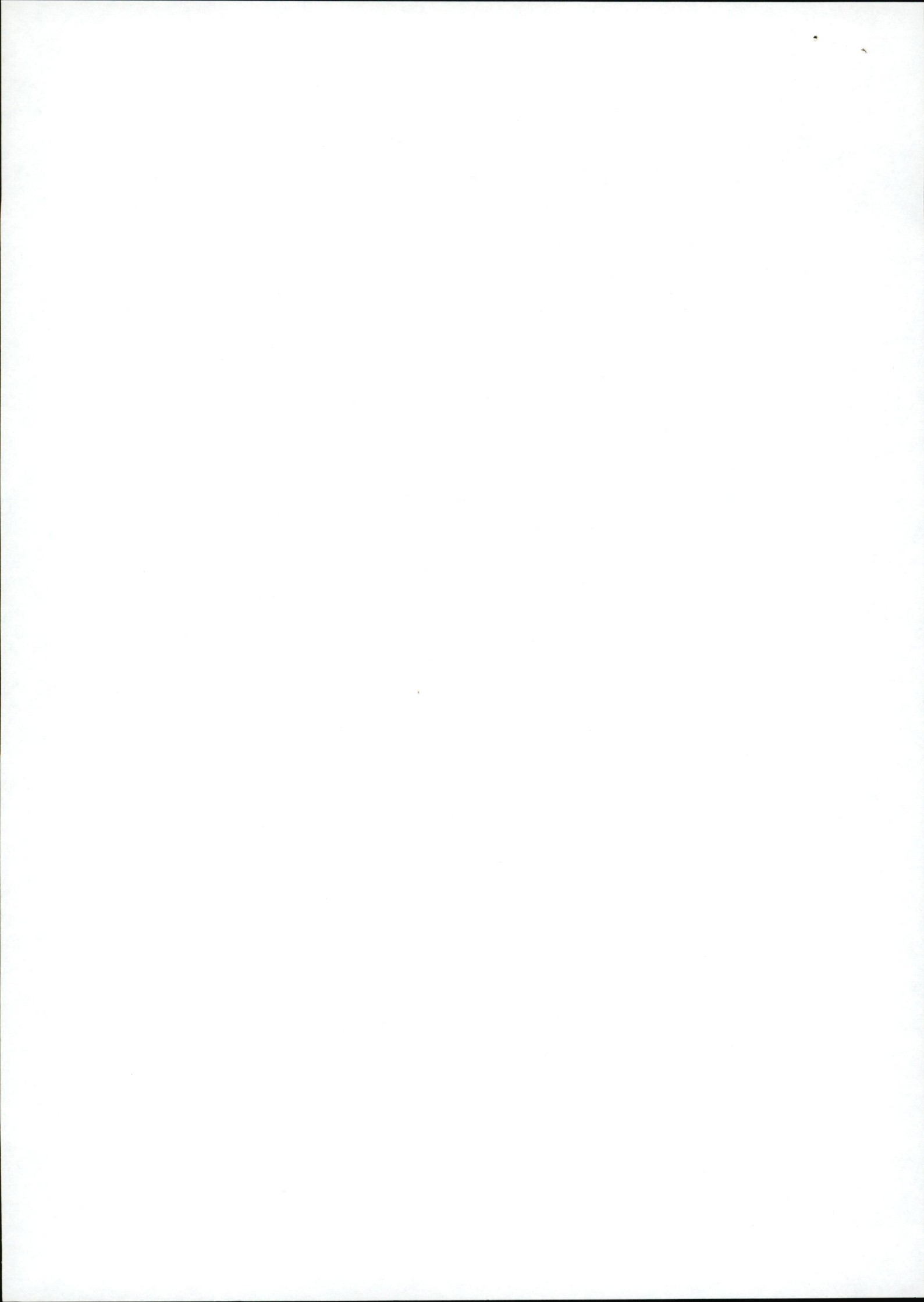
CLEARLY, IF IT IS FOUND THAT A CLUB HAS PERSISTENTLY AND FLAGRANTLY COMMITTED MAJOR BREACHES OF THE LAW, THAT THERE HAS BEEN NO REGARD PAID TO THE PROPER CONDUCT OF THE CLUB IN THE INTERESTS OF ITS MEMBERS, OR THAT CRIMINAL ACTIVITY PERVADES THE CLUB, THEN THE CANCELLATION OF A CLUBS CERTIFICATE MAY BE THE ONLY PROPER COURSE AVAILABLE TO THE COURT.

THE BILL NOW BEFORE THE HOUSE ALSO INCLUDES TRANSITIONAL PROVISIONS THAT WILL REQUIRE ANY EXISTING REGISTRATION DISQUALIFICATION TO BE REMITTED TO THE LICENSING COURT FOR RE-DETERMINATION ON THE BASIS OF THE NEW PROVISIONS WHICH I HAVE OUTLINED ABOVE. AN IMPORTANT EXCEPTION TO THIS WILL BE THAT THE INCREASE IN MONETARY PENALTY WILL NOT BE AVAILABLE IN CURRENT CASES.

THESE TRANSITIONAL ARRANGEMENTS DO NOT OFFEND THE RULE OF LAW WHICH IS ALREADY EMBODIED IN SECTION 55 OF THE INTERPRETATIONS ACT OF 1987. SIMPLY EXPRESSED, THAT RULE SAYS THAT IF A STATUTORY PENALTY IS INCREASED THE INCREASED PENALTY APPLIES ONLY TO OFFENCES COMMITTED AFTER THE COMMENCEMENT OF THE STATUTE.

CONVERSELY, THE RULE SAYS THAT A REDUCTION IN A STATUTORY PENALTY EXTENDS TO OFFENCES COMMITTED BEFORE THE STATUTE COMMENCES, EXCEPT THOSE WHERE A PENALTY HAS ALREADY BEEN IMPOSED.

WHAT THE AMENDMENTS IN THIS BILL DO IS TO SPECIFICALLY APPLY THAT RULE TO THE PARTICULAR CIRCUMSTANCES OF THE PENALTY PROVISIONS FOR SECTION 17 COMPLAINTS UNDER THE REGISTERED CLUBS ACT.



I AM SATISFIED THAT WITH ALL THE AMENDMENTS PROPOSED IN THIS BILL THE COURT WILL HAVE AVAILABLE TO IT A RANGE OF SANCTIONS WHICH IT CAN IMPOSE TO FIT THE PARTICULAR CIRCUMSTANCES OF A COMPLAINT AGAINST A CLUB WHERE IT MAY DETERMINE THAT ACTION IS APPROPRIATE IN THE PUBLIC INTEREST.

I COMMEND THE BILL TO THE HOUSE.



**REGISTERED CLUBS (MANAGEMENT) AMENDMENT ACT
1993 No. 57**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Registered Clubs Act 1976 No. 31

SCHEDULE 1—AMENDMENTS

**REGISTERED CLUBS (MANAGEMENT) AMENDMENT ACT
1993 No. 57**

NEW SOUTH WALES



Act No. 57, 1993

An Act to amend the Registered Clubs Act 1976 in relation to the powers of the Licensing Court in respect of complaints about registered clubs; and for other purposes. [Assented to 24 September 1993]

Registered Clubs (Management) Amendment Act 1993 No. 57

The Legislature of New South Wales enacts:

Short title

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

Commencement

2. This Act commences on the date of assent.

Amendment of Registered Clubs Act 1976 No. 31

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

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 16 (**Duration of certificate of registration**):

- (a) At the end of section 16 (2) (a), insert “or”.
- (b) Omit section 16 (2) (b).

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

(a) Section 17 (1):

Omit “or why the club should not be disqualified for a period from holding a certificate of registration”.

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

(vii) the secretary of the club or one or more members of the governing body of the club are not fit and proper persons to act as such;

(c) Omit section 17 (2) (b).

(d) Section 17 (2) (c):

Omit “500 penalty units”, insert instead “2,500 penalty units”.

SCHEDULE 1—AMENDMENTS—*continued*

- (e) Renumber section 17 (2) (f) as paragraph (g), and after section 17 (2) (e), insert:
- (f) declare (subject to section 17AAA) that each person specified in the declaration is, for such period as is specified in the declaration, ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body (or both of those positions) of:
- (i) the club; and
- (ii) if the Licensing Court so declares—all other registered clubs or such other registered clubs as are specified or as are of a class specified in the declaration;
- (f) Omit section 17 (6).
- (3) After section 17, insert:

Declarations concerning ineligibility of persons to be secretary or member of governing body

17AAA. (1) This section applies to the power of the Licensing Court to make a declaration under section 17 (2) (f) in connection with a complaint about a registered club.

(2) The Licensing Court must not make a declaration in relation to a person unless:

- (a) it is satisfied that the person was the secretary of the club or a member of the governing body of the club at a relevant time or was materially involved in the management of the affairs of the registered club at a relevant time; and
- (b) the person has been given an opportunity to show cause why the declaration should not be made.

(3) The Licensing Court may make a declaration in relation to a person regardless of whether the grounds on which the complaint under section 17 was made included the ground that the person was not a fit and proper person to act as secretary or member of the governing body of the registered club.

SCHEDULE 1—AMENDMENTS—*continued*

(4) The Licensing Court may make a declaration in relation to a person regardless of whether a complaint has been made under section 35 in relation to the person.

(5) If the Licensing Court makes a declaration in relation to a person, the position of the person as secretary or member of the governing body of any registered club to which the declaration relates immediately becomes vacant.

(6) A person must not, during the period for which the person is declared ineligible for a position, stand for election or accept appointment to, or hold office in, that position.

Maximum penalty: 10 penalty units.

(7) Despite any other law, if the Licensing Court makes a declaration in relation to a person, the person is not, in consequence of the declaration or of anything done to give effect to the declaration, entitled to compensation or damages from the club of which he or she was the secretary or a member of the governing body, unless the Licensing Court specifies in the declaration that the declaration does not affect the rights, if any, of the person to compensation or damages from the club.

(8) A vacancy in the position of a member of the governing body of a registered club resulting from a declaration may be filled as a casual vacancy.

(4) **Section 36 (Conduct of club elections by Electoral Commissioner):**

From section 36 (11), omit “is disqualified from holding a certificate of registration or”.

(5) **Schedule 2 (Transitional Provisions):**

At the end of Schedule 2, insert:

Part 5—Provisions relating to enactment of Registered Clubs (Management) Amendment Act 1993

Existing disqualifications remitted to Licensing Court for redetermination

39. (1) On the commencement of the Registered Clubs (Management) Amendment Act 1993, any matter determined under section 17 that resulted in the disqualification of a registered club under section 17 (2) (b) (being a

SCHEDULE 1—AMENDMENTS—*continued*

disqualification in force immediately before that commencement or that is not operative because the decision of the Licensing Court is subject to an appeal) is by this clause remitted to the Licensing Court for redetermination.

(2) Until that redetermination takes place, the decision of the Licensing Court on the matter is for the purposes of section 16 (Duration of certificate of registration) taken to be subject to an appeal that has not been finally disposed of.

Certain amendments apply to existing matters and matters remitted for redetermination

40. The following amendments made by the Registered Clubs (Management) Amendment Act 1993 extend to any matter pending before the Licensing Court at the commencement of that Act and also extend to any matter heard and determined by the Licensing Court before that commencement that as a result of any appeal or the operation of clause 39 is remitted to the Licensing Court for redetermination:

- (a) the amendments with respect to the disqualification of a registered club from holding a certificate of registration (namely the amendments made by Schedule 1 (1), (2) (a), (c) and (f) and (4) to that Act);
- (b) the amendments with respect to the power of the Licensing Court to make a declaration that a person is ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body of a registered club or registered clubs (namely the amendments made by Schedule 1 (2) (b) and (e) and (3) to that Act).

Penalty increase does not apply to existing matters and matters remitted for redetermination

41. The increased maximum penalty effected by Schedule 1 (2) (d) to the Registered Clubs (Management) Amendment Act 1993 does not apply in relation to anything done or omitted to be done before the commencement of the amendment or in relation to complaints made before the commencement of the amendment. This clause does not affect the generality of section 55 of the Interpretation Act 1987.

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SCHEDULE 1—AMENDMENTS—*continued*

1989 amendment extends to pending and remitted matters

42. (1) The amendment made to section 17 (2) by Schedule 1 to the Statute Law (Miscellaneous Provisions) Act (No. 3) 1989 extends to any matter pending before the Licensing Court at the commencement of this clause and also extends to any matter heard and determined by the Licensing Court before that commencement that as a result of any appeal or the operation of clause 39 is remitted to the Licensing Court for redetermination, even if the matter relates to a complaint made before the commencement of that amendment.

(2) The amendment referred to in this clause enabled the Licensing Court to take any one or more of the actions specified in section 17 (2) when hearing and determining a complaint about a registered club (prior to the amendment it was limited to any one of those actions).

(3) This clause applies despite the transitional provision enacted by the Statute Law (Miscellaneous Provisions) Act (No. 3) 1989 in respect of the amendment.

[*Minister's second reading speech made in—
Legislative Assembly on 15 September 1993
Legislative Council on 16 September 1993*]

