GOLF NSW
Club Management Manual 2010

ThomsonsLawyers

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SECTION 1

GOLF NSW LIMITED

GOLF CLUB MANAGEMENT MANUAL

INTRODUCTION

Golf NSW Limited is pleased to introduce the third edition of the Golf Club Management Manual which was officially updated on 11th November 2010 and is the second version to be delivered electronically.

Access to this directory is provided free of charge to all clubs and District Golf Associations affiliated with GOLF NSW LIMITED and we trust club managers and honorary officials will see this as one of the benefits of affiliation.

Hard copies will only be produced (by request) for clubs who genuinely haven‘t got access to email or the web.

This management resource has been specifically divided into three sections.

Section One **General Information**

- *Section One* is a hands-on information guide that should be useful on a daily basis at a golf club. This section will be regularly updated by the Company as and when the need arises.

Section Two **In the Clubhouse & On the Course**

- *Section Two* has been designed to be a guide for management and sub committees on how a golf club committee structure could operate, plus a number of other sub sections relating to the game of golf.

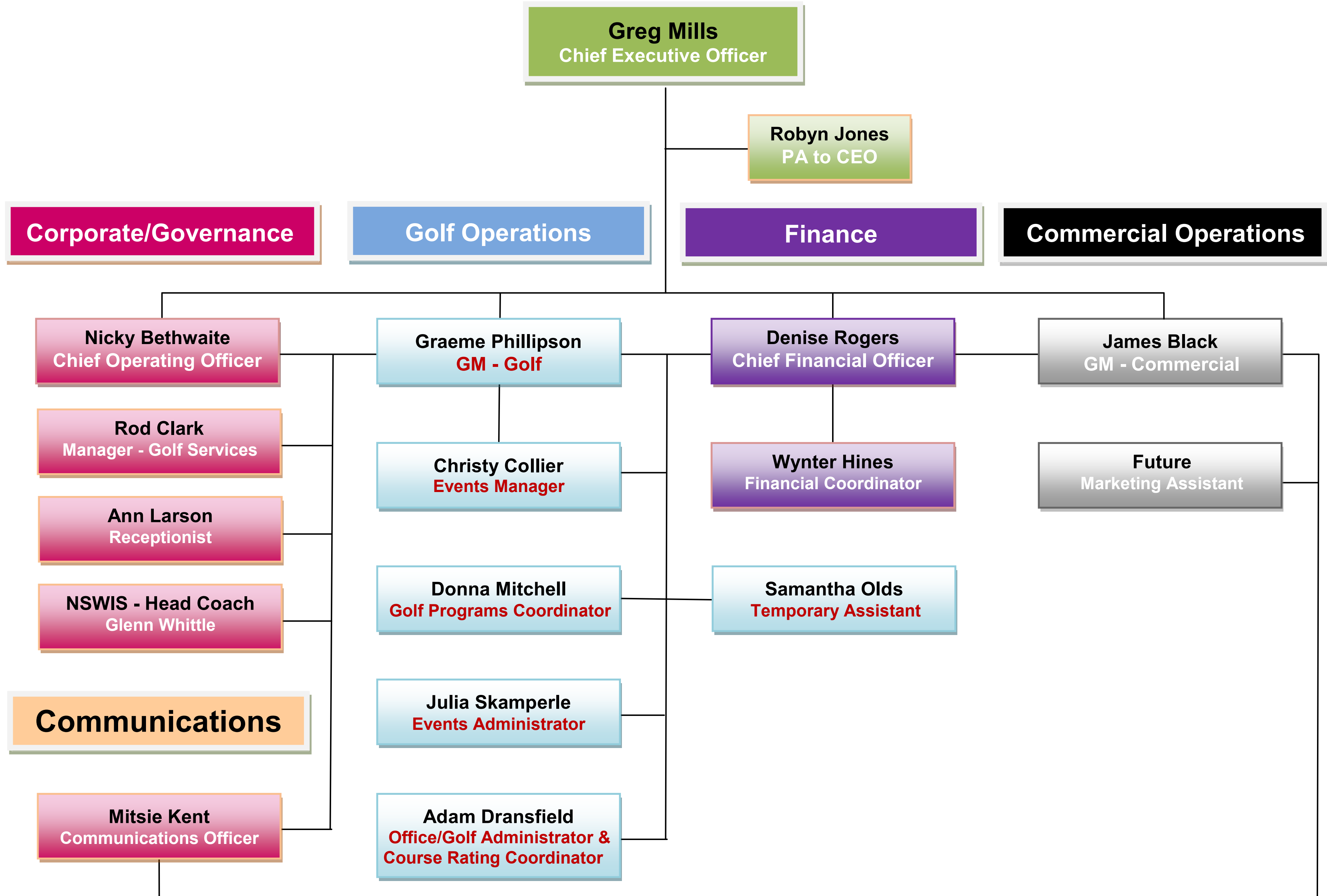
All sections of this Directory will be regularly reviewed for currency and accuracy with updates made where necessary.

If any affiliated Club or District Golf Association has any constructive suggestion as to how we may improve the content of this edition, please don‘t hesitate to contact GOLF NSW LIMITED at any time. We also invite any club manager or official to call or email the Company whenever there is a genuine need to discuss matters that may not be included or covered by this publication.

Chris Allen
Chairman
Golf NSW Limited

Greg Mills
Chief Executive Officer
Golf NSW Limited

GOLF NSW LIMITED - STAFF ORGANISATIONAL CHART



GENERAL GUIDE FOR OFFICE BEARERS & COMMITTEES

THE PRESIDENT

In Australia, the Club President is generally regarded as the social and business head of the club, although there are some clubs which follow the English procedure of making the captain the senior executive official. The duties generally covered by a President are dealt with below under two headings:-

BUSINESS

The President is responsible for the general supervision of the club and to be in a position to do this effectively he or she should acquaint themself with all matters affecting the club.

It is their duty to know how to conduct meetings and to see that all business is dealt with expeditiously, without allowing discussion to wander too far from the point at issue. There are a number of texts which deal fully with the subject of meetings and it is advisable for the President to own and be familiar with one of these volumes.

It is recommended that the following points be observed in the conduct of meetings:-

- Meetings should be commenced punctually;
- The President should be well acquainted with the items on the agenda;
- The President should be unbiased and direct the discussion so that opposing points of view are given full opportunity of expression, thus ensuring that the final decision is in the best interests of the club.

  Furthermore, the President should not lead the discussion from the Chair and not exert influence on the decision through his or her own views and interpretations of the subject under discussion;
- The President should ensure that all members of the Board (Committee) have a thorough knowledge of their legal duties and responsibilities as laid down in the various Acts of Parliament which govern club activities.

It is the President's responsibility to unobtrusively supervise the work of the Secretary Manager, General Manager or CEO (Club Manager) as the case may be and other club officials to ensure that the decisions and policy of the Board (Committee) are carried out promptly and effectively.

The President should also play a major role in ensuring that he or she and all other Board members, do not become involved in staff matters or staff supervision or direction. All such items should be referred to the Club Manager.

SOCIAL

The President is regarded as the social head of the club and should, whenever possible, be present to receive visitors at social functions. He or she should see that letters of thanks, congratulations, condolences, etc., are written by the Club Manager on the occasions required.

By giving encouragement and by setting an example to club staff and Board (Committee) Members the President can contribute substantially to making the social functions of the club a success.

It can be said that the status of a golf club is often a reflection of the President's ability and the tone of the club is set by his example.

THE CAPTAIN

The Club Captain is responsible for the organisation of play on the course and should be selected for his qualities of leadership and ability to uphold the rules and traditions of the game. He should be an experienced player (although not necessarily a champion player) who has a thorough knowledge of the Rules of Golf.

It is usual for the Captain to be Chairman of the Match Committee and the many and varied duties of this Committee are discussed in another section of this book. As Chairman of the Match Committee, the Captain is responsible for seeing that all of the obligations and requirements of the Match Committee are completed satisfactorily.

The Captain must also provide liaison between the Green and Match Committees to ensure that the course and out of bounds, margins of water hazards and lateral water hazards, ground under repair, obstructions and integral parts of the course are defined accurately.

The Captain would be involved in selection of teams to represent the club and accompany those teams when visiting other clubs.

He would be present to ensure that visiting teams are welcomed at his own club and should assist the President with any entertaining.

The coaching of players for Pennant Teams and promotion of juniors are matters which should also receive his attention.

Basically, the Captain should deal with all matters in regard to play on the course and see that players are educated in respect of the rules of golf, local rules and etiquette.

THE MATCH COMMITTEE

The Match Committee is responsible for the control and management of all aspects of the playing of golf on the course. The Match Committee shall:-

- Acquire a good working knowledge of the Rules of Golf in order to be able to give decisions promptly and correctly;
- Acquire a thorough understanding of the current Australian Course Rating System in use and the application of the Australian Handicapping System;
- Draw up and circulate the programme of events or club fixture list for the year. This is normally included in the members' handbook, along with other information;
- Determine and clearly display in advance the conditions under which competitions are to be played. This is a most important consideration as experience indicates that a large percentage of disputes referred to the Golf NSW Limited could have easily been avoided had suitable conditions been published prior to the event;
- Deal with and resolve disputes arising from the conduct of matches and competitions. In order to handle such matters it is essential that Committee personnel are thoroughly conversant with and have immediate access to Conditions of the Competition, current Local Rules, Rules of Golf and Decisions on the Rules of Golf;
- Allocate all trophies and prizes other than those which have been donated for specific events. It should be noted that the value of trophies and prizes must be determined within the limits imposed by the Rules of Amateur Status;
- Select individuals and/or teams to represent the club as and when required and to appoint a team captain when necessary;
- Ensure that information and performances regarding talented players is put forward to enable those players to be considered for selection in various representative teams;
- Ensure that all local rules on the scorecard are relevant and accurate;
- Make or vary any temporary Local Rules displayed on the Temporary Local Rule Notice Board as may from time to time be deemed necessary, and in particular on those occasions when advised by the greens committee of conditions on the course requiring consideration;
- In order to avoid confusion and argument all Local Rules and Temporary Local Rules should be worded in accordance with specimen Local Rules provided the Rules of Golf Book or by the Golf NSW Limited where applicable;
- Ensure that a Committee representative is available at all times during a competition to make decisions and suspend or cancel play if required;
- Allot new handicaps to new members in accordance with the Australian Handicapping System;
- Educate members as necessary in the proper playing of the game;
- Monitor play on the course, so as to reduce undue delay to the minimum level;

THE GREENS COMMITTEE

A Greens Committee Chairman or member has the responsibility to oversee and direct an appreciable part of the club's expenditure on the course. Indeed the Greens Committee Chairman of most clubs is responsible for the operating budget for the major investment of the club. In larger clubs this responsibility may be shared with the Club Manager.

There can be problems with this job, and there are opportunities. Some people will say that the job of a Greens Committee Chairman or member is the most thankless task in the world. Others will say it is the most rewarding the club has to offer.

If the course is in poor condition, club operations in general are likely to be affected.

As Greens Committee Chairman or Greens Committee Member, the task is to serve your fellow-members by maintaining the type of golf course that the majority of them want. A tough layout that is a challenge to the expert may not be very enjoyable to the average golfer - of which there are so many. Certainly, the job is not to rebuild the course the way you want it as an individual.

The Chairman should be willing to learn and spend some time reading journals, pamphlets and magazines dealing with turf grasses. He or she should attend an occasional turf grass meeting with the Superintendent. A good Chairman should be an active golfer, but he need not necessarily be a highly competent player or club champion.

A good chairman should also know their limitations. They should avoid causing problems by crossing bridges that, in reality, may never have to be crossed. A golf course program of maintenance and management is an intricate combination of people, materials, pests, climate, grasses and soils. What is good for one course is not always best for the course down the road. Leave the program up to your golf course superintendent, for it is his responsibility to grow and cut grass for the playing of the game. A good chairman need not become a turf expert. They must, however, have sufficient knowledge to be conversant with the Board and members on questions of a general nature. Tour the course some morning with the superintendent when he or she faces the challenge of the day's problems.

Other functions of a good Green Committee Chairman:

- Regularly liaise with club members, the Board of Directors and course operations;
- Keep up to date on members' complaints. Remember that there are no little complaints;
- Have a voice in scheduling the number of tournaments or competitions. Be sure the superintendent receives the tournament schedules and notices of special events that are of concern to his area of responsibility;
- Have a thorough knowledge of the course in its best playing conditions;
- Employ a competent and progressive golf course superintendent;
- Assist the superintendent in an advisory, budgetary and policy-making capacity. Be alert to problems involving salaries, leave provisions, fringe benefits and retirement plans;
- Have authority to close the course on appropriate occasions because of adverse weather or turf conditions. This includes authority to prohibit use of automotive golf carts when conditions justify. The chairman's authority should be vested in the superintendent during any emergency when the chairman is not available and the superintendent finds the need to close the course or restrict the use of golf carts;
- Be acquainted with the problems and the functions of the superintendent. Become a "buffer" for him with the membership;
- Implement any part of the long-range program scheduled for the current year.

It is the Greens Committee's role to see that course maintenance is in a high position in relation to other functions of the club. Every committee member should have a portfolio containing maps of the entire course. Some clubs have maps of each hole, showing water lines, drainage ditches, bridges, conduits, etc. Aerial photos are excellent for this purpose. From these maps, outlines may be prepared of the architectural, agronomic and landscape needs of every hole in order to put it into top playing condition. It would be wise to consult a golf course architect as well as your own superintendent. Priorities and estimated costs should be assigned for any planned improvement.

The Greens Committee should contain a continuing nucleus of members. The best committeepersons are those who have an appreciation of maintenance problems or who are willing to learn and who will serve for a number of years. Such committeepersons, however, are usually willing to serve continuously only if spared the unpleasantness of dealing with complaints from members.

Plagued by short terms, many Greens Committees today are unable to contribute significantly to the improvement of their courses. There can be no long-range planning when the chair and or committee members change faces every two years. An "improvement" completed by one committee is often removed a few years later by an entirely different group. Short-term planning is expensive and short-term committees often become liabilities.

Next to the quality of personnel, the budget is the lifeblood of the golf course maintenance program. It is one of the most important features of the committee's work. It is the committee's responsibility to meet, as nearly as possible, the superintendent's recommendations and the club's ability to finance. The budget should become the principal control of the club's program for maintenance, improvements and the purchase of new equipment during the year.

But a budget is a plan, not merely a device to control expenses - it should provide funds adequate to maintain good conditions. If at all possible, funds should be set aside for replacement of worn-out equipment. Good inventory control is important. Appropriation made available to the superintendent should not later be taken away. They should be held responsible for completion of the program within estimated costs. Any budget, however, must be flexible enough to accommodate changes in the work program, emergencies, or price fluctuations.

Many golf clubs feel a need to modernise the golf course. Usually such a desire is motivated by:

- Increased use of golf course;
- A desire to improve turf-grasses and playing conditions;
- A desire to reduce maintenance costs;
- Fundamental weakness in construction design;

- Pride of membership (a desire to toughen or add new interest to the course).

Rebuilding or remodelling is not an easy task and should not be entered into lightly. Changes in the course, expense and inconvenience to members must be justified in terms of genuine course improvement.

When planning to rebuild or remodel, Turfgrass Technology's services should prove to be helpful. Be sure your club takes advantage of the latest information on soil mixtures for putting greens, new grasses and new techniques. Be sure the fundamentals of drainage, fertilisation and golfing turf management are fully utilised.

Someone must handle the complaints. The chairman is the logical one to stand between the membership of the other committee members and the superintendent. They definitely should assume the responsibility of receiving and dealing with complaints. Perhaps a "Suggestion Box" in the locker room will help to reduce pressure while the chairman is not around the club. Complaints and grievances seem small until they are overlooked.

The smart chairman and their committee will adopt a program of keeping the membership well informed in advance of their various moves. A notice in the club newsletter or on the locker room bulletin board notifying the membership when the greens will be scarified or cored, when re-sodding work will be done or when play will be interrupted for any other reason will save a lot of headaches and later member grumblings.

It's a good policy in another way: it helps to keep the turf management program before the members' eyes. They will enjoy knowing about course improvements. Additional publicity among the membership may be obtained by holding a dinner meeting and presenting a program on turfgrass management. Here is a wonderful opportunity to tell of the problems of turfgrass maintenance.

In recent years the old-time profession of greenkeeper has made rapid strides. Golfers continually demand higher standards of maintenance. To meet these demands, today's turf-professionals must call on the latest agricultural research and technical information. They must make use of modern equipment.

Although today's golf course superintendent is a grower of grass, the fields from which they draw their information have become extremely broad. They must have knowledge of plant nutrition, plant pathology, and entomology, weed control, watering techniques, environmental issues and an understanding of plant life in general. They must know how to handle their workforce and members effectively. They must also have ability as a mechanic, a landscaper and a keeper of records.

They should prepare the maintenance budget. Be a planner and a purchaser. In short, they must be capable of providing a high degree of maintenance proficiency, operate economically and keep abreast of new developments. The chairman must show their loyalty to the superintendent by supporting them with the members and by privately reserving any criticism for the superintendent.

A good chairman also needs the superintendent's confidence. Thus they can not only develop important information and a better job understanding but may also create an enthusiasm for the work on the part of the superintendent. The job has become more than one of "keeping the green." Today's turf-professional is an agriculturalist, a supervisor and a manager.

The superintendent is responsible for the maintenance of the golf course. Given the necessary material and manpower, it is their duty to carry out the wishes of the membership as expressed by the Greens Committee. With responsibility must go authority and in every case, therefore, the superintendent should have complete control over their crew and equipment. They should receive their orders directly from him of her.

The superintendent should be answerable to the Greens Committee chairman for the overall effective maintenance of the course and carrying out of the committee's plans and instructions.

Some clubs will wish to have all communications and instructions from all committees (including Green) passed through their Club Manager. Certainly, the Club Manager must be responsible for all staff matters, wages, discipline, annual and sick leave and other entitlements. For the superintendent, the chairman and the Greens Committee members to do a good job for the membership of the club, they must not appease in order to postpone criticism. They must not be overly sensitive to criticism and permit gibes and taunts of a few to upset the program.

The average member is interested only in having the course playable when they want to use it. They find it difficult to understand why it is necessary to spoil a beautiful green by brushing and top-dressing. The superintendent thinks in terms of today's play, not tomorrow's.

Acting from a genuine motive - to do everything to build a better turf for the members' enjoyment - the superintendent and the Greens Committee must pursue their efforts.

Constructive criticism and suggestions from members should always be welcomed, but the maintenance team must be willing, however reluctantly, to displease the members and be criticised and spoil a few days' play rather than multiply the bad days of the future.

In order to produce a great golf course, your superintendent must be a professional turfgrass grower - they cannot survive in the long term as an amateur. Local, state and national turfgrass conferences have helped eliminate the excuse of ignorance in turfgrass culture today. Many Greens Committees have found that the club profits when the superintendent attends these professional meetings. A good chairman will urge their superintendent to attend and they will see to it that the club makes attendance possible. Whenever practical, the chairman should also attend; this would not only edify the chairman but would encourage the superintendent.

THE TREASURER AND THE FINANCE COMMITTEE

The Treasurer would normally act as Chairman of the Finance Committee and the responsibilities of this important role within the club are set out below:

- Ensure that the financial transactions of the club are regularly recorded and balanced. Inspection of the basic records and private ledger should be undertaken as a regular duty to monitor this aspect;
- Check that receipts are banked on a regular basis - if not daily, then at least three times per week. This procedure will help to maintain the minimum level of cash on the premises to meet requirements;
- Ensure that all appropriate returns for liquor, poker machines, taxation etc. are prepared by the Club Manager and submitted within prescribed time limits;
- Ensure that poker machines are cleared in accordance with laid down procedures and that appropriate analysis of results is tabled at monthly meetings, together with a report on the general financial position of the club;
- Authorise for payment and sign in conjunction with the Club Manager cheques issued by the club. Signing of the cheques allows the Treasurer to keep their finger on the pulse in relation to expenditure. It is appreciated that the Treasurer will not be available at all times and on these occasions cheques should be signed by another Director;
- Assist the Club Manager in the preparation of income and expenditure and capital expenditure budgets for submission to the Board at its first meeting of the year.
- Together with members of the Finance Committee, formulate policies on financial matters for recommendation to the Board;
- Review procedures for recording and accounting for cash receipts in the club to ensure efficiency and probity in all areas of operations;
- Ensure that employee records relating to all entitlements of holiday pay, sick pay, long service leave, credits for working on rostered days off, etc. are correctly maintained. The importance of this aspect cannot be over-emphasised as good records will lessen the possibility of industrial problems when employees leave the club's service;
- At year end, oversee preparation of final accounts, have them approved by the Board and present them at the Annual General Meeting.

While the specifications of duties for the Treasurer appear to be onerous for one person, they are a very important link in the implementation of internal controls, through their overview of the financial and monetary operations of the club.

THE HOUSE COMMITTEE

The House Committee is responsible for all that happens within the clubhouse, including the following items:

- The appointment of all rooms, verandahs and offices of the clubhouse for use of members, exclusively or otherwise of members and their visitors;
- Arranging the provision of meals and refreshments including liquor and the supply of such other articles as the Board of the club shall from time to time approve;
- Control and regulate all matters relating to the sale and purchase of liquor;
- Supervise and control the caterers, stewards and (via the Club Manager) other domestic indoor employees of the club;
- Control & regulate matters relating to sale, purchase and operation of gaming devices;
- Act within the clubhouse in all matters relating to good order, conduct and mode of dress of all persons using the clubhouse, and to draw up from time to time for the approval of the Board, rules relating to such matters;
- To receive and deal with all complaints relating to matters within the clubhouse;
- If no special social committee is appointed, the House Committee would be required to organise, arrange and conduct all social functions approved by the Board;
- To ensure that the premises are maintained in a clean condition and that the appointments are kept to the standard expected by the members;
- To investigate, plan and obtain estimates in relation to all matters concerning extensions, additions or alterations to the clubhouse or other ancillary buildings.

THE MEMBERSHIP COMMITTEE

It has often been stated that the Membership Committee is possibly the most important Committee of a golf club. The reason for this is usually given that if we have the right type of members at our club, we can achieve almost anything.

Obviously, systems vary quite dramatically at golf clubs over how the club invites and inducts new members. At many clubs, traditionally, the proposer of a new member is deemed to be responsible for the introduction and education of a new member into the club's ―style". At some clubs, even prior to an interview taking place with the prospective member, the Membership Committee will first conduct an interview with the proposer alone to ascertain, first hand, the proposer's knowledge of the candidate. If, at this interview, the proposer's knowledge of the candidate does not appear to be strong, a Membership Committee may decline to interview the candidate.

Naturally, this interviewing technique varies greatly from club to club however, it does appear logical that if a new member is inducted into golf club life without anybody really bearing responsibility, the chances of the new member acclimatising into the ways of the golf club are greatly reduced.

Some clubs also extend their requirements past a proposer and seconder and may also require the names of another three or four members who would be prepared to support the application.

If, on the other hand, a golf club has no waiting list, and is therefore keen to secure every prospective member who may be available, the membership technique may need to be entirely different.

At all times however, the Membership Committee is responsible for ensuring that a candidate will enjoy their new membership and should take steps to seek some simple information from the candidate.

It is suggested that a Membership Application Form be used which includes a number of key questions:

- Is the candidate a member of any other golf club/s?
- If a member of more than one club, which club is designated as their home club?
- What is/was the candidate's Australian Handicap?
- Has the candidate ever been refused membership of a golf club/s?
- Has the candidate ever been suspended or expelled from any other golf club/s?

It is important that an applicant for membership, when signing their nomination for membership form, acknowledges that they agree to be bound by the Club's Constitution, Rules and By-laws. Clubs should ensure that this acknowledgement is included on the Nomination for Membership form.

From time to time, a golf club committee may deem it necessary to adjust a player's handicap due to current golf form exceeding a player's current handicap. With this in mind, it is also suggested that clubs incorporate wording to the effect that the candidate acknowledges that the Committee has the power to adjust handicaps from time to time if it believes this needs to occur.

THE PLANNING COMMITTEE

―Those who fail to plan, plan to fail" are words which have been often quoted.

In the case of golf clubs, with the likelihood of rotating Committee members, it is essential that the club sets some long term achievable goals and plots its plan towards implementation.

A Planning Committee should be responsible for setting the future direction of the club in a large range of areas including, but not limited to:-

- Long term ownership of the golf course and other facilities;
- Financial measures required for this to occur.
- In the case of leasehold situations, review of the existing leasehold documentation allowing plenty of time for on-going negotiations with the owner to take place;
- Review of the existing golf course layout taking into account any threats by way of dangerous holes or potential Out of Bounds situations;
- Review of the current clubhouse condition. Decisions may need to be made regarding either major repairs and improvements or full clubhouse replacement or relocation;
- Review of the club's capital items with particular reference to course equipment;
- Overall review of the Club's future directions.

A Planning Committee should work towards implementing a capital replacement programme which ensures that major items are replaced or upgraded on a regular basis. Analysis of each item needs to be undertaken with the view that each item is included in a schedule with a sensible nominated year for replacement.

A Club cannot capably plan its future when it is forced without notice to find emergency funds to replace a major item which suddenly ceases to operate.

THE JUNIOR COMMITTEE

Juniors are the future life-blood of a club.

A responsible Junior Committee will ensure that all members of this Committee have been screened under the Child Protection Act legislation.

A Junior Committee should be formed to ensure that plans are in place that not only attract new younger members to the club, but also provide sufficient stimulus for existing juniors to continue to renew their memberships.

The attraction of new juniors will require consideration as to how the club will promote its availability. A club may plan some Saturday or Sunday junior clinics and promote these by way of local newspapers, posters, local radio etc. Many young people should be interested in a free opportunity to learn about the game of golf.

Retention of juniors is equally important and the Junior Committee should have plans in place to provide interest, variety and entertainment for its junior members.

Some clubs are in the fortunate situation of being able to provide a Juniors Room. While it may be argued that separate facilities don't always help with compatibility of membership, the opportunity to allow juniors to use some club facilities without the need to be concerned over the consequences of the Liquor and Gaming Acts can certainly be seen as favourable.

Usually, clubs that have a good number of junior members continue to build their junior memberships. This is natural as new juniors will be attracted to clubs where it is obvious younger members are encouraged to join and that there are clear programmes in place to provide clinics and on-going development at reasonable costs.

THE CLUB MANAGER

For the successful operation of a club it is essential that the person selected as Club Manager must have suitable qualifications and a clear understanding of the responsibilities of the position.

It is a specialised occupation requiring many skills, some of which will have been developed as a result of a specific course of training, but in the main, experience and a common sense approach will be most important attributes. In general terms, the Club Manager is required to administer and manage the club in accordance with the policy determined from time to time by the Board. The Board should provide advice and consultation to the Club Manager on matters affecting management of the club and it is wise policy to afford the Club Manager the opportunity to be heard on policy matters.

To operate successfully and effectively a Club Manager requires a breadth of knowledge and skills which cover the following matters:-

- A strong background in financial control;
- A knowledge of the various Government regulations and laws which are applicable to the industry. These would include:-
  - The Registered Clubs Act;
  - Corporations Law;
  - Industrial Arbitration Act;
  - Anti-Discrimination Act;
  - Occupational Health and Safety Act;
  - Awards affecting the various staff classifications;
  - WorkCover Insurance;
  - Group Tax;
  - Fringe Benefits Tax;
  - Superannuation Guarantee;
  - Training Guarantee;
  - Payroll Tax;
  - Privacy Act;
  - Child Protection Act.
- A thorough understanding of bar and dining room operations, stock control, ordering procedures and security of goods received;
- Handle all staff matters including effective rostering procedures, time management, employee meetings, industrial relations, discipline, staff welfare and appropriate training courses;
- Develop a good relationship with media, local Council representatives, the club's banker and representatives of other local community organisations;
- Development of a mutual respect and sound relationship with the members of the club is a most important aspect of the position. Wherever possible, address the member and guests by name and adopt a firm but polite manner when ensuring that the club's rules as laid down by the Board are adhered to by members;
- Acquire a first-rate knowledge of the game of golf and the rules and regulations which apply to various types of competitions, handicapping and other related matters.

The Club Manager should be able to guide and assist the Board in the development and formulation of club policies in relation to short-term and long-term projects. The person in this position will work with the various subcommittees in developing and carrying out programmes of the club's activities which have been approved by the Board. The Secretary-Manager will be responsible to the Board through the President.

In summary, the Club Manager needs to be a manager, public relations tactician, diplomat, innkeeper and restaurateur as well as have knowledge in a number of aspects of the law. Patience, understanding and tolerance are necessary qualities. However, clubs should seek to have a person who, above all else, is honest, truthful and trustworthy in this important but exacting position.

Sub Committees Appointments 2010 – 2011

Please note the Match Committees for both Men and Women will operate separately for the immediate future.

Match (Men)
Les Browne (Chair)
Alan Harrison
Bruce Nairn
Robert Scott
Darrell Watts
Frank Gal
Denis Spillane
Lester Peterson
Bob Griffiths
Suzanne Fabian
Donna Mitchell
Chris Allen

Rules & Amateur Status
Frank Gal (Chair)
Ian Fraser
Bob Griffiths
John Waanders
Judy Haddrick
Jean Moran
Moya Shepherd
Michael Palmer
John Robinson
Suzanne Fabian
Chris Allen

Finance
John Waanders (Chair)
David Coulton
John Lock
Paula McAnally
Suzanne Fabian
Chris Allen

JNJG
Darrell Watts
Sandra Gillies
Chris Allen

Delegates to Golf Australia
Chris Allen

Suzanne Fabian
Alan Harrison

NSW Institute of Sport - Golf Program
Greg Mills & Nicky Bethwaite

Selectors (Men)
Bruce Nairn (Chair)
Les Browne
Lester Peterson

Match (Women)
Sandra Gillies (Chair)
Susan Wilson (Deputy)
Sue Fabian
Jean Moran
Margaret Ashton
Annette Baggie
Judy Haddrick
Elsa Hocking
Olwyn Johnstone
Julie Jones
Jann Pearson
Lynne Robson
Donna Mitchell
Chris Allen
Graeme Phillipson

Handicapping and Course Rating
Lynne Ritchie (Chair)
John Lock
Colin Kaye
Olwyn Johnstone
Bob Griffiths
Suzanne Fabian
Chris Allen

Audit & Risk
Alan Harrison (Chair)
Jean Moran
Carolyn Bloch
Suzanne Fabian
Chris Allen

NSW Golf Foundation
Chris Allen (Chair)
Jim Glenday
Suzanne Fabian
Jane Buckley
Katrina Brown

Clubs NSW Councillor
Greg Mills

Selectors (Women)
Jane Searle
Jan Heys
Denise Hutton
Glenn Whittle
Peter Van Wegen

GOLF NSW LIMITED OFFICIALS

DIRECTORS

Chris Allen	Pennant Hills Golf Club
Carolyn Bloch	New South Wales Golf Club
Sue Fabian	Pennant Hills
Frank Gal	Richmond
Alan Harrison	ACT-Monaro DGA
Jean Moran	Central Coast Women's GA
Lynne Ritchie	Blue Mountains District Ladies GA
John Waanders	Newcastle DGA
Darrell Watts	Northern Rivers DGA

COUNCILLORS

Ian Armour (Northern Rivers DGA)
Margaret Ashton (Metro West/Muirfield GC)
Trevor Bartley (Metro Zone C/Windsor GC)
Ray Bellamy (Lower North Coast DGA)
Colleen Bennett (Far South Coast & Tablelands GA)
Diane Boulton (North & North West District Ladies GA)
Marcia Box (Western District Ladies GA)
Janet Bracken (Central Southern GA)
Peter Brien (Western DGA)
Tony Briers (Murray DGA)
Val Bronson (Metro Central/Woolooware GC)
Susan Brooks (Blue Mountain District Ladies GA)
Les Browne (Metro Zone A/Long Reef GC)
Gary Bryant (Mid North Coast DGA)
Tony Busch (Blue Mountains DGA)
David Byfield (Riverina DGA)
David Coulton (North West DGA)
Stuart Cox (Metro Zone A/Moore Park GC)
Yvonne Day (Metro Nepean/Camden GC)
Deanne Deitz (Newcastle Hunter District Ladies GA)
Michael Dodd (Newcastle DGA)
John Dunkin (Metro Zone B/Cabramatta GC)
Ian Elliott (Central Coast DGA)
Jan Frater (New England DGA)
Ian Fraser (Metro Zone C/The Coast GC)
Robert Griffiths (Illawarra DGA)
Jim Glenday (Metro Zone C/Georges River GC)
Judy Harris (Metro Nepean/Richmond GC)
Grant Harding (South West DGA)
Jeannie Henry (Metro North/Avondale GC)
Richard Hattersley (Metro Zone A/Royal Sydney GC)
Elsa Hocking (Metro West/Bankstown GC)

Jim Jackson (ACT-Monaro DGA)

Reg Johnston (Metro Zone C/Parramatta GC)

Julie Jenkins (South West Ladies GA)

Julie Jones (Metro North/Northbridge GC)

Olwyn Johnstone (Metro Peninsula/Bayview GC)

Margaret Koeninger (Metro North/Cammeray GC)

Greg Kellett (Central North DGA)

Diana Lindsay (Metro Central/New South Wales GC)

Brian Lanz (New England DGA)

Ken Martin (Western Riverina DGA)

John Lock (Metro Zone B/Carnarvon GC)

John Miller (Central Western DGA)

Verelle Miller (Women's Golf Central North Coast)

Bruce Nairn OAM (Metro Zone B/Bexley GC)

Robyn Newey (Western Districts Ladies GA)

Margaret O'Donnell (Newcastle Hunter District Ladies GA)

Jann Pearson (Metro Peninsula/Mona Vale GC)

Ellen Rae (Central Coast Women's GA)

Jill Roach (Metro Central/Woolooware GC)

Lynne Robson (Metro Peninsula/Wakehurst GC)

Robert Scarr (Hunter River DGA)

Robert Scott (Metro Zone A/Bankstown GC)

Jane Searle (Metro West/Ryde-Parramatta GC)

Joy Slater (Women's Golf Northern Rivers)

Colin Smith (Metro Zone B/Botany GC)

Robert Soper (Far South Coast DGA)

Denis Spillane (Metro Zone B/Fox Hills GC)

Tony Steele (Metro Zone A/Oatlands GC)

Paul Thomas (Lachlan Valley DGA)

Jo-Ellen Thorpe (Metro Nepean/Wallacia-Panthers GC)

Lynne Townsend (Women's Golf Illawarra)

Aileen Whiticker (Riverina Ladies GA)

Casual Vacancy exits in Metro Zone B

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GOLF NSW LIMITED

AFFILIATED CLUBS LISTING

Club Name	Club Contact Name	Postal Address	Phone	Fax	Email	Golf Link #
Aberdeen Golf Club	Mrs Bev Murphy	PO Box 21, ABERDEEN, NSW, 2336	6543 7226	6543 7154	waybev18@aapt.net.au	21101
Adelong Golf Club	Mrs Anne Hockey	Reka Road, ADELONG, NSW, 2729	6946 2343			22201
Albert Golf Club	Mrs Josephine Matthews	"Brooklyn", ALBERT, NSW, 2873	6892 8242	6892 5014	josie@gobushmail.com.au	22401
Antill Park Country Golf Club	Mr John Vincent	PO Box 36, PICTON, NSW, 2571	4677 1512	4677 2730	admin@antillpark.com.au	20301
Ariah Park Golf Club	Mrs Tracey Harper	16 Hopetoun St, ARIAH PARK, NSW, 2665	02 6974 1121			22301
Armidale Golf Club	Mr Peter Moy	PO Box 54, ARMIDALE, NSW, 2350	6772 5837	6772 9197	armidalegc@bigpond.com	22101
Ashford Golf Club	Mr I. Long	PO Box 96, ASHFORD, NSW, 2361	6725 4284		i.m.and.r@hotmail.com	21701
Ashlar Golf Club	Mr Craig Scott	PO Box 6550 BC, BLACKTOWN, NSW, 2148	9622 4220	9622 7227	craig.scott@ashlar.com.au	20101
Asquith Golf Club	Ms Michelle Vernon	Lord Street, MT COLAH, NSW, 2079	9477 1266	9482 2039	gm@asquithgolfclub.com.au	20201
Avalon Golf Course	Mr Bruce Mclean	Barrenjoey Road, AVALON BEACH, NSW, 2107	9918 2606	9918 2606	bruce.mclean@northernbeachesgolf.com	20391
Avondale Golf Club	Mr Symon Scott	PO Box 20, PYMBLE, NSW, 2073	9449 6455	9488 7065	symon@avondalegolfclub.com.au	20102
Balgowlah Golf Club	Mr Greg Milner	506 Sydney Road, BALGOWLAH, NSW, 2093	9948 1900	9948 1863	balgowlahgolf@bigpond.com	20202
Ballina Golf Club	Mr Steve Middleton	PO Box 7057, EAST BALLINA, NSW, 2478	6686 2766	6686 3744	ceo@ballinagolf.com.au	22001
Bankstown Golf Club	Derryn Weigand	PO Box 51, MILPERRA, NSW, 2214	9773 0628	9772 1524	gm@bankstowngolf.com.au	20103
Bardwell Valley Golf Club	Mr Andrew Lloyd	PO Box 105, BEXLEY NORTH, NSW, 2207	9567 7600	9597 3591	manager@thevalley.org.au	20302
Barellan Golf Club Inc.	Mr Mark Ericson	PO Box 68, BARELLAN, NSW, 2665	6963 9382			22203
Barnwell Park Golf Club	Mr Mohammed Farook	551 Lyons Road West, FIVE DOCK, NSW, 2046	9713 1162	9712 2108	barnwellgolfclub@bigpond.com.au	20303
Barraba Golf Club	Mr David York	PO Box 143, BARRABA, NSW, 2347	6782 1264	6872 1899		22102
Bathurst Golf Club	Mr Brad Constable	Orange Road, BATHURST, NSW, 2795	6331 4144	6331 9048	info@bathurstgolf.com.au	20901
Batlow Golf Club	Mr John Melrose	PO Box 53, BATLOW, NSW, 2730	6949 1799	6949 1321	rpeel@dragnet.com.au	22204
Bayview Golf Club	Mr Nigel Gibson	PO Box 312, MONA VALE, NSW, 1660	9999 3786	9979 5806	gm@bayviewgolfclub.com.au	20203
Bega Country Club	Mr Greg Godess	Tarranganda Lane, BEGA, NSW, 2550	6492 1570	6492 5307	enquiries@begacountryclub.com.au	21001
Belconnen Magpies Golf Club	Mr Jon Burrows	PO Box 96, KIPPAX, ACT, 2615	6254 2922	6255 1146	golfclub@belconnenmagpies.com.au	20623
Bellata Golf Club	Mr Greg Baker	PO Box 63, BELLATA, NSW, 2397	6793 7559	02 6793 7557	bellatagolfclub@bigpond.com.au	21901
Bellingen Golf Club	Ms Gillian Anderson	PO Box 123, BELLINGEN, NSW, 2454	6655 1312	6655 0251	ceo@bellingenc.com.au	21501
Belmont Golf Club	Mr Garry Leo	PO Box 8044, MARKS POINT, NSW, 2280	4945 4348	4947 7089	office@belmontgolf.com.au	21801
Beresfield Golf Club	Mr Ric Maclean	PO Box 49, BERESFIELD, NSW, 2322	4966 4665	4966 6666	beresfieldmensgolfclub@bigpond.com.au	21816
Bermagui Country Club	Mr Caleb Rose	Tuross Street, BERMAGUI SOUTH, NSW, 2546	6493 4340	6493 4461	bermaguicountryclub@bigpond.com	21002
Berrigan Golf and Bowling Club	Ms Yasmin Lumees	PO Box 24, BERRIGAN, NSW, 2712	03 5885 2229	03 5885 2726	yasmin.lumees@sparties.com.au	22501
Beverley Park Golf Club	Mr Paul Nicholls	87a Jubilee Ave, BEVERLEY PARK, NSW, 2217	9587 3424	9553 8977	paul@bpgc.com.au	20204

Bexley Golf Club	Mr Justin Waring	203 Stoney Creek Rd, KINGSGROVE, NSW, 2208	9150 9062	9150 5424	ceo@bexleygolf.com.au	20205
Bigga Golf Club	Mr Michael Chudleigh	PO Box 12, BIGGA, NSW, 2583	4835 2260	4835 2100		20601
Binalong Golf Club Ltd	Mr Garth Chisholm	Glengarry Road, BINALONG, NSW, 2584	6227 4241	6227 4241	talmobj@bluemass.com.au	22302
Bingara Sporting Club	Mr Brian Drewitt*	PO Box 166, BINGARA, NSW, 2404	6724 1206	6724 1207	bpdrewy@tpg.com.au	21902
Binnaway Golf Club	Mrs June Perrin	PO Box 25, BINNAWAY, NSW, 2395	6844 1509	6844 1509	skitsworld@actius.net.au	22403
Blackheath Golf Club	Mr David Robertson	Brightlands Avenue, BLACKHEATH, NSW, 2785	4787 8406	4787 6161	info@blackheathgolf.com.au	20701
Blayney Golf Club	Mr Darren Jones	PO Box 87, BLAYNEY, NSW, 2799	6368 2939	6368 4940		20902
Bogan Gate Golf Club	Mr Robert McIntyre	48 Bushman Street, PARKES, NSW, 2870	6862 1707	6863 4369		21301
Boggabri Golf Club	Dr Philip Briddon	23 Laidlaw Street, BOGGABRI, NSW, 2382	6743 4411	02 6743 4252	briddons@bigpond.com	22103
Bombala Golf Club	Mr Daryl White	PO Box 112, BOMBALA, NSW, 2632	6458 3306	6458 4295	boagolf@clearmail.com.au	20602
Bonalbo Golf Club	Ms Carol Ballard	Woodenbong Road, BONALBO, NSW, 2469	6665 1208	6665 1208		
Bondi Golf And Diggers Club	Mr Dennis Beuganey	PO Box 7017, BONDI BEACH, NSW, 2026	9130 3170	9130 8093	admin@bondigolf.com.au	20304
Bonnie Doon Golf Club	Mr Nick Bowles	Banks Avenue, PAGEWOOD, NSW, 2035	9349 2101	9314 1474	nick@bdgc.com.au	20104
Bonville International Golf Club	Mr Brad Daymond	PO Box 9, BONVILLE, NSW, 2441	6653 4002	6653 4005	gm@bonvillegolf.com.au	21502
Boorowa Golf Club	Mr Dianne Carmony	Market Street, BOOROWA, NSW, 2586	6385 3244	6385 3859	boorowarerec@bigpond.com	22302
Botany Golf Club	Mr Damien Phelps	PO Box 48, MASCOT, NSW, 2019	9316 8582	9700 1619	admin@botanygolfclub.com.au	20305
Bowral Golf Club	Mr F Sewell HGM	PO Box 934, BOWRAL, NSW, 2576	4861 1042	4862 2104	fsewell@optusnet.com.au	21203
Bowraville Golf Club	Mr Noel Mackay	PO Box 237, BOWRAVILLE, NSW, 2449	6564 7349	6564 7992	bowrarec@bigpond.com.au	21503
Braidwood Golf Club	Mr Robert Bevzeville	Coronation Avenue, BRAIDWOOD, NSW, 2622	4842 2108	4842 2062	braidwoodsc@internode.on.net.au	20603
Branxton Golf Club	Mr Scott Westwood	P O Box 25, BRANXTON, NSW, 2335	4938 1421	4938 3571	branxtongolfclub@westnet.com.au	21102
Breakers Country Club	Mr Ken Pearson	PO Box 785, TERRIGAL, NSW, 2260	4384 2661	4385 2134	info@breakerscc.com.au	20805
Brewarrina District Golf Club	Ms T Eastwood*	GPO Box 107, BREWARRINA, NSW, 2839	6839 2252	6839 2469		22405
Bulahdelah Golf Club	Mr Craig Littlechild	PO Box 4, BULAHDELAH, NSW, 2423	4997 4327	4997 4761	bulahdelahgolf@bigpond.com.au	21401
Bundarra Golf Club	Mr Paul Smith	PO Box 69, BUNDARRA, NSW, 2359	6723 7110	6723 7416		21702
Burcher Golf Club	Ms Leah Thornberry	C/- Post Office, BURCHER, NSW, 2671	6972 5250		chocco9@bigpond.com	21302
Byron Bay Golf Club	Peter Swavy	62 Broken Head Road, BYRON BAY, NSW, 2481	6685 6470	6685 5245	manager@byronbaygolfclub.com.au	22002
C.Ex Urunga	Mr Damon Hunter	PO Box 2068, COFFS HARBOUR, NSW, 2068	6655 6161	6655 5399	ugscreception@cex.com.au	21515
Cabramatta Golf Club	Mr Bill Bassen	PO Box 8063, MOUNT PRITCHARD, NSW, 2170	9602 8283	9601 3216	bbassen@cabgolf.com.au	20206
Calderwood Valley Golf Club		532 Calderwood Rd, CALDERWOOD, NSW, 2527	4256 3055			
Callala RSL Country Golf Club	Mr Doug Bawgwell	Callala Beach Rd, CALLALA BEACH, NSW, 2540	4446 5112	4446 4068	callalagolf@bigpond.com.au	21204
Camden Golf Club	Mr Phillip Cleaton	PO Box 17, CAMDEN, NSW, 2570	4646 1203	4646 1167	camden@camdengolfclub.com.au	20306
Camden Haven Golf Club	Mrs Deniece Merryfull	PO Box 20, KENDALL, NSW, 2439	6559 4203	6559 4672	chgc@laurietonclub.com.au	21402
Camden Lakeside Country Club	Mr Doug Jones	PO Box 2, NARELLAN, NSW, 2567	9606 5301	9606 5690	resort@camdenvalley.com.au	20207
Cammeray Golf Club	Mr Simon Adams	Park Avenue, CREMORNE, NSW, 2090	9953 1522	9953 0735	admin@cammeraygolf.com.au	20208
Campbelltown Golf Club	Mr Greg Field	Golf Course Road, GLEN ALPINE, NSW, 2560	4622 2900	4628 0947	info@campbelltowngolfclub.com.au	20209
Candelo Kameruka Golf Club	Wendy Anderson	Golf Club Road, CANDELO, NSW, 2550	6493 2203			21003
Canowindra Golf Club	Mr Maragret Grant	PO Box 73, CANOWINDRA, NSW, 2804	6344 1342	6344 2469	canowindragolfclub@bigpond.com.au	20903
Canterbury Golf Club		Moorefields Road, BEVERLY HILLS, NSW, 2209	9759 5444	9758 1039		20395
Capital Golf Club Inc.	Mr Mal Shelton	PO Box 3136, MANUKA, ACT, 2604	6295 8048	6295 2707	mal.shelton@vikings.com.au	20604

Caragabal Golf Club	Mr GP Toole	Marsden Road, CARAGABAL, NSW, 2810	6347 1349	6347 1106		21303
Carinda Golf Club	Ms Cathy Hatton	Shakespeare Street, CARINDA, NSW, 2831	6823 2257	6823 2257		
Carnarvon Golf Club		Nottinghill Road, LIDCOMBE, NSW, 2141	9649 6255	9749 4240	info@carnarvongolf.com.au	20210
Casino Golf Club	Mr. Wayne Morgan	PO Box 106, CASINO, NSW, 2470	6662 1259	6662 6540	ceo@casinogolfclub.com.au	22003
Castle Hill Country Club	Mr Stuart Fraser	PO Box 6767, BAULKHAM HILLS BC, NSW, 2153	9634 2499	9899 5086	sfraser@chcc.com.au	20105
Castlecove Country Club	Mr David Leyshon	PO Box 416, FORESTVILLE, NSW, 2087	9417 5444	9417 3060	admin@castlecovegolf.com.au	20307
Catalina Country Club	Mr Richard Hogg	PO Box 306, BATEMANS BAY, NSW, 2536	4472 4022	4472 7477	rhogg@catclub.com.au	21004
Charlestown Golf Club	Ms Michelle Gorton	PO Box 586, WARNERS BAY, NSW, 2282	4943 7944	4943 5411	mggolf@bigpond.net.au	21802
Chatswood Golf Club	Mr John Watters	PO Box 413, ARTARMON, NSW, 1570	9419 2336	9419 5785	gm@chatswoodgolf.com.au	20211
Chinderah Golf Club		Chinderah Road, CHINDERAH, NSW, 2487				22020
Clover Leigh Golf Club	Mr Peter Frecklington	777 Karoopa Lane, CROWTHER, NSW, 2803	6383 7311		peter.frecklington@rlpb.org.au	22314
Club Taree - Golf	Mr Geoff Garnett	PO Box 874, TAREE, NSW, 2430	6539 4000	6539 4001	club@clubtaree.com.au	21408
Cobar Bowling and Golf Club	Mr Neil Urquhart	PO Box 68, COBAR, NSW, 2835	6836 2214	6836 4613	cbgc@tpg.com.au	22407
Coffs Harbour Golf Club		PO Box 153, COFFS HARBOUR, NSW, 2450	6652 3244	6652 1206	ceo@coffsharbourgolfclub.com.au	21504
Coleambally Golf Club	Mrs Maragret King	PO Box 7, COLEAMBALLY, NSW, 2707				22502
Colonial Golf Course		Werrington Road, WERRINGTON, NSW, 2747	9673 3639			
Commercial Golf Resort Albury	Mr Bruce Duck	PO Box 916, ALBURY, NSW, 2640	6021 1133	6041 4760	info@commclubalbury.com.au	21601
Concord Golf Club	Mr Tim Gahan	PO Box 5, CONCORD, NSW, 2137	9743 6111	9743 5808	gm@concordgolfclub.com.au	20106
Condobolin Golf Club	Keira Maxwell	PO Box 68, CONDOBOLIN, NSW, 2877	6895 2465	6895 4126	condobolinsportsclub@bigpond.com	21304
Coolah Sporting Club	Mr Kevin Birchall	PO Box 17, COOLAH, NSW, 2843	6377 1222	6377 1770	coolah1@bigpond.com	22408
Coolamatong Golf Club	Mr Harry Hovasapian	PO Box 75, BERRIDALE, NSW, 2628	6456 3321	6456 3192		20605
Coolamon Sport & Rec Club	Mr Tony O'Reilly	Lewis Street North, COOLAMON, NSW, 2701	6927 3178		coolamonsport.rec@bigpond.com	22206
Coolangatta-Tweed Hds GC	Mr Phillip Dark	PO Box 6010, TWEED HEADS STH, NSW, 2486	07 5524 4544	07 5524 3543	enquiries@cooltweedgolf.com.au	22004
Cooma Golf Club	Ms Gaye Wilson	PO Box 128, COOMA, NSW, 2630	6452 2243	6452 6900	cooma@bigpond.net.au	20606
Coomba Park Golf & Cty Club	Mr Don G Johnson	PO Box 158, PACIFIC PALMS, NSW, 2428	6554 2167			21413
Coonabarabran Golf Club	Ms Carmen Reedman	PO Box 176, COONABARABRAN, NSW, 2357	6842 1292	6842 3023	cwana.golf@exemail.com.au	22409
Coonamble Golf Club	Mr Steven Hind	PO Box 309, COONAMBLE, NSW, 2829	6822 1303	6822 2204	cgccble2@bigpond.com.au	22410
Cootamundra Country Club	Mr Bob Breath	PO Box 22, COOTAMUNDRA, NSW, 2590	6942 1330	6942 4484	cc-club@bigpond.net.au	22304
Coraki Golf Club	Mr M A Scurr	Kardina Street, CORAKI, NSW, 2471	6683 2001	6683 2434		22005
Corowa Golf Club	Mr Tony Freeman	PO Box 13, COROWA, NSW, 2646	6033 1466	6033 3607	corgolf@albury.net.au	21602
Corryong Golf Club	Mrs Judith Ferry	PO Box 228, CORRYONG, VIC, 3707	6076 1081		corryonggolf@live.com	22207
Cowra Golf Club	Margeret Grent	PO Box 515, COWRA, NSW, 2794	6342 2299	6342 3881	cowragolfclub@bigpond.com.au	20904
Crescent Head Country Club	Mr Colan Ryan	PO Box 51, CRESCENT HEAD, NSW, 2440	6566 1211	6566 0653	accounts@chcclub.com.au	21505
Cromer Golf Club	Mr Rod Davies	Cromer Road, CROMER, NSW, 2099	9982 3088	9981 3782	manager@cromergolfclub.com.au	20107
Cronulla Golf Club	TBA Sept/Oct	PO Box 2057, TAREN POINT, NSW, 2229	9523 6777	9527 3929	jenny@cronullagolf.com.au	20212
Crookwell Golf Club	Mrs Jean Dooley	PO Box 87, CROOKWELL, NSW, 2583	4832 1323	4832 0123	crookwellgolfclub@yahoo.com.au	20607
Culcairn Golf Club	Mr Ken Daws	PO Box 104, CULCAIRN, NSW, 2660	6929 3097		meralyn2@bigpond.com.au	22208
Cumberland Country Golf Club	Mr Ian Cottle	PO Box 176, PENDLE HILL, NSW, 2145	9631 0688	9688 3714	gm@cumberlandgolf.com.au	20213

Cumnock Golf Club Inc	Mr.Allan Chandler	C/- S. Noble, Yarn Market Terrace - No. 6 Bells La, MOLONG, NSW, 2866	6366 9056		allan.chandler@bigpond.com	20905
Cypress Lakes Golf Club	Mr Murve Hayward	PO Box 342, CESSNOCK, NSW, 2325	4993 1555	4993 1524	greens@cypressresort.com.au	21104
Darling River Golf Club	Mr Richard McLean	PO Box 208, BOURKE, NSW, 2840	6872 2942		maccasbac@bigpond.com	22404
Deepwater Golf Club	Mr Brian Lang	Stannum Road, DEEPWATER, NSW, 2371	6734 5266			21703
Del Rio Resort		Chasling Road, WEBBS CREEK VIA WISEMANS FERRY, NSW, 2775	4566 4330			
Delegate Country Club	Mrs N Manning	PO Box 29, DELEGATE, NSW, 2633	6458 8169	6458 8269		20608
Delungra Golf Club	Mr Geoff Crawford	2B Lake Inverell Drive, INVERELL, NSW, 2360	6721 0053			21704
Deniliquin Golf Club	Mr Jarod Somerfield	PO Box 178, DENILIQUIN, NSW, 2710	5881 1325 (03)	5881 1159 (03)	denigolf@bigpond.net.au	22504
Denman Golf Club	Mr Ken McCormick	Ogilvie Street, DENMAN, NSW, 2328	6547 1173	6547 2203		21105
Dorrigo Memorial RSL GC	Mr Richard Shadforth	PO Box 163, DORRIGO, NSW, 2453	6657 2006	6657 2924	rissole2@bigpond.com.au	21506
Dubbo Golf Club	Mr Tim McGrath	PO Box 6079, DUBBO, NSW, 2830	6882 1255	6884 8596	admin@dubbogolfclub.com.au	22411
Dunedoo Sports Club Ltd	Mr John Sullivan	PO Box 2, DUNEDOO, NSW, 2844	6375 1018	6375 1818	dunedoogolfclub@hotmail.com	22142
Dungog & District Golf Club	Mrs Judith G Olsen	PO Box 167, DUNGOG, NSW, 2420	4992 1394	02 4992 3083		21106
Dunheved Golf Club		PO Box 104, ST MARYS, NSW, 1790	9623 0239	9623 0230	dunhevedgolf@onestream.com.au	20308
Duntryleague Golf Club	Mr Stephen Steptoe	PO Box 82, ORANGE, NSW, 2800	6362 3466	6361 7259	golf@duntryleague.com.au	20910
Eastlake Golf Club	Mr Damien Phillips	PO Box 176, KINGSFORD, NSW, 2032	9663 1374	9313 8871	gm@eastlakegolfclub.com.au	20214
Easts Leisure & Golf	Mr Scott Driffeild	PO Box 429, EAST MAITLAND, NSW, 2323	4933 7512	4933 5581	scott@embc.com.au	21108
Eden Gardens Country Club	Peter Cook	PO Box 45, EDEN, NSW, 2551	6496 1126	6496 3328		21006
Elanora Country Club	Mr Jeremy Freyburg	PO Box 78, NARRABEEN, NSW, 2101	9913 7336	9913 1255	ecc@elanracc.com.au	20108
Emmaville Golf Club Inc	Mr Trevor Lockwood	c/-L Lockwood, 113 Moore Street, EMMAVILLE, NSW, 2371	6734 7324	6733 7270		21705
Everglades Country Club	Mr Tony Costain	PO Box 297, WOY WOY, NSW, 2256	4341 1866	4342 3840	t.costain@everglades.net.au	20801
Fairbairn Golf Club Incop	Mr Robert Lightburn	PO Box 1535, FYSHWICK, ACT, 2609	6257 9000	6257 9099	fairbairngc@netspeed.com.au	20617
Fairfield Golf Club	Mr Neil Porter	Cnr Smithfield Rd & Beavors St, PRAIRIEWOOD, NSW, 2176	9604 4007	9725 5317	enquiries@fairfieldgolf.com.au	20333
Federal Golf Club	Mr Scott Elias	PO Box 3039, MANUKA, ACT, 2603	6281 1888	6285 3140	fgc@fgc.com.au	20609
Finley Golf Club	Mr Paul Pinnlick	PO Box 138, FINLEY, NSW, 2713	03 5883 1360	03 5883 1360	finleygolfclub@bigpond.com	22505
Forbes Golfers Association	Mr Peter Cripps	PO Box 19, FORBES, NSW, 2871	6851 1051		pcripps@bigpond.net.au	21306
Forster-Tuncurry Golf Club	Mr Chris Turner	PO Box 4028, FORSTER, NSW, 2428	6554 6799	6555 5129	admin@forstertuncurrygolf.com.au	21404
Fox Hills Golf Club	c.fletcher	55 Fox Hills Crescent, PROSPECT, NSW, 2149	9631 3390	9896 3309	coreyf@foxhillsgolfclub.com.au	20215
Frederickton Golf Club	Mr Les Snape	PO Box 3, FREDERICKTON, NSW, 2440	6566 8261	6566 8245	fgc@fredericktongolfclub.com.au	21507
Ganmain Golf Club	Mr. Bill Fairless	44 Menangle Street, GANMAIN, NSW, 2702	6927 6248	6927 6020		22209
Georges River Golf Club	Mr Michael Kenny	255 Henry Lawson Drive, GEORGES HALL, NSW, 2198	9724 1615	9725 6931	michael.kenny@georgesrivergolf.com.au	20329
Gerringong Golf Club	Mr. Ian Godfrey	PO Box 75, GERRINGONG, NSW, 2534	4234 3333	4234 0878	info@gerringonggolf.com.au	21205
Gibraltar Country Club	Miss R. A. Hore	PO Box 41, BOWRAL, NSW, 2576	4861 1946	4862 1978	enquiries@gibraltarbowral.com.au	21202
Gilgandra Golf Club	Mrs Shiralee Bone	"Carinya", BALLADORAN, NSW, 2831	6888 1126	6888 1056		22413
Glen Innes Golf Club	Mr Pat Lonegan	PO Box 308, GLEN INNES, NSW, 2370	6732 1555	6732 6088	gigolf@bigpond.net.au	21706

Glenmore Heritage Valley	Mr Frank Kuiters	PO Box 690, MULGOA, NSW, 2745	4733 1230	4733 2754	ghv_golf@bigpond.com.au	20309
Gloucester Country Club	Mr Jim Dunn	PO Box 21, GLOUCESTER, NSW, 2422	6558 1602	6558 1934	glocc@bigpond.com	21405
Gold Creek Golf Club	Mr Keith Lewis	PO Box 636, GUNGAHLIN, ACT, 2913	6123 0601	6241 9144	keith.lewis@goldccc.com.au	20610
Goolabri Golf Club	Mr Ben Luton	202 Goolabri Drive, SUTTON, NSW, 2620	6230 3294	6230 3575		TBA
Goolgowi Golf Club	Mr David Flood	P O Box 67, GOOLGOWI, NSW, 2652	6965 1260	6965 1478		22506
Gordon Golf Club	Mr Brian Chalmers	2 Lynn Ridge Avenue, GORDON, NSW, 2072	9498 1913	9880 2337	bchalmers@gordongolfclub.com.au	20310
Gosford Golf Club	Mr Alvin Kan	PO Box 273, GOSFORD, NSW, 2250	4325 0361	4323 2750	alvin@gosfordgolf.com.au	20802
Goulburn Golf Club	Mr Robert Kirk	Blackshaw Road, GOULBURN, NSW, 2580	4821 2454	4821 9280	ggc@managers.com.au	20611
Grafton District Golf Club	Mr Mark Butler	PO Box 198, GRAFTON, NSW, 2460	6642 2255	6643 5745	graftongolfclub@bigpond.com	21508
Greenhills Golf & Country Club		817 Peats Ridge Road, PEATS RIDGE, NSW, 2250	4373 1522	4373 1523		20809
Grenfell Country Club	Mr John Grant	Gooloogong Road, GRENFELL, NSW, 2810	6343 2374	6343 2640	grenfellcountryclub@bigpond.com	21307
Griffith Golf Club	Mr Wayne Moat	PO Box 1915, GRIFFITH, NSW, 2680	6962 3173	6964 5790	grifgolf@bigpond.net.au	22507
Grong Grong Golf Club	Mr. Brian Gawne	Narrandera Street, GRONG GRONG, NSW, 2652	6956 2132			22210
Grose River Golf Club	Mr Del Nutman	41 Nutmans Road, GROSE WOLD, NSW, 2753	4572 2012	4572 2666	groserivergolfclub@bigpond.com	20714
Gulargambone Golf Club	Mr. Brian Gawne	P O Box 63, GULARGAMBONE, NSW, 2828	6825 1039	6825 1415		22415
Gulgong Golf Club	Mr. Mal Mallinson	PO Box 220, GULGONG, NSW, 2852	6374 1571	6374 1571	gulgolf@bigpond.net.au	20703
Gundagai Services Golf Club	Mr Joe Lico	21 Tor street, GUNDAGAI, NSW, 2722	6944 3331	6944 3332	joegdsc@bigpond.net.au	22305
Gungahlin Lakes Golf Club	Ms Wendy Howe	PO Box 636, Mitchell, ACT, 2911	6242 6283	6242 9437	wjhowe@bigpond.com	20626
Gungahlin Lakes Golf Club	Brian Dobson	PO Box 636, MITCHELL, ACT, 2911	6242 6283	6242 9437	golfsec@lakesgolf.org	20626
Gunnedah Golf Club	Mr Steve Johnston	PO Box 105, GUNNEDAH, NSW, 2380	6742 2111	6742 5030	office@gunnedahgolfclub.com.au	22105
Guyra Bowling & Recreation Club	Mr. Fred Geldof	PO Box 48, GUYRA, NSW, 2365	6779 1499	6779 1886		21707
Harden Country Club	Mr Ron Page	East Street, HARDEN, NSW, 2587	6386 2483	6386 3583	hcclub@dragnet.com.au	22306
Harrington Waters Golf Club	Mr Craig Staymen	PO Box 92, HARRINGTON, NSW, 2427	6556 0404	6556 0409	golf@harringtonwaters.com.au	21414
Hawks Nest Golf Club	Mr Stephen Cheater	PO Box 6, HAWKS NEST, NSW, 2324	4997 0145	4997 1397	gm@hawksnestgolfclub.com.au	21803
Hay Golf Club	Robert Weston	408 Murry Street, HAY, NSW, 2711	6993 1360	6993 2229	haysport@bigpond.com	22508
Henbury Sport & Recreation Club Ltd.	MsBarbara Babbage	PO Box 22, KANDOS, NSW, 2848	6379 4101	6379 4101	henburysport@bigpond.com	20704
Highlands Golf Club	Mr David Fenner	PO Box 82, MITTAGONG, NSW, 2575	4871 1995	4872 1523	admin@higlandsgolf.com.au	21206
Hillston Golf Club		PO Box 108, HILLSTON, NSW, 2675	6967 2184	6967 2804		22510
HMAS Creswell Golf Club	Mr Andrew Gibbes	c/o David Smith, 41 Cyrus Street, HAYMS BEACH, NSW, 2540	4429 7158	4429 7161	andrewgibbes@iprimus.com.au	21207
Holbrook RSL Golf Club	Mr Adam Haswell	C/- PO Box 11, HOLBROOK, NSW, 2644	6036 2199			22212
Honiara Golf Club	Mr Jim Forrester	PO Box 195, HONIARA, SOLOMON ISLANDS,				20504
Howlong Golf Club	Mr Chris Rebbechi	PO Box 5, HOWLONG, NSW, 2643	6026 5321	6026 5951	gm@howlonggolf.com.au	21603
Hudson Park Golf Course		Arthur Street, HOMEBUSH, NSW, 2140	9746 7502			
Hunter Valley Golf & Country Club		430 Wine Country Drive, LOVEDALE, NSW, 2325				0
Hurstville Golf Club	Ms Michele Adair	PO Box 148, MORTDALE, NSW, 2223	9533 5024		hgcbruce@bigpond.com.au	20331
Illawarra Golf Club		Princes Highway, MADDENS PLAINS, NSW,	4294 0125			

Iluka Golf Club	Mr Don McCusker	PO Box 43, ILUKA, NSW, 2466	6646 6408	6646 5129	ilukagolf@commander360.com	22006
Inverell Golf Club	Mr. Tony O'Shannessy	PO Box 267, INVERELL, NSW, 2360	6722 1574	6721 5000	manager@inverellgolfclub.com	21708
Ivanhoe Golf Club	Mrs M Parnaby	Columbus Street, IVANHOE, NSW, 2878	6995 1316			21308
Jamberoo Golf Club	Mr geoff Boxsell	PO Box 112, JAMBEROO, NSW, 2533	4236 0291	4236 0736	jamgolf@speedlink.com.au	21208
Jerilderie Golf Club & Sports Club	Mr Gerard Lawson	PO Box 62, JERILDERIE, NSW, 2716	03 5886 1445	03 5886 1865	jerilderiegolf@bigpond.com.au	22509
Jindabyne Golf Club	Mr Machelle Grant	PO Box 231, JINDABYNE, NSW, 2627	6457-8102	6457 8335	john.bottrill@snowyriver.nsw.gov.au	20613
Jindera Country Golf Club	Mrs Judith Gehrig	PO Box 132, JINDERA, NSW, 2642				21605
Jugiong Golf Club	Mr Peter North	C/- Post Office, JUGIONG, NSW, 2726	02 6945 3288	6945 3141	jenandpete@aapt.net.au	22307
Junee Golf Club	Mr Geoffery Reynolds	PO Box 41, JUNEE, NSW, 2663	6924 3371	6924 3371	juneegolfclub@bigpond.com	22214
Kangaroo Valley Country Club		PO Box 135, KANGAROO VALLEY, NSW, 2577	4465 1131	4465 1359	info@kangaroovalley.com.au	21209
Kapooka Golf Club	Mr N Upfield	ARTC, KAPOOKA MILPO, NSW, 2661	6933 8426	6933 8205		22215
Kareela Golf Club	Mr David Rootham	PO Box 210, SUTHERLAND, NSW, 1499	9521 5555	9521 7441	contact@kareelagolf.com.au	20311
Karuah Golf Club	Mr. Gordon Wilson	154 Tarean Road, KARUAH, NSW, 2324	4997 5693	4997 5693		21805
Katoomba Golf Club	Mr Peter Garth	Acacia Street, KATOOMBA, NSW, 2780	4782 2000	4782 3522	katoombagolf@optusnet.com.au	20705
Kempsey Golf Club	Mr Jason Webb	PO Box 143, KEMPSEY, NSW, 2440	6562 6291	6562 7703	kempseygolfclub@bigpond.com	21509
Khancoban Country Club	Mr Marissa Lucas	PO Box 78, KHANCOBAN, NSW, 2642	6076 9468	6076 9322	khanclub@dragnet.com.au	22216
Kiama Golf Club	Mr Craig Norman	PO Box 138, KIAMA, NSW, 2533	4237 7300	4237 6159	kiamagolfclub@kiamagolfclub.com.au	21210
Killara Golf Club	Mr David Gazzoli	PO Box 142, KILLARA, NSW, 2071	9498 2700	9498 6783	david.gazzoli@kgc.com.au	20109
Kogarah Golf Club	Mr Tony Rodgers	PO Box 3, ARNCLIFFE, NSW, 2205	9567 0334	9597 2594	admin@kogarahgolfclub.com.au	20216
Kooindah Waters Golf Club	Mark Ingrey; Michael Coggan	40 Kooindah Boulevarde, Kooondah Waters, WYONG, NSW, 2259	4351 0700	4355 1738	info@kooindahwatersgolf.com.au	20811
Krambach Golf Club	J. Legge	3782 Bucketts Way, KRAMBACH, NSW, 2429	6559 1288	6559 1288	krambachgolf@hotmail.com	21406
Kurrajong Hills Golf Course	Greg Snelling	102 Peel Parade, KURRAJONG, NSW, 2758	4573 2012	4573 2072	kurrajonghillsgolf@dodo.com.au	20713
Kurri Kurri Golf Club	Shane Lee	PO Box 123, KURRI KURRI, NSW, 2327	4937 1224	4936 1670	kurrigolf@shancour.com	21107
Kyogle Golf Club	Bill Walters	PO Box 7, KYOGLE, NSW, 2474	6632 1130	6632 2667	kyoglegc@yahoo.com.au	22007
Lachlan River Sporting Club	Mr Greg Reko	PO Box 108, HILLSTON, NSW, 2675		6967-2804	rekod1@bigpond.com	22510
Lake Cargelligo Golf Club	Mr Ian Harris	PO Box 28, LAKE CARGELLIGO, NSW, 2672	6898 1297	6898 1144		21309
Lane Cove Country Golf Club	Mr Ian Hardwick	PO Box 878, LANE COVE, NSW, 2066	9427 6631	9427 9824	lcccgolf@bigpond.net.au	20313
Le Meilleur Horizons Golf Resort	Mrs Julie Morgan	5 Horizons Drive, SALAMANDER BAY, NSW, 2317	4982 0502		enquiries@horizons.com.au	21804
Leeton Golf Club	Ms Lauren Kingsbury	PO Box 416, LEETON, NSW, 2705	6953 2270	6953 7160	leetongolf@itg.net.au	22217
Leonay Golf Club (Emu Plains Sporting & Rec Club)	Michael Ekert	PO Box 69, EMU PLAINS, NSW, 2750	4735 5529	4735 6038	membership@emusportsclub.com.au	20314
Leura Golf Club	Mrs Christine Barlow	1 Sublime Point Road, LEURA, NSW, 2780	4782 5011	4784 3355	leuragc@pnc.com.au	20706
Lightning Ridge Golf Club	Mrs kay Hogan	PO Box 313, LIGHTNING RIDGE, NSW, 2834	6829 0006	6829 0576		22416
Lismore Workers Golf Club	Ross Fletcher	PO Box 5345, LISMORE, NSW, 2480	6621 2255	6621 6340	lisgolf@spot.com.au	22008
Lithgow Golf Club	Rhonda McAndrew	PO Box 198, LITHGOW, NSW, 2790	6351 3164	6351 3164	lithgowgolfclub@bigpond.com	20707
Liverpool Golf Club	Mr Kieran Semple	PO Box 3019, LANSVALE, NSW, 2166	9728 7777	9727 8696	kieran@liverpoolgolf.com.au	20217
Lockhart Golf Club	Ms. Sandra Johnstone	PO Box 68, LOCKHART, NSW, 2656	6920 5174	6920 5505	sjohn123@optusnet.com.au	22218

Long Reef Golf Club	Graeme Ashley	PO Box 182, COLLAROY, NSW, 2097	9971 8113	9982 4648	graemea@lrgc.com.au	20110
Longyard Golf Club	Vanessa Kelly	PO Box 388, TAMWORTH, NSW, 2340	6765 2988	6765 2245	manager@longyardgolfclub.com.au	22106
Lord Howe Island Golf Club	Ms Julie Bretnall	PO Box 44, LORD HOWE ISLAND, NSW, 2898	6563 2179	6563 2179	lhhideaway@bigpond.com	20505
Lyndhurst Golf Club	Mr M J McFawn	Mount McDonald Road, LYNDHURST, NSW, 2797				20906
Lynwood Country Club	Sandra Greaves	PO Box 4206, PITT TOWN, NSW, 2756	4580 2800	4580 9469	info@lynwoodcc.com.au	20312
Macarthur Grange Country Club	Mr Rob Tunchin	PO Box 422, NARELLAN, NSW, 2567	9820 1600	9820 4399	rob@macarthurgrange.com.au	20509
Macksville Country Club	Mrs Yvonne Price	PO Box 118, MACKSVILLE, NSW, 2447	6568 1400	6568 4044	ycprice@bigpond.com	21510
Maclean Golf Club	Mr. Robert Harvey	PO Box 21, MACLEAN, NSW, 2463	6645 2183	6645 4306	mcleangolf@bigpond.com	22009
Macquarie Links International Golf Club	Sanjay Rumar	PO Box 899, INGLEBURN, NSW, 1890	8796 5888	9605 7900	lsmith@mli.com.au	20508
Magenta Shores Golf & Country Club	Mr Trevor McGaw	PO Box 166, THE ENTRANCE, NSW, 2261	4352 8100	4352 8199	info@magentagolf.com.au	0
Maitland Golf Club	Scott Driffield	PO Box 429, EAST MAITLAND, NSW, 2323	4933 7512	4933 5581		21108
Mandeni Golf Club	Anne Bolton	PO Box 264, Merimbula, NSW, 2548	6495 9785	6495 0192		21013
Mangrove Mountain Memorial Club	Mr Garry Malone	18 Hallards Road, CENTRAL MANGROVE, NSW, 2250	4373 1129	4373 1081	mmmclub@bigpond.com.au	20803
Manildra Golf Club	Jennifer J. Miller	PO Box 24, MANILDRA, NSW, 2865			terrymostyn@bigpond.com	20907
Manilla Golf Club	K McDowell	PO Box 37, MANILLA, NSW, 2346	6785 1417	6785 1417		22107
Manly Golf Club	Mr Ed J Hynes	PO Box 166, MANLY, NSW, 1655	9948 0256	9948 3325	edhynes@manlygolf.com.au	20111
Marrickville Golf Club	Mr Garry Weston	Locked Bag 6510, MARRICKVILLE SOUTH, NSW, 2204	9558 1876	9558 6674	garry@marrickville.com.au	20315
Massey Park Golf Club	Mr Tony Rosillo	Ian Parade, CONCORD, NSW, 2137	9743 4113	9736 2653	tony@masseypark.com.au	20218
Mendooran Golf Club	Mr S Bush	Racecourse Road, MENDOORAN, NSW, 2842				22417
Menindee Golf Club	Mr M Minns	PO Box 154, MENINDEE, NSW, 2879	08 8091 4238			21310
Merewether Golf Club	Mr Heath McMahan	40 King Street, ADAMSTOWN, NSW, 2289	4963 1128	4963 6441	heath@merewethergolf.com.au	21806
Merriwa Golf Club	Mrs D Thorley	King George V Avenue, MERRIWA, NSW, 2329	6548 2028		vivian.murray@bigpond.com	21109
Mollymook Golf Club	Mr. Tod Oxborough	PO Box 315, ULLADULLA, NSW, 2539	4455 1911	4455 1513	tod@mollymookgolf.com.au	21211
Molong Golf Club	Mr R A Wood	P O Box 78, MOLONG, NSW, 2866	6366 8321			20908
Mona Vale Golf Club Ltd	Mr Tim Parker	Golf Avenue, MONA VALE, NSW, 2103	9999 4266	9997 5791	manager@mvgc.com.au	20112
Monash Country Club	Mark Bartrop	PO Box 99, NARRABEEN, NSW, 2101	9913 8282	9913 8784	mark.bartrop@monashcc.com.au	20113
Moore Park Golf Club	Julian Murray	PO Box 178, KENSINGTON, NSW, 1465	9697 3877	9697 2988	admin@mpgolf.com.au	20114
Moree Golf Club	Mr Geoff Benson	PO Box 95, MOREE, NSW, 2400	6752 1405	6752 4382	moreegolfclub@bigpond.com	21905
Morisset Golf Club	Mr Mick Bennett	PO Box 192, MORISSET, NSW, 2264	4973 1100	4970 5054	office@mccl.com.au	20804
Moruya Golf Club	Mr Craig Clark	PO Box 140, MORUYA, NSW, 2537	4474 2300	4474 3536	admin@moruyagolfclub.com.au	21007
Moss Vale Golf Club Ltd	Mr Jason Harwood	PO Box 205, MOSS VALE, NSW, 2577	4868 1811	4868 1904	jharwood@mossvalegolfclub.com.au	21212
Moss Vale Golf Club Ltd	Jason Harwood	PO Box 205, MOSS VALE, NSW, 2577	4868 1811	4868 1904	info@mossvalegolfclub.com.au	21212
Mt Broughton Golf & Country Club	Mr Peter Fissell	PO Box 505, MOSS VALE, NSW, 2577	4868 3200	4868 3211	manager@mtbroughton.com.au	21213
Mudgee Golf Club	Mr David Sykes	PO Box 1096, MUDGEE, NSW, 2850	6372 1811	6372 1653	goflclub@winsoft.net.au	20708
Muirfield Golf Club	Mr Guy Gibson	Barclay Road, NORTH ROCKS, NSW, 2151	9871 1388	9871 3876	admin@muirfieldgolf.com.au	20115
Mullumbimby Golf Club	Mr John Donoghue	PO Box 96, MULLUMBIMBY, NSW, 2482	6684 2273	6684 1585	mullgolf@bigpond.net.au	22010

Mungindi Golf Club	Mrs P Ward	Boomi Road, MUNGINDI, NSW, 2406	6753 2148			21906
Muree Golf Club	Mr Richard Jones	PO Box 61, RAYMOND TERRACE, NSW, 2324	4987 2142	4983 1960	mur3779@bigpond.net.au	21807
Murrumbidgee Country Club	Mr Warren James	PO Box 3094, WESTON CREEK, ACT, 2611	6296 2888	6231 9261	manager@mccgolfclub.com	20614
Murrurundi Golf Club	Howard Lane	PO Box 50, MURRURUNDI, NSW, 2338	6546 6038	6546 6525		21110
Murwillumbah Golf Club	Mr Brett Holland	PO Box 185, MURWILLUMBAH, NSW, 2484	6672 1799	6672 6168	murbahgolf@bigpond.com	22011
Muswellbrook Golf Club Ltd	Michael Alsleben	PO Box 265, MUSWELLBROOK, NSW, 2333	6543 1767	6541 2938	muswellbrookgolf@ozemail.com.au	21111
Nambucca Heads Island Golf Club	Mr Peter Coutman	PO Box 89, NAMBUCCA HEADS, NSW, 2448	6569 4111	6568 7439	secretary@namgolf.com	21611
Narooma Golf Club	Mrs Colleen Kirby	PO Box 38, NAROOMA, NSW, 2546	4476 2522	4476 2016	enquiries@naroomagolf.com.au	21008
Narrabri Golf Club	Mr Paul Gleeson	Gibbons Street, NARRABRI, NSW, 2390	6792 2344	6792 1771	nbrigolfclub@bigpond.com	21907
Narrandera Golf Club	Miss Nikki Carbone	PO Box 105, NARRANDERA, NSW, 2700	6959 1327	6959 4032	info@narranderagolfclub.com.au	22219
Narromine Golf Club	Mrs Nancy Elrington	PO Box 80, NARROMINE, NSW, 2821	6889 1179	6889 4811	narrominegolfie@westnet.com.au	22418
National Golf Association of Fiji	Mr Ilaisa Labaibure	PO Box 5363, Raiwaqa, Suva, Fiji,	(679) 331 0738	(679) 3371191	ngaf@connect.com.fj	
Nelson Bay Golf Club	Mr Jason Russell	PO Box 33, NELSON BAY, NSW, 2315	4981 1132	4981 2412	jason@nelsonbaygolf.com.au	21808
New Brighton Golf Club	Andrew Terry	PO Box 144, MOOREBANK, NSW, 2170	9602 8072	9602 8393	admin@newbrightongolf.com.au	20116
New South Wales Golf Club	Mr David Burton	PO Box 28, MATRAVILLE, NSW, 2036	9661 4455	9311 3792	admin@nswgolfclub.com.au	20117
Newcastle Golf Club	Paul Foulcher	Vardon Street, FERN BAY, NSW, 2295	4928 1365	4920 1190	office@newcastlegolf.com.au	21809
Nimmitabel Golf Club	Mr Russell Hadley	PO Box 21, NIMMITABEL, NSW, 2631	6454 6323	6454 6053		20615
Norfolk Island Golf Club	Mr Kylie Umlauft	PO Box 379, NORFOLK ISLAND, , 2899	0011 6723 22354	0011 6723 23243	nigolfclub@ni.net.nf	20506
North Ryde Golf Club	Mr Brenden Ellam	Twin Road, NORTH RYDE, NSW, 2113	9887 4422	9805 1646	gm@northrydegolfclub.com.au	20219
North Turramurra Golf Club		361A Bobbin Head Road, NORTH TURRAMURRA, NSW, 2074	9144 5110	9983 9184		20394
Northbridge Golf Club	Mr Marko Delatovic	Sailors Bay Road, NORTHBRIDGE, NSW, 2063	9958 6900	9958 8243	marko@northbridgegolfclub.com.au	20220
Nowra Golf Club	Mr Michael Walker	PO Box 3145, NORTH NOWRA, NSW, 2541	4421 3900	4423 3223	ngclub@tpg.com.au	21214
Nundle Golf Club	Mrs S Hoad	Crosby, NUNDLE, NSW, 2340				22108
Nyngan Golf Club	Mr Jamie Barrow	PO Box 265, NYNGAN, NSW, 2825	6832 1127	6832 1127		22419
Oaklands Golf Club	Mr Phillip Goldsack	Hunter Street, OAKLANDS, NSW, 2646	6035 4319	6035 4174	phillipgoldsack@bigpond.com	
Oatlands Golf Club	Paul Paterson	PO Box 106, OATLANDS, NSW, 2117	9630 4444		admin@oatlandsgolf.com.au	20118
Oberon Golf Club	Ray Ross	PO Box 30, OBERON, NSW, 2787	6336 0262	6336 0262		20709
Ocean Shores Country Club	Mr Andrew Spice	Orana Road, OCEAN SHORES, NSW, 2483	6680 1008	6680 1721	info@oceanshorescc.com.au	22012
Orange Ex-Services Country Golf Club	Mr Camerson Provost	PO Box 90, ORANGE, NSW, 2800	6361 3210	6362 5162	admin@oesc.com.au	20909
Orchard Hills Golf Club	Mr Kevin Woodward	PO Box 887, KINGSWOOD, NSW, 2747	4736 1266		woodies@virginbroadband.com.au	20318
Pacific Dunes Golf Club	Brendan Currie	Championship Drive, MEDOWIE, NSW, 2318	4916 0500	4916 0501	golfshop@pacificdunesgolf.com.au	21817
Palm Beach Golf Club	Michael Nixon	2 Beach Road, PALM BEACH, NSW, 2108	9974 4079	9974 1091	manager@palmbeachgolf.com.au	20316
Palms Golf Club	Mr John Mitchell	PO Box 96, ANNA BAY, NSW, 2316	4982 1754	4982 1754	palmsgolf@nelsonbayonline.com.au	21813
Pambula-Merimbula Golf Club	Mr Noel Robertson	PO Box 75, MERIMBULA, NSW, 2548	6495 6154	6495 6272	gm@merimbulagolf.com.au	21009
Parkes Golf Club	Mrs Helen Westcott	PO Box 241, PARKES, NSW, 2870	6862 2044	6862 2509	office@parkesgolfclub.com.au	21311
Parramatta Golf Club	Mr Peter Kovaluns	Park Parade, PARRAMATTA, NSW, 2150	9635 6781	9893 8630	peter@parramattagolfclub.com.au	20317

Paterson Golf Club	Mr Ross Coyle	PO Box 29, PATERSON, NSW, 2421	4938 5828	4938 5828	patersongolfclug@bigpond.com	21116
Peak Hill Golf Club	Mrs G Stone	PO Box 22, PEAK HILL, NSW, 2869	6869 1248	6869 1855		21312
Pennant Hills Golf Club	Mr Cameron Harvey	PO Box 1, BEECROFT, NSW, 2119	9484 1358	9484 8372	gmanager@pennanthillsgolfclub.com.au	20119
Penrith Golf Club	Brendon Kop	PO Box 726, KINGSWOOD, NSW, 2747	4736 1633	4736 5580	admin@penrithgolfclub.com.au	20221
Port Kembla Golf Club	Mr Brett Gibson	PO Box 103, PORT KEMBLA, NSW, 2505	4274 1159	4274 1467	brett@portkemblagolf.com.au	21215
Port Macquarie Golf Club	Trevor Haynes	PO Box 9074, PORT MACQUARIE, NSW, 2444	6582 0409	6582 2116	pmgc@midcoast.com.au	21407
Port Vila Golf & Country Club	Mr Robert Sugden	PO Box 358, PORT VILA VANUATU, VANUATU,	6782 2564	6782 2564	pvgcc@vanuatu.com.au	20507
Portland Golf Club	John Sharp	PO Box 47, PORTLAND, NSW, 2847	6355 5208	6355 5208		20710
Pymble Golf Club	Mr Bill Francis	PO Box 74, ST IVES, NSW, 2075	9144 2884	9144 3311	bill.francis@pymblegolf.com.au	20120
Queanbeyan Golf Club	Mr Graham Wise	PO Box 152, QUEANBEYAN, NSW, 2620	6297 1669	6297 4949	ceo@queanbeyangolf.com.au	20616
Quirindi RSL Golf Club	Mrs Del Short	PO Box 100, QUIRINDI, NSW, 2343	6746 1209	6746 2695	info@quirindirsl.com.au	22109
RAAF Wagga Golf Club	Ms Lynise Anderson	C/- RAAF Base Wagga, FOREST HILL, NSW, 2651	6937 5419	6937 4358		22220
Rand Golf Club	Mrs M Fuller	, , ,				21606
Randwick Golf Club	Mrs Maryanne Branighan	Howe Street, MALABAR, NSW, 2036	8347 3777	8347 3799	themanager@randwickgolfclub.com.au	20319
Rankins Springs Golf Club	Mr Bruce Vearing	C/- Post Office, RANKIN SPRINGS, NSW, 2669				21313
Richmond Golf Club	Mike Creighton	PO Box 5, RICHMOND, NSW, 2753	4578 1739	4588 5881	mike@richmondgolfclub.com.au	20320
Riverlands Golf and Recreation Club		PO Box 64, MILPERRA, NSW, 2214	9792 2633	9792 2284	thewhealys@hotmail.com	20222
Riverside Oaks Golf Club		74 O'Briens Road, CATTAI, NSW, 2756	4560 3200	4560 3266	reception@riversideoaks.com.au	20223
Roseville Golf Club	Mr Jason Seagg	4 Links Avenue, ROSEVILLE, NSW, 2069	8467 1800	8467 1888	gm@rosevillegolf.com.au	20224
Rosewood Golf Club	Meredith Morton	Kyeamba Street, ROSEWOOD, NSW, 2652	6948 8269	6948 8266		22221
Rosnay Golf Club	Stevan Payk	PO Box 2073, BERALA, NSW, 2141	9649 8429	9649 5310	golf@rosnaygolfclub.com.au	20321
Royal Australian Engineers Golf Club	Mr Barry Dodd	Steel Barracks, Moore Bank Avenue, MOOREBANK, NSW, 2170	9601 8783	9601 8781	info@raegolf.com.au	20322
Royal Canberra Golf Club	Mr Richard Coate	PO Box 240, DEAKIN WEST, ACT, 2600	6282 7000	6285 2742	gm@royalcanberra.com.au	20618
Royal Military College Golf Club	Mr Ian Cutler*	Calculus Lane, DUNTROON, ACT, 2600	6265 9620	6273 2346	rmcgc@bigpond.com	20619
Rum Corps Barracks Golf Club	Ms Alison Green	PO Box 5568, SOUTH WINDSOR, NSW, 2756	4577 6600	4577 6600	alandbaz@bigpond.com	20323
Russell Vale Golf Club	Marie Whittaker	PO Box 55, WOONONA, NSW, 2517	4285 1286	4285 4679	golf@russellvalegolfclub.com.au	21216
Ryde-Parramatta Golf Club	Mr Daniel Constable	1156 Victoria Road, WEST RYDE, NSW, 2114	9874 1204	9858 1685	gm@rydeparramatta.com.au	20121
Sawtell Golf Club	Shane Bennett	PO Box 3, SAWTELL, NSW, 2452	6653 1006	6658 3034	sawtellgolf@bigpond.com	21512
Scone Golf Club	Ms. Robyn Gaiter	Aberdeen Street, SCONE, NSW, 2337	6545 1814	6545 3425	sconegolf@westnet.com.au	21112
Sefton Golf Club	Mr David Winn	160 Rose Street, YAGOONA, NSW, 2162	9743 9436	9644 4564	david.winn@bankstown.nsw.gov.au	20330
Shelly Beach Golf Club	Craig Ellis	PO Box 7063, TOOWOON BAY, NSW, 2261	4332 3400	4334 3621	info@tlgc.com.au	20807
Shoalhaven Ex-Servicemens Golf Club	Chris Allen	131 Greenwell Point Road, WORRIGEE_, NSW, 2540	4421 7430	4421 7427	exservicemens@shoalhaven.net.au	21225
Shoalhaven Heads Golf Club	Mr David Lamb	PO Box 50, SHOALHAVEN HEADS, NSW, 2535	4448 8683	4448 7725	shgolfclub@shoal.net.au	21223
Shortland Waters Golf Club	Ray Duncan	PO Box 194, JESMOND, NSW, 2299	4955 8169	4951 5467	swgc@hunterlink.net.au	21810
Singleton Golf Club	Daniel Storey	PO Box 63, SINGLETON, NSW, 2330	6572 2876	6571 1797	singletongolf@internode.on.net	21113
South West Rocks Country Club	David Cunningham	PO Box 159, SOUTH WEST ROCKS, NSW, 2431	6566 6252	6566 5118	swrcc@tsn.cc	21514

Spring Ridge Country Club	Louise Russell	Darby Road, SPRING RIDGE, NSW, 2343	6747 3817			22110
Springwood Country Club	Mr Gary Considine	PO Box 94, SPRINGWOOD, NSW, 2777	4751 1122	4751 7593	springcc@anc.com.au	20711
St Georges Basin Country Club	Peter Thorncroft	PO Box 9, SANCTUARY POINT, NSW, 2540	4443 0666	4443 8084	theclub@basincountryclub.com.au	21218
St. Michael's Golf Club	Murray Watts	PO Box 375, MAROUBRA JUNCTION, NSW, 2035	9311 0068	9311 3321	admin@stmichaelsgolf.com.au	20122
Strathfield Golf Club	Neil Hardy	PO Box 586, FLEMINGTON, NSW, 2129	9642 0326	9742 5572	nhardy@strathfieldgolf.com	20123
Stroud Golf Club	Mr. Rob Bowden	Bucketts Way, STROUD, NSW, 2425	4994 5264	4994 5264		21114
Sugar Valley Golf Club	Simon Rainey	Boundary Street, WEST WALLSEND, NSW, 2286	4953 2891	4953 2891	bruchris@hunterlink.net.au	21811
Sunny Ridge Golf Club	Edna Maynard	136 Burnt Yards Road, MANDURAMA, NSW, 2792	6367 5207	6367 5275		20911
Sussex Inlet Golf Club	Ms Linda Evans	PO Box 73, SUSSEX INLET, NSW, 2540	4441 2259	4441 2218	sussexgolf@shoalhaven.net.au	21219
Sylvan Glen Golf Club		Kareela Road, PENROSE, NSW, 2579	4884 4306			21226
Talbingo Golf Club	Warren Gooley	PO Box 32, TALBINGO, NSW, 2720	6949-5260	6949-5432	tcc260@dragnet.com.au	22315
Tallwoods Golf Club	Peter Townsing	PO Box 5206, Hallidays Point, NSW, 2430	6557 3991	6557 3974	ptkt@bigpond.net.au	21415
Tamworth Golf Club	M Rick Watt	PO Box 3086, WEST TAMWORTH, NSW, 2340	6765 9393	6765 4122	manager@tamworthgolfclub.com.au	22111
Tanilba Bay Golf Club	Ms Pat Andrews	Lemon Tree Passage Road, TANILBA BAY, NSW, 2319	4982 3215	4984 5171	tanilba@bigpond.net.au	21812
Taralga Golf Club	Mr. Peter Carlon	Old Showground Road, TARALGA, NSW, 2580	4840 2383			20620
Tathra Beach Country Club	Tony Brunton	Andy Poole Drive, TATHRA, NSW, 2550	6494 1220	6494 1037	tbcclub@acr.net.au	21010
Temora Golf Club	Mr Paul Leary	PO Box 143, TEMORA, NSW, 2666	6978 0160	6978 0375		22309
Tenterfield Golf Club	W. Koppell	PO Box 217, TENTERFIELD, NSW, 2372	6736 1480	6736 2379	tentgolf@halenet.com.au	21709
Terrey Hills Golf & Country Club	Shawn Mahoney	116 Booralie Road, TERREY HILLS, NSW, 2084	9450 0155	9450 0034	thgolf@terryhillsgolf.com.au	20124
Teven Golf Club	Mrs Rebecca Rogers	1684 Eltham Road, TEVEN, NSW, 2478	6687 8386	6687 8762		22018
The Australian Golf Club	Mr Bill Green	PO Box 95, ROSEBERY, NSW, 1445	9663 2273	9662 6096	bgreen@australiangolf club.com	20125
The Coast Golf Club	Mr Robert Kelly	1 Coast Hospital Road, LITTLE BAY, NSW, 2036	9311 7422	9311 4854	robert@coastgolf.com.au	20324
The Grange Golf Club a division of Dapto Leagues Club Ltd	Mr Mick Villa	PO Box 3, DAPTO, NSW, 2530	4261 1647	4262 2064	info@thegrangegolfclub.com.au	21220
The Lakes Golf Club	Mr Graham Christian	PO Box 545, MASCOT, NSW, 2020	9669 1311	9669 6206	mrc@thelakesgolfclub.com.au	20126
The Links Shell Cove*	Mr Robby Stephenson	PO Box 4145, SHELLHARBOUR, NSW, 2529	4237 5955	4237 5012	robby@linksshellcove.com.au	21217
The Oaks Golf & Country Club	Mr Denis McEncroe	49 Lindsay Street, CESSNOCK, NSW, 2325	4990 1633	4991 2267	welcome@theoaksgolfclub.com.au	21103
The Rock Golf Club	Mr Colin Stewart	PO Box 84, THE ROCK, NSW, 2655	6920 2193	6920 2193		22222
The Royal Sydney Golf Club	Mr Paul Hinton	Kent Road, ROSE BAY, NSW, 2029	8362 7000	8362 7070	paul.hinton@rsgc.com.au	20127
The Springs Golf and Country Club	Mr Henry Sunwoo	817 Peats Ridge Road, PEATS RIDGE, NSW, 2250	4373 1522	4373 1523	info@springsgoflclub.com	20809
The Vintage Golf Club	Mr Steve Wylie	PO Box 2023, ROTHBURY, NSW, 2320	4998 6789	4998 6788	golf@thevintage.com.au	21117
Thredbo Golf Club	Kim Gallacher	PO Box 37, THREDBO VILLAGE, NSW, 2625	0412 2584 86	6457 7015	kim.gallachel@bigpond.com	20621
Thurgoona Country Club Resort	Greg McMillan & Peter Norris	PO Box 496, LAVINGTON, NSW, 2641	6043 1902	6043 2967	admin@thurgoonaresort.com.au	21607
Tipperary Golf Club	Mrs Vera McMillan	PO Box 207, YOUNG, NSW, 2594	6382 1475			22313
Tooleybuc Sporting Golf Club	Eileen Old	c/ E. Old 34 Wakool Street, TOOLEYBUC, NSW, 2736	5030 5539 (03)		tooleybucsc@bigpond.com	22514
Toronto Country Club	Gordon Smith	PO Box 946, TORONTO, NSW, 2283	4959 1584	4959 1602	torontocountryclub@hunterlink.net.au	21814
Tottenham Golf Club	Mr John Medcalf	PO Box 85, TOTTENHAM, NSW, 2873	6892 4132	6892 4132		22421

Toukley Golf Club	Mr Stephen Arnold	PO Box 13, TOUKLEY, NSW, 2263	4396 5811	4397 1298	admin@toukleygolfclub.com.au	20118
Trangie Golf Club		PO Box 79, TRANGIE, NSW, 2823	6888 7159			22422
Tree Valley Golf Club		Camden Valley Way, PRESTONS, NSW, 2170	9607 5060			
Trundle Golf Club	David French	96 Forbes Street, TRUNDLE, NSW, 2875	6892 1120	6892 1043		21314
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Tully Park Early Birds Golf Club	Mr Greg Hosking	PO Box 123, GOULBURN, NSW, 2580	4822 2828	4822 7277	hosko@goulburn.net	20622
Tumbarumba Golf Club	Mr Dave D'deavle	PO Box 283, TUMBARUMBA, NSW, 2653	6948 8626			22223
Tumut Golf Club	Matthew Chapman	PO Box 203, TUMUT, NSW, 2720	6947 1475			22310
Tura Beach Country Club	Mr Damien Foley	PO Box 52, MERIMBULA, NSW, 2548	6495 9002	6495 9756	dfoley@clubsapphire.com.au	21011
Tuross Head Country Club	Barry Clynch	PO Box 3066, TUROSS HEAD, NSW, 2537	4473 8186	4473 8066	thcc@acr.net.au	21012
Twin Creeks Golf & Country Club	Rob Selley	PO Box 42, LUDDENHAM, NSW, 2745	9670 8888	9670 8800	roberts@twincreeks.com.au	20128
Twin Towns Services Mens Golf Club	Mr John Haywood	PO Box 369, Tweed Heads, NSW, 2485	07 5524 1544	07 5524 1432	roberts@twincreeks.com.au	22014
Uralla Golf Club	Warren Nelson	PO Box 119, URALLA, NSW, 2358	6778 4059	6778 4003		22112
Vincentia Golf Club	Robert Packwood	PO Box 270, VINCENTIA, NSW, 2540	4441 5111	4441 5802	vincentiagc@shoal.net.au	21221
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Wagga Wagga Country club	Mr Barry Harris	Plumpton Road, WAGGA WAGGA, NSW, 2650	02 6922 6444	02 6922 5016	wccgolf@bigpond.net.au	22225
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Walgett District Sporting Club	Daryl Cooper	PO Box 112, WALGETT, NSW, 2832	6828 1271	6828 1653	walgettsporto@bigpond.com	22423
Wallacia Panthers Golf & Country Club	Andrew Gardner	PO Box 3033, WALLACIA, NSW, 2745	4773 8417	4773 9090	wallacia@panthers.com.au	20326
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Wanaaring Golf Club	Mr Roby Parker	Wanaaring Road, WANAARING, NSW, 2840			rosanne@ipstarmail.com.au	22424
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Warialda Golf and Bowling Club	Gavin Marle	Holden Street, WARIALDA, NSW, 2402	6729 1192		wgbc@bigpond.net.au	21909
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Welaregang Golf Club	Mr. D Paton	C/- 9 Possum Point Road, TOOMA, NSW, 2642	6948 4012	6948 4012		22228
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Woolgoolga RSL Golf Club	Mr Don Penson	5 Punnet Place, WOOLGOOLGA, NSW, 2456	6654 2111	6654 2291	woopigolf@yahoo.com.au	21513
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STANDARD RULING ON SPONSORS EMBLEMS

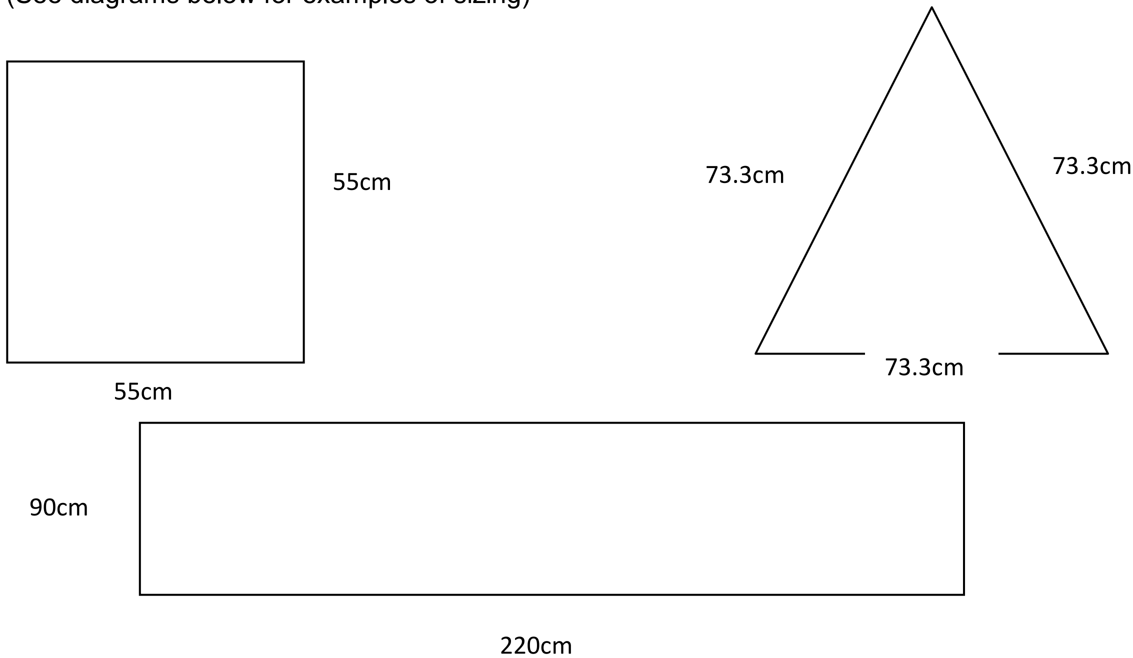
Clothing, including head gear, issued by a commercial sponsor to individuals may only bear the small emblem of the clothing, or head gear manufacturer, or the event concerned (which may or may not include the name or logo of the sponsor of the event).

If clothing or head gear is issued by a sponsor to individuals in any event, it must be available to all and not just selected players.

Teams: Where a National, State, District or Club Team is sponsored, the members of the Team may have on their uniforms the emblem of the Team and the small name or logo of either the sponsor or manufacturer.

The sponsor‘s or manufacturer‘s name or logo must not appear more than once on each garment and should not exceed a perimeter measurement of 220mm.

(See diagrams below for examples of sizing)



AFFILIATION AND PLAYING RIGHTS OF FULL MEMBERS IN CLUBS

MEMBERSHIP

1. All golf clubs in NSW determine the playing categories within their Club and subsequently the playing rights within each category of membership.

2. All categories of Membership must be made available to men and women.

3. Men and women who wish to become a registered player **MUST** become a member of an Affiliated Golf Club which must also be an affiliated with their District Golf Association if a non-metropolitan club.

4. **BOTH** men and women can hold a Golf Australia Handicap calculated in accordance with Golf Australia's Handicapping System.

5. Each group must play in competitions run for that particular group in accordance with the Handicap Rules laid down by Golf Australia

6. **BOTH** male and female registered players with full playing rights at a club may play together in the time allocated to full playing members, however, they must play in separate men's and women's competitions. Clubs must determine the minimum number of players required to constitute a legitimate competition under these circumstances and should there be insufficient women members to do so, a club may, at its discretion conduct a ball competition instead, providing the women concerned play off the women's tees and off a women's handicap and they play the same type of event. Any completed card returned marked by a fellow competitor (male or female) must be accepted **for handicapping purposes.**

GENERAL

It is recommended that clubs have a Women's Committee, rather than an Associates Committee, representing women. This committee should be authorised to conduct the affairs of women's golf within the club.

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GOLF COMPETITION CONDITIONS

1. **GENERAL**

The Rules of Golf define the Committee as “the Committee in charge of the competition” and Rule 33-1 states that “the Committee shall lay down the conditions under which the competition is to be played”.

The Conditions of Competition are the foundations on which a competition is built as, among other things, they specify who is eligible to enter, how a player may enter and what format the event will take. The Conditions nominate the requirements considered necessary by the Committee for efficient administration of regular club events or other specific tournaments for which the Committee may be responsible.

It is vital that the conditions are laid down in advance of the competition so that the Committee can deal with any situation which may arise, such as a player‘s eligibility, a tie or a player using a ball which does not appear on the List of Conforming Golf Balls etc. It is the responsibility of the Committee to interpret the conditions they lay down and, therefore, the conditions should be clear and carry precise guidance as to what action should be taken when certain circumstances arise.

Conditions should not be confused with Local Rules. Conditions cover such matters as the format of the competition, eligibility requirements, method of deciding ties, etc., whereas, in general, Local Rules cover abnormal or specific local conditions relating to the golf course.

2. **ELIGIBILITY**

The Committee must decide who may participate in the competition, i.e. men, women, juniors, seniors etc.

It may be that a competition has handicap restrictions. Often a competition will have a restricted field and the Committee must decide on a procedure if it receives more entries than it can accept. A “first come first served” policy can be adopted, or alternatively, the Committee may accept players with the lowest handicaps. If this is the case the Committee must decide whether it will use exact handicaps (i.e. to one decimal point) or playing handicaps (i.e. whole numbers) to determine the lowest handicaps.

If entry is restricted by age then any condition in this regard should be unambiguous.

3. **ENTRY**

The Committee must determine how players are to enter the competition. In major events it is normal for players to have to complete an entry form which must reach the Committee by a certain date. In many cases the entry form must be accompanied by an entry fee.

In club competitions entry may be made by a player adding his name to a sheet by a certain date or simply arriving on the day of the competition and indicating his desire to play. Even with these less formal methods of entry, the Committee must lay down clear procedural guidelines and state what should happen if the correct procedure is not adopted. For example, if a player is able to enter a competition by putting his name down for a starting time on the day of the competition, is he then restricted to that time or can he subsequently decide to play at another time. It is considered advisable in such circumstances for the Committee to provide a condition stating that once a player has entered his name against a starting time, that starting time has the status of a time fixed by the Committee and therefore, cannot be altered without the Committee‘s authority.

4. **FORMAT**

Whilst many competitions will have a traditional format, a Committee creating a new event must decide which form of play it wishes to adopt.

(a) **Match Play**

These days there are very few Match Play events that do not involve stroke play qualifying rounds. Accordingly, the number of players who ever gain experience in this traditional form of the game is sadly limited.

If the competition is to be played on the basis of match play it can be singles, foursomes or four-ball match play and can either be scratch or on a handicap basis.

The method of determining the field in a match play competition may vary. It may be that the field is restricted to a certain number, there may be stroke play qualifying preceding the match play stage or the Committee may accept all entries and tailor the draw accordingly.

In events which have stroke play qualifying it would be normal for Committees to look for 16, 32 or 64 qualifiers. With such events it is essential that the Committee decide in advance how it will settle a tie for the last qualification position.

Once the requisite number of qualifiers has been established the Committee must make the draw for the match play. A full list of pairings for events with 64, 32, 16 and 8 qualifiers is contained in Appendix I of the Rules of Golf (page 126 of the current edition).

(b) **Stroke Play**

If the competition is to be played on the basis of stroke play it can be singles, foursomes or four-ball stroke play. However, in addition, it can be on the basis of stableford or par.

The Committee must decide how many rounds are to be played, whether or not the field is to be reduced at any stage of the competition and whether it is a scratch or handicap event.

If the competition is based on handicap, the Committee may seek to establish different handicap grades with prizes being awarded in each grade, thereby allowing competitors to compete against others of comparable ability. The Committee may wish to determine such grades in advance or await entry and then divide the field evenly into their respective handicap classes.

The Committee may decide to use a form of play which is not covered by the Rules of Golf such as the best ball of four players or a ―scramble". As these forms of golf are not specifically recognised in the Rules, the Committee must establish Rules and conditions which will be specific to these events. For example, in a ―scramble" the Committee should determine how and where the ball of a player whose ball is not in play shall be dropped or placed at which a stroke is to be played

5. **TIMES OF STARTING AND GROUPS**

Under Rule 33-3 of the Rules of Golf, it is the responsibility of the Committee to lay down the times of starting and, in stroke play, to arrange the groups in which competitors shall play. However, in both match play and stroke play the Committee may permit players to determine their own starting times and, in stroke play, to decide their own grouping.

(a) **Starting Times**

In the majority of Club match play competitions the Committee does not lay down starting times and the organisation of matches is left to the players. This is perfectly acceptable. However, it is essential that the Committee stipulates when each round must be played by and it is important that these time limits are strictly enforced. If a match is not played by the prescribed date, the Committee should have a method of determining whether one of the players should be allowed to advance or whether both are disqualified. This can be a difficult area for Committees. Strict and consistent enforcement of the conditions laid down is vital to the proper organisation of such competitions.

Ideally, each round of a competition, whether match play or stroke play, is played on a certain day and in such circumstances it is normal for the Committee to lay down starting times in both match play and stroke play and determine groupings in stroke play. Where possible the Committee should make the times and groupings available to players well in advance of the competition. However, when there is a cut in a stroke play competition this will not always be possible.

(b) **Groups**

The Committee determines the groupings in stroke play which will usually be in threes. Playing in fours is not recommended except in club competition. In 72 hole events where there is a large entry to be subject to a cut, the groups on the first two days are normally the same with a group having one earlier and one later starting time.

Failure to start on time is covered by Rule 6-3 which provides that ―the player shall start at

the time laid down by the Committee." The penalty for a breach of this Rule is disqualification, but the Committee may choose to include the Note to Rule 6-3 in the conditions of the competition.

This condition is introduced at all GOLF NSW LIMITED, GA and R&A Championships.

However, in order to apply this condition efficiently, it is necessary to have an appointed starter who will be in a position to register lateness on the tee and take appropriate action.

If the starter is not actually a member of the Committee, he should be instructed to report any late arrival on the tee to the Committee, who will then take the appropriate action. In such circumstances, the communication of a penalty to a player should be handled by the Committee, not the starter.

It is important to note that all players in a group must be present and ready to play at the time laid down by the Committee, and that the order of play is not relevant. Therefore, a player in a group of three with a starting time of 9.00am will be in breach of Rule 6-3 if he arrives at 9.01am even if he is third in the order of play (see Decision 6-3a/2)

6. **HANDICAPS**

The Rules of Golf do not legislate for the allocation and adjustment of handicaps. Such matters are within the jurisdiction of the National Union, Federation or Association of the country where the competition is being played. The Australian Handicapping System, based on course rating, has been designed to achieve uniformity of handicapping throughout Australia for male amateur golfers. Golf Australia delegates to each of its Member States the power to administer on its behalf the handicapping of all players who are members of clubs affiliated with such States and any queries concerning handicapping should be directed accordingly.

Golf Australia has decreed that the use of full handicaps in all forms of play is mandatory.

In match play competitions which extend over a period of time the Committee should lay down in the conditions whether the handicap current at the beginning of the competition or the beginning of each match shall apply. The latter is more usual. In a stroke play-off the handicap applicable to the last round (rather than the handicap at the time of the play-off) should apply and the conditions should so declare. In 36 hole stroke play competitions it is recommended that handicaps are not altered during the event.

7. **DECISION OF TIES**

Rule 33-6 states in part "the Committee shall announce the manner, day and time for the decision of a halved match or of a tie, whether played on level terms or under handicap". It is essential that such decisions are taken in advance of the competition and laid down in the conditions. The recommended methods of settling ties are detailed in Appendix I of the Rules of Golf.

8. **PRIZES**

The Committee should announce in advance the prizes which are to be awarded in the competition. The conditions should also indicate whether one player may accept more than one trophy and the trophy precedence.

The Committee must be aware of the regulations concerning prizes which an Amateur player may accept without breaching his Amateur Status. Committees should refer to the Rules of Amateur Status and Decisions on the Rules of Amateur Status.

9. **PRACTICE**

Rule 7-1 provides that a player may practise on the competition course before a round on any day of a match play competition, but a competitor in stroke play is prohibited from taking such action or from testing the surface of any putting green on the course before a round or play-off. However, the Note to Rule 7-1 allows the Committee to introduce a condition which overrides Rule 7-1.

If a Club has no practice facilities it may be necessary to allow competitors in a stroke play competition to use part of the course for practising and, therefore, such a condition must be introduced.

10. **CADDIES**

The Rules of Golf do not place any restriction on who may serve as a caddie, but the Committee may prohibit or restrict caddies in the conditions of competition.

However, since the Rules specifically permit a player to use a caddie, generally it is not recommended that a Committee introduce a condition prohibiting their use. That having been said, for various

reasons, it is common for Committee's organising junior events to prohibit or restrict the use of caddies. In addition, in certain competitions it may be considered appropriate to prohibit professional golfers from acting as caddies.

11. GOLF CARTS

The use of golf carts (i.e. ride-on motorised vehicles) during a competition is permitted unless their use is specifically prohibited in the conditions of the competition (as per GOLF NSW LIMITED's Transportation Policy)

12. MISCELLANEOUS

The Committee may in certain special events introduce the following conditions:

(a) Require players to use a ball named on the List of Conforming Golf Balls (see the Note to Rule 5-1).

(b) ―One Ball" Condition (Require players to use balls of the same brand and type).

(c) Advice in Team Competition (see Note to Rule 8).

Further advice concerning these special conditions may be obtained from the GOLF NSW LIMITED.

13. CONCLUSION

It is the responsibility of the Committee to interpret the Conditions they lay down for each Competition and to give a decision on any query which arises out of them.

It may be appropriate and convenient to publish regular or standard Competition Conditions in the Club Fixture Book or to permanently provide a copy for perusal by members somewhere within the Clubhouse. Conditions for special events should be published and distributed with Entry Forms.

The Committee should consider each situation carefully prior to introducing any Competition Condition as the Committee does not have the power to waive or modify a Rule of Golf. One such example relates to players recording scores into a computer upon completion of a stipulated round. The Committee may request and encourage competitors to enter their scores into a computer but to publish a condition making the entry of scores into a computer by players mandatory would modify Rule 6-6b. (Decision 6-6b/8)

It is not appropriate to apply a penalty of one or two strokes, loss of hole or disqualification for a breach of dress regulations, failure to carry and use sand buckets, drinking alcohol on the course, use of mobile phones, etc. On such occasions, Club by-laws or regulations providing disciplinary sanctions should be invoked.

It must be understood that in a brief article of this type, it is impossible to comprehensively describe each and every variation of competition conditions suitable or necessary for every circumstance and accordingly, a number of matters have had to be omitted.

Should further assistance or advice be required, contact the GOLF NSW LIMITED.

14. COMPETITION CONDITIONS - FOR REGULAR CLUB EVENTS

The following matters are recommended for consideration by Committees in the preparation of Competition Conditions for regular club competition.

- Define the format of the Competition
  - Stroke, Stableford, Par etc
  - Individual, Four-ball, Foursomes, Team Event etc
- Date and time
  - Duration of the event and rounds or holes involved.
- Rules
  - Nominate that the Rules of Golf plus any current Local Rules apply.
  - If the Competition is a Novelty Event (not covered by the Rules of Golf), the relevant Rules for the Competition need to be compiled and published.
- Tee Markers
  - Nominate the tee markers to be used in respective competitions.
- New Holes
  - Consider Rule 33-2b.
- Eligibility
  - Players should be financial members of the club or financial members of an affiliated club
  - Handicaps limits (if any)
  - Age (if applicable) – Juniors (under 18), Colts (Under 24 years), Senior, Veteran etc.

- Special Restrictions (Is there any restriction relating to juniors playing together?)
- Entering Competition
  - Entry Sheet
  - Closing Date
  - Post Entries
- Times of Starting and Groups
  - See Rule 33-3 and Rule 6-3 and Decision 33-1/3
  - If competitors are permitted to start their round at some hole other than the 1st (e.g. the 10th), this must be stated.
- Foursome Competition
  - In a Foursome Competition the Committee may stipulate which player shall play from the 1st tee in a stipulated round. See Decision 33-1/3.5
- Starting Times
  - Nominate the procedure to apply should a player arrive to play later than the time indicated on the Time Sheet.
  - Will the penalty be Disqualification or will the Note to Rule 6-3 be implemented?
- Starting – Inclement Weather
  - Consider the situation when a player cancels out of the competition because of inclement weather and decide whether he may re- nominate and occupy a position in the same competition later in the day should the weather improve.
- Handicap Stroke Index
  - Publish Handicap Tables indicating the order of holes at which handicap strokes are taken in Stroke Play (Stableford and Par) and given or received in Match Play. See Rule 33-4.
- Scorecards
  - Issue scorecards – see Rule 33-5.
  - Nominate where players are required to return the completed scorecards.
- Grades
  - Indicate the number and method by which grades in the competition are established.
- Trophies
  - Nominate trophy precedence (Gross or Handicap) and the number of trophies in each grade.
  - It is usual to nominate that a player shall not be eligible to win more than one trophy.
- Practice
  - Where there is doubt, Committees should define clearly what areas are available for practice (33-2c). Committees have the power to waive or modify the provisions of Rule 7-1 under the Note to that Rule. If this is done, it must be made clear what the effect of the waiver or modification is, e.g.
    - ❖ Whether a competitor may play a full round before his competition; or
    - ❖ Whether he may only practice at certain holes; and
    - ❖ If so, whether he may play practice shots on or on to greens or out of hazards.
    - ❖ The Committee may also:
      - (i) allow practice on the competition course (or parts of it) during a suspension of play (see Exception (c) to Rule 7-2; and
      - (ii) Prohibit practice on or near the putting green of the last hole played (see Note 2 to Rule 7).
- Motorised Transport
  - Golf carts may be used in any competition unless the conditions of the competition prohibit their use. (Decision 33-1/8 and 9)
  - Therefore, if it is desired to require players to walk during a competition the following condition is recommended.
  - "Players shall walk at all times during a stipulated round." (See Appendix 1 for recommended penalties.)
    - Note: If adopted, this condition applies to caddies also (see Decision
    - 33-1/9.5).

- Anti-discrimination Regulations may require incapacitated or disabled players (and caddies) be allowed to use transport; however, the Committee is not obliged to provide such transport.
- If motorised carts are permitted, the carts become part of the players' equipment as described in the Definition of equipment. Therefore a Local Rule should be published clarifying the status of the carts together with any special conditions or restrictions relating to where the carts may travel. As the carts are part of the players' equipment and governed by a Rule of Golf or Local Rule appropriate penalties apply. (See Decision 33-8/4 re Local Rule)

- Caddies
  - Are there any restrictions concerning who may act as caddies e.g. professionals, parents etc.
  - See Decisions 33-1/10 and 33-1/11.
- Pace of Play Guidelines
  - See Note 2 to Rule 6-7 and specific article in this manual
- Course Not Playable
  - Advise that the Committee may temporarily suspend play or declare a Stroke round null and void if it considers the course is not in a playable condition or should a dangerous situation arise. See Rule 33-2d and Decision 33-1/2 and 33-2d/1.
- Suspension of Play
  - Nominate the means by which a Suspension and Resumption of Play will be announced. It is recommended that the signal for suspending play due to a dangerous situation is a prolonged note on a siren. The signal for resumption of play should be two short notes of the siren repeated. See Rule 6-8 and in particular the Note following Rule 6-8b.
- Discontinuance of Play
  - Indicate whether players may discontinue play for a short period of time to partake of refreshments at a nominated point within the stipulated round.
  - See Decisions 6-8a/2.5 and 6-8a/2.7.
- By-Laws, Club Rules and Dress Regulations
  - Describe clearly any By-laws relating to dress regulations, use of sand buckets, drinking alcohol on the course, use of mobile phones, wide wheels on golf buggies etc.
- Footwear
  - Nominate whether there are restrictions on the type of footwear permitted on the course or any policy regarding the various forms of golf shoe spikes.
  - See Decision 33-1/14.
- Alcohol
  - Advise if alcohol is prohibited on the course during play of a stipulated round.
- Mobile Phones
  - Advise if the use of mobile phones is prohibited.
  - If the use of mobile phones is prohibited, indicate that if a phone rings it will be deemed to be in use.
- Communication
  - Provide phone numbers or means by which players can advise of cancellation.
- Stroke Play Qualifying followed by Match Play
  - The Committee may choose to allow qualifying for the Match Play to be optional. If this is the case the manner by which players nominate to be considered for qualification should be clearly indicated.
  - It should be noted that a stroke competition is deemed to have closed when the result has been announced whereas in stroke play followed by match play the competition is not closed until the player has teed off in his first match.
- Championships
  - The Committee should publish any special conditions and arrangements that may apply for Championships.
  - The Committee should advise what handicap shall apply in the event of a player's handicap changing during the course of the Championship.

NOTE:

Further information relating to the staging of competitions, count-back system, method for seeding automatic draws, handicaps in use for various events, match play index and duties of Referees and Committee Members is published in the Australian Golfer's Handbook available from Golf Australia. Further enquiries may also be directed to the Golf NSW Limited.

15. **CONDITIONS FOR SPECIAL TOURNAMENTS.**

Many of the conditions required for normal club events will probably be required for Special Tournaments, however, as visitors will probably be involved, the Special Tournament Conditions will need to be published differently and made available to all competitors.

Committees should select the appropriate conditions from the previous list and add to the conditions considered unique to the Special Tournament. Such special matters may include:

- Method of Entering the Competition
  - Entry Forms
  - Closing Date for Entries.
  - Post Entries.
  - Procedure in the event of an excessive number of entries – Pre-qualifying, ballot etc.
- Tournament Committee
  - Nominate the composition of the Tournament Committee.
- By-Laws, Club Rules and Dress Regulations
  - Describe clearly by-laws relating to dress regulations, mobile phones, sand buckets, wide wheels on buggies, consuming alcoholic drinks on the course etc.
- Practice
  - Advise location of Practice Areas.
  - Advise procedure required to arrange practice and when practice times are available.
- Locomotion
  - Golf carts may be used in any competition unless the conditions of the competition prohibit their use. (See Decisions 33-1/8 and 9) Therefore, if it is desired to require players to walk during a competition the following condition is recommended:
  - "Players shall walk at all times during a stipulated round." See Appendix 1 for relevant penalties.)
  - Note: If adopted, this condition applies to caddies also (see Decision
  - 33-1/9.5).
  - Anti-discrimination Regulations may require incapacitated or disabled players (and caddies) be allowed to use transport; however, the Committee is not obliged to provide such transport.
  - Advise if motorised transport is allowed and if so whether carts are available at the club.
- Time of Starting
  - Nominate the procedure to apply should a player arrive to play later than the time indicated on the Time Sheet.
  - Disqualification or will the Note to Rule 6-3 be implemented?
  - Advise when the draw will be made and how it will be made available.
  - State who has the authority to alter starting times.
- Tee Markers
  - Advise which Tee Markers shall apply.
- Caddies
  - Advise of any restrictions relating to caddies.
- Golf Balls
  - Advise if there is a requirement to use balls on the List of Conforming Golf Balls issued by the Royal and Ancient Golf Club of St. Andrews.
  - State if it is a condition of the event that players use one type of ball during play of the competition.
- Drug Testing
  - The following condition is discretionary:- All competitors are subject to drug testing by the Australian Sports Drug Agency for banned substances as laid down in the Australian Golf Union's Doping Policy. Any

competitor infringing this condition, or refusing to take a test, may be disqualified.

- Pace of Play Guidelines
  - See Note 2 to Rule 6-7 and specific article in this manual.
- Communication
  - Provide phone numbers or means by which players can advise of cancellation.
- Competition Fees
  - Advise the Competition Fee.
  - State the conditions under which any refunds may be made should a player cancel.
- Covering Statements
  - It is recommended that Conditions of the Competition include the following statements:
    - ❖ The Match Committee shall have the right to alter or make any variations to the Conditions or Programme should they deem it necessary.
    - ❖ The Match Committee shall have the right to refuse the entry of any person without being required to give any reason for such refusal.
    - ❖ The Match Committee shall settle all disputes.

STANDARD CONDITIONS for STATE EVENTS as at 1 JANUARY 2010

The Golf NSW Limited (GOLF NSW LIMITED) Standard Conditions for State Events (including the GOLF NSW LIMITED Transportation Policy) and the GOLF NSW LIMITED Code of Conduct apply to State and Championship events where indicated.

Where there is any inconsistency between the conditions set out in these GOLF NSW LIMITED Standard Conditions for State Events and those set out in a State or Championship event, the conditions of the State or Championship event will prevail.

A copy of the GOLF NSW LIMITED Standard Conditions for State Events (including the GOLF NSW LIMITED Transportation Policy) and GOLF NSW LIMITED Code of Conduct are available from the GOLF NSW LIMITED website at www.Golf NSW Limited.com.au.

In these Conditions, unless the context indicates otherwise:

GOLF NSW LIMITED means the Golf NSW Limited Limited or Golf NSW.

Match Committee means the Match Committee of the NSWSGA.

Recognised Golf Club means a golf club affiliated with the GOLF NSW LIMITED, a District Golf Association, the governing bodies in other States of Australia or in overseas countries.

Rules of Golf means the Rules of Golf and Rules of Amateur Status (2008-2011) published and approved by the R&A Rules Limited and The United States Golf Association (Effective 1 January 2008).

PART A – ADMINISTRATION AND ENTRY CONDITIONS

1. MATCH COMMITTEE

1.1 The Match Committee has the power to vary these Standard Conditions and to decide any dispute or question arising as to the qualification of any entrant and may, in its absolute discretion at any time and without assigning any reason therefore, refuse any entry without assigning any reason for its decision.

1.2 The members of the Match Committee present during the playing of the event may exercise all functions of the Match Committee in relation to the event and shall constitute the Committee within the meaning of the ***Rules of Golf*** for the purpose of the conduct of the event.

1.3 A member of the Match Committee cannot be a competitor or a caddie.

1.4 **Protests** must be made in writing and submitted to the Match Committee within fifteen (15) minutes of the conclusion of the day‘s play.

2. ELIGIBILITY

In the event of a player being suspended by an affiliated club, a club affiliated with a District Golf Association, or a District Golf Association on a golf related matter the player is not eligible to enter or play in any GOLF NSW LIMITED event during the period of suspension. This Condition applies even if the player nominates another club as the player‘s home club for handicap purposes.

3. DRAW

3.1 The Match Committee reserves the right to fix and/or alter starting times.

3.2 Once a draw is compiled, no refund will be available except upon production of a medical certificate.

4. PRACTICE ROUNDS PRIOR TO THE EVENT

Practice rounds, prior to GOLF NSW LIMITED events, are at the discretion of the Host Club. Permission must be sought from the Secretary/General Manager of the Host Club.

5. BY-LAWS, RULES AND DRESS REGULATIONS

The By-laws, rules and dress regulations of the Host Club shall apply. The penalty for non-compliance would be no start or disciplinary sanctions at the discretion of GOLF NSW LIMITED Match Committee in accordance with the GOLF NSW LIMITED Code of Conduct.

6. CANCELLATION

Players who are unable to compete for any reason, should cancel by contacting the GOLF NSW LIMITED's General Manager - Golf Programs & Services during business hours or the after hours on Mobile telephone no. 0416057965.

PART B - CONDITIONS OF COMPETITION

The following Conditions, in concert with those contained in the specific event Entry Form and any other additions or amendments as published, will apply under Rule 33-1.

Unless otherwise noted, the penalty for breach of a Condition is:

Match Play - Loss of Hole
Stroke Play - Two Strokes

1. CONFORMING GOLF BALLS (Note to Rule 5-1)

(a) The specimen condition on page 142 of the Rules of Golf is in effect.
(b) For Specific Events (NSW Medal and Amateur, NSW Junior Championship, NSW Mid Amateur Championship and NSW Foursomes Championship) the One Ball Condition on pages 142-143 of the Rules of Golf is in effect.

2. TIME OF STARTING (Note to Rule 6-3a)

The specimen condition on page 142 of the Rules of Golf is in effect.

3. DISTANCE MEASURING DEVICES

For all play in a State or Championship event a player may obtain distance information using a device that measures distance only. If during a ***stipulated round***, a player uses a distance-measuring device that is designed to gauge or measure other conditions that might affect his play (e.g. gradient, windspeed, temperature, etc), the player is in breach of Rule 14-3, for which the penalty is disqualification, regardless of whether any such additional functions are actually used.

This Condition applies irrespective of any Local Rule that may or may not be in effect at the Host Club.

4. PACE OF PLAY (Note 2 to Rule 6-7)

(a) Pace of play policy guidelines may be laid down by the Match Committee for each State or Championship event.

(b) Where Pace of play policy guidelines have been **laid down they will be strictly enforced** (see note 2; Rule 6-7). A copy of the Pace of play policy guidelines will be posted at the State or Championship Host Club(s) and will be available on request.

(c) Penalties will be issued to individuals in groups who by their pace contribute to such delay. Warnings may not be issued prior to the application of penalties.

5. PRACTICE (Rule 7)

(a) Prior to a stipulated round in stroke play, a player may practice on the designated practice areas. Rule 7-1b applies to other practice in stroke play, and Rule 7-1a covers practice before the round in match play competitions.

(b) For Specific Events (NSW Medal, NSW Junior Championship, NSW Mid Amateur Championship and NSW Foursomes Championship) the Note to Rule 7 on page 145 will be in effect. N.B. This prohibition includes rolling a ball on the putting green of the hole last played.

Note: This prohibition will not apply to match play events, including the NSW Amateur Championship and Pennant competitions).

6. TRANSPORTATION

Players must walk at all times during a stipulated round unless permitted to ride by the Match Committee. The provisions of the GOLF NSW LIMITED's Transportation Policy (please click here for Transportation Policy document) apply to all amateur Championship or State events conducted by the GOLF NSW LIMITED.

The Penalty for breach of this Condition is as provided for in Appendix I of the Rules of Golf (page 146) - Breach of Transportation Condition.

7. **DRUGS**

All competitors are subject to drug testing by the Australian Sports Anti-Doping Agency for banned substances as laid down in Golf Australia's Anti-Doping Policy. Any competitor infringing this policy, or refusing to take a test, will be disqualified and subject to any sanction(s) brought down by ASADA. A list of the prohibited substances will be available at registration. Clarification of any medication can be obtained via the ASADA hotline – 1800 020 506, or from www.asada.gov.au.

The penalty for use of banned substance will be at the discretion of GOLF NSW LIMITED Match Committee in accordance with the GOLF NSW LIMITED Code of Conduct. Please click here for document

8. **CONSUMPTION OF ALCOHOL**

The consumption of alcohol by players and caddies on the course during a stipulated round is strictly prohibited. The penalty for breach of this Condition will be at the discretion of GOLF NSW LIMITED Match Committee in accordance with the GOLF NSW LIMITED Code of Conduct. Please click here for document

9. **MOBILE PHONES**

The use of a mobile phone or portable phone by a competitor or his caddie, whilst on the golf course during an event is distracting and inconsiderate. If the competitor or his caddie is in the possession of a mobile or portable phone it should be turned off. If the phone rings this is deemed to be in use and the committee may take disciplinary action against the offending player in accordance with the concluding paragraph of section 1, Etiquette of the Rules of Golf**.** If a mobile phone has a distance measuring device facility it may be used in line with Condition 3, provide the device does not have the facility to **gauge or measure other conditions that might affect play (e.g. gradient, windspeed, temperature, etc).** However the 'phone communication' facility of the mobile phone should be turned off. In match play, your opponent should be informed if you plan on using this facility on your phone.

> ***Note***: In deciding whether a penalty should be applied the Match Committee will consider Decision 33-7/8 "Meaning of "Serious Breach of Etiquette" on page 504 of the R&A Decisions on the Rules of Golf 2008-2009.

10. **SUSPENSION OF PLAY DUE TO A DANGEROUS SITUATION (Note to Rule 6-8b)**

The specimen condition on pages 144-145 of the Rules of Golf is in effect.

All practice areas are closed during suspension due to a dangerous situation until the Match Committee has declared them open. The following signals will be used:

Discontinue Play Immediately:
One prolonged note of siren.

Discontinue Play:
Three consecutive note of siren, repeated.

Resume Play:
Two short notes of siren, repeated.

11. **RETURNING OF SCORE CARD**

A player must return his card as soon as possible after completion of his round and his score card is deemed officially returned to the Match Committee when the player has left the designated recording area.

12. **RESULTS OF THE COMPETITION CLOSED**

Match Play:

In the NSW Amateur Championship, the result of the match is deemed officially announced when it has been officially recorded in the Championship Office. In pennant matches, the result of the match is deemed officially announced when it has been recorded on the official result sheet signed by the team captains.

Stroke Play:

The competition is closed when the trophy has been presented to the winner or, in the absence of a prize ceremony, when all scores have been approved by the Match Committee.

TRANSPORTATION POLICY AS AT 1 JANUARY 2010

The provisions of the GOLF NSW LIMITED's Transportation Policy apply to all amateur Championship and State events, except for the Club Qualifying section of the following State events:

- *sureshotgps NSW Men's Fourball Championship*
- *Keno NSW Mixed Fourball Championship*

Players must not ride on any form of transportation during a stipulated round unless authorised by the Match Committee or based on the exception below.

An exception will be made in the case of a player affected by a disability.

The following must be produced to gain exemption:

(a) a certificate or letter from a Medical Practitioner specifying:

(i) the disability by which the player is affected;

(ii) the medical practitioner's opinion that the disability necessitates the player requiring the use of automotive locomotion in order to participate in the competition;

(b) in the case of a permanent disability a letter from the Secretary/General Manager of the Club, confirming that the player does not participate in any games of golf at that Club except with the assistance of automotive locomotion; or

(c) in the case of a temporary disability a letter from the Secretary/General Manager of the Club confirming that the player does not presently participate in any games of golf at the Club except with the assistance of automotive locomotion and nominating the period for which permission to use automotive locomotion is granted.

The GOLF NSW LIMITED accepts no responsibility for the availability of automotive locomotion at Host Clubs, or as to whether or not permission is granted to use automotive locomotion.

Subject to the approval of the Host Club, the Match Committee authorises caddies to use transportation provided that, during the stipulated round:

(a) The player does not accept a ride at any time.

(b) The player does not accept advice from any other person travelling with the caddie.

The Penalty for breach of this Condition is as provided for in Appendix I of the Rules of Golf (page 146) - Breach of Transportation Condition.

DRAFTING OF LOCAL RULES

Rule 33 – 8a and Appendix 1 Part A provide that Committees may establish Local Rules for local abnormal conditions. The following Draft Local Rules are intended as a guide for Committees to ensure uniformity amongst Golf Clubs. They should be read in conjunction with Appendix 1, Parts A and B on pages 124 to 140 of the 2008 - 2011 edition of The Rules of Golf.

1. GENERAL

Generally, Local Rules are introduced to clarify the course marking (e.g. clarifying the bounds of the course) or to provide relief from local abnormal conditions which are not covered by the Rules themselves. Appendix I to the Rules of Golf suggests specific matters for which Local Rules may be advisable. In addition, the "Decisions on the Rules of Golf" provides detailed information regarding acceptable and prohibited Local Rules under Rule 33-8.

Committees are reminded that a penalty imposed by a Rule of Golf must not be waived by a Local Rule and that modification of a Rule of Golf in a Local Rule is not allowed without the authorisation of the GOLF NSW LIMITED which is the Governing Body for the Rules in NSW (see Preamble to Appendix I, Part A). Such permission is only given in very special cases when local abnormal conditions interfere with the proper playing of the game.

It is the duty of Committees to interpret their own Local Rules and, if a doubt arises about the applicability or interpretation of a Local Rule, it is the responsibility of the Committee to give a decision. The GOLF NSW LIMITED, while giving advice on the drafting of Local Rules and considering cases where modification of a Rule of Golf is requested, does not interpret Local Rules other than those covered by Appendix I or by this document.

A Committee wishing to adopt the recommended wording for a Local Rule provided in Appendix I may simply refer to the Rule Book. For example, if the Committee is adopting the lengthy standard wording for a Local Rule for fixed sprinkler heads, the Local Rule could read:

> "Immovable Obstructions Close to Putting Green. The specimen Local Rule in the Rules of Golf is in effect - see pages 134 - 135".

It is important to note that Local Rules should not be introduced or altered after a stroke play round has started. However, it is permissible to declare an unmarked area as GUR during a round (see Decision 33-2a/2). It is also permitted to alter the Local Rules for different rounds in an event consisting of more than one round, although this should be avoided if at all possible.

2. SPECIMEN LOCAL RULES

2.1 Out of Bounds (Rule 27-1)

The Committee must clarify the boundaries of the course and highlight holes on which the method of defining the boundary differs from the rest of the course, for example:

(a) Out of Bounds

(b) Beyond the course boundary fences.

(c) Beyond any line of white stakes and/or white lines.

(d) At the 18th hole, on or beyond the concrete path surrounding the Clubhouse.

Where there are out of bounds stakes between two holes which apply to only one of the holes, it should be made clear in the Local Rules to which of the holes the boundary applies. Furthermore, it is recommended that, by Local Rule, the stakes be deemed immovable obstructions during the play of the hole for which the stakes do not constitute a boundary (see Decision 24/5). The wording for such a Local Rule may read as follows:

When playing the 6th hole only, beyond the line of white stakes to the left of the 6th hole.
Note: When playing any hole other than the 6th, the white stakes defining the boundary at the 6th hole are immovable obstructions.

3. WATER HAZARDS (RULE 26)

Committees must clarify the status of water hazards that may be lateral water hazards and whether stakes are movable or immovable obstructions. (It is recommended stakes be deemed movable if possible).

A ball which lands in a water hazard or lateral water hazard and is carried out of bounds by the flow of water is deemed to lie out of bounds. It is, therefore, recommended that, where balls are likely to be carried out of bounds in a water hazard, a grill or screen be placed in the stream to prevent this occurring.

4. GROUND UNDER REPAIR

“Ground under repair” includes any part of the course so marked by order of the Committee (see Definition of “Ground Under Repair”). The means by which such areas are identified should be stated in the Local Rules, for example:

4.1 Ground Under Repair

(a) All areas defined by white lines and/or stakes.

(b) Clearly defined wheel ruts

(c) All defined (bordered) or ornamental garden beds.

(d) Any seam or edge of newly laid turf.

(e) Cracks in the ground on closely-mown areas.

Unusual damage may be caused to a course by animals. Rule 25-1 gives relief from holes made by burrowing animals but not, for example from hoof marks or from non-burrowing animals such as kangaroos or bandicoots. If relief from such conditions is considered equitable, it should be granted on the same terms as in Rule 25-1, eg:

(a) Hoof marks.

(b) Kangaroo damage in bunkers.

(c) Large ant hills.

If the Committee considers the relief available under Rule 25-1 to be too generous in such situations, it may deny relief from interference with the player‘s stance (see Note to Rule 25-1a). For example, in hot and dry conditions, the fairways of a course may suffer due to cracks in the ground. The lie of a ball could be seriously affected if it comes to rest in such a crack, but a player‘s stance may not be hindered by such a condition. If relief is to be denied from interference to stance, the following should be added to the relevant section(s):

> “Relief is denied if the only interference from this condition applies to the player‘s stance.”

A Committee may also deem solidly embedded stones and tree roots protruding onto a fairway or semi-rough as GUR as follows:

(a) Exposed tree roots on closely mown areas.

(b) Solidly embedded stones on closely mown areas.

5. AREAS REQUIRING PRESERVATION

Where the Committee wishes to protect an area completely by not allowing any play whatsoever, it may declare the area to be “ground under repair; play prohibited” as follows:

5.1 Ground Under Repair – Play Prohibited

Ornamental garden beds are ground under repair from which play is prohibited. If a player‘s ball lies in such an area, or if the area interferes with the player‘s stance or area of intended swing, the player MUST take relief in accordance with Rule 25-1.

6. OBSTRUCTIONS

Obstructions are defined in the Rules of Golf (pages 38 – 39) and free relief from obstructions is available under Rule 24. It is therefore not necessary to refer to obstructions in the Local Rules unless the Committee wishes to clarify the status of certain constructions or when it is desired to vary the relief provided in accordance with the policy outlined in Appendix I.

The following example clarifies the status of some constructions:

Immovable Obstructions (Rule 24-2)

(a) The artificial surfaces and sides of roads and paths (includes gravel paths).

(b) White-lined areas adjoining an obstruction are part of that obstruction and not GUR.

(c) Landscaped garden areas completely surrounded by an obstruction are part of that obstruction.

(d) Secured mats and plastic cable ramps covering cables are immovable obstructions.

(e) The following are specific examples listed in Appendix I. It is recommended that these be listed as separate Local Rules for clarity:

7. ROADS AND PATHS

The Definition of “Obstruction” states in part that “An obstruction is anything artificial except: Any construction declared by the Committee to be an integral part of the course.” Accordingly, a Committee may declare an artificially surfaced road or path to be an integral part of the course. This would normally only be recommended in a situation where providing free relief from the road or path would spoil an intrinsic feature of the hole.

In addition, on courses where there are roads, paths or tracks that have not been purposely formed and which have doubtful status, the Committee may consider the following Local Rule:

7.1 **Roads and Paths**

Roads and paths that are artificial or provided with artificial sides or edging are immovable obstructions. All other roads, paths and tracks are an integral part of the course from which the ball must be played as it lies or declared unplayable (Rule 28).

It should be noted that under the Rules, roads and paths covered with gravel, wood-chips or the like are obstructions and free relief is available unless specifically denied by a Local Rule (Decision 24/9). The following is an example of a Local Rule which restricts relief:

7.2 **Roads and Paths**

Roads and paths that are surfaced with concrete or bitumen are immovable obstructions. All other roads, paths and tracks are an integral part of the course from which the ball must be played as it lies or declared unplayable (Rule 28).

8. **PROTECTION OF YOUNG TREES**

Many courses have newly planted trees that the Committee wishes to protect. If it is desired to protect young trees, they should be identified in some manner (e.g. a stake, tag, etc.). The practice by some clubs of granting relief from trees under two club-lengths is strongly discouraged, since relief will not be available to all players in some circumstances (eg those with shorter clubs).

It is recommended that the following Local Rule be introduced which deems the tree to be an immovable obstruction. Therefore, any branches or foliage would be part of the obstruction.

8.1 **Staked Trees and Shrubs**

If a tree or shrub, that is either staked and/or protected by a tree guard, interferes with the player's stance or the area of their intended swing, the ball **MUST** be lifted, without penalty, and dropped in accordance with the procedure prescribed in Rule 24-2b (Immovable Obstruction).

NOTE: The stakes and tree guards are **immovable obstructions** (or movable obstructions at the discretion of the Committee).

If there are staked trees in a water hazard, the following should be added to this Local Rule above the note:

If the ball lies in a water hazard, the player may lift and drop the ball in accordance with Rule 24-2b(i) except that the nearest point of relief must be in the water hazard and the ball must be dropped in the water hazard or the player may proceed under Rule 26. The ball may be cleaned when lifted under this Local Rule.

In some instances, newly planted trees may be so close together that relief from one tree automatically results in interference from another tree. In this situation, it may be advisable to define the affected area as "ground under repair" which will enable the player to take relief outside the area. It is not permissible for a Committee to state that relief must be taken on a particular side of a plantation (e.g. the fairway side of the hole being played) as this would modify Rule 25-1b. However, if the Committee considers that it is not practicable to proceed in accordance with Rule 25-1b due to the fact that players may have to play through the trees thereby causing damage, it may introduce one or more dropping zones.

9. **IMMOVABLE OBSTRUCTIONS CLOSE TO THE PUTTING GREEN**

Committees may provide relief from intervention by immovable obstructions on or within two club-lengths of the putting green when the ball lies within two club-lengths of the obstruction. The Committee may print on the card the wording used in Appendix I in the Rules of Golf (page 135), or may simply say:

9.1 **Immovable Obstructions Close to Putting Green (eg Sprinkler Heads)**

The specimen Local Rule in the Rules of Golf is in effect. – see page 135.

10. **ELEVATED POWER LINES OR CABLES (AND PYLONS)**

Where overhead wires and pylons interfere with the playing of the game, an equitable solution is to require the stroke to be replayed, without penalty, if the ball strikes the obstruction. The player must not be given the option of replaying the stroke or playing the ball as it lies. The following Local Rule is recommended:

If a ball strikes an elevated power line or cable, the stroke must be cancelled and replayed without penalty (see Rule 20-5). If the ball is not immediately recoverable, another ball may be substituted.

In some cases the Committee may wish to include in the Local Rule the supporting towers or poles when

they are positioned such that they interfere with the play of the hole.

11. **PROTECTIVE SCREENS AND OTHER OBSTRUCTIONS CLOSE TO THE LINE OF PLAY**

Occasionally a high, close-meshed screen has to be erected to protect players on the tee of one hole from errant shots played at another hole. If this protective screen is relatively close to the line of play of the other hole, it would be permissible to make a Local Rule allowing a player whose ball is in such a position that the fence intervenes on their line of play to drop the ball, without penalty, not nearer the hole in a specified Dropping Zone as follows:

If any part of the protection screen adjacent to the 8th teeing ground intervenes directly between the player's ball and any part of the putting green of the 1st hole, the ball may be lifted, cleaned and dropped without penalty in the Drop Zone provided.

12. **INTEGRAL PARTS OF THE COURSE**

Committees are reminded that all constructions are either "obstructions" (relief is available under Rule 24) or "integral parts of the course" (no relief except under penalty by declaring the ball unplayable).

In addition to roads and paths, there may be other constructions which the Committee wishes to declare integral parts of the course.

A construction such as a wall which does not define the boundary may be a feature of a hole and to allow relief under Rule 24-2b for interference from the wall would weaken the hole. In such a situation, the Committee may declare it an integral part of the course, for example:

12.1 **Walls**

The stone walls at the 8th and 13th holes are integral parts of the course. The ball must be played as it lies or declared unplayable (Rule 28)."

Other constructions a Committee may wish to deem an integral part of the course include retaining walls in hazards and wooden sleepers in bunkers.

13. **STONES IN BUNKERS**

By definition, stones in bunkers are loose impediments and therefore when a player's ball is in a hazard, a stone lying in or touching the hazard must not be touched or moved. However, stones in bunkers may represent danger to players (a player could be injured by a stone struck by a player's club in an attempt to play the ball) and they may also interfere with the proper playing of the game. When permission to lift a stone in a bunker would be warranted, the following Local Rule is recommended:

13.1 **Stones in Bunkers**

Stones in bunkers are movable obstructions (Rule 24-1 applies).

14. **DISTANCE MEASURING DEVICES**

A committee is permitted to establish a Local Rule allowing players to use devices that measure distance only (see Decision 14-3/0.5). It should be noted however that **the use of devices that gauge or measure other conditions that might affect a player's play (eg wind or gradient) is not permitted.**

In the absence of a Local Rule in this respect, the use of distance measuring devices would be contrary to Rule 14-3.

Any such Local Rule must prohibit the use of a distance measuring device that is capable of gauging or measuring other conditions that might affect play, even if such a function is not used.

If a Committee wished to establish a Local Rule permitting the use of such devices, the following Specimen Local Rule should be adopted:

> "[Specify as appropriate, eg, In this competition, or For all play at this course, etc], a player may obtain distance information by using a device that measures distance only. However, if, during a stipulated round, a player uses a distance measuring device that is designed to gauge or measure other conditions that might affect his play (eg, gradient, wind-speed, temperature, etc), the player is in breach of Rule 14-3, for which the penalty is disqualification, regardless of whether any such additional functions are actually used."

With the emergence of multi-functional devices that can provide additional information to golfers such as PDAs and mobile phones, there is often doubt as to the conformity of such devices. Each device should be judged according to the above criteria. If a Committee is in doubt about the conformity of a device, it should contact the Golf NSW Limited for clarification.

15. **ENVIRONMENTALLY-SENSITIVE AREAS**

An area can only be defined as an environmentally-sensitive area by an appropriate authority (eg government agency). If an area is defined as

environmentally-sensitive and entry into and/or play from the area is prohibited it is recommended the Local Rule in Appendix I in the Rules of Golf (pages 128-130) be adopted.

16. TEMPORARY LOCAL RULES

16.1 Embedded Ball

Rule 25-2 provides relief without penalty for a ball embedded in its own pitch-mark in any closely mown area through the green. It may be warranted to allow the lifting of an embedded ball anywhere through the green and the following Local Rule is recommended:

Through the green, a ball that is embedded in its own pitch mark in the ground, other than sand, may be lifted without penalty, cleaned and dropped as near as possible to where it lay but not nearer the hole. The ball when dropped must first strike a part of the course through the green. Exception: A player may not obtain relief under this Local Rule if it is clearly unreasonable for them to make a stroke because of interference by anything other than the condition covered by this Local Rule.

Alternatively, conditions may be such that permission to lift, clean and replace the ball is required. In these circumstances, the following temporary Local Rule is recommended:

(Specify area) a ball may be lifted, cleaned and replaced without penalty. Note: The position of the ball must be marked before it is lifted under this Local Rule.

16.2 Preferred Lies

Conditions such as prolonged rains or extreme heat can make fairways unsatisfactory and sometimes prevent the use of heavy mowing equipment. If the Committee believes ―preferred lies” would promote fair play or help to protect the course, it is recommended the Local Rule in Appendix I of the Rules of Golf (pages 132-133) is adopted.

The Golf NSW Limited will interpret a Local Rule which includes the provisions outlined in the Appendix, but will not interpret a Local Rule which, for example, allows a preferred lie without prior marking of the ball.

16.3 Tee-Up Through the Green

If ground conditions are unsatisfactory to the extent that ―preferred lies” will not provide an adequate solution, a Committee may wish to introduce a ―Tee-Up” Local Rule. Such ground conditions may be the result of environmental or maintenance factors. In these circumstances, the following Local Rule is recommended:

(Specify area) a ball may (or MUST – see below note) be lifted, cleaned, and teed-up at the place it was lifted, without penalty. Note: The position of the ball must be marked before it is lifted under this Local Rule.

Note: When using such a Local Rule, a Committee may wish to REQUIRE players to tee their ball up (if, for example, preservation of the ground is a significant concern). In such a case it is recommended that a player have the option of playing their ball as it lies if it is within a specified distance (eg 15 metres) from the green.

16.4 Water-filled Bunkers

A Committee may not declare a bunker ground under repair solely because it is filled with water. However, in conditions of extreme wetness, where certain specific bunkers are completely flooded prior to the competition commencing and there is no reasonable likelihood of the bunkers drying up during the competition, the Committee may, in exceptional circumstances, introduce a Local Rule providing that specific bunkers, which are known to be flooded prior to the competition commencing, are deemed to be ground under repair and classified as through the green (see Decision 33-8/27).

16.5 Aeration Holes

When a course has been aerated, a Local Rule permitting relief, without penalty from an aeration hole may be warranted. The following Local Rule is recommended:

Through the green, a ball that comes to rest in or on an aeration hole may be lifted without penalty, cleaned and dropped, as near as possible to the spot where it lay but not nearer the hole. The ball when dropped must first strike a part of the course through the green.

On the putting green, a ball that comes to rest in or on an aeration hole may be placed at the nearest spot not nearer the hole that avoids the situation.

17. SUMMARY

17.1 Cleaning Balls

Permission to clean the ball in the Local Rules is not necessary as Rule 21 allows a ball to be cleaned on any occasion that it is lifted in accordance with the Rules or Local Rules except:

- When it is lifted to determine if it is unfit for play. (Rule 5-3)
- When it is lifted for identification, (Rule 12-2) in which case it may be cleaned only to the extent necessary for identification.
- Because it is interfering with or assisting play. (Rule 22)

17.2 **Dropping Zones**

There are some situations where it is not feasible or practicable to proceed exactly in conformity with Rule 24-2b or 24-2c (Immovable Obstruction), Rule 25-1b or 25-1c (Abnormal Ground Conditions), Rule 25-3 (Wrong Putting Green), Rule 26-1 (Water Hazards and Lateral Water hazards) or Rule 28 Ball Unplayable). In such situations the committee should establish special areas on which balls may be dropped.

Using the example of a Dropping Zone for a water hazard, when such a Dropping Zone is established, the following Local Rule is recommended:

"If a ball is in or it is known or virtually certain that a ball that has not been found is in the water hazard (specify location), the player may:

(i) proceed under Rule 26; or

(ii) as an additional option, drop a ball, under penalty of one stroke, in the Dropping Zone.

17.3 **Local Rules and Conditions of the Competition.**

Local Rules are meant to cater for abnormal conditions on the course.

Conditions of the Competition, as the name implies relate to the conditions under which a competition is to be played and which are not appropriate to deal with in the Rules of Golf or by Local Rule.

17.4 **Penalty Clause**

The following penalty clause should be clearly stated on the scorecard.

Penalty for Breach of Local Rule Match Play – Loss of Hole/Stroke Play – Two Strokes

18. **STAKE MARKINGS**

18.1 **Recommended Markings**

Out of Bounds

- White Stakes
- Joined by oil lines or solid white lines where necessary.

Ground Under Repair

- White lines encircling an area.
- White dots
- Broken white lines
- Coloured stakes (eg blue)
- GUR signage

Environmentally Sensitive Areas

- White Stakes with Green Tops

Mandatory Stake Markings (Local Rule not required)

Water Hazards

- Yellow Stakes and/or Lines

Lateral Water Hazards

- Red Stakes and/or Lines

Note: It is recommended that stakes (other than those defining OOB) be declared Immovable Obstructions.

19. **CONCLUSION**

Sloppy or inadequate Local Rules are a reflection upon the Club concerned.

It is recommended that Club Committees carefully consider the wording and intent of all Local Rules and Temporary Local Rules.

It is the duty of Club Committees to interpret their own Local Rules and, if a doubt arises about the applicability or interpretation of a Local Rule, it is the responsibility of the Club Committee to make a decision.

The Golf NSW Limited is prepared to assist Clubs in the drafting of Local Rules. Clubs seeking advice or assistance should contact GOLF NSW LIMITED and send a copy of the existing Local Rules etc.

GUIDANCE FOR COMMITTEES REGARDING SLOW PLAY

Slow play has significant potential to detract from the enjoyment of the game and as a result it is incumbent upon players and administrators at all levels to ensure golf is played at a proper pace. To help club administrators and players achieve this objective, Golf Australia has produced the below guidance for Committees.

Alleviating pace of play problems is as much the responsibility of the Club Management/Committee as it is of the players themselves.

A. Course Set-up and Administration

The more difficult the course, the longer it will take for players to complete a round. As a result, the following points should be considered:

- Avoid making green speed too fast – a reading of 9-10 feet on the Stimpmeter is generally more than appropriate. This way, players are not regularly having three or four putts, or spending too much time on the green.
- Hole locations should not be severe, particularly on the most busy days.
- Avoid thick rough so as to enable the majority of players to reasonably advance the ball. Shorter rough will also avoid numerous lost balls.
- When considering architectural or obstacle changes for holes, be mindful of the impact some changes may have to pace of play – particularly with regard to the degree of increased challenge posed to long markers and shorter hitters.
- Be mindful that when thick undergrowth and low-lying bushes are prevalent in areas that are in-play, the amount of time players will spend on ball searches will increase.
- Set up the course to accommodate the format of the day (eg consider the impact of having the course play the longest and hardest if conducting a medal competition). In addition:
  - Par 5s – consider playing these long enough to avoid players not waiting for the green to clear.
  - Par 4s – set their length so that a strong majority of players can reach or get close to the green in two shots.
  - Par 3s – retain a length so that a strong majority of players can reach the green with their tee shot.
- Do not overload the course by allowing too many groups on the course and by using short starting intervals. When play is in groups of four, at least 8 minutes (or preferably 10 minutes) should be allowed between groups.
- Incorporate starter‘s gaps throughout the course of the day to allow for the clearance of any delays that have arisen. Effective use of starter‘s gaps and preparing a time sheet in advance will help alleviate many problems.
- If carts are used, consider allowing them to scatter, rather than keeping them on the cart paths.

If a Committee sets its course up in an overly-severe fashion, players will take a relatively long time to complete their rounds.

B. Managing the Process

Committees should proactively manage any processes that are in place. Leaving things solely in the hands of players leaves much scope for poor outcomes. Determination of the best-fit strategy for each course will be dependent on available personnel; however the following points may assist.

- Use a starter to regulate the time between each group teeing off. If groups start before their tee time it will increase the potential for delay on a future hole, especially if there is a Par 3 early in the round.
- Be aware of where call-up may assist and consider making appropriate holes compulsory call-up (but ensure this is managed in a safe manner). On a par 3 hole where most players can not reach the green with their tee shot, call-up is generally successful as it will avoid players backing up on the tee and will help smooth flow. This is similarly the case with a long par 4 hole or a reachable par 5 hole. On the reverse, call-ups generally do not work on a short Par 3 and in fact can slow the pace down. Also be careful of hole configurations or weather conditions that will see the institution of call-up on one hole simply shift the problem to another hole.

- Use a more "experienced" Staff Member / Committee Member for marshalling duties (if available). Most players may not heed the warning of a younger or less experienced Marshal. Someone who is friendly and helpful to players, but who can also be assertive when necessary, is ideal. Many Committees may never have fully contemplated the best person to put in the position of course Marshal.
- Understand where issues exist. To better understand this, it may be worth monitoring every group that tees off on a particular day. Start with the first group and note the time the group actually commences their round (ie not when they checked in or what their allocated tee time was). Note their time again when they finish nine holes, and finally when they finish 18-holes. There may be a couple of groups in the morning (which may be the same players each week) that are creating the slow play for the rest of the day. If there is a slow start in the morning, the entire day will be spent trying to recover. Try to have the first groups playing at a great pace.
- Importantly, have a slow play policy / pace of play guidelines in place and stringently apply it/them. If one or two players are reprimanded early on, problems may be eliminated quickly thereafter.

C. Formulating a Policy:

It is a matter for the Committee to formulate its own pace of play guidelines. Two options are suggested:

1. In most cases, Club Committees are limited in the number of officials to implement pace of play guidelines. Accordingly, it may be necessary to formulate a simple condition whereby a time limit is provided for completion of the round and/or a certain number of holes. The Committee may decide that a group of three (for example) should not take more than 1 hour 45 minutes to complete nine holes and stipulate that if they exceed this limit, and are out of position, all three players are subject to penalty (out of position is defined in Appendix I). In addition, the condition may state that if they fail to complete the second nine holes in the prescribed time and are still out of position, all three players are subject to further penalty.
2. Where a marshal (or marshals) is readily available, the committee will have available the option of adopting hole-by-hole pace of play guidelines (incorporating shot-by-shot timing procedures) for application to groups that are out of position and in excess of designated time limits (see Appendix II for examples). Players

   can quickly get the message if the odd penalty is actually applied via this mechanism.

When formulating time limits, reasonable allowances for par 3s, par 4s and 5s may be 10, 13 and 15 minutes respectively for groups of three (in Stableford). In groups of four, 11, 14 and 16 minutes respectively may be considered reasonable. Adjustments should be made to take account of the severity/simplicity of a particular hole or course set-up, and walking distances between the green of the hole last played and the next tee.

D. Education

It is vital that players are educated on pace of play and know what is expected of them. The following strategies will assist:

- Advise players of the time that should be taken to play the course.
- Improve player perception. Many players may not be aware exactly what time they teed off, hence, have them write their actual start and finish time on their score card. Have them regularly check the time that they have taken at various stages of a round to ensure good pace is being maintained.
- If possible, encourage players to play from tees that suit their ability. The starter should guide the players in this respect before the round.
- Remind players of their responsibilities, including:
  - keep up with the group in front – groups should not be concerned with the group behind; (the fact that they are not holding them up is irrelevant)
  - if a player feels that their group is falling behind, have them advise the other players in the group
  - if a clear hole is lost and the group behind is being delayed, or if there is no group in front and the group behind is being delayed, invite the group behind to play through

- keep practice swings and pre-shot routines to a minimum
- be ready to play as soon as it is the player‘s turn (ie. put a glove on, select a club and calculate yardage while waiting to play)
- if a group is falling behind, play "ready golf," which simply means that order of play is based on who's ready, not who's away
- look at their own line of putt while the other players in the group look at theirs (within the bounds of normal etiquette), and putt out whenever possible
- at the green, position bags so as to allow quick movement off the green to the next tee
- move off the green as soon as all players in the group have holed out; mark score cards at or on the way to the next tee
- play a provisional ball if a ball may be lost outside a hazard or out of bounds
- carry extra tees, ball markers and possibly a spare ball in their pockets to avoid having to return to their golf bag to retrieve them, should they be needed
- walk quickly between strokes
- take the rake into the bunker before playing the shot; and to assist the next person, do not place a rake near another rake in the bunker
- if using a cart that must remain on the cart path, or the person sharing the cart has taken the cart forward, take several clubs to play the next shot
- in Par, Stableford, and Four-ball events, have players pick up when they can no longer score on the hole

We hope that this document assists in the management of play at your club. Please feel free to contact Golf NSW Limited if you have any queries or if you would like any further information.

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APPENDIX I

OUT OF POSITION

Definition:

The first group/s to start will be considered out of position if at any time during the round, the group is behind the prescribed schedule (see Pace of Play Chart below). Any following group will be considered out of position:

- When the cumulative time for the round exceeds the time allowed for the number of holes played.

  AND

- When a group completes play of the [specify the hole number(s)] hole more than 14 minutes * after the preceding group completed play of that hole.

*Alternatives include:

- When a group arrives at the [specify the hole number(s)] teeing ground and all the players in the preceding group are on the putting green (par 5s and long par 4s), or
- When a group arrives at the [specify the hole number(s)] teeing ground and all the players in the preceding group have left the putting green (par 3s and short/medium length par 4s).

If, for example, pace of play is being checked at the completion of the 9th and 18th holes, the allotted time should be displayed along the following lines (assuming a two tee start):

Hole #	9 / 18	18 / 9
Time allotted	2:06/4:15	2:06/4:15

Procedure when a Group Is Out of Position

During the play of a round, if a group is ―out of position" the Committee representative should decide whether there are any mitigating circumstances e.g., lost ball, play of a wrong ball etc on the hole being checked. If such a circumstance does exist, the General Manager or member of the Match Committee should request the group to close the gap on the group ahead and then monitor the group's effort to regain their correct position in the field. If there are no mitigating circumstances, each player in the group should be penalised as follows:

- First offence – One Stroke
- Second offence – Two Strokes
- For subsequent offence – Disqualification

APPENDIX II

HOLE BY HOLE PACE OF PLAY GUIDELINES

As mentioned above, where a marshal (or marshals) is readily available, the committee will have available the option of adopting hole-by-hole pace of play guidelines (incorporating shot-by-shot timing procedures) for application to groups that are out of position and in excess of designated time limits. Examples of timing schedules at a course for a round of 18 holes in groups of four players follows:

Relatively easy course setup (tees forward, accessible pins, short rough, slow green-speed etc)

Hole	1	2	3	4	5	6	7	8	9
Par	4	3	4	5	4	5	3	5	4
Max. Time Allowed	12	11	13	16	13	15	11	17	13
Max. Cumulative Time Allowed	12	23	36	52	1.05	1.20	1.31	1.48	2.01

Hole	10	11	12	13	14	15	16	17	18
Par	4	5	4	3	4	4	3	4	5
Max. Time Allowed	13	16	13	11	14	13	11	13	17
Max. Cumulative Time Allowed	2.14	2.30	2.43	2.54	3.08	3.21	3.32	3.45	4.02

Standard course setup (medal tees, more difficult pin positions, longer rough, moderate green-speed etc)

Hole	1	2	3	4	5	6	7	8	9
Par	4	3	4	5	4	5	3	5	4
Max. Time Allowed	14	12	14	17	14	17	12	18	15
Max. Cumulative Time Allowed	14	26	40	57	1.11	1.28	1.40	1.58	2.13

Hole	10	11	12	13	14	15	16	17	18
Par	4	5	4	3	4	4	3	4	5
Max. Time Allowed	14	17	15	12	15	14	12	15	18
Max. Cumulative Time Allowed	2.27	2.44	2.59	3.11	3.26	3.40	3.52	4.07	4.25

Difficult courts setup (back tees, difficult pin positions, some extreme rough, fast green-speed etc)

Hole	1	2	3	4	5	6	7	8	9
Par	4	3	4	5	4	5	3	5	4
Max. Time Allowed	15	13	15	18	15	18	13	19	16
Max. Cumulative Time Allowed	15	28	43	1.01	1.16	1.34	1.47	2.06	2.22

Hole	10	11	12	13	14	15	16	17	18
Par	4	5	4	3	4	4	3	4	5
Max. Time Allowed	15	18	16	13	16	15	13	16	19
Max. Cumulative Time Allowed	2.37	2.55	3.11	3.24	3.40	3.55	4.08	4.24	4.43

To assist a Marshall or Committee member to monitor pace of play on the course, a spreadsheet may be provided listing the time schedule for each starting time.

DUTIES OF A RULES OFFICIAL

1. GENERAL

Golf, for the most part is played without a Rules official being present. However, the Committee in charge of a competition may appoint a referee and perhaps an observer, to accompany play, or it may assign Committee members to particular parts of the course to assist players with the Rules. It should go without saying that a Rules official must have a good knowledge of the Rules. This is considered to be more than just a playing knowledge.

A Rules official may spend all day on the course without being called upon to make a ruling. However, he must remain alert and be wary against becoming a ―spectator" as a question may arise when least expected.

Therefore, a Rules official requires not only a good knowledge of the Rules, but also an awareness of his duties and responsibilities and an appreciation of how best to handle various rules situations.

2. REFEREES

A referee is defined in the Rules of Golf as one who is appointed by the Committee to accompany players to decide questions of fact and apply the Rules. He will act on any breach of a Rule which he observes or is reported to him.

It is not sufficient for a referee merely to give a correct decision when appealed to. He must also at all times be sufficiently alert to observe accurately and to interpret correctly all the events which may occur during a round. Within the scope of these duties he is assigned to a match or game to help ensure that it will be fairly played under sporting conditions.

This raises the question of the referee‘s ethical position when he sees a player about to break the Rules. The referee is not responsible for a player‘s wilful breach of the Rules, but he certainly does have an obligation to advise the players about the Rules. It would be contrary to the spirit of fair play if a referee failed to inform a player of his rights and obligations under the Rules and then penalised him for a breach which he could have prevented. The referee who tries to help players avoid breaches of the Rules cannot be accused of favouring one player against the other, since he would act in the same manner towards any player and is, therefore, performing his duties impartially.

The following are examples of actions which a referee may take in order to prevent a breach of the Rules:

If a player at any time plays a provisional ball or puts a second ball into play, ensure that the player can identity both balls.

If a player tees his ball ahead of the markers, draw his attention to it before he drives.

If a player is about to lift a loose impediment in a bunker or water hazard, remind him that his ball is in a hazard.

If a player is about to adopt or adopts a wrong dropping procedure, call his attention to it and point out the correct procedure.

If a player is about to play another ball because the original may be lost or out of bounds, ask the player whether it is a provisional ball.

Another important general aspect of refereeing is the manner in which a referee performs his duties. When golf is played at a level where referees are present, the players concerned may be under considerable pressure. A heavy handed or unsympathetic approach may be unhelpful and could have a detrimental effect on a player by disturbing his concentration. Therefore a referee should attempt to perform duties with understanding and tact. It is important to sense when to talk to a player and when to be silent.

Beginning with the first tee, the following comments offer guidelines on how a referee should act when faced with a certain situation and suggest action which a referee can take to try to avoid a problem arising.

(a) At the First Tee

If the players in a group or match are experienced in being accompanied by a referee, it is usually sufficient for the referee to ask the players to ensure they can identify their own ball and that they count the number of clubs they are carrying. If the players are less experienced it may be useful to remind them of the role of the referee, i.e. to be of assistance to the players and to be on hand should they be doubtful as to the correct procedure in a situation.

(b) **On the Tee**

It is recommended that the referee situates himself on the teeing area when players are playing their tee shots, and in a position that he will be able to determine whether the players have teed their ball within the limits of the teeing ground. As stated above, a referee should not stand back and watch a player tee and play his ball from outside the limits without bringing this fact to the player's attention.

(c) **Between Tee and Green**

Having left the tee, if there may be a doubt as to which player is first to play, the referee should arrive in the area ahead of the players so that he can decide on this matter before the players are ready to play. Determining the order of play is obviously more important in match play than in stroke play.

It is recommended that the referee tries to position himself to observe each player playing each stroke, although in some circumstances this will obviously not be possible. However, the referee should be careful not to hover around players to the extent that it could be a distraction and make the player feel uncomfortable.

Being in a position to see each stroke played will assist the referee in determining questions of fact, such as whether the player has moved the ball at address. In addition, it means that the Referee will be on hand if a player is playing from a place where Rule 13-2 may come into play, for example, if the player is having to manoeuvre himself through bushes to make a stroke at the ball. Here the referee must determine how much the player may disturb the interfering growth in the process of fairly taking his stance. Generally speaking, the referee can be guided by the principle that anything occupying the space in which the player wishes to stand may be moved to one side but not stepped on or moved more than necessary for the player to take his position (see Decision l3-2/l) The referee can guide the player in his actions to ensure he does not breach Rule 13-2.

(d) **On the Putting Green**

On reaching the putting green, the referee should select a position from which he can observe play without interference to any spectators.

A referee should be in a position to observe that a ball lifted is replaced in the correct place. Problems in this area are most likely to arise when a player has had to move his ball-marker a putter head length or more to one side so that it doesn't interfere with others. The referee should take particular note of such action and ensure that the marker is put back in the right place before the ball is replaced.

Many experienced referees have individual methods of ensuring that they observe the replacement of the marker in the correct place. For example, when observing a player moving his marker a putter head length to one side, a referee may take a coin out of his pocket and will not put it back until he has observed the correct replacement. In this way, the referee is unlikely to forget that the player has moved the marker away from the original spot.

The referee must also watch to see that the players do not touch their line of putt except as permitted under the Rules. When a ball stops on the lip of the hole, the referee may have to decide, first, whether it overhangs the edge of the hole, and if so, whether the player has used the time allotted to determine whether the ball is at rest.

One especially difficult situation on the putting green that can arise relates to the concession of putts in match play. Sometimes a player may miss a putt to win a hole and, without thinking, removes his ball from near the hole without holing out and without concession by the opponent. In such a case, the referee should make certain whether the putt had been conceded or not. It is advisable in match play for the referee to ask the players to ensure that concessions are made clearly. This may be an additional task undertaken by the referee on the first tee.

(e) **General**

On a more general note, sometimes a player can be careless in his observance of a Rule. If there has been no actual breach the referee should caution the player and so minimise the possibility of having to impose a penalty later; this can be done by making sure that the player is familiar with the particular Rule.

In any situation where a player may wish to take relief, the referee should advise the player not to touch his ball until he has decided upon his best course of action. When applicable, the referee should instruct the player to establish and mark his nearest point of relief and the prescribed dropping area.

The referee should not leave the player simply because the prescribed dropping area has been established. He should remain in position to assist the player if a dropped ball rolls into a position requiring it to be re-dropped, or if the dropped ball strikes the player or his equipment. Conversely, the player may think that a ball which has been dropped and is in play should be re-dropped. The referee should be on hand to prevent the player from lifting a ball that is in play.

At times awkward situations will arise. The referee should be firm and positive, but take plenty of time. It is always as well to consult the Rule Book and it may help to let the players read it. When faced with a problem, it is often of considerable assistance to find out the player's intention. A determination of this can also be very useful as a routine approach to a questionable action, for example, if the player appears to test the depth of sand in a bunker, or to touch the line of his putt when there are no visible loose impediments to be removed.

In addition to the Rules and Local Rules, the referee must familiarise himself with the Conditions of Competition, which may vary considerably in different tournaments. Particular attention should be paid to any Pace of Play condition to enable the referee to act in accordance with the prescribed procedure, should he be faced with slow play.

3. **OBSERVERS**

An observer is defined in the Rules of Golf as one who is appointed by the Committee to assist a referee to decide questions of fact and to report to him any breach of a Rule. Before play, it is important for a referee to reach an understanding with his observer as to their respective duties. Usually it is best for the observer to work ahead of the match as much as possible. The referee should stay close to the players at all times and be readily available to answer questions.

An observer, by stationing himself in the area where the ball may be expected to come to rest may be in a position to determine questions of fact that the referee, from his position near the players could not hope to decide. For example, it is always useful to know before going forward whether a player's ball is out of bounds or in a water hazard. Only a Rules official can properly determine this. Similarly, it is important to know whether a ball was still in motion when deflected or stopped by an outside agency (such as a spectator) and, if so, whether the deflection was deliberate or whether the ball had come to rest and was moved by an outside agency. If it was moved when at rest, the observer may know the spot from which it was moved.

Since the play of each ball should be observed, when players are in difficulty on opposite sides of the hole it is desirable for the observer to station himself by one of the balls, if possible. Preferably, he should watch the ball to be played first, so that he may have the opportunity to resume his normal position ahead of play.

When there is a large crowd, an observer can perform other duties by placing himself ahead of the play. To help ensure fair play, it is a duty of a referee to guard against any possible interference by spectators. An observer can be of great assistance by moving spectators away from places where a ball may go, asking spectators to be alert before shots are played to the green and in guarding a ball which may have gone into the crowd. Very often an observer is in a better position than the referee to work with the marshals to obtain proper control of the crowd.

In an important match or grouping, the services of an alert observer are invaluable to a referee.

4. **COMMITTEE MEMBERS**

When Committee members are watching play either by chance or through having been assigned to a particular place on the course, their duties are different from those of a referee. In match play without a referee, the players involved in a particular match are there to protect their own interests and there is no reason for a Committee member to take any notice of a breach of the Rules that he may observe, unless he is satisfied that the opponent is not in a position to observe the breach. If the opponent was not in a position to observe the breach, the Committee member should bring the player's breach to the attention of the opponent. It is then a matter for the opponent to decide if he wishes to make a claim (see Decision 2-5/1). Otherwise, the

Committee member's presence on the course is solely to assist players in the event of a claim - see Rule 2-5. His handling of the situation will depend on whether the Committee has granted individual members unlimited authority to represent the Committee and make final decisions. This is an issue which the Committee should clarify in advance. However, deferring a decision should be resorted to only in exceptional circumstances since it is a principle of match play that each side is entitled to know the state of the match at all times.

In stroke play the situation is different. Every competitor has a direct interest in the play of all competitors. Every Committee member, therefore, has a duty to represent the interest of every competitor in the field. Thus, a Committee member must act on any probable breach of the Rules which he may observe. This may be done by immediately questioning the competitor about his procedure. Also, he will be called upon to make decisions on the course and they should be handled as in match play except that the need for an immediate decision is less urgent.

INCLEMENT WEATHER AND SUSPENSIONS OF PLAY

A Committee must be prepared for inclement weather and players and those involved in running the competition must be able to recognise the signal that means that the Committee has suspended play. The situation where players do not know whether play has been suspended or not, or some players know and others don't, must be avoided.

A competition need not be suspended simply on account of rain, unless the rain is so heavy that it would be unfair to require players to continue. Generally, play should not be suspended unless the course has become unplayable, for example, balls are moving frequently on the putting greens due to wind or holes are surrounded by casual water. In any event, if rain is of sufficient intensity to present an unfair condition, normally it would take little time for casual water to accumulate around the hole on at least one putting green. When that occurs, the Committee would be remiss if it did not consider the course unplayable and suspend play. If rain is not of sufficient intensity to present an unfair situation, but heavy enough to cause casual water around a hole, in match play the Committee may relocate the hole if a suitable area not under water can be found, and then resume play. However, in stroke play it is not permissible to relocate a hole unless it is severely damaged - see the Exception under Rule 33-2b. Accordingly, play cannot be resumed until the casual water problem is resolved.

Squeegees are invaluable when puddles start to form on putting greens. After heavy rain, casual water can remain on some greens for a considerable period of time if nothing is done to remove it. However, an organised squeegee crew can usually remove the casual water in a few minutes. Therefore, the Committee should ensure that a supply of squeegees is available and that the Head Greenkeeper has a team ready to put them to use.

If the Committee decides that water is collecting on the greens to the extent that it wishes to deploy squeegee operators, the following policy should be adopted when the ball is on the putting green:

> "If the ball lies on the putting green and there is interference by casual water on the putting green, the player may:
>
> (a) take relief under Rule 25-1b(iii); or
>
> (b) have his line to the hole squeegeed.
>
> Note: Such squeeging should be done across the line of putt and must extend a reasonable distance beyond the hole (i.e. at least one roller length)."

If conditions deteriorate to the extent that the smooth running of the event is at risk, the Committee may authorise a combination of moving the ball under Rule 25-1b(iii) together with squeegeeing across the line. In addition, while a player is not entitled to relief under Rule 25-1 for casual water on his line of play when his ball lies off the putting green, in exceptional circumstances, if casual water on the putting green on the player's line of play materially affects his intended stroke, the Committee may authorise its clearance. It should be noted that the Committee may enlist the help of players and their caddies in any squeegee operation (see Decision 33/1).

However, putting greens are not the only source of potential problems when the course is subject to heavy rains. As with hole locations, in stroke play, tee-markers may not be moved during a round and, therefore, careful attention should be paid to the teeing grounds. As the grass on teeing grounds is generally longer than on putting greens, it is often better to use towels to absorb the water as opposed to squeegees.

Although a Committee should not suspend play unless absolutely necessary, it is the responsibility of the Committee to do everything possible to protect players from lightning and, therefore, no chances should be taken in this respect. There are a number of lightning detection devices available on the market, in addition to computer software packages that predict and forecast lightning.

Although Rule 6-8b governs when play is suspended by the Committee, there is a Note to his Rule that states:

> "The Committee may provide in the conditions of a competition (Rule 33-1) that, in potentially dangerous situations, play must be discontinued immediately following a suspension of play by the Committee. If a player fails to discontinue play immediately, he is disqualified unless circumstances warrant waiving the penalty as provided in Rule 33-7."

If the Committee introduces the condition for potentially dangerous situations, it overrides the provisions of Rule 6-8b in terms of discontinuance of play. This condition is in effect at all Golf Australia and Golf NSW Limited Championships (see Appendix I in the Rules of Golf; page 137).

If the Committee has been advised that lightning is approaching, it should suspend play before the storm is predicted to arrive to give players a chance to seek shelter and/or return to the clubhouse. To assist players in these circumstances it is advisable to organise an evacuation procedure. This may involve sending transport to various positions on the course in advance of the inclement weather to transport players to the clubhouse if and when play is suspended. It is also important that the Committee advise spectators if lightning is approaching. This can be done by putting weather warnings on scoreboards and the like.

It is important to note that, while the Committee has the right to cancel a round in a stroke play competition, it may not do so in match play. If the players in a match have completed, for example, six holes, they must resume play at the 7th tee. The match is not replayed in its entirety.

In stroke play, the Committee has the option of suspending play and resuming from where play was discontinued or cancelling the round and replaying it entirely. There is no hard-and-fast rule as to when a Committee should suspend play and when it should cancel the round in stroke play. However, generally a round should be cancelled only in a case where it would be grossly unfair not to cancel it. For example, if some competitors begin a round under extremely adverse weather conditions, conditions subsequently worsen and further play that day is impossible, it would be unfair to the competitors who started not to cancel the round (see Decision 33-2d/1).

When the course becomes unplayable and play is discontinued, the Committee should keep open as many options as possible to maximise the chances of completing the competition on schedule.

For example, consider these facts:

(a) The field for the first two rounds of a 72-hole stroke play competition is 156, with the field being cut to 60 competitors for the last two rounds.

(b) Due to the size of the field, the first two rounds are normally not completed until shortly before dark.

(c) In the second round, a thunderstorm occurs in the middle of the day, rendering the course unplayable.

(d) The delay because of the storm makes it impossible to complete the second round on schedule.

(e) If the storm were to pass over quickly, it might be possible with the aid of squeegees and pumps to get the course playable and resume play for a couple of hours.

(f) If play could be resumed for a couple of hours, it would be possible to finish the second round the next morning, quickly make the draw for the third round and finish the third round on schedule.

In these circumstances, it would be inadvisable for the Committee to suspend play for the day as soon as the storm rendered the course unplayable. In doing so, the Committee would be foreclosing an option which, if retained, might result in being able to finish the competition on schedule.

Generally, when more than half of the field have completed their rounds, it would be unusual to cancel the round if the opportunity is available to continue play the following day.

RULES OF AMATEUR STATUS

1. **THE GOVERNING BODY**

Golf Australia is the governing body for the Rules of Amateur Status in Australia. Golf Australia strictly adheres to and enforces the Rules and Decisions laid down by the international governing authority, R&A Rules Limited. The Rules of Amateur Status are available from Golf Australia and the Golf NSW Limited.

2. **AMATEUR STATUS**

Amateur Status is a universal condition of eligibility for playing in golf competitions as an Amateur golfer. A person who acts contrary to the Rules may forfeit their status as an Amateur golfer and as a result will be ineligible to play in Amateur competitions.

Amateur golf is almost unique in all of sport in that it is totally reliant on a handicapping system which allows any golfer to compete on equal terms with any other golfer. Additionally, in virtually every amateur golf event, competition is reliant upon self-regulation as regards the Rules of play.

It is The R&A‘s position that uncontrolled sponsorship and financial incentive in the amateur game would provide significant temptation to players to manipulate scores and handicaps and to consequently diminish the competitive experience that is enjoyed by so many millions of players. As a result, The R&A, in consultation with the United States Golf Association, has set standards that limit the degree to which sponsorship and financial incentive may be involved with amateur golfers and amateur golf events. Golf Australia and its member state associations implement The R&A‘s position.

The R&A further makes the following general statement: ―The Rules of Amateur Status are there to protect the best traditions and integrity of the game."

An Amateur golfer is defined as someone who plays the game as a non-remunerative or non-profit making sport and who does not receive remuneration for teaching golf or for other activities because of golf skill or reputation, except as provided in the Rules.

3. **PRIZE LIMITS**

In Australia, the maximum retail value of a prize or prizes that can be accepted by an amateur golfer for any event or series of events in any one tournament, exhibition or event is $1,200.

This limit also applies to a prize for a hole-in-one, however such a prize may be accepted in addition to any other prize won in the same competition. See Section D for further information.

NB Playing for Prize Money – Money prizes of any amount cannot be accepted by amateur golfers. In fact it is a breach of the Rules to play in a competition where cash or its equivalent is on offer – a breach is not restricted to winning such a prize (although note C.v.5). All sweepstakes must be voluntary, otherwise it is equivalent to playing for money.

3.1 **Symbolic Prizes**

A Symbolic Prize is a trophy made of gold, silver, ceramic, glass, or the like, that is permanently and distinctively engraved. Symbolic prizes are exempt from the above prize limits. Prizes such as watches, electrical goods, luggage, golf bags, and clothing, even though engraved or otherwise marked, are not considered to be symbolic prizes.

3.2 **Retail Value**

This is the normal recommended selling price at which merchandise is available to anyone at a retail source over a reasonable period of time. Specially-discounted or short-term offers, or those restricted to certain customers, do not fall within this definition.

3.3 **Prize Vouchers**

A prize voucher, in lieu of an actual prize, may be issued by the organisation conducting the competition for the purchase of goods from a clubhouse, pro shop, or other retail source. *The function of a voucher is to provide the winner the opportunity to select their own prize from items that might normally be presented in a golf competition, eg clothes, shoes, furniture, suitcases, pictures, cameras, crockery, cutlery, glassware, bottles of wine, a sit-down meal,MP3 players, or mobile phones.* The recipient is not entitled to receive back any cash by way of change. When the price of an item is in excess of the voucher value, the holder may pay the balance in order to acquire the item.

To redeem the voucher it must be handed over by the winner to the provider of the good/s or service/s in exchange for the good/s or service/s. If the Committee has not already paid the provider, the provider will send their bill directly to the Committee for payment (unless the Committee is also the provider). The winner does not handle any cash. It is permissible for a Committee to award a —gift card" or –gift voucher" that can be used at a number of different retail sources. A Committee may also choose to operate a club rewards points program which accrues competition prize vouchers towards a member's points balance – points could, for example, be redeemed against clubhouse or pro shop items.

A voucher must not be used in a way that it is the equivalent of money. It cannot be used for crediting to a club account to pay off expenses already incurred, or for paying a club membership subscription, electricity bill or the like, or for opening a bank or investment account, or purchasing petrol. Additionally, a voucher cannot be used for the payment of competition entry fees or competition travel or hotel expenses as this would be a breach of the Expense Rule (Rule 4).

It is though perfectly permissible for competition vouchers to be accrued for redemption against, for example, any future purchases of the following:

- an expensive dinner produced by clubhouse catering, or;
- clubhouse/bar food and beverage items (either packaged or non-packaged), or;
- pro shop goods or services.

Additionally, vouchers may be applied toward use of a practice area, use of a golf cart, or green fees at a public course.

3.4 Team Competitions

In a foursome, four-ball or team competition, each player may individually accept a prize up to the approved limit, however the players may not jointly accept one prize worth over the limit of $1,200.

3.5 Other pertinent R&A Decisions

(a) A prize of an honorary club membership cannot be accepted.

(b) A prize (irrespective of value) of an expenses paid trip to compete in a golf competition cannot be accepted. (With Golf Australia approval, certain events qualify for the sponsor to pay the expenses of competitors in handicap events – contact Golf Australia for further details.)

(c) A prize of a place in a Pro-Am can be accepted provided the Pro-Am's normal entry fee does not exceed the prize limits.

(d) The cumulative value of all prizes, other than for a hole-in-one, won by one golfer relating to the overall tournament (eg gross, nett, first nine, nearest-the-pin), must not exceed the prize limits.

(e) Players competing for cash prizes in hole-in-one, closest-to-the-hole, long-drive, or putting contests are not considered to be –playing for prize money". Consequently only a player who accepts such a prize will be considered to have breached the Rules.

4. NEAREST-THE-PIN, LONG-DRIVING, PUTTING, HOLE-IN-ONE, & SIMILAR EVENTS

The following information will be of assistance to anyone wishing to conduct a nearest-the-pin, long-driving, putting, or similar event in which golf skill is a factor. It should be read in conjunction with the preceding information on prize limits. The retail value of prizes that can be accepted for such a competition is $1,200.

(NOTE – Whilst a prize with a value greater than $1,200 (or cash of any amount) is contrary to the Rules, it may be awarded to a player in a hole-in-one competition ONLY. This is PROVIDED players are advised in advance they will forfeit their Amateur Status if such a prize is accepted. Prizes of this type MAY NOT be offered for anything other than a hole-in-one competition. This recognises the degree of luck involved in making a hole-in-one.)

4.1 Venues

The Rules of Amateur Status apply to all competitions (at a golf course, driving range, or golf simulator) where the player is asked to replicate a shot similar to that he would encounter during a round of golf. The Rules of Amateur Status do not apply to activities involving golf feats not encountered during play of a round of golf (eg pitching a ball into a bucket or striking a moving target). The Rules of Amateur Status also do not apply to activities that may occur other than at a golf facility or golf simulator.

A golf facility includes any adjoining car park, practice area or unused land that forms part of the club's or facility management's freehold, leasehold or other tenancy arrangement. An event conducted in conjunction with a regular golf competition is covered by the Rules irrespective of the venue. If an area has a number of golf holes temporarily laid out within it (ie with tees, greens, hazards, etc) this would be considered a "golf facility". A "green" mown on a sports oval or in a paddock for a one-off competition is not a golf facility.

4.2 **Donating Excessive Prizes to Charity**

When a club or a promoter has a sponsor wishing to provide a prize in excess of $1,200 at a golf facility, the only option open is to make the prize available to a recognised charity (however see NOTE above). The conditions of the competition must clearly state that the person achieving the required feat does not win the "illegal" prize but the charity (nominated by the person or by the sponsor) shall receive the prize.

4.3 **Attempts to Circumvent Rules**

In efforts to publicise events, promoters often seek ways of trying to "get around" the Rules. Other than as described in i) and ii) above, please be assured that there are no such ways. The following points are made:

- Quiz, Raffle, or Prize Draw – See E below.
- Open Championships – At events in which both professional and amateur golfers are competing, an "illegal" prize can be made available to the professionals but not to the amateurs. Amateurs cannot be given an option to accept the illegal prize. Conditions of such events must be clearly set out.

(However see the NOTE above.)

5. **RAFFLES, LUCKY DRAWS, SWEEPSTAKES**

If a quiz, raffle, or prize draw is limited to competitors who have achieved either a certain standard in a golf competition, or a particular feat (such as a hole-in-one, longest drive, or nearest the pin), the Rules still apply.

NB The Rules do not apply to quizzes, raffles, or prize draws, where the entry requirements are otherwise – so long as they are not conducted in an attempt to circumvent the Rules, for example as would be the case where a prize draw is structured or used to lure elite-level players to compete in an event.

If a raffle or prize draw is limited to players to have achieved a certain standard in a golf event or a specific feat (such as a hole-in-one, longest drive, or nearest-the-pin), golf skill would be an entry requirement and when the retail value of such a raffle or draw prize is added to any other prize won by the same person in the same event, this must not total an amount in excess of $1,200.

A sweepstake, whereby a competitor voluntarily wagers a set amount of money on himself, is acceptable provided the cost of an individual ticket does not exceed $10. A Calcutta or auction sweepstake is considered contrary to the purpose and spirit of the Rules (Rule 7-2).

6. **BREACHES OF RULES**

Breaches of Amateur Status rules will be dealt with by Golf Australia or the Golf NSW Limited, whether or not the golfer is a member of an affiliated club. If Golf Australia is satisfied that an amateur golfer has knowingly breached the Rules by accepting an illegal prize, the golfer's amateur status will be revoked. A period of up to two years awaiting reinstatement is appropriate for a prize of excessive value.

7. **AFFILIATED CLUBS**

When the Golf NSW Limited or Golf Australia receives advice that an improper prize is on offer at an affiliated club, that club will be requested to have the prize withdrawn, irrespective of the time and cost invested by the organiser in promoting the event, or the worthiness of any charity involved.

Where an affiliated club is aware of, but makes no effort to discourage, a competition on its course for an excessive prize (other than for a hole-in-one competition), the Golf NSW Limited and Golf Australia would consider appropriate sanctions on that club, the ultimate being one of disaffiliation.

Clubs are urged to ensure that outside users of their course provide management with copies of entry forms and publicity releases as well as a list and value of all prizes that are proposed to be on offer. A copy of this document should be provided to the organiser.

If any doubt exists as to the legality of any prize, details should immediately be sent to the Golf NSW Limited for clarification, so as to avoid any embarrassment.

REGULATIONS GOVERNING THE FUNDING OF AMATEUR GOLFERS IN AUSTRALIA

1. DEFINITIONS

Amateur Golfer - An Amateur Golfer is one who plays the game as a non-remunerative or non-profit making sport and who does not receive remuneration for teaching golf or for other activities because of golf skill or reputation, except as provided in the Rules.

Golf Skill or Reputation - It is a matter for the Governing Body to decide whether a particular amateur golfer has golf skill or reputation.

Generally, an amateur golfer is only considered to have golf skill if he or she:

(a) has had competitive success at a local or national level or has been selected to represent his national, regional, state or county union or association; or

(b) competes at an elite level.

Golf reputation can only be gained through golf skill and does not include prominence for service to the game of golf as an administrator.

The status of a specific player can be ascertained by contacting the Golf NSW Limited or Golf Australia.

2. AMATEUR GOLFERS <u>NOT</u> OF GOLF SKILL OR REPUTATION

An Amateur golfer who is not of golf skill or reputation may receive funding from any source without requiring approval from Golf Australia EXCEPT to cover expenses incurred in competing in a golf competition or exhibition (*Note – see below for exceptions). However, such funds may not be received as a Prize (Rule 3), or as compensation for performing Instruction (Rule 5), except in accordance with these Rules.

Reference, including the use of photos, may be made of the recipients of such funding in any advertising.

Please note though that an Amateur golfer, not initially of golf skill or reputation, who is in receipt of un-approved funding but who subsequently achieves *Golf Skill or Reputation* status, would no longer be able to receive un-approved funding. If such improvement were to occur, any reference to them in advertising from that time forward would jeopardise their amateur status.

*** Expenses to Compete in a Golf Competition or Exhibition –** An amateur golfer must not accept expenses, in money or otherwise, from any source to compete in a golf competition or exhibition unless one of the exceptions apply as detailed in Rule 4 of the Rules of Amateur Status. For further details please consult the Golf NSW Limited or Golf Australia.

3. AMATEUR GOLFERS OF GOLF SKILL OR REPUTATION

Rule 6-5 of the Rules of Amateur Status states: "An Amateur golfer of golf skill or reputation must not accept the benefits of a grant, scholarship or bursary, except one whose terms and conditions have been approved by the Governing Body."

3.1 Guidelines for Funding of Amateur Golfers of Golf Skill or Reputation

Amateur golfers of golf skill or reputation are permitted to receive funding from a number of sources to assist with the costs of training for and competing in golf events, <u>provided the provision of such funding has been approved by Golf Australia</u>. Examples of such funding sources may include; a club, golf association, government department, or sponsor, a local council grant or award, the operator of an elite golfer program, or a scholarship or bursary to attend a College or University (NB the player themself may directly approach any of these bodies to obtain funds).

Although not exhaustive, the following are examples of expenses Golf Australia may approve to be funded on behalf of an Amateur golfer:

- Coaching costs, including tuition fees and related travel and living expenses.
- Travelling, living costs and caddie fees incurred at golf events in accordance with approval granted by the player's state association (Note - additional approval must be sought via Golf Australia when competing overseas).
- Golf equipment (including clothing worn on a golf course).
- Golf club subscriptions.

- Medical treatment (eg physiotherapy) for conditions specifically affecting the playing of golf.
- Costs incurred in respect of golf fitness training.
- Costs incurred in respect of golf mental training.
- Costs incurred in respect of public presentation education that may relate to the requirements of an elite golfer.
- Educational costs - including related tuition fees, books, room & board.

Although not exhaustive, the following are examples of expenses Golf Australia will not approve to be funded on behalf of an Amateur golfer:

- Day-to-day living expenses which are not directly related to training for or competing in golf events (except as per 9 above).
- Travelling costs not related to golf.
- Non-related clothing.
- General medical treatment.

If there is in any doubt surrounding a proposed use of funding, Golf Australia should be contacted for guidance.

Please note that an Amateur golfer of golf skill or reputation in receipt of financial assistance, and those providing such assistance, cannot advertise the source of the funding (Rule 6-2).

4. APPROVAL & ADMINISTRATION OF FUNDING SCHEMES

Application Process - The process for applying to conduct a funding scheme for Amateur golfers of golf skill or reputation (or for a single Amateur golfer of golf skill or reputation) is as follows:

- The application must be submitted to the respective state association by the body/person wishing to provide funds.
- It must include a schedule of ALL expenses for which approval is sought plus a related budget (for the maximum amount that may be invested in any one individual player under that scheme).
- State associations shall forward to Golf Australia applications they choose to endorse.
- A decision of Golf Australia will be communicated to the applicant via the state association.
- Once approval of a scheme has been granted, further approval of the scheme itself is only necessary in the case of a scheme being broadened. Pre-approval of each individual must always be obtained by the manager of the funding scheme.

AS A SEPERATE DOCUMENT - The manager of the funding scheme must also submit the name of each player it wishes to financially support to the state association for approval. Those applications approved by the state association must then be forwarded by the state association to Golf Australia for ratification. (A decision of Golf Australia will be communicated to the manager of the funding scheme via the state association.) No funding may be provided to a player until that player's application has been ratified by Golf Australia.

Payment of Funds - The respective State Association must hold and disburse ALL funds (NB exceptions may be made to this requirement only to allow an affiliated club to hold and disburse funds, provided all payments are administered by the State Association).

(NB Applications regarding national programs do not require Golf NSW Limited endorsement and must be sent directly to Golf Australia – additionally, the disbursement of funds for approved national programs will be administered by Golf Australia.)

LINKS TO ALL MATTERS RELATED TO AMATEUR STATUS AND OTHER GOLF AUSTRALIA POLICIES

GOLF AUSTRALIA GUIDELINES FOR APPROVAL OF EVENTS UNDER AMATEUR STATUS RULES 4-2g Sponsored Handicap Competitions

http://admin.golfaustralia.org.au/site/_content/document/00005979-source.pdf

RULES OF AMATEUR STATUS

http://www.golfaustralia.org.au/default.aspx?s=amateurstatusrules

DECISIONS ON THE RULES OF AMATEUR STATUS

http://www.randa.org/rules/amateur/ruleslist

REGULATIONS GOVERNING THE ISSUE OF PRIZES – Under the Rules of Amateur Status

http://admin.golfaustralia.org.au/site/_content/document/00005980-source.pdf

GOLF AUSTRALIA'S ANTI DOPING POLICY

http://www.golfaustralia.org.au/site/_content/document/00006013-source.pdf

HOT WEATHER GUIDLEINES

http://golfaustralia.sportal.net.au/site/_content/document/00007547-source.pdf

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Sandhurst Club
600 Thompson Road
Sandhurst VIC 3977
Telephone ▷ **(03) 8320 1911**
Facsimile ▷ **(03) 9783 0000**
Website ▷ **www.pga.org.au**
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PGA of Australia services and programs for Golf Clubs

Career Services

- Assistance to clubs with recruitment for PGA professionals.
- Advertising through to consulting
- Contract assistance
- Fair Work Act and the Modern Awards interpretation

http://www.pga.org.au/default.aspx?s=careers

Pro Ams

- Through PGA member at club, develop and grow locally based events that add value back to the club and community

http://www.pga.org.au/default.aspx?s=historyofthepga

Beverage supplier

- Assist the host pro and the club with the important decisions and factors for choosing your club's beverage supplier
- Coca Cola Invitational: http://www.pga.org.au/default.aspx?s=article-display&id=129796

Junior Golf programs

- Assist the host PGA member and club with materials and programs that are now part of a national program in conjunction with Golf Australia

http://www.pumpgolf.com/

Holden Scramble

- Engage with club and host PGA member to run what has been a highly successful event for club members and local golfers over the last 18 years.

http://www.pga.org.au/default.aspx?s=holdenscramble

NSW GOLF COURSE SUPERINTENDENTS ASSOCIATION
http://www.nswgcsa.com.au/

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- environmental compliance and management audits
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- staff environmental inductions and training
- air quality and assessment and odour control and management
- noise management and assessment and control
- energy assessment and management
- carbon management plans
- carbon footprint assessment
- waste management and plans/assessment/monitoring
- water management and plans/assessment/monitoring
- environmental project management
- community and regulatory agency engagement and consultation
- infrastructure assessment/design and management

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e-par website http://www.epar.com.au/public/Home.aspx

SECTION 2

LEGAL, CORPORATE GOVERANCE AND COMPLIANCE

(as at 1 April 2010)

For further information please contact:

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INTRODUCTION TO THE REGISTERED CLUBS ACT 1976 (NSW) AND REGISTERED CLUBS REGULATIONS 2009 (NSW)

1. WHAT IS A REGISTERED CLUB?

1.1 General

(a) A club is an association of people who come together to pursue a common interest. A registered club is a club that holds a club licence under the *Liquor Act 2007 (NSW)* (**Liquor Act**).

(b) A registered club is no different to any club except it enjoys 2 special privileges:

(i) it can sell liquor; and

(ii) it can operate gaming devices.

(c) A registered club must either be a company registered under the *Corporations Act 2001 (Cth)* (**Corporations Act**) or a co-operative registered under the *Co-operatives Act 1992 (NSW)* (**Co-operatives Act**). The vast majority of golf clubs are companies limited by guarantee under the Corporations Act and this chapter is prepared primarily for such clubs.

(d) Registered clubs are principally governed by the *Registered Clubs Act 1976 (NSW)* (**Registered Clubs Act**), the Liquor Act, and if the club keeps gaming machines on its premises – by the *Gaming Machines Act 2001 (NSW)* (**Gaming Machines Act**).

1.2 Features of a registered club

(a) Every registered club has certain common features. These features are common largely because they are imposed on registered clubs by the Registered Clubs Act or the Corporations Act (or, more unusually, the Co-operatives Act).

(b) Every registered club:

(i) has members;

(ii) has rules (a Constitution or Memorandum of Association and Articles of Association) which set out the objects of the club;

(iii) can sell liquor because of the club licence it holds under the Liquor Act;

(iv) can conduct gaming (section 7 of the Gaming Machines Act);

(v) is a non-proprietary organisation (a non-profit organisation); and

(vi) has rules which prevent the distribution of income or profits to members (section 30(1)(i) of the Registered Clubs Act).

1.3 **A Club is a non-proprietary association**

(a) Every registered club must be a non-proprietary organisation (non-profit organisation). Although clubs must attempt to trade at a profit in order to fund their ongoing existence, any such profit must not be distributed directly to the members of the club.

(b) Members of clubs pay membership fees or subscriptions but they do not have shares in the club and are not entitled to any dividends. Members of a club do not have a "proprietary interest" in the club.

(c) All income derived by the club must be applied by the club to the promotion of, and in pursuit of, the objects of the club.

1.4 **A Club has rules**

(a) Every club has rules set out in its constitution. The rules usually provide for matters such as:

(i) how to become a member

(ii) classes of membership

(iii) subscription fees

(iv) temporary members

(v) disciplinary proceedings (suspension and expulsion)

(vi) composition of the board

(vii) election of the board

(viii) powers of the board

(ix) procedures at general meetings

(x) keeping of accounts

(xi) appointment of a secretary

(xii) amendment of the rules

(b) The fundamental requirements to be met by clubs are set out in Section 10 of the Registered Clubs Act. Section 10 of the Registered Clubs Act is reproduced at **Annexure "A".**

(c) Section 30 of the Registered Clubs Act sets out certain rules that are 'deemed' to be included in the rules of a club. Section 30 of the Registered Clubs Act is reproduced at **Annexure "B".**

1.5 **Members' benefits and 'The Seagulls Case'**

(a) It is a fundamental principle that benefits should be offered equally to all full members.

(b) In *Seagulls Rugby League Football Club Limited v Superintendant of Licenses* the club offered free bus trips from Brisbane to the club. Members who lived south of the club complained because a bus was not provided for them. The Court held that, provided all full members had an opportunity to access the benefit and that the benefit was **offered equally to all members of the club** then the provision of the bus which could only be accessed by members in Brisbane was not unlawful.

(c) As a result, the Registered Clubs Act does not require that any particular benefit, advantage or facility be available at the Club all of the time to all of the members. The Registered Clubs Act only requires that all members have an **equal entitlement** to the Club benefits. Whether or not members can or do utilise those benefits in practice is irrelevant.

1.6 **Exceptions to the 'no benefit or advantage' rule**

(a) Does this mean that every benefit must be offered equally to every full member? No. There are 5 exceptions to the rule. They are:

(i) a contract

(ii) honoraria

(iii) out of pocket expenses

(iv) hospitality provided by a dealer

(v) non-monetary benefits

(b) The exceptions to Section 10(1)(i) of the Registered Clubs Act in further detail are summarised as follows:

1.7 **Exception 1 - Contract**

Where the member derived or became entitled to derive the benefit pursuant to a contract or agreement with the club and the benefit was in the opinion of the Casino, Liquor & Gaming Control Authority (**Authority**) reasonable in the circumstances of the case (Section 10(6)(a));

1.8 **Exception 2 - Honorarium**

Honorarium approved by the members in general meeting, for example, director's honoraria (Section 10(6)(b));

1.9 **Exception 3 - Dealer's or seller's hospitality**

Reasonable food and refreshment offered by a licensed gaming machine dealer or seller in the premises of that dealer or seller or at a gaming machine display in New South Wales, for the purposes of promoting gaming machines and related products and services (Section 10(6)(c));

1.10 **Exception 4 - Out of pocket expenses**

Reasonable out of pocket expenses incurred by the chief executive officer, a director, an employee or a member of the club in the course of carrying out his or her duties in relation to the club and paid in accordance with a current resolution of the board of directors (Section 10(6)(d));

1.11 **Exception 5 - Non-monetary benefits**

Under Section 10(6A)(b), the club can provide different benefits for different classes of members if the different benefits (not being in the form of money or a cheque or a promissory note) have been approved by the members in a general meeting prior to the benefit being provided. It is common practice now for most clubs to have benefits approved by members at their Annual General Meeting.

2. **PREMISES**

A registered club must have premises of which it is the bona fide or 'true' occupier for the purposes of the club, and which are provided and maintained from the funds of the club and include a properly constructed bar-room.[1]

[1] Sections 10(1)(f) and 10(1)(h) of the Registered Clubs Act

2.1 **What are club premises (formerly 'defined' premises)?**

The club licence of a registered club will relate to the (licensed) premises of the Club for the purposes of the Liquor Act. Licensing the premises means identifying that part of the premises upon which liquor can lawfully be sold (section 94 of the Liquor Act).

Liquor can only be sold on those parts of the premises which have been identified by the Authority as forming part of the club (licensed) premises (formerly the ‗defined premises‘ under the repealed section 20 of the Registered Clubs Act). Accordingly, it cannot be assumed that merely because the club owns land (sometimes referred to as premises) that the sale of liquor is lawful on all parts of the club's premises. For example, it is extremely difficult for a club to have its golf course included on its club licence.

The Authority may only approve the boundaries of any licensed premises if it is of the opinion that any primary purpose requirement under the Liquor Act in relation to the licensed premises is or will be complied with.[2] The primary purposes of the Liquor Act are set out in the Introduction to the Liquor Act 2007 and Liquor Regulation 2008.

2.2 **What is a bar area?**

A bar is any part of the club where liquor is sold, supplied or disposed of, to persons for consumption on those premises but does not include:

(a) a section 22 area (non-restricted area);

(b) a dining room; or

(c) a section 22A area (junior members‘ authorisation).

(See the definition of 'bar area' in section 4 of the Liquor Act).

2.3 **What is a section 22 area (non-restricted area)?**

A section 22 area is any part of the club which the Authority has authorised under section 22 of the Registered Clubs Act to be used by persons under the age of 18. This is commonly referred to as a 'non-restricted area'. It is an offence to allow minors into a bar area unless there is a section 22 authorisation in force in relation to that area. A section 22 area does not and cannot include a gaming machine area.

[2] Section 94(5) of the Liquor Act

2.4 **What is a section 22A area (junior members' authorisation)?**

A section 22A area is any part of the club which the Authority has authorised under section 22A of the Registered Clubs Act to be used by persons under the age of 18 for the purpose of taking part in sporting activities or a prize giving ceremony associated with sporting activities (**junior members authorisation**). A junior members' authorisation will generally only be approved by the Authority where the size of the club's premises makes it impractical to designate a section 22 area.

2.5 **What is a gaming machine area?**

A gaming machine area is any part of the premises of a registered club in which gaming machines are located (see the definition of ‗gaming machine area' in section 4 of the Gaming Machines Act).

Gaming machines are not permitted in a dining area, a section 22 area or any part of the club's premises through or by means of which a minor is permitted or obliged to obtain entry to, or to depart from a section 22 area. Gaming machine areas should be physically separated from non-gaming machine areas using fences, lattice work, planter boxes, railings or partitions (glass and otherwise).

It is an offence for a minor to be in a gaming machine area (section 52 of the Gaming Machines Act) for which the club and the secretary may be prosecuted, unless the minor was passing through the gaming machine area only for so long as was reasonably necessary to conveniently gain access to another area of the club that a minor may lawfully enter, and the minor was in the immediate presence of a responsible adult. It is also an offence for a minor to operate gaming machines, unless the minor is receiving technical training and instruction in the service or repair of a machine from a licensed technician (sections 50 and 51 of the Gaming Machines Act).

3. **MEMBERS**

Every club must have members. Metropolitan clubs must have at least 200 members, and country clubs must have at least 60 members (Sections 10(1)(d) and 12 of the Registered Clubs Act). Previously, a club could only have the maximum number of members approved by the Authority under section 11 of the Registered Clubs Act. However, section 11 has now been repealed and there is no maximum number of members.

A person can only become a member of a club by making application for membership in accordance with the rules of the club.

3.1 **Why do clubs have members? Section 45 - The Holy Grail**

Section 45 of the Registered Clubs Act provides that a person shall not use the accommodation, facilities or amenities provided on the defined premises of a club without being a member, guest of a member or a temporary or honorary member.

3.2 **Who is an Ordinary Member?**

A member is somebody who has been elected to membership in accordance with the rules of the club (section 30(1)(g) of the Registered Clubs Act). The club's constitution will usually provide that a person must be nominated and seconded for membership and pay the entrance fee or subscription before being admitted to membership, although some clubs are now doing away with this requirement in order to simplify the application process.

The application for membership must be displayed on the notice board for at least 7 days (section 30(2)(a)) of the Registered Clubs Act) and 2 weeks must elapse before the application for membership may be placed before the Board or election committee (section 30(2)(b) of the Registered Clubs Act). Only those people who have had their application for membership approved in accordance with these provisions become ‗ordinary members' of the club.

3.3 **Who is a Provisional Member?**

Persons who have made application for ordinary membership as outlined above and are waiting on the decision of the election committee or Board, can be granted provisional membership for a period not exceeding 6 weeks.

Provisional members enjoy all the entitlements of ordinary members, such as the facilities and social amenities of the club, but are not entitled to vote or participate in the management of the club. Provisional membership is a form of instant membership.

3.4 **Who is a Temporary Member?**

Persons who do not wish to apply for full time membership of a club (ordinary membership) but wish to enter and use the facilities of a club may apply for temporary membership. The usual procedure is to complete the temporary members'

register in the foyer of the club and then enter the club.

Section 30B of the Registered Clubs Act states that as long as a club's constitution provides for temporary membership, the constitution is now taken to include a rule that a temporary member may be admitted for up to 7 days (they must not be admitted for a longer period without the prior written approval of the Authority). A temporary member admitted under this rule is only required to complete the register on the first day that they enter the Club.

(a) What is the 5 kilometre rule?

Every club that has a temporary members' rule is deemed by the Registered Clubs Act to have a rule that if a person lives outside of 5km from the club premises, the person may apply for temporary membership of the club in accordance with the club's rules (section 30(3B) of the Registered Clubs Act). The club is not required to accept a person as a temporary member. So the starting point is that if a person lives within 5km of a club, the person is not entitled to become a temporary member of that club. There are 4 exceptions to this rule.

(b) Exceptions to the 5 kilometre rule:

Exception 1 – Clubs with similar objects

If a person lives within 5km of the club but is an ordinary member of a club with similar objects.

Exception 2 – Sporting events

If the person is an ordinary member of another club and is attending the club to participate in an organised sport or competition at the invitation of the board.

Exception 3 – State borders

If the person is an ordinary member of a registered club in another State and is attending the club to compete in an organised sport or competition. This exception benefits the clubs on State borders (South Australia, Queensland and Victoria).

Exception 4 - Functions

If the person is attending a function at the Club in an approved function area.

3.5 Members' guests

The rules of a club may permit members to introduce a guest into the club. If a member wishes to bring a guest to the club the Registered Clubs Act deems the following rules to apply:

(a) The guest must remain in the reasonable company of the member.

(b) Liquor can only be supplied to the guest if the guest is in the actual company of the member.

(c) If the member leaves the club the guest must leave the club.

(d) Adult temporary members may now admit persons under the age of 18 as guests. The adult must be a ‗responsible adult'. A responsible adult is a person who is a parent, guardian or spouse of the minor.

3.6 Registers

A club is required to keep a record of all persons admitted as members. The rules relating to the keeping of a club's registers are set out in section 31 of the Registered Clubs Act. Section 31 of the Registered Clubs Act is reproduced at **Annexure "C".**

(a) Temporary Member's Register

If a person lives outside of 5 kilometres from the club the person may make application for temporary membership of the club. The temporary member's register must be correctly completed. Anyone can complete the register.

(b) How to complete the Temporary Members' Register

The following must be legible:

(i) full name, or surname and initials;

(ii) address;

(iii) date; and

(iv) signature.

(c) When to complete the Temporary Members' Register

The register must be completed on the first occasion temporary membership is conferred each day the person enters the Club, unless the person is admitted for an extended period of up to 7 days in accordance with section 30B of the Registered Clubs Act (in which

case they are only required to complete the register on the first day they enter the Club).

(d) The Guest's Register

If a member wishes to bring a guest into the club the guest's details must be recorded in the guests' register (name and address). The member must sign his or her name next to that entry and record his or her membership number.

Why must this be done? So that the board, the secretary manager or staff, can identify which member is responsible for the guest. If the guest breaches the club's rules or acts inappropriately, the member can be disciplined by the board for failing to ensure their guest complies with the club's standards of behaviour.

NOTE: A member must not sign in a person under the age of 18 as his or her guest, with the limited exception referred to in paragraph 3.5(d).

4. FUNCTIONS

Clubs can hold functions on their premises at which non-members may be present. To permit functions to occur, Clubs must apply for a functions authority under Section 23 of the Registered Clubs Act.

If the Authority grants a club functions authorisation, persons who are not members or who are under the age of 18 years may attend a function or functions of a cultural, educational, religious, patriotic, professional, charitable, political, literary, sporting, athletic, industrial or community nature in the specified part of the club's premises. Weddings are also now specifically included as functions permitted under a club functions authorisation.

The practical effect of a function authority is to permit the club to allow any person (under or over 18 years) to enter the club and use the facilities within the function area without having to comply with the usual entry requirements:

(a) No need to sign in.

(b) No 5 kilometre rule.

(c) No guest of members' rule.

(d) No offence if person under 18 is in a bar area or a function area.

However, persons attending the function are not permitted to enter other parts of the club without meeting the club's usual entry requirements.

Poker machines are not permitted in the functions area to the extent that the functions authorisation authorises functions for minors on the Club's premises (section 23(3) of the Registered Clubs Act).

5. VOTING

Pursuant to clause 23 of the Registered Clubs Regulation, a registered club's constitution may provide that less than 50% of the full members of the registered club are entitled to vote at elections of the Board if:

(a) the ordinary members of the club have approved in general meeting a rule in the Club's constitution which limits the number of voting members of the club to less than 50% of the full members; and

(b) the club has complied with any guidelines given by the Director-General of Communities NSW (at present there are no such guidelines).

Additionally, pursuant to section 30(9)(a) of the Registered Clubs Act, the members cannot approve any rule under which less than 25% of the full members of the club will be voting members.

The '**ordinary members**' are all members of a club who have been elected to membership of the club. This means all such members can vote on a resolution referred to above in paragraph (a), even if some of them do not normally have playing or voting rights.

The '**full members**' of a club include the ordinary members and the life members.

6. ACCOUNTABILITY REQUIREMENTS IN REGISTERED CLUBS

6.1 Part 4A of the Registered Clubs Act – General

Since April 2004, registered clubs have been required to disclose certain interests of directors and employees including interests in hotels and gifts from contractors. Restrictions and controls have also been imposed on certain contracts entered into by registered clubs and disposals of land.

The major thrust of the 2004 amendments to the Registered Clubs Act was to require disclosure of information in relation to interests and matters to the governing body, members, and the regulatory authority.

6.2 **Management and Directors**

A club that has more than one separate premises must now appoint a different manager, approved by the Authority, for each set of premises at which the secretary of the Club is not in attendance (subject to certain exceptions).

Only a natural person may be appointed to manage premises to ensure managers are personally involved in the supervision and management of the conduct of the clubs, and responsible for compliance with the provisions of the Registered Clubs Act, the Liquor Act and the Gaming Machines Act. This is intended to stop commercial operators entering into arrangements to manage clubs.

6.3 **Accountability of Club Directors and Managers**

Throughout Part 4A of the Registered Clubs Act, reference is made to the terms 'close relative' and 'top executive' of directors and clubs respectively. Section 41B of the Registered Clubs Act contains the following definitions:

(a) '**Close relative**' of a person means:-

(i) a parent, child, brother or sister of the person;

(ii) a spouse of the person (including defacto spouse); or

(iii) a spouse (including defacto spouse) of a parent, child, brother or sister of the person.

(b) '**Contract**' includes commercial arrangement.

(c) '**Gift**' includes money, hospitality or discounts.

(d) '**Top executive**' of a registered club means:

(i) the secretary of the club;

(ii) a person who is the manager (within the meaning of the Liquor Act) of any premises of the club;

(iii) the following persons as prescribed under clause 14 of the *Registered Clubs Regulation 2009* (**Registered Clubs Regulation**):

A. a person (other than the secretary of the club or any manager appointed under section 66 of the Liquor Act) who is one of the 5 highest paid employees of the club (including any person who acts in the position of any such employee for a continuous period of not less than 3 months);

B. any person who is nominated by the club as a top executive;

but (A) and (B) above do not include the following:

C. a person whose total remuneration package does not exceed $100,000 per year; or

D. a person who is not involved in the general administration of the registered club or with its liquor and gaming business.

6.4 **Disclosure of interests in contract**

Section 41C of the Registered Clubs Act requires a director who has a material personal interest in a matter that relates to the affairs of the club, to declare as soon as practicable, the nature of the interest at a meeting of the Board. Section 41C is similar to section 191 of the Corporations Act.

The courts have held that 'material' in the context of 'material personal interests' means that the interest involves a relationship of some real substance to the matter under consideration or the contract or arrangement which is proposed. In that way, the nature of the interest should be seen to have a capacity to influence the vote of the particular director upon the decision to be made. The interest may be direct or indirect, vested or contingent. It is wider than a 'pecuniary interest'.

A director would likely be considered to have a material personal interest if, for example, the Board is considering entering into a contract for supply of goods or services with a company in which the director is also a director or shareholder.

A penalty of up to $5,500 applies for non-disclosure under the Registered Clubs Act, and a director may also be subject to penalties under the Corporations Act if the director fails to declare an interest under sections 191 or 192.

6.5 **Financial interests in a hotel**

A director or top executive of a club, who holds a financial interest in a hotel, must give a written declaration of that interest to the club's secretary within 14 days of acquiring the interest (section 41D of the Registered Clubs Act).

A penalty of up to $5,500 applies for non-disclosure.

This section does not apply to the club's secretary or an approved manager of any of the club's secondary premises, as they are strictly prohibited from holding interests in hotels under section 33A of the Registered Clubs Act.

6.6 Disclosure of gifts and remuneration from affiliated bodies

A director or top executive of a club must declare, to the club's secretary, any gift received from an affiliated body, if the gift or remuneration has a value exceeding $500.

(a) A '**gift received from an affiliated body**' means a gift or remuneration received from:

 (i) a related body corporate (for example a subsidiary company); or

 (ii) an entity that obtained a grant or subsidy from the club within the 12 months preceding the receipt of the gift.

(b) A '**gift**' includes money, hospitality or discount.

(c) '**Remuneration**' includes any fee for service.

A declaration must be made within 14 days of receiving the gift or remuneration and in accordance with the form prescribed by the Director of Liquor

and Gaming (section 41E of the Registered Clubs Act).

A penalty of up to $5,500 applies for non-disclosure. It is a defence to a prosecution for non-disclosure if the director establishes he or she did not know, and could not be reasonably expected to know, that the gift was from an affiliated body.

6.7 Disclosure of gifts and remuneration from contactors

A director of a club or an employee of a club must submit a written return each year, declaring any gifts and remuneration received by that director or employee from an organisation that is a party to a contract at the Club if:

(a) the value of the gift or remuneration exceeds $500; or

(b) its value would exceed $500 when added to the value of all gifts received from the same donor during the financial year to which the return applies.

If the value of non-money gifts cannot be determined by reasonably estimating the value or cost of the gift if the recipient had to personally acquire it at the time it was given, the gift must be disclosed.

A penalty of up to $5,500 applies for non-disclosure. It is a defence to a prosecution for non-disclosure if the defendant establishes that he or she did not know and could not reasonably be expected to have known that the gift donor had a contract with the club (see Section 41F of the Registered Clubs Act and clause 15 of the Registered Clubs Regulation).

6.8 Secretary to keep register of disclosures

The secretary of a registered club must keep a register of all disclosures, declarations and returns made to the club under sections 41C (disclosure of interests in contracts), section 41D (declaration of financial interests in hotels), section 41E (disclosure of gifts or remuneration from affiliated bodies) and section 41F (disclosure of gifts or remuneration from persons or organisations with contracts with the club) of the Registered Clubs Act.

Pursuant to clause 16 of the Registered Clubs Regulation, the register must be kept in a form approved by the Director-General of Communities NSW. The requirements are set out in the 'Accountability and Corporation Governance Requirements for Registered Clubs' section of the Office of Liquor, Gaming & Racing (**OLGR**) website www.olgr.nsw.gov.au.

The Director-General of Communities NSW requires that all disclosures or declarations made to a club under section 41C (disclosure of interests in contracts) must contain a club reference number, the date each declaration was made, the name of each person who made the declaration, the date the person became aware of the interest, the name of the contractor, a description of the nature of the contract, the nature of the interest declared and – if a hard copy is kept – the signature of the person who made the declaration.

The Director-General of Communities NSW requires that a register of all disclosures or declarations made to a club under section 41D of the Registered Clubs Act (declaration of financial interests in hotels) must contain a club reference number for the declaration, the date the declaration was made, whether the person who made the declaration is a director or top executive of the club, the date the director or top executive was appointed to the club, the date the person became aware of the interest, the nature of the interest including the name and licence number of the hotel(s) and if applicable, the company name of the owner and its Australian company number and – if a hard copy of the declaration is kept – the signature of the person who made the declaration.

6.9 Annual reporting requirements – financial statements

Under clause 17 of the Registered Clubs Regulation, a registered club must:

(a) prepare, on a quarterly basis, financial statements that incorporate:

  (i) the club's profit and loss accounts and trading accounts for the quarter;

  (ii) a balance sheet as at the end of the quarter;

(b) provide the financial statements to the board of directors of the club;

(c) make the financial statements available to the members of the club within 48 hours of the statements being adopted by the governing body;

(d) indicate, by displaying a notice in the form approved by the Director-General of Communities NSW on the club's premises and on the club's website (if any), how the members of the club can access the financial statements (the form of the notice required by the Director-General of Communities NSW is displayed on the Office of Liquor, Gaming and Racing's website); and

(e) provide a copy of the financial statements to any member of the club or the Director-General of Communities NSW on the request (in writing) of the member or the Director.

Failure to comply with the above requirements may result in a penalty of up to $5,500 being imposed.

6.10 Annual reporting requirements – provision of information to members

For each financial year of the club, the club must record, the following information in relation to the financial year concerned:

(a) Disclosures, declarations and returns received by the club under section 41C to section 41F of the Registered Clubs Act (disclosure of interests in contracts, declaration of financial interests in hotels, disclosure of gifts from affiliated bodies, disclosure of gifts from persons or organisations with contracts with the club).

(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 of any club related overseas travel by a director or employee (including the costs paid by the club for the director or employee and any other person connected with 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 for a top executive approved by the Board.

(f) The name of any employee of the club who the club is aware is a close relative of a member of the Board or of a top executive 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 in respect of consultants paid more than $30,000 during the reporting period.

(i) Details of any settlement made during the reporting period with a member of the Board 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 would be a breach of any confidentiality provision agreed to by the club.

(j) Details of any legal fees (not rising out of the preceding point) paid by the club on behalf of a director or an employee of the club.

(k) The total amount of the profits (within the meaning of the Gaming Machine Tax Act 2001) from the operation of approved gaming machines in the club during the gaming machine tax period relating to the reporting period.

(l) The amount applied by the club during the gaming machine tax period to community development and support under Part 4 of the Gaming Machine Act 2001.

The information must be made available to each member (either by allowing a member to view the register and financial statements or providing the member with a copy on receipt by the club of a written request from the member) within 4 months after the end of the club's financial year. The Club must display a notice at its premises (and if the club has multiple premises, at each set of those premises) and on its website (if any) an approved notice informing the members of how they can access that information. The approved notice may be viewed at www.olgr.nsw.gov.au and purchased from the OLGR.

7. DISPOSAL OF A CLUB'S LAND (CORE PROPERTY)

The annual report of a registered club must specify the core property and non-core property of the club as at the end of the financial year to which the report relates.

If a transaction involves the sale, lease, licence or other disposal of any of a registered club's 'core' property, then the process for such disposal provided for under section 41J of the Registered Clubs Act must be followed.

In addition, if there are any particular requirements in a club's constitution regarding disposal of land, care should be taken to ensure those conditions are complied with. For example, some club constitutions provide that the sanction of a general meeting is required for the sale (and sometimes, for lease or other disposal) of club property (irrespective of whether the land is core or non-core property). In some cases, it may be that mere compliance with the disposal requirements of section 41J of the Registered Clubs Act will not automatically mean that the particular constitutional requirements of the club will also be met.

7.1 What is 'core' property?

A club's 'core' property is defined to include:

(a) the defined premises of the club;

(b) any facility provided by the club for the use of its members and their guests; or

(c) any other property declared, by a resolution passed by a majority of the members present at a general meeting of the ordinary members of the club, to be core property of the club.

In addition to the defined premises of the club, core property would include things like the club's car park and sporting facilities. Core property would not include any property or land that is not presently being utilised for any purpose or land that is owned by the club for investment purposes.

7.2 What is the process for disposing of 'core' property?

To dispose of any 'core' property, clubs must comply with the following procedure:

(a) the land being disposed of must be valued by a registered valuer;

(b) the disposal must be approved at a general meeting of the *ordinary members* of the club by a majority of those members; **and**

(c) any sale is by way of public auction or open tender conducted by an independent real estate agent or auctioneer.

Note that 'ordinary members' is defined in section 4 of the Registered Clubs Act to mean a person who is

elected to membership of the club. Therefore members classed as 'social' members or similar – who perhaps do not have playing rights or rights to vote in the election of the Board - would be entitled to vote on a resolution at a general meeting for the disposal of land.

7.3 **Exceptions to the requirements of section 41J?**

There are exceptions to the requirements of section 41J which are contained in clause 19 of the Registered Clubs Regulation. If the disposal of 'core' property falls within any one of the exceptions contained in the regulation, then the processes set out in section 41J will not need to be complied with. Those exceptions are as follows:

(a) the leasing or licensing of the core property is for a period not exceeding 10 years on terms that have been the subject of a valuation by a registered valuer;

(b) the disposal of the property to a wholly owned subsidiary of the club;

(c) the leasing or licensing of the core property to a telecommunications provider for the purposes of a telecommunications tower;

(d) the disposal involves the calling for expressions of interest and a subsequent selective tendering process, and the disposal and disposal process has been approved by a majority vote at a general meeting of the ordinary members of the club;

(e) the property is being sold by private treaty, but only after it failed to sell at public auction or open tender;

(f) the terms and nature of the disposal are disclosed to the ordinary members of the club and the disposal is approved at a general meeting of those ordinary members;

(g) the Director-General of Communities NSW has, on application by the club, approved of the 'core' property being disposed of other than in accordance with the requirements of section 41J;

(h) the disposal is to a government department, a statutory body, a state owned corporation or to a local council; and

(i) the disposal is by way of lease or licence and the lease or licence:

(i) is being granted to a person for the purpose of enabling the person to provide goods or services exclusively to members of the club and their guests and to other members of the public attending the club in accordance with a functions authority held by the club; or

(ii) is being granted to a person for the purpose of enabling the person to provide goods or services to members of the club and their guests and to other members of the public and the granting of the lease or licence has been

approved at a general meeting of the ordinary members of the club.

7.4 **Catering and golf pro shop contracts**

Catering or golf pro shop contracts might fall under one of the exemptions contained in clause 19 of the Registered Clubs Regulations as follows:

(a) A full exemption applies where a club grants a lease or licence, but only where the lease or licence was granted for the purpose of enabling a person to provide goods or services *exclusively* to members of the club and their guests and to other persons attending the club in accordance with a functions authorisations held by the club under section 23 of the Act.

(b) A partial exception applies where the lease or license is granted and *members of the club and their guests and other members of the public* access the goods or services, so long as the grant of the lease or licence for that purpose has been approved by a majority of votes cast at a general meeting of the club's ordinary members.

(c) Normally, a catering agreement with a caterer for the provision of catering services at the club for the benefit of the club's members and guests and to other persons attending the club in accordance with a functions authority would be exempt from the disposal of land requirements in section 41J(1) of the Act.

(d) If the lease/licence is for a term not exceeding 10 years (including options to renew), the agreement would normally be exempt if a valuation is obtained from a registered valuer. The terms of reference and scope of the valuation may need careful consideration.

(e) With respect to a golf pro shop contract, the exact circumstances of the matter would determine if a full or partial exemption to section 41J of the Act was available. Again,

an agreement not exceeding 10 years (including any options of renewal) may be exempt, subject to a valuation by a registered valuer (and again, the terms of reference and scope of the valuation may need careful consideration).

Note that in most cases, catering and golf pro shop agreements will also be subject to the requirements of the *Retail Leases Act 1994 (NSW)*.

7.5 What happens if section 41J(1) is contravened?

Contravention of section 41J(1) of the Registered Clubs Act enables the Director of Liquor and Gaming to apply to the Supreme Court of New South Wales for an order in relation to the land disposal (section 41Q of the Registered Clubs Act).

The Court can make a number of different orders, including an order voiding the land disposal contract or an order directing the transfer of the land back to the club (if the club owned the land when it was disposed of), or an order, directing the purchaser of the land (or any person who benefited from the club's disposal of the land) to pay an amount or a further amount to the club.

The Court cannot make an order that would unfairly and materially prejudice an interest or right of a person who acted in good faith and with no reasonable grounds for suspecting that the disposal of the land was contravening the Registered Clubs Act, or, which 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 disposal contravened the Registered Clubs Act or no means of preventing the land disposal.

8. CONTRACTS WITH REGISTERED CLUBS

8.1 Contracts in which a director or top executive has an interest

Section 41K of the Registered Clubs Act provides that, subject to guidelines prescribed by the Registered Clubs Regulation, a registered club must not enter into a contract with a director of the club or top executive, or with a company or other body in which the director or top executive has a pecuniary interest, unless the proposed contract is first approved by the Board.

Clause 21 of the Registered Clubs Regulation prescribes the following as pecuniary interests which are subject to section 41K of the Registered Clubs Act:

(a) a shareholding of more than 5% in a company is a pecuniary interest (unless the company carries on the business of supplying gaming machines or liquor to the club per below); and

(b) any shareholding interest in a company that carries on the business of supplying gaming machines or liquor to the club.

Before entering into a contact of this kind, a registered club must make all reasonable enquiries to ensure that section 41K(1) of the Registered Clubs Act is not contravened. The club can rely on a statutory declaration from the party to the 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 a director, top executive, or company or other body in which the director or top executive has or has not a pecuniary interest.

8.2 Contracts with secretary, manager, close relatives and others

A registered club may only enter into a contract with the:

(a) secretary of the club;

(b) a manager appointed for any premises of the club;

(c) any other person prescribed by the Registered Clubs Regulation;

(d) any close relative of the above persons;

(e) or a company or any other body in which the secretary of the club, a manager for any premises of the club (or any other person prescribed by the Registered Clubs Regulation) or a close relative of them, has a controlling interest;

if the club's premises are situated outside the metropolitan area and the contract has been entered into as a result of an open tender process conducted by the club (section 41L of the Registered Clubs Act, clause 20 of the Registered Clubs Regulation).

A '**controlling interest**' in a company or other body exists where a person has the capacity to determine the outcome of decisions about the financial and operating policies of the company or body.

'**Metropolitan area**' means, pursuant to clause 20 of the Registered Clubs Regulation, the Sydney Statistical Division, the statistical local areas of Newcastle (statistical local areas 590, 5094 and 5905), the statistical local area of Lake Macquarie

(statistical local areas 4651 and 4653) and the statistical local area of Wollongong (statistical local areas 8451 and 8454) determined by the Australian Bureau of Statistics.

Again, a club entering into a contract must make all reasonable enquiries to ensure that the provisions of section 41L(1) of the Registered Clubs Act are not contravened. It may rely upon 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 company is or is not such a person, company or body (section 41L(5) of the Registered Clubs Act).

8.3 Remuneration of top executive

A registered club may only enter into a contract for the remuneration by the club of a top executive if the contract is first approved by the Board (section 41M of the Registered Clubs Act).

8.4 Loans to directors of the club and employees of the club

A club must not lend money to a director of the club. A club may lend money to an employee of the club, provided that the loan amount (together with any other club loan that the employee has not repaid) is $10,000 or less, and provided the club's Board of Directors first approves the loan (section 41N of the Registered Clubs Act). This does not apply to any amount of money lent to the employee in accordance with the terms of the employee's contract of employment with the club. Loans to employees are not advisable in any event.

8.5 Termination of certain contracts

Section 41R of the Registered Clubs Act enables the Director of Liquor & Gaming to terminate a contract which contravenes Division 4 of Part 4A except a contract which contravenes section 41J for disposal of real property (i.e. the requirements for and/or prohibitions (as the case may be) concerning contracts in which a director or top executive has an interest – section 41K, contracts with secretary, manager, close relatives and others – section 41L, remuneration of top executives – section 41M, loans to directors and employees – section 41N).

Contracts which contravene section 41J of the Registered Clubs Act (regarding disposal of real property) are subject to section 41Q (see above).

A penalty of up to $2,200 applies for the giving of effect to a terminated contract (section 41T of the Registered Clubs Act).

8.6 Notification to top executive

A registered club must, as soon as practicable, give written notice to a person who becomes a top executive of the registered club, informing the person that he or she is a top executive and has responsibilities under Part 4A of the Registered Clubs Act (section 41U of the Registered Clubs Act).

8.7 Offences by secretary and directors of the club in relation to contracts

If a club contravenes any provisions relating to Division 4 of Part 4A of the Registered Clubs Act (i.e. the requirements for and/or prohibitions (as the case may be) concerning disposal of real property – section 41J, contracts in which a director or top executive has an interest – section 41K, contracts with secretary, manager, close relatives and others – section 41L, remuneration of top executives – section 41M, loans to directors and employees – section 41N), the club is not guilty of an offence, but the secretary and each director and each close associate of the club is guilty of an offence. A penalty of up to $11,000 can be imposed, unless the secretary, director or close associate satisfies the court that:

(a) the club contravened the provision without the knowledge of the secretary, director or close associate;

(b) the secretary, director or close associate was not in a position to influence the conduct of the club in relation to its contravention of the provision; or

(c) the secretary, director or close associate used all due diligence to prevent the contravention by the club.

As contravention can lead to a criminal conviction, it would not be possible to cover the monetary penalty under directors and officers liability insurance.

9. INQUIRIES IN RELATION TO REGISTERED CLUBS

If the Director of Liquor and Gaming receives an allegation about any 'corrupt or other improper conduct' then the Director may arrange for the holding of an inquiry into allegation to be presided over by a person appointed by the Director (section 41X(1) of the Registered Clubs Act). The matters

that may be the subject of an inquiry include matters relating to the termination of employment of staff of a club (section 41X(3)).

The person presiding over an inquiry under section 41X of the Registered Clubs Act has the power and authority of a Royal Commissioner (section 41Y of the Registered Clubs Act).

The inquiry's findings are reported to the Director of Liquor and Gaming who in turn determines whether any matter in the inquiry's report relates to a contravention of the Registered Clubs Act or any other law or whether there are grounds for taking of further proceedings of any kind (section 41Z of the Registered Clubs Act). The Director of Liquor and Gaming may refer any matter to a law enforcement agency such as the Police or Australian Taxation Office.

The Director of Liquor and Gaming may order the club to provide information to each of its members about the section 41X inquiry's findings and/or order the club to hold an election for its Board of Directors (section 41ZA of the Registered Clubs Act).

10. **DISCIPLINARY ACTION**

(a) The Director of Liquor and Gaming or the Commissioner of Police may make a complaint to the Authority on the following grounds:

(i) that the requirements specified in section 10(1) of the Registered Clubs Act are not being met, or have not been met, by or in relation to the club;

(ii) that the supply of liquor to the club, or on the premises of the club, has not been under the control of the governing body of the club;

(iii) that the club or the secretary of the club has contravened a condition to which any of the following authorisations held by the club is subject:

A. a non-restricted area authorisation under section 22,

B. a junior members authorisation under section 22A,

C. a club functions authorisation under section 23,

(iv) that the club has contravened the Registered Clubs Act, whether or not it has been convicted of an offence in respect of that contravention;

(v) that a rule of the club referred to in section 30(1) has been broken or any other rule of the club has been habitually broken;

(vi) that the club has been conducted, or the premises of the club have been habitually used, for an unlawful purpose;

(vii) that the secretary of the club or any member of the governing body of the club is not a fit and proper person to act as such;

(viii) that a requirement of the Director of Liquor and Gaming made under the Registered Clubs Act in relation to the investigation of the secretary of the club or any member of the governing body of the club has not been complied with;

(ix) that the club has ceased to exist; or

(x) any other ground that the complainant considers appropriate for the taking of disciplinary action against the club.3

(b) The Authority can either take no action after taking account of submissions of the parties or, if it is satisfied that the complaint is made out, the Authority's wide powers include the making of the following orders or declarations:

(i) order the club to pay a monetary penalty of up to $275,000;

(ii) suspend the club's licence for such period as the Authority thinks fit;

(iii) cancel the club's licence;

(iv) suspend or cancel any authorisation held by the registered club under the Registered Clubs Act;

(v) impose a condition on the club's licence;

(vi) remove from office the secretary of the club or a member of the governing body of the club;

(vii) declare that a specified person is (for a period of up to 3 years) ineligible to stand for election or to be appointed to, or to hold office in, the position of

[3] Section 57F of the Registered Clubs Act

secretary or member of the governing body (or both of those positions) of:

A. the club;

B. if the Authority so determines — all other registered clubs or such other registered clubs as are specified (or as are of a class specified) by the Authority; and

(viii) appoint a person to administer the affairs of the club who, on appointment and until the Authority orders otherwise, has, to the exclusion of any other person or body of persons, the functions of the governing body of the club. [4]

(c) As registered clubs are also subject to the Liquor Act and Gaming Machines Act, they are potentially subject to separate procedures and action provided for in those Acts.

11. **AVOIDING COMMON OFFENCES**

(a) Effective management means avoiding the commission of the most common offences. It also means ensuring that staff are aware of their obligations. The most common offences are:

(i) A person using the facilities of the club without being admitted as a member, temporary member or guest of a member (section 45 of the Registered Clubs Act).

(ii) Persons signing in as temporary members without qualifying for temporary membership (e.g. living within 5km) (section 30 of the Registered Clubs Act).

(iii) Persons incorrectly signing in as a guest of a member.

(iv) Failure to obtain the approval of the Authority for the appointment of the club's secretary (section 33 of the Registered Clubs Act).

(v) Failure to comply with the disclosure and reporting requirements in Part 4A of the Registered Clubs Act.

This chapter covers the law in NSW. Clubs in the ACT are referred to ACT legislation including the *Liquor Act 1975, Gaming Machine Act 2004, Gaming Machine Regulation 2004, Gaming & Racing Control (Code of Practice) Regulation 2002.*

[4] Section 57J of the Registered Clubs Act

ANNEXURE A

SECTION 10 OF THE REGISTERED CLUBS ACT 1976

10 Requirements to be met by clubs

(1) The following requirements apply in relation to a club:

(a) The club shall be conducted in good faith as a club.

(b) The club shall be:

(i) a company within the meaning of the *Corporations Act 2001* of the Commonwealth, or

(ii) if the club was registered, or applied for registration, before the commencement of Part 10—a co-operative under the Co-operatives Act 1992 or a corporation constituted by another Act.

(c) (Repealed)

(d) The membership of the club shall consist of or include not less than such number of ordinary members as is prescribed in respect of it by section 12.

(e) The club shall be established:

(i) for social, literary, political, sporting or athletic purposes or for any other lawful purposes, and

(ii) for the purpose of providing accommodation for its members and their guests.

(f) The club shall have premises of which it is the bona fide occupier for the purposes of the club and which are provided and maintained from the funds of the club.

(g) The premises of the club shall contain accommodation appropriate for the purposes of the club.

(h) The premises of the club shall contain a properly constructed bar room but shall not contain a separate area for the sale or supply of liquor to be carried away from those premises to which area there is direct access from outside any building that is part of those premises.

(i) A member of the club, whether or not he or she is a member of the governing body, or of any committee, of the club, shall not be entitled, under the rules of the club or otherwise, to derive, directly or indirectly, any profit, benefit or advantage from the club that is not offered equally to every full member of the club.

(j) Only the club and its members are to be entitled under the rules of the club or otherwise to derive, directly or indirectly, any profit, benefit or advantage from:

(i) the fact that the club has applied for, or is granted, a licence under the Liquor Act 2007, or

(ii) any added value that may accrue to the premises of the club because the club has applied for, or is granted, a licence under that Act,

unless it is a profit, benefit or advantage derived from dealings reasonably carried out, or contracts reasonably made, with the club in the ordinary course of its lawful business.

(k) The secretary or manager, or any employee, or a member of the governing body or of any committee, of the club is not entitled to receive, either directly or indirectly, any payment calculated by reference to:

(i) the quantity of liquor purchased, supplied, sold or disposed of by the club or the receipts of the club for any liquor supplied or disposed of by the club, or

(ii) the keeping or operation of approved gaming machines in the club.

(l) The club must comply with any requirements imposed on the club under section 38.

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

(2) For the purposes of determining whether a club is conducted in good faith as a club, as required by subsection (1) (a), regard is to be had to the nature of the premises of the club.

(3) Subsection (1) (b) does not apply in respect of Tattersall's Club referred to in the *Tattersall's Club Act of 1888*, City Tattersall's Club referred to in the *City Tattersall's Club Act of 1912*, Newcastle Tattersall's Club referred to in the *Newcastle Tattersall's Club Act 1945*, the Newcastle International Sports Centre Club referred to in clause 9 of Schedule 5 to the *Sporting Venues Authorities Act 2008* or in respect of any club declared under section 13 (1) (a) to be an exempt club for the purposes of this subsection.

(4) (Repealed)

(5) Subsection (1) (e) (ii) does not apply in respect of any club declared under section 13 (1) (b) to be an exempt club for the purposes of this subsection.

(6) A club does not fail to meet the requirement specified in subsection (1) (i) or (1) (j) by reason only that a member of the club derives or is entitled to derive any profit, benefit or advantage from the club that is not offered equally to every full member of the club if:

(a) the member derives or is entitled to derive the profit, benefit or advantage, not being a profit, benefit or advantage referred to in paragraph (b), pursuant to a contract (including a contract of employment) or agreement with the club and the deriving of or entitlement to the profit, benefit or advantage is, in the opinion of the Authority, reasonable in the circumstances of the case, or

(b) the profit, benefit or advantage consists only of a sum of money paid to the member in respect of his or her services as a member of the governing body or of any committee of the club and that payment has been approved by a resolution passed at a general meeting on which the persons entitled to vote are the same as the persons entitled to vote at the annual election of the governing body of the club, or

(c) the profit, benefit or advantage consists only of hospitality in the nature of reasonable food or refreshment offered by the holder of a dealer's licence, seller's licence or adviser's licence (within the meaning of the *Gaming Machines Act 2001*) in the normal course of a sale of an approved gaming machine on the licensee's premises, or at a display of an approved gaming machine that is held anywhere in the State for the purpose of directly promoting the products or services of the licensee, or

(d) the profit, benefit or advantage consists only of the payment of out-of-pocket expenses that are of a kind authorised by a current resolution of the governing body and are reasonably incurred by a member of the club, or by the secretary or any other employee, in the course of carrying out his or her duties in relation to the club.

(6A) Subsection (1) (i) does not prevent a club from providing different benefits for different classes of members if:

(a) the different benefit was being lawfully provided immediately before the commencement of this subsection, or

(b) the different benefit is not in the form of money or a cheque or promissory note and is the subject of a current authorisation given by a general meeting of the members prior to the benefit being provided.

(7) A club does not fail to meet the requirement specified in subsection (1) (j) by reason only that a person derives or is entitled to derive any profit, benefit or advantage as referred to in subsection (1) (j) if, in the opinion of the Authority, the deriving of or entitlement to the profit, benefit or advantage is reasonable in the circumstances of the case.

ANNEXURE B

SECTION 30 OF THE REGISTERED CLUBS ACT 1976

30 Rules of registered clubs

(1) The rules of a registered club shall be deemed to include the following rules:

(a) The governing body of the club responsible for the management of the business and affairs of the club is to be elected:

(i) annually, or

(ii) if a rule of the club so provides—biennially, or

(iii) if a rule of the club so provides—in accordance with Schedule 4,

at an election in respect of which the full members only of the club (or a subclass of full members determined by a rule of the kind referred to in subsection (9)) are entitled to vote.

(b) A person shall not hold office as a member of the governing body of the club unless the person is a full member of the club.

(c) The governing body of the club shall hold a meeting at least once in each month of the year and minutes of all proceedings and resolutions of the governing body shall be kept and entered in a book provided for the purpose.

(d) A person shall not:

(i) attend or vote at any meeting of the club or of the governing body or any committee of the club, or

(ii) vote at any election of, or of a member of, the governing body of the club,

as the proxy of another person.

(e) (Repealed)

(f) A person shall not be admitted to membership of the club except as an ordinary member (whether or not persons may be admitted as different classes of ordinary members), provisional member, life member, honorary member or temporary member.

(g) A person shall not be admitted as a member of the club, other than as a provisional member, honorary member or temporary member, unless the person is elected to membership at a meeting of the full members of the club or at a duly convened meeting of the governing body or election committee of the club, the names of whose members present and voting at that meeting are recorded by the secretary of the club.

(h) An employee of the club shall not vote at any meeting of the club or of the governing body of the club, or at any election of the governing body of the club, or hold office as a member of the governing body of the club.

(h1) An employee of the club must not vote at any election of the governing body of another club or association if any member of that governing body would, as the result of that election, be entitled or qualified to be appointed (or be nominated for appointment) to the governing body of the registered club.

(i) Any profits or other income of the club shall be applied only to the promotion of the purposes of the club and shall not be paid to or distributed among the members of the club.

(j) The fee payable by, or by any class of, ordinary members for membership of the club shall be an amount, not being less than $2 per annum, specified in the rules of the club other than the rules contained in this subsection or subsection (2) and be payable annually or, if the rules of the club other than the rules contained in this subsection or subsection (2) so provide, by monthly, quarterly or half-yearly instalments, and in advance, or for more than 1 year in advance.

(2) The rules of a registered club shall be deemed also to include the following rules:

(a) The names and addresses of persons proposed for election as ordinary members of the club shall be displayed in a conspicuous place on the premises of the club for at least 1 week before their election.

(b) An interval of at least 2 weeks shall elapse between the proposal of a person for election as an ordinary member of the club and his or her election.

(c) A person shall not be admitted as an honorary member or as a temporary member of the club unless:

(i) the person is admitted in accordance with the rules of the club, and

(ii) subsection (3A) is complied with in the case of an honorary member or subsection (3B) is complied with in the case of a temporary member.

(d) Liquor must not be sold, supplied or disposed of on the premises of the club to any person who is not a member of the club except:

(i) on the invitation and in the company of a member of the club, or

(ii) if the person is attending a function in respect of which a club functions authorisation under section 23 is in force.

(e) A person under the age of 18 years must not be admitted as a member of the club unless the purpose of membership is to enable the person to take part in regular sporting activities organised by the club.

(f) A person under the age of 18 years shall not propose or second a person for admission as a member of the club.

(g) Liquor shall not be sold, supplied or disposed of on the premises of the club to any person under the age of 18 years.

(h) A person under the age of 18 years shall not use or operate approved gaming machines on the premises of the club.

(i) A register of persons who are full members of the club shall be kept in accordance with section 31.

(j) A register of persons who are honorary members of the club (other than honorary members referred to in section 30A) is to be kept in accordance with section 31.

(j1) A register of persons who are honorary members of the club, being persons referred to in section 30A, who attend the club on any day is to be kept in accordance with section 31 as a separate register from the register referred to in paragraph (j).

(k) A register of persons of or above the age of 18 years who enter the premises of the club as guests of members shall be kept in accordance with section 31.

(l) A register of persons who are temporary members of the club (other than temporary members referred to in subsection (10) or in section 30B) is to be kept in accordance with section 31.

(m) A register of temporary members of the club (other than temporary members referred to in subsection (10) or in section 30B) who attend the club each day is to be kept in accordance with section 31 either as a separate register or as part of the register referred to in paragraph (l).

(n) A register of persons who are admitted as temporary members of the club for an extended period as referred to in section 30B is to be kept in accordance with section 31 either as a separate register or as part of the register referred to in paragraph (l).

(o) (Repealed)

(2A) If the rules of a club provide for the admission of honorary members or temporary members, the rules are taken also to include a rule that there is to be prominently displayed at all times at each entrance on the club premises at which members and guests are permitted to enter:

(a) subject to any exception created by the regulations under subsection (3C), a map that clearly shows the limits of the area within which an ordinary resident of the area is not eligible for temporary membership otherwise than under section 30 (10), and

(b) the rules of the club that relate to temporary membership of the club, and

(c) a copy of section 30 (10), unless the rules of the club provide that the provisions of that subsection do not apply to the club, and

(d) a copy of the definition of guest in section 4.

(3) A rule referred to in subsection (1), (2) or (2A) has effect notwithstanding the provisions of any other law except a provision of this section.

(3A) The rules of a registered club may not provide for a person to be an honorary member of the club unless the person holds office as a patron of the club or is a prominent citizen or local dignitary.

(3B) A person whose ordinary place of residence is in New South Wales and is within a radius of 5 kilometres from the premises of a registered club (in this subsection referred to as the host club) is not eligible for admission as a temporary member of the host club unless the person is:

(a) a member of another registered club with similar objects to those of the host club, or

(b) a member of another registered club who is attending the host club as provided by subsection (10).

(3C) The regulations may create exceptions to subsection (3B).

(4) The provisions of subsection (1) (a) and (g) do not apply in respect of any club while:

(a) a person is acting in a capacity referred to in section 41 (1) in respect of that club, and

(b) that club does not, as a result of a person having been appointed so to act, have a governing body.

(5) Subsections (1) (a) and (g) and (2) (a) and (b) do not apply in respect of any club declared under section 13 (1) (b) to be an exempt club for the purposes of section 10 (5).

(5A) Subsection (1) (d) does not apply in respect of a registered club that is:

(a) a race club registered or licensed by Racing New South Wales, or

(b) a harness racing club registered by Harness Racing New South Wales, or

(c) a greyhound racing club registered by Greyhound Racing New South Wales.

(6) Subsection (2) (d) does not apply:

(a) in respect of the Sydney Cricket Ground Club, the Australian Jockey Club Limited (ACN 130 406 852), the Newcastle International Sports Centre Club referred to in clause 9 of Schedule 5 to the Sporting Venues Authorities Act 2008 or any other club declared under subsection (7) to be an exempt club for the purposes of this paragraph, or

(b) in respect of the sale, supply or disposal of liquor to any person, other than a member, in any part of the premises of a registered club while a reception is being held in that part where that person has been invited to the reception by a person entitled to issue the invitation.

(7) The Governor may, by order published in the Gazette, declare any club to be an exempt club for the purposes of subsection (6) (a).

(7A) (Repealed)

(8) Any rule of a registered club (except a rule that is deemed by subsection (10) to be included in the rules of the club) that is inconsistent with any rule specified in subsection (1) or (2) is to the extent of the inconsistency of no force or effect.

(9) For the purposes of subsection (8) a rule of a club is not inconsistent with a rule specified in subsection (1) or (2) by reason only that:

(a) in relation to the election of the governing body of the club, referred to in subsection (1) (a), the rules of the club provide that the members of the club entitled to vote at that election consist of such class or classes of full members specified in those rules as comprises or comprise not less than 25% of the full members of the club,

(b) (Repealed)

(c) in relation to the age of any person, it specifies an age that is higher than the age specified in a rule contained in subsection (2), or

(d) the fee payable by, or by any class of, ordinary members for membership of the club is an amount specified or determined in accordance with the rules of the club that exceeds $2 per annum and is payable, as may be provided by the rules of the club other than the rules contained in subsection (1) or (2), annually or by quarterly or half-yearly instalments.

(10) The rules of a registered club (in this subsection referred to as the host club) shall, unless its rules provide that the provisions of this subsection do not apply to that club, be deemed to include a rule that a full member of any other registered club or any interstate club (as defined in subsection (13)) who, at the invitation of the governing body or of a full member of the host club, attends on any day at the premises of the host club for the purpose of participating in an organised sport or competition to be conducted by the host club on that day shall be a temporary member of the host club from the time on that day when he or she so attends the premises of the host club until the end of that day.

(11) Any person who is a temporary member of a registered club under the rule deemed by subsection (10) to be a rule of a registered club shall, for the purposes of this Act, be deemed to have been admitted as a temporary member of that club in accordance with its rules.

(12) The provisions of:

(a) subsection (2) (c) do not apply to a temporary member referred to in subsection (10) of a registered club, and

(b) subsection (10) do not affect the right of a registered club to make rules with respect to the admission of persons as temporary members of the club.

(13) For the purposes of subsection (10), an interstate club is a club that is:

(a) incorporated in a Territory or in a State other than New South Wales, and

(b) licensed, permitted or otherwise authorised under the law in force in the Territory or State to sell liquor, and

(c) licensed, permitted or otherwise authorised under the law in force in the Territory or State to keep and to operate poker machines within the meaning of the Gaming Machines Act 2001.

For the purposes of subsection (10), a full member of an interstate club is a member of an interstate club who has full voting rights at general meetings of the interstate club.

ANNEXURE C

SECTION 31 OF THE REGISTERED CLUBS ACT

31 Manner of keeping registers relating to members and guests

(1) A register kept for the purposes of:

(a) section 30 (2) (i) shall set forth the name in full, the occupation and the address of each full member and, if he or she is an ordinary member, the date on which he or she last paid the annual fee for membership of the club,

(b) section 30 (2) (j) in relation to honorary members is to have entered in it the full name or the surname and initials, and the address, of each honorary member,

(b1) section 30 (2) (j1) in relation to honorary members referred to in section 30A is to have entered in it, when any such honorary member first enters the club premises on any day, the full name, or the surname and initials, and the address, of the honorary member together with his or her signature,

(c) section 30 (2) (k) shall have entered therein on each occasion on any day on which a person of or above the age of 18 years enters the premises of the club as the guest of a member the name in full or the surname and initials of the given names, and the address, of that guest, the date of that day and the signature of that member,

(d) section 30 (2) (l) in relation to temporary members is to have entered in it the full name or the surname and initials, and the address, of each temporary member,

(e) section 30 (2) (m) in relation to temporary members is to have entered in it, when a temporary member first enters the club premises on any day, the full name, or the surname and initials, and the address, of the temporary member together with his or her signature,

(f) section 30 (2) (n) in relation to temporary members referred to in section 30B is to have entered in it, when any such temporary member enters the club premises for the first time, the full name, or the surname and initials, and the address, of the temporary member together with his or her signature.

Note. A person who is admitted as a temporary member for an extended period under section 30B does not have to sign in each time the person enters the club's premises as such a member.

(2) Notwithstanding subsection (1) (c), if an entry in the register kept for the purposes of section 30 (2) (k) is made on any day in respect of the guest of a member, it is not necessary for an entry to be made in that register in respect of that guest if he or she subsequently enters the premises of the club on that day as the guest of that member.

(3) A register referred to in this section must be retained by a registered club for a period of at least 3 years after the date of the last entry in the register.

(4) Maximum penalty: 20 penalty units.

INTRODUCTION TO THE LIQUOR ACT 2007 (NSW) AND LIQUOR REGULATION 2008 (NSW)

1. **A NEW REGIME**

(a) Both the *Liquor Act 2007 (NSW)* (**Liquor Act**) and the *Liquor Regulation 2008 (NSW)* (**Liquor Regulation**) commenced operation on 1 July 2008.

(b) The Liquor Act is a complete rewrite of the New South Wales liquor licensing laws. The *Liquor Act 1982 (NSW)* is repealed by the *Liquor Act 2007*.

(c) The Liquor Act and Liquor Regulation are now the sole legislative instruments regulating liquor sales including sales by New South Wales registered clubs. To this end, the provisions of the *Registered Clubs Act 1976 (NSW)* (**Registered Clubs Act**) regulating the supply of liquor by registered clubs have been removed from that Act, the intention being to highlight the focus of the Registered Clubs Act mainly on club management and governance issues.

(d) The Liquor Act adopts the reforms identified in the 2003 National Competition Policy Review of the New South Wales for liquor and club management laws aimed at reducing the costs, complexities and the judicial nature of the current licensing system, which can often act as a barrier to market entry, while ensuring the law meets the changing demands of industry and the public interest. The reforms are in line with those adopted by other Australian States that have moved away from a Court based liquor-licensing system towards more administrative systems.

2. **SUMMARY OF MAJOR CHANGES BROUGHT ABOUT BY THE LIQUOR ACT 2007**

(a) The major changes can be summarised as follows:

(i) The Licensing Court of NSW and the Liquor Administration Board of NSW have been abolished. In their place, the Director-General of Communities NSW (through the Office of Liquor, Gaming and Racing) and the Casino, Liquor and Gaming Control Authority (**Authority**) will administer the Liquor Act, Liquor Regulation and Registered Clubs Act (and *Registered Clubs Regulation 2009 (NSW)* (**Registered Clubs Regulation**).

(ii) The Director-General of Communities NSW has powers pertaining to investigation and imposition of conditions on licences.

(iii) —Community Impact Statements” (**CIS**) replace —Social Impact Assessment” (**SIA**) in assessment of certain applications, including applications for club licences.

(iv) The Liquor Act introduces standard liquor trading hours, namely 5:00am to midnight for any day other than Sunday, and from 10am to 10pm for a Sunday, subject to shorter periods as may be prescribed in the Liquor Regulation. **However, Clubs which had unrestricted on premises trading hours prior to 1 July 2008 will keep those unrestricted hours until action (if any) is taken to vary those hours under the Liquor Act (see section 94 of Schedule 2 to the Registered Clubs Act).**

(v) Liquor licensing categories have been reduced from 21 to just 6 – there are now several forms of —on-premises” and —off-premises” licences to recognise and cater for the different types of businesses.

(vi) Registered clubs now hold club licences rather than certificates of registration which are issued under the Liquor Act rather than under the Registered Clubs Act. A club licence cannot be held or owned by an individual, although secretaries of registered clubs (and a manager of another set of premises of a registered club) require approval from the Authority to hold that position.

(vii) Increased controls on underage drinking, responsible service of alcohol, and liquor harm minimisation provisions are included in the Liquor Act.

(viii) Increased controls on underage drinking, responsible service of alcohol, and liquor harm minimisation provisions are included in the Liquor Act.

(ix) The CIS process and noise/disturbance complaint procedures have been strengthened to ensure neighbourhood harm issues are considered during the process – importantly, disturbance complaints may now be considered in light of the order of occupancy between the liquor venue and local residents.

3. **OBJECTS OF THE LIQUOR ACT AND OBLIGATIONS OF PERSONS HAVING FUNCTIONS UNDER IT**

(a) The objects of the Liquor Act are:

(i) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community;

(ii) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality; and

(iii) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.

(b) Significantly, the Liquor Act imposes obligations on each person who exercises functions under it (including secretaries of registered clubs). Each person who exercises functions under the Liquor Act is required to have due regard to the following:

(i) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour);

(ii) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor; and

(iii) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

4. **CLUB LICENCES AND TRADING HOURS**

(a) A club licence authorises the licensee club to sell liquor by retail on the licensed premises to a member of the club (or a guest of a member of the club) for consumption on or away from the licensed premises.[5]

(b) If a registered club owns or occupies more than one set of premises, each set of premises must be separately licensed under the Liquor Act and the corporate entity comprising the registered club will hold separate club licences for each set of premises owned or occupied as licensed premises.[6]

(c) **Trading hours for consumption on premises**: The times when liquor may be sold for consumption on the licensed premises of a registered club are as follows:

(i) During the *standard trading period* or at such other times as may be authorised by an extended trading authorisation; and

(ii) On 31 December in any year (but without limiting the operation of any extended trading authorisation)—from the start of the standard trading period for that day until 2 am on the next succeeding day.[7]

(Unless the Club has unrestricted trading hours in which case it may supply liquor at any time permitted under its club licence).

(d) **Trading hours for consumption away from premises:** Liquor may be sold for consumption away from the licensed

[5] Section 18(1) of the Liquor Act
[6] Section 19(2) of the Liquor Act
[7] Section 18(2) of the Liquor Act

premises of a registered club during the *standard trading period* or at such other times as may be authorised by an extended trading authorisation.[8]

(e) **No take-away sales on restricted trading days:** However, the sale of liquor for consumption away from the licensed premises is not authorised on a restricted trading day.[9]

(f) The standard trading period is set out in section 12 of the Liquor Act and applies to hotel and club licences, among others. The standard trading period presently prescribed is as follows:

(i) for any day of the week other than a Sunday - the period from 5am to midnight**,**

(ii) for a Sunday - the period from 10am to 10pm.

(g) Shorter trading hours may be prescribed under the Liquor Regulation.[10]

(h) A club is required to comply with the Registered Clubs Act (and Registered Clubs Regulation) in addition to the Liquor Act and Liquor Regulation. Registered clubs which keep poker machines will also be subject to gaming machine shutdown periods of the *Gaming Machines Act 2001 (NSW)* and *Gaming Machines Regulation 2002 (NSW)*.

(i) Section 11A of the Liquor Act came into operation on 26 November 2008. It provides for a 6 hour closure period for licensed premises in each period of 24 hours for licences granted:

(i) on or after 30 October 2008; and

(ii) before 30 October 2008, but only if an extended trading hours authorisation was granted on or after 30 October 2008.

(j) Therefore new club licences, including removals of club licences to new premises where trading beyond the standard trading period is sought (assuming the standard trading period does not apply to the new premises of the club), will likely be subject to the 6 hour closure period in section 11A of the Liquor Act and not just the standard trading period. The standard 6 hour closure period is 4am to 10am each day, but the Authority may authorise a different 6 hour closure period for premises and the Liquor Regulation may provide for exceptions to the 6 hour closure period.[11]

(k) Section 11A of the Liquor Act applies despite any other provision of the Act (in particular, those provisions relating to the standard trading period for licensed premises).

5. **GRANT OF LICENCES**

(a) The Authority is responsible for the issue of licences under the Liquor Act. In determining an application, the Authority must be satisfied that:

(i) the applicant is a fit and proper person;

(ii) there are measures in place to ensure that liquor will be served or supplied responsibly; and

(iii) if a development consent is required, that the development consent is in force.[12]

(b) Applications for a licence, removal of a licence (to new premises), variation or revocation of conditions on a licence, extension of trading hours, among others, are subject to the notification and advertising requirements of clauses 7 and 8 of the Liquor Regulation (which are similar to the advertising and notification requirements previously contained in the Registered Clubs Regulation.

(c) Notification must be given to the occupier of any premises within 50 metres of the venue (or 100 metres where a Category B CIS is required), to the police and local council and any adjoining local council if the venue is within 500 metres of that adjoining local council's local government area boundary.

(d) Importantly, *any* person may make a submission to the Authority in relation to an application for a licence, which the Authority

[8] Section 18(3) of the Liquor Act
[9] Section 18(4) of the Liquor Act
[10] Section 12(1) of the Liquor Act
[11] Sections 11A(4),11A(5) and 11A(10) of the Liquor Act
[12] Section 45(3) of the Liquor Act

is required to take into account before deciding an application for a licence.[13]

(e) An application may be determined by the Authority whether or not the Director-General of Communities NSW (through the Office of Liquor, Gaming and Racing) has provided a review report on the application.[14]

(f) Although the Liquor Act allows for the making of regulations setting out mandatory or discretionary grounds for the granting of an application, the Liquor Regulation does not presently prescribe any grounds.[15]

(g) There is no appeal process contained in the Liquor Act for refusals of licensing applications. This means that a dissatisfied party would be required to appeal determinations of the Authority to the Supreme Court of NSW (decisions of the Director-General of Communities NSW may be reviewed by the Authority concerning such matters as licence conditions imposed by the Director-General of Communities NSW[16]).

6. COMMUNITY IMPACT STATEMENTS (CIS)

(a) Relevantly for registered clubs, a CIS is required for the following types of applications:[17]

(i) applications for removal of a club licence to other premises;

(ii) any extended hours authorisation for a registered club; and

(iii) other applications specified by the Authority or by the Liquor Regulation.

(b) Pursuant to clause 10 of the Liquor Regulation, a CIS is required to be lodged for, among other things:

(i) applications for a club or hotel licence;

(ii) applications for removal of club or hotel premises to other premises;

(iii) applications for extended trading authorisation for a club or hotel licence; and

(iv) applications for on-premises licences that relate to a public entertainment venue other than a cinema or theatre.

(c) The Authority may require a CIS on a case by case basis, such as where the Authority considers there may be potential for community impact associated with a new licensed premises or a change to an existing premises.

(d) There are two categories of CIS, being ‗Category A' and ‗Category B'. A Category A CIS is less onerous than a Category B CIS because the latter requires consultation with a wider range of stakeholders, such as the Roads & Traffic Authority, Department of Community Services and the Department of Health.

(e) In reality, most applications requiring a CIS for registered clubs will require a Category B CIS because a Category A CIS is limited under clause 10 of the Regulation to:

(i) packaged liquor licences for sales made by phone, internet etc;

(ii) extended hours authorisations for on-premises licences on Sundays; and

(iii) applications for an on-premises licence for sale or supply of liquor ancillary to specified services or products.

(f) The Liquor Act provides that the Liquor Regulation can make provision for a wide variety of matters relating to a CIS, including the requirements that must be satisfied in relation to the preparation of a CIS (including consultation requirements), the matters to be addressed by a CIS and the information to be provided in a community impact statement.

(g) Where a CIS is required, the Authority cannot grant a licence, authorisation or approval unless it is satisfied, after having regard to:

(i) the community impact statement provided with the application; and

[13] Section 44 of the Liquor Act
[14] Section 45(1) of the Liquor Act
[15] Section 45(4) of the Liquor Act
[16] Section 153 of the Liquor Act
[17] Section 48 of the Liquor Act

(ii) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),

that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.[18]

This requirement is similar to that which applied under the former Liquor Act 1982 concerning social impact assessments.

7. SPECIAL LICENCE CONDITIONS FOR DECLARED PREMISES

(a) In December 2008, section11(1A) and Schedule 4 of the Liquor Act were passed. Section 11(1A) gives effect to Schedule 4 but allows for the Schedule to be amended by the Liquor Regulation. Schedule 4 lists some 48 venues which are subject to special licence conditions, such as:

(i) a lock out so that patrons cannot enter the premises between 2am and 5am;

(ii) no service of drinks in glasses or breakable plastic containers between midnight and 5am;

(iii) cessation of liquor sales 30 minutes before closing;

(iv) limit of up to 4 drinks or one bottle of wine to be sold to any one person between midnight and 5am; and

(v) cessation of sale or supply of liquor for a continuous period of 10 minutes during each hour between midnight and 5am.

(b) As Schedule 4 of the Liquor Act may be amended by the Liquor Regulation, other venues, including registered clubs, may be added to the list of venues subject to the special licence conditions contained in the Schedule. Venues already listed can likewise be de-listed and the special conditions themselves may be varied.

8. NEW RESTRICTIONS ON 'HIGH RISK' VENUES

(a) Clubs need to be aware of a new procedure put in place in late 2008 to categorise ‗high risk' venues and subject those venues to additional restrictions.

(b) Venues are categorised according to the number of incidents attributed to a venue by the police. The following table summarises the additional restrictions placed on listed venues:

Number of assault incidents	Category	Additional Licence Restrictions
19 or more incidents	Level 1	1. A mandatory 2am lockout lockout of patrons (except members of registered clubs). 2. Cessation of alcohol service 30 minutes prior to close. 3. No glass containers to be used after midnight. 4. No shots and drink limit restrictions after midnight. 5. Ten minute alcohol sales time out every hour after midnight or active distribution of water and/or food. 6. Extra security measure.
12 to 18 incidents	Level 2	1. Cessation of alcohol services 30 minutes prior to close. 2. No glass containers to be used after midnight. 3. Ten minute alcohol sales time out every hour after midnight or active distribution of water and/or food.
8 to 11 incidents	Level 3	No additional special licence conditions.

* This table is drawn from an Office of Liquor, Gaming and Racing publication at www.olgr.nsw.gov.au

(c) The list of venues is compiled from statistics from the Bureau of Crime Statistics and Research every 6 months. Once a venue is listed it will remain on the list for at least 6 months.

(d) While it is unlikely that many golf clubs would ever fall into these categories, if assault incidents are attributed by the police to the Club which the Club believes are unjustified, then it is recommended that the Club should seek professional advice promptly. There is a very limited time in which to challenge any such decision by the police. Additionally, the Club generally has

[18] Section 48(5) of the Liquor Act

no right to be heard in person, and any submissions must be made in writing.

9. PARTICULAR LICENCE CONDITIONS

(a) There is a very wide power for the Director-General of Communities NSW to impose conditions on a licence under any other provision of the Liquor Act, *for such reasons, or in such circumstances, as the Director-General considers necessary or appropriate.*[19] The Authority has a similar power to impose conditions.[20]

(b) Licence conditions may be varied on the initiative of the Director-General of Communities NSW (or the Authority), on application of the Commissioner for Police or of the licensee.[21] However, the Director-General of Communities NSW (and the Authority) must give the licensee an opportunity to make submissions and must take into account any submissions made (including any party who makes submissions) before making a determination.[22]

(c) Venues which have a troublesome history recorded by the Police or the Director-General of Communities NSW may now more readily be subject to adverse trading or licence conditions, as imposed by the Director-General of Communities NSW or the Authority.

(d) Imposition of special conditions on a licence may cause significant expense or loss of revenue to the licensee. The range of conditions which may be imposed by the Director-General of Communities NSW or the Authority include:

(i) a reduction in trading hours;

(ii) imposition of a lock out; and

(iii) imposition of security conditions such as specification of the numbers of security personnel and/or requiring installation of CCTVs in parts of the premises.

(e) A condition imposed by the Director-General of Communities NSW may be reviewed by the Authority, although there is no stay on the conditions pending the review.[23]

10. RESPONSIBLE SERVICE OF ALCOHOL

The Responsible Service of Alcohol and Harm Minimisation was introduced as a government initiative in 1996. It received so much support from the government that the objects of the *Registered Clubs Act* were amended to include harm minimisation associated with the misuse and abuse of liquor. With the enactment of the Liquor Act (and the removal of the liquor licensing and associated matters from the Registered Clubs Act), the new Liquor Act incorporates the harm minimisation objects and imposes harm minimisation obligations on persons exercising functions under the Liquor Act .

10.1 Section 73 - The offence of permitting intoxication

Section 73 of the Liquor Act creates 2 offences:

(a) The offence of supplying liquor to an intoxicated person.

(b) The offence of permitting an intoxicated person to be on the premises.

Both the club and the employee supplying liquor can be guilty of the offence of supplying liquor to an intoxicated person.

Although the maximum penalty is 100 penalty units ($11,000) if ‗circumstances of aggravation' exist the Authority can impose far more serious penalties. Circumstances of aggravation are any circumstances which the Authority considers warrants the imposition of a higher penalty (such as a monetary penalty up to $110,000 in the case of a corporation and up to $40,000 in the case of an individual and suspension or cancellation of a licence).[24]

10.2 Section 148 – Additional penalties

In addition to any other penalty that a court may impose on a licensee or other person for an offence under the Liquor Act or the Liquor Regulation, the court may, if it thinks it appropriate, do any one or more of the following:

(a) reprimand the licensee or person;

[19] Section 54(1) of the Liquor Act
[20] Section 53 of the Liquor Act
[21] Sections 53(2) and 54(2) of the Liquor Act
[22] Sections 53(3) and 54(3) of the Liquor Act
[23] Section 153(3) of the Liquor Act
[24] Section 141 of the Liquor Act

(b) impose a condition to which a licence is to be subject or revoke or vary a condition to which a licence is subject;

(c) suspend a licence for such period, not exceeding 12 months, as the court thinks fit;

(d) cancel a licence;

(e) withdraw the person‘s approval to manage licensed premises;

(f) disqualify the person from being the holder of an approval to manage licensed premises for such period as the court thinks fit;

(g) give such directions as to the exercise of the licence as the court thinks fit.

Section 148 applies to all offences under the Liquor Act, not just harm minimisation offences. The onus is on all club staff to ensure that the responsible service of alcohol principles are adopted and enforced.

10.3 RSA policy

Every club by now should have a responsible service of alcohol policy. That policy must identify, as a minimum, how the club will promote the responsible service of alcohol and how the club will minimise the harm caused by the abuse of alcohol.

The essence of the responsible service of alcohol is to prevent the supply of liquor to a point where a person becomes intoxicated.

10.4 What is "intoxicated"?

In *Director of Liquor and Gaming -v- Crescent Head Country Club Limited* the Supreme Court defined ‗intoxicated‘ to mean the point at which a person has lost control of his or her bodily and mental faculties.

There is no need to be teetotalling in our attitude to the supply of liquor. The Liquor Act and the Registered Clubs Act confer an entitlement on licensed premises to supply liquor lawfully to persons over the age of 18. However, alcohol is a drug which impairs the mental and bodily faculties of human beings. Scientists tell us that a level of 0.05 is a level sufficient to impair a driver's mental and bodily faculties even though that impairment may not be observable.

Although each case must be assessed on its own facts, the Liquor Act now provides a definition of intoxication. A person is intoxicated (on licensed premises) if:

(a) the person‘s speech, balance, co-ordination or behaviour is noticeably affected; and

(b) it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of liquor.

The Director-General of Communities NSW, as required by the Liquor Act, has issued guidelines to assist in determining whether or not a person is intoxicated. The guidelines are published on the Office of Liquor, Gaming and Racing‘s website.

The guidelines issued by the Director-General of Communities NSW may also indicate circumstances in which a person may be assumed not to be intoxicated for the purposes of this Act.

If licensed premises act inconsistently with the guidelines published by the Director-General of Communities NSW in determining whether or not an individual is intoxicated, a defence to a prosecution under section 73 of the Liquor Act is likely to be more difficult to make out.

Clubs also need to be aware of the law relating to negligence and service of alcohol. While the High Court found in the recent case of *C.A.L. No 14 Pty Ltd v Motor Accidents Insurance Board; C.A.L. No 14 Pty Ltd v Scott [2009] HCA 47 (10 November 2009)* that licensees owe no general duty of care at common law to customers which requires them to monitor and minimise the service of alcohol or to protect customers from the consequences of the alcohol they choose to consume (unless in exceptional circumstances), Clubs need to be aware that service of alcohol in breach of statutory duties may have wider consequences in general law. If the Club or its employees become aware

that a person is intoxicated when leaving the premises, then safe methods of travel should be offered where possible (such as a taxi or courtesy bus service if available).

10.5 **The Defence**

It is not all doom and gloom. If a person has been found on the premises in a state of intoxication there may be a defence available.

To avoid committing of supplying liquor to an intoxicated person or permitting intoxication under 73 of the Liquor Act, the licensee must prove:

(a) that the licensee, and the licensee's employees or agents, took the following steps:

(i) asked the intoxicated person to leave the premises;

(ii) contacted, or attempted to contact, a police officer for assistance in removing the person from the premises;

(iii) refused to serve the person any alcohol after becoming aware that the person was intoxicated;

(iv) took all other reasonable steps to prevent intoxication on the licensed premises, or

(b) that the intoxicated person did not consume alcohol on the licensed premises.[25]

The power under the Liquor Act for an employee (including a club secretary) to refuse persons entry to premises or to turn persons out of premises for intoxication (among other reasons), is covered in paragraph 11 below (see also the chapter on Disciplinary Proceedings against Members).

11. **SELF EXCLUSION SCHEMES**

(a) Clubs should operate a self exclusion scheme in accordance with section 76 of the Liquor Act.

(b) A self exclusion scheme is a voluntary scheme that, as the name suggests, allows the club to exclude the member (**participant**) from entering or remaining on the premises of the club. If the club is a member of a local liquor accord, the self exclusion agreement can apply to other premises which are a party to the accord if the self exclusion agreement specifies them.[26]

(c) The self exclusion agreement must be in a form prescribed by the Authority.[27]

(d) It is lawful for a director, secretary, employee or agent of the club specified in a self-exclusion agreement, using no more force than is reasonable in the circumstances:

(i) to prevent the participant from entering the licensed premises; and

(ii) to remove the participant, or cause the participant to be removed, from the licensed premises.

12. **NON VOLUNTARY EXCLUSION FROM LICENSED PREMISES**

(a) The licensee, an employee (including a contractor of a registered club) or agent of a licensee or a police officer (**authorised persons**) may refuse to admit, or may turn out of, licensed premises any person:

(i) who is at the time intoxicated, violent, quarrelsome or disorderly;

(ii) whose presence on the licensed premises renders the licensee liable to a penalty under the Liquor Act;

(iii) who smokes, within the meaning of the *Smoke-free* Environment *Act 2000*, while on any part of the licensed premises that is a smoke-free area within the meaning of that Act,

(iv) who uses, or has in his or her possession, while on the premises any substance that the authorised person suspects of being a prohibited plant or a prohibited drug, or

(v) whom the authorised person, under the conditions of the licence or according to a term of a local liquor accord, is authorised or required to refuse access to the licensed premises.

[25] Sections 73(4) and 73(5) of the Liquor Act

[26] Section 76(4) of the Liquor Act

[27] Section 76(2) of the Liquor Act

(b) Under the repealed section 67A of the Registered Clubs Act, the secretary or an employee of a registered club could exercise the above power. However, a police officer could exercise the power under that section if requested to do so by the secretary or employee of the registered club. Police officers have additional powers under the Liquor Act in relation to requiring persons to leave a registered club's premises.

(c) A person who has been refused entry to or turned out of licensed premises may not re-enter the premises or attempt to re-enter them within 24 hours of being refused entry or being turned out.[28] In addition, if the reason the person was refused entry or turned out was due to the person being intoxicated, violent, quarrelsome or disorderly, the person must not, without reasonable excuse:

(i) remain within 50 metres of the boundary of the licensed premises; or

(ii) re-enter an area within 50 metres of the boundary of the licensed premises within 6 hours of being refused entry or being turned out.[29]

(d) The Liquor Act deems the following reasons for remaining in or re-entering an area within 50 metres of the boundary of the licensed premises as being a ‗reasonable excuse' and therefore permissible:

(i) reasonable fears for personal safety;

(ii) the need to obtain transport; or

(iii) residence within 50 metres of the boundary of the licensed premises.[30]

13. DISTURBANCE COMPLAINTS

(a) A person may complain to the Director-General of Communities NSW that the quiet and good order of the neighbourhood of licensed premises are being unduly disturbed (**disturbance complaint**) because of:

(i) the manner in which the business of the licensed premises is conducted, or

(ii) the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).[31]

(b) Any of the following persons (**complainants**) may make a disturbance complaint:

(i) a person authorised in writing by 3 or more persons residing in the neighbourhood of the licensed premises or a person who is such a resident and is authorised in writing by 2 or more other such residents,

(ii) the Commissioner of Police;

(iii) a person authorised by the local consent authority (such as the local council) in relation to the licensed premises; or

(iv) a person who satisfies the Director-General of Communities NSW that his or her interests, financial or other, are adversely affected by the undue disturbance to which the person's complaint relates.

(c) A disturbance complaint is determined by the Director-General of Communities NSW. It may convene a conference to hear submissions relating to the complaint. A conference may be extended to include other premises in the neighbourhood if there is evidence to support a complaint against those other premises or to give effect to action taken by the Director General of Communities NSW against the licensed premises the subject of the disturbance complaint.[32]

(d) Clubs should note that the Director-General of Communities NSW is not obliged to convene a conference, and may simply review written submissions from concerned parties.

(e) After hearing the disturbance complaint and submissions of each party, the Director-General of Communities NSW

[28] Section 77(7) of the Liquor Act
[29] Section 77(8) of the Liquor Act
[30] Section 77(9) of the Liquor Act
[31] Section 79 of the Liquor Act
[32] Section 80 of the Liquor Act

may impose a condition on the licence concerned, adjourn the conference, issue a warning to the licensee or take no action.

(f) The conditions which the Director-General of Communities NSW may impose on a licensee include:

(i) a noise abatement condition;

(ii) prohibition of the sale or supply of liquor before 10am and after 11pm, prohibition of, or restriction on, activities (such as promotions or discounting) that could encourage misuse or abuse of liquor (such as binge drinking or excessive consumption);

(iii) restricting the trading hours of, and public access to, the licensed premises;

(iv) requiring the licensee to participate in, and to comply with, a local liquor accord.[33]

(g) The Director-General of Communities NSW required to take the following matters into consideration before making a decision as to imposition of a condition on a licence:

(i) the order of occupancy between the licensed premises and the complainant resident or person authorised by 3 or more residents of the neighbourhood;

(ii) any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises;

(iii) any changes in the activities conducted on the licensed premises over a period of time.[34]

(h) A disturbance complaint against a club or against premises of nearby licensed premises (whether those nearby premises are a registered club or not) carries the risk of additional conditions being imposed on a registered club's club licence. Therefore, if a club licenses a part of its premises to another party and the licence includes an ability to sell liquor, consideration may need to be given about the imposition of conditions in the licence agreement as to the scope of the licence and notification of the club of any disturbance complaint. The agreement may also need to specify that the club's club licence is paramount and that the club may terminate the licence in certain circumstances.

[33] Section 81(2) of the Liquor Act
[34] Section 81(3) of the Liquor Act

14. SHORT TERM CLOSURE ORDERS AND LATE HOUR ENTRY DECLARATIONS

(a) A Magistrate, registrar of the Local Court or authorised employee of the Attorney General's Department (**authorised officer**) or the Authority may give a notice ordering the short term closure of premises, being a period of up to 72 hours.[35] No more than one closure order may be made in a week against the premises.[36]

(b) A threat to public health or safety, a risk of substantial damage to property, a significant threat to the environment, and a risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the premises are grounds for a closure order being sought by an authorised officer.[37]

(c) The Director-General of Communities NSW may make a late hour entry declaration preventing patrons entering licensed premises during late trading hours even though the premises are authorised to trade during that time.[38]

15. DIRECTIONS TO LICENSEES AND STAFF OF LICENSED PREMISES

(a) The Director-General of Communities NSW may give a licensee or an employee or agent of a licensee a written direction concerning any matter relating to the licensed premises (including any conduct on the licensed premises).[39]

(b) This very wide power includes the power to give a direction to adopt, vary, cease or refrain from any practice on or in respect of the licensed premises.[40]

[35] Section 82(1) of the Liquor Act
[36] Section 82(7) of the Liquor Act
[37] Section 82(3) of the Liquor Act
[38] Section 87 of the Liquor Act
[39] Section 75(1) of the Liquor Act
[40] Section 75(4) of the Liquor Act

(c) The only statutory restraint is that the direction must not be inconsistent with the Liquor Act and the authorisation conferred under the relevant licence.[41]

(d) It may be that there will be an abundance of directions given by the Director-General of Communities NSW under this power. The licensee or person to whom the direction is given will commit an offence if they do not comply with the direction. The licensee or person to whom the direction is given may seek its review by the Authority.[42]

16. BANNING ORDERS

(a) The Authority has the power to issue a banning order of up to 6 months duration against a person, prohibiting the person from entering or remaining on licensed premises specified in the order.[43]

(b) A banning order may be made on the application of the Director-General of Communities NSW, the Commissioner of Police or a licensee who is a party to a local liquor accord.

(c) The grounds on which a banning order can be made are if the person is repeatedly intoxicated, violent, quarrelsome or disorderly on licensed premises or within 50 metres of the boundary of the premises. However, the Liquor Regulation may prescribe other grounds on which banning orders can be made.[44]

17. DISCIPLINARY ACTION

(a) The Director-General of Communities NSW may carry out investigations and inquiries in order to ascertain whether a complaint should be made under Part 9 of the Liquor Act in relation to:

(i) a licensee;

(ii) a manager; or

(iii) a close associate of a licensee (such as a director or secretary of a registered club).[45]

(b) The Director-General of Communities NSW or the Commissioner of Police may make a complaint to the Authority in relation to a licensee, manager or close associate of a licensee.

(c) The grounds on which an investigation may be conducted include failure to comply with the conditions of the (club) licence, failure to comply with a direction of the Authority, the Commissioner of Police or Director-General of Communities NSW and that the manager is not a fit and proper person to be the manager of the licensed premises.[46]

(d) The Authority can either take no action after taking account of submissions of the parties or, if it is satisfied that the complaint is made out, it has wide powers to, among other things:

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[41] Section 75(6) of the Liquor Act
[42] Section 153(1)(b) of the Liquor Act
[43] Section 78 of the Liquor Act
[44] Sections 78(4) and 78(5) of the Liquor Act
[45] Section 138(1) of the Liquor Act
[46] Section 139 of the Liquor Act

(i) cancel the licence;

(ii) suspend the licence for up to 12 months (or, if circumstances of aggravation exist in relation to the complaint, for up to 24 months);

(iii) order the licensee or manager to pay, within such time as is specified in the order:

A. a monetary penalty not exceeding $55,000 (in the case of a corporation) or $22,000 (in the case of an individual), or

B. if circumstances of aggravation exist in relation to the complaint—a monetary penalty not exceeding $110,000 (in the case of a corporation) or $44,000 (in the case of an individual),

(iv) impose a condition on the licence, or revoke or vary a condition on the licence;

(v) withdraw the manager's approval to manage licensed premises;

(vi) disqualify the manager from being the manager of licensed premises.[47]

(e) As registered clubs are also subject to the Registered Clubs Act and Gaming Machines Act, they are subject to separate and potentially cumulative procedures and action as contained in those Acts.

18. AVOIDING COMMON OFFENCES

(a) Effective management means avoiding the commission of the most common offences. It also means ensuring that staff are aware of their obligations. The most common offences are:

(i) Supplying liquor to a person under the age of 18 (sections 117 to 119).

(ii) Failing to remove a person under the age of 18 from a bar area (section 123).

(iii) Permitting intoxication or selling or supplying liquor to an intoxicated person (section 73).

(iv) Failing to have the manager of separate premises approved by the Authority (sections 66 to 69).

(v) Failing to comply with provisions of the Liquor Act or Liquor Regulation concerning the responsible sale, supply, service or promotion of liquor (sections 99 to 102).

19. CONCLUSIONS

(a) Directors of registered clubs are required to exercise their duties to the Club and its members whilst having regard to the additional responsibilities arising from the club holding a corporate liquor licence. There are safeguards for directors who do not knowingly authorise illegal behaviour and take reasonable steps to ensure control is maintained over managers, and have proper governance systems in place to deal with such matters.

(b) A registered club will require a separate corporate licence for all premises belonging to the club where it intends to sell liquor. There will need to be an approved manager for each licence and for this reason - the club secretary in this case need not be the approved manager for any of the club's premises. Rather the club secretary will be responsible for compliance with the club management laws, while the approved managers will need to ensure compliance with the liquor laws.

(c) The new regime is potentially going to involve a lot of administrative law. Virtually every decision will initially be taken by the Director-General of Communities NSW, rather than a Court, which will potentially raise a plethora of issues such as apprehended bias, jurisdictional error, denial of procedural fairness and, perhaps unreasonableness, particularly in relation to imposition of licence conditions.

[47] Sections 140 and 141 of the Liquor Act

(d) There is the ever increasing need for registered clubs to ensure that they have formal and effective governance measures in place. With the increased scrutiny of public companies generally, directors of registered clubs must be ever more vigilant in discharging their corporate duties including those additional duties imposed upon them by the new liquor laws.

This chapter covers the law in NSW. Clubs in the ACT are referred to ACT legislation particularly the *Liquor Act 1975* and the *Liquor Licensing Standards Manual.*

INTRODUCTION TO THE GAMING MACHINES ACT 2001 (NSW) AND GAMING MACHINES REGULATION 2002 (NSW)

1. INTRODUCTION

1.1 *The Gaming Machines Act 2001 (NSW)* (**Gaming Machines Act**) commenced operation in April 2002. The Gaming Machines Act was subject to a statutory review in 2007. Pursuant to that review, the Gaming Machines Amendment Act 2008 (NSW) (**GMAA**) was enacted, which amended the Gaming Machines Act and introduced some significant changes to the way in which a venue may increase the number of poker machines it keeps on its premises.

1.2 Most of the provisions of the GMAA commenced operation on 31 January 2009, with some provisions commencing *earlier*.

1.3 The State wide cap on poker machines was reduced from 104,000 to 99,000. This reduction follows the overall reduction in poker machines in the State since 2001/2. The overall State cap is subject to review by the Authority at least once every 5 years and may be *further* reduced pursuant to the *Gaming Machines Regulation 2002 (NSW)* (**Gaming Machines Regulation**).[48]

1.4 The cap of 450 poker machines for registered clubs was abolished by the GMAA. Hotels continue to be subject to a cap of 30 poker machines per hotel licence. The removal of the cap for registered club venues reflects State *government* recognition of the trend towards more amalgamations of registered clubs and rationalisation in the industry generally.

1.5 Since the abolition of the Liquor Administration Board of New South Wales pursuant to the commencement of the *Liquor Act 2007 (NSW)* (**Liquor Act**) on 1 July *2008*, the Casino, Liquor and Gaming Control Authority (**Authority**), now exercises most of the administrative functions under the Gaming Machines Act and Gaming Machines Regulation.

1.6 Throughout this chapter, the terms ―poker machines" and ―gaming machines" will be used. The Gaming Machines Act defines the former but not the latter, although both terms are used in the Gaming Machines Act and Gaming Machines Regulation. A ―**poker machine**" is defined as a device that is designed:

(a) for the playing of a game of chance or a game that is partly a game of chance and partly a game requiring skill, and

(b) for paying out money or tokens or for registering a right to an amount of money or money's worth to be paid,

and includes any subsidiary equipment.[49]

2. BASIC REQUIREMENTS FOR THE KEEPING OF GAMING MACHINES AT A VENUE

2.1 For a registered club to keep poker machines on any of its *premises*, the following is required:

(a) **Approval** of the gaming machine – The gaming machine(s) is subject to technical approval by the Authority.50

(b) **Authorisation** – An authorisation is required from the Authority for the keeping of individual machines on the premises.51

(c) **Gaming Machine Threshold (GMT)** – This is the maximum number of gaming machines which may be kept at a venue. The number of gaming machines kept must be within the gaming machine threshold for the venue in question.52

(d) **Poker Machine Entitlement (PME)** – A PME must be held for each gaming machine kept at the premises of a venue. The number of PMEs for a

[48] Section 10 of the Gaming Machines Act

[49] Section 4 of the Gaming Machines Act. The term ―subsidiary equipment" is separately defined in the Gaming Machines Act and is not relevant to this chapter.
[50] Section 56 of the Gaming Machines Act
[51] Section 56 of the Gaming Machines Act
[52] Section 32 of the Gaming Machines Act

venue cannot exceed the GMT for the venue. The number of PMEs in the State is subject to the overall State cap and therefore the Authority cannot allocate PMEs where this would result in the overall State cap being breached.53 PMEs may be traded and transferred between premises of different registered clubs or between separate premises of the same registered club, subject to the approval of the Authority.

3. APPROVAL AND AUTHORISATION OF GAMING MACHINES

3.1 An approved *gaming* machine cannot be installed on the floor of a club or disposed of by a club without authorisation by the Authority (section 56 of the Gaming Machines Act).

3.2 An authorisation is not to be confused with an "*approval*". The system is as follows:

(a) Manufacturers manufacture a poker machine and submit it to the Authority for approval.

(b) The Authority's inspectors assess the poker machine to ensure that it performs within performance parameters identified by the manufacturer and acceptable to the Authority. The technical standards applicable in Australia (and subject to New South Wales Appendices) are published on the Office of Liquor, Gaming and Racing's website. If it does, the Authority approves that poker machine (and all clones) for sale within the market (NSW). The poker machine is now an "approved poker machine."

(c) Sales representatives then sell clones of that poker machine in the industry. If your club wishes to buy one, application must be made to the Authority for approval to install the machine on your floor.

[53] Section 14 of the Gaming Machines Act

(d) The Authority will "authorise" the installation of that machine in your club.

3.3 The *gaming* machine is now an "approved gaming machine" and an "authorised" gaming machine.

3.4 It cannot be sold, it cannot be bought, it cannot be traded, and it cannot be delivered to any other place without the approval of the Authority.[54]

4. GAMING MACHINE THRESHOLD

4.1 Thresholds

(a) Each premises of a registered club (and hotel) which has gaming machines has a GMT which is set by the Authority, or in the case of existing club premises, is set, at least initially, by the Gaming Machines Act.

(b) The GMT came into effect on 31 January 2009. Each existing premises of a registered club has its GMT set at the same Social Impact Assessment Threshold (**SIAT**) which existed prior to 31 January 2009.[55]

(c) For a new club, the GMT may be set at zero by the Authority.[56] A **new club** is:

(i) a club that, on or after 26 July 2001, is or was registered for the first time under the Registered Clubs Act (other than as a result of an amalgamation under section 17A of that Act); or

(ii) a club whose premises become licensed for the first time under the Liquor Act 2007 (other than as a result of a transfer of club licence under section 60 of that Act or because an existing club held a certificate of registration as at 30 June 2008 and that certificate is converted to a club licence(s) from 1

[54] Sections 56 and 57 of the Gaming Machines Act
[55] Clause 45(1) of Schedule 1 of the Gaming Machines Act
[56] Section 32(4) of the Gaming Machines Act

July 2008, when the Liquor Act came into force).[57]

(d) A removal of a club licence from one set of premises may result in the new premises having its GMT set at zero.

4.2 **Increasing a venue's GMT**

The GMT for a venue may be increased by application to the Authority. An increase in a venue's GMT may or may not require an assessment to be conducted by the Authority, being either a ―class 1 Local Impact Assessment" (**class 1 LIA**) or a ―class 2 Local Impact Assessment" (**class 2 LIA**), before the application to increase the GMT can be considered.

There are 2 factors determining whether or not an LIA is required to accompany an application to increase a venue's GMT, and if an LIA is required, as to whether the LIA is to be a class 1 LIA or class 2 LIA. These are:

(a) the number of gaming machines in the local government area (**LGA**) in which the venue is located and the LGA's socio economic status; and

(b) the size (in terms of number of machines) of the increase sought to the GMT.

4.3 **Banding of Local Government Areas (LGAs)**

All local government areas (**LGAs**) in the State are banded by the Authority as either Band 1, Band 2 or Band 3. The Office of Liquor, Gaming and Racing's website has the list of all LGAs in the State and the band in which each falls.

The following table generally describes each band:

Band 1	Generally low numbers of machines, low average expenditure on machines and relatively advantaged socioeconomically.
Band 2	Generally moderate numbers of machines, moderate average expenditure on machines and moderately advantaged socioeconomically.
Band 3	Generally high numbers of machines, high average expenditure on machines and relatively disadvantaged socioeconomically.

[57] Section 4 of the Gaming Machines Act

4.4 **GMT increase ranges**

The sizes of applications to increase a GMT will fall into one of 3 categories, as follows:

(a) a low-range increase is any number from 1 to 20, and

(b) a mid-range increase is any number from 21 to 40, and

(c) a high-range increase is any number above 40.[58]

4.5 **When no LIA is required to increase a venue's GMT**

An LIA is not required to accompany an application to increase a venue's GMT if the application is made with a transfer of PMEs between premises of registered clubs (for the Authority's approval) if:

(a) the relevant venue is situated in a Band 1 LGA and the GMT increase application, if approved, would not result in the GMT for the venue being increased, over any period of 12 months, by a number that is more than the number corresponding to a low-range increase (i.e. up to 20 PMEs) for the venue, and/or

(b) both the relevant venue and the club premises from which the PMEs are proposed to be transferred are situated in the same LGA.[59]

4.6 **When a class 1 LIA is required to increase a venue's GMT**

(a) Unless the venue is in a Band 1 LGA (and is not seeking to increase the GMT by more than the low range increase in a 12 month period) or unless the transferor of the PMEs and the transferee of the PMEs are in the

[58] Section 35 of the Gaming Machines Act, clause 34 of the Gaming Machines Regulation
[59] Section 35(2) of the Gaming Machines Act

same LGA, a class 1 LIA is required with a GMT increase application if the relevant venue (i.e. the transferee) seeking the increase:

(i) is situated in a Band 1 LGA and the application is for a mid-range increase in the gaming machine threshold for the venue, or

(ii) is situated in a Band 2 LGA and the application is for a low-range increase in the gaming machine threshold for the venue.[60]

(b) An LIA that is required to be provided with a GMT increase application by a parent club (i.e. the amalgamated club to which the club licence of the child club is transferred pursuant to an amalgamation of the parent and child clubs) in relation to its main premises is to be a class 1 LIA if:

(i) the GMT of the main premises is being increased as a result of the transfer of poker machine entitlements from the premises of the dissolved club (i.e. the child club which is dissolved pursuant to the amalgamation), and

(ii) the premises of the dissolved club are situated within a radius of 5 kilometres of the main premises of the parent club, and

(iii) trading on the premises of the dissolved club has ceased permanently.[61]

4.7 When a class 2 LIA is required to increase a venue's GMT

Unless the venue is in a Band 1 LGA (and is not seeking to increase the GMT by more than the low range increase in a 12 month period) or unless the transferor of the PMEs and the transferee of the PMEs are in the same LGA, a class 2 LIA is required with a GMT increase application if the relevant venue (i.e. the transferee) seeking the increase:

(a) is situated in a Band 1 LGA and the application is for a high-range increase in the gaming machine threshold for the venue, or

(b) is situated in a Band 2 LGA and the application is for a mid-range or high-range increase in the gaming machine threshold for the venue, or

(c) is situated in a Band 3 LGA.[62]

4.8 Approval of LIA by the Authority

(a) An LIA may only be approved by the Authority if it meets the requirements of the Gaming Machines Act and Gaming Machines Regulation and has demonstrated that gambling activities in the relevant venue will be conducted in a responsible manner.

(b) In addition:

(i) For a class 1 LIA:

A. the proposed increase in the GMT for the relevant venue is to provide a *positive contribution* towards the local community where the venue is situated;

B. the relevant venue is not, if the venue comprises the premises of a new club or is a new hotel, situated in the immediate vicinity of a school, hospital or place of worship; and

C. the LIA has adequately addressed any community concerns arising out of the consultation process under the Gaming Machine Regulation.

(ii) For a class 2 LIA:

A. the proposed increase in the GMT for the relevant venue will have an overall positive

[60] Section 35(3) of the Gaming Machines Act
[61] Clause 38A of the Gaming Machines Regulation
[62] Section 35(4) of the Gaming Machines Act

impact on the local community where the venue is situated;

B. the relevant venue is not, if the venue comprises the premises of a new club or is a new hotel, situated in the immediate vicinity of a school, hospital or place of worship; and

C. the LIA has adequately addressed any community concerns arising out of the consultation process under the Gaming Machine Regulations.[63]

(c) The discretionary test to be satisfied in having a class 2 LIA approved by the Authority is more onerous than the discretionary test to be satisfied in having a class 1 LIA approved.

(d) The Authority may only approve a class 2 LIA if it is satisfied that the proposed increase in the GMT for the relevant venue will have an *overall positive impact* on the local community where the venue is situated.[64]

(e) However, for a class 1 LIA, the Authority may approve the GMT increase if it will provide a *positive contribution* towards the local community where the venue is situated.[65]

(f) By nature of the more onerous discretionary test to be satisfied and the scope of matters to be addressed, a class 2 LIA will be significantly more expensive to conduct and will carry greater uncertainty in terms of determining prospects of it being approved by the Authority than will a class 1 LIA.

(g) In addition, where a club is relocating to a new site and is by definition under the Gaming Machines Act a ~~"~~new club", care should be taken in selecting the site if the club's GMT is to be maintained. The Authority cannot grant an LIA (class 1 or class 2), if the new club is within the ~~"~~immediate vicinity" of a school, hospital or place of worship.

[63] Section 36(3) of the Gaming Machines Act
[64] Section 36(3)(d)(i) of the Gaming Machines Act
[65] Section 36(3)(c)(i) of the Gaming Machines Act

4.9 **Period of time allowed for obtaining PMEs if an LIA is approved by the Authority**

(a) If a class 1 LIA is approved by the Authority, the venue has 2 years to obtain the number of PMEs equivalent to the number by which the GMT has been increased. If the quota is not filled within that period, the GMT is reduced by the equivalent number to the unfilled portion.[66]

(b) Similarly, if a class 2 LIA is approved by the Authority, the venue has 5 years to acquire the number of PMEs equivalent to the number by which the GMT has been increased. If the quota is not filled within that period, the GMT is reduced by the equivalent number to the unfilled portion.[67]

(c) Previously, a venue had a period of 5 years and 10 years to acquire additional PMEs to fill an increase of its SIAT under a class 1 SIA and class 2 SIA respectively.

5. TRANSFERRING OF PMEs BETWEEN VENUES

5.1 Reduction of GMT of transferor/selling venue on transfer of its PMEs

(a) Prior to 31 January 2009, a club's SIAT generally remained unchanged if it transferred PMEs to another one of its premises or to a different club. An exception was the large scale clubs which were still subject to the compulsory reduction of poker machine entitlements under the repealed clause 10 of the Gaming Machines Regulation.

[66] Section 37(2) of the Gaming Machines Act
[67] Section 37(3) of the Gaming Machines Act

(b) From 31 January 2009, a club's GMT will be reduced by the number of PMEs it transfers to another one of its premises or to the premises of a different club.[68]

5.2 **Transfer blocks and forfeiture rates**

(a) If a club transfers PMEs, it must be in blocks of 2 or 3 PMEs (**transfer blocks**)[69], with the following PMEs from each transfer block to be forfeited to the Authority:

(i) If the transfer is to an unrelated registered club (whether inside or outside the same LGA), 1 PME is forfeited out of each transfer block;[70]

(ii) If the transfer is to a separate set of premises of the same registered club within the same LGA, there is no forfeiture of PMEs from any of the transfer blocks;[71]

(iii) If the transfer of PMEs is to a separate set of premises of the same registered club in another LGA, then 1 entitlement for every 2 transfer blocks is forfeited.[72]

(b) For a club with 10 or less PMEs (**remaining entitlements**), the club cannot transfer any of those remaining entitlements unless the transfer has been approved in principle at an extraordinary general meeting of the ordinary members of the club (being an approval supported by a majority of the votes cast at the meeting).[73]

(c) If a liquidator has been appointed for a registered club and any poker machine entitlements allocated in respect of any of the premises of the club are proposed to be transferred, the forfeiture to the Authority of 1 entitlement per transfer block is required.[74]

(d) If a registered club (**dissolved club**) amalgamates with another registered club (**parent club**) pursuant to the Registered Clubs Act, any poker machine entitlements allocated in respect of the premises of the dissolved club are taken to be transferred to those same premises without the forfeiture of any entitlement to the Authority.[75]

(e) If a club's licence is removed with the approval of the Authority to other premises which are situated in the same local government area as the previous premises, the forfeiture to the Authority of 1 entitlement per transfer block is not required.[76]

5.3 **Special provision for clubs establishing in new development areas**

(a) New development areas in a Band 1 LGA which do not have services and facilities of registered clubs are subject to concessional forfeiture rates of PMEs when increasing the GMT of a registered club in the new development area.

(b) A class 1 LIA may be provided by a registered club in a new development area of a Band 1 LGA (**special class 1 quota**) to increase that club's GMT if:

(i) the proposed GMT increase is not more than 150;

(ii) the Authority is satisfied that the acquisition of a corresponding number of PMEs in respect of the venue's premises will not increase the density of gaming machines in the LGA in which the venue is situated to the extent that the

[68] Section 20(7) of the Gaming Machines Act
[69] Section 20(3) of the Gaming Machines Act
[70] Section 20(3) of the Gaming Machines Act
[71] Section 21(2) of the Gaming Machines Act. Previously, a club with more than one set of premises could transfer PMEs between its premises without forfeiture but only if the two premises were within a kilometre of one another (or 50 kilometres in non-metropolitan areas).
[72] Section 21(3) of the Gaming Machines Act
[73] Section 21(4) of the Gaming Machines Act
[74] Section 21(5) of the Gaming Machines Act
[75] Section 21(6) of the Gaming Machines Act
[76] Section 25A of the Gaming Machines Act

(banding) classification of the area is affected. [77]

(c) A special class 1 quota has the benefit of a concessional rate of forfeiture of 1 PME out of every 2 transfer blocks for the first 50 PMEs transferred to the venue, after the Authority approves the class 1 LIA.[78]

(d) A club has a period of 5 years to acquire the number of PMEs required to fill a GMT increase under the class 1 LIA approved by the Authority, otherwise the Authority is to decrease the GMT for the venue by the unused portion of the special class 1 quota.[79]

5.4 **Planning transfers of PMEs**

(a) Banding of LGAs may be changed from time to time by the Authority.[80] Therefore, clubs should include this factor in business planning and strategy and be aware of the general number of PMEs coming in and out of their local LGA. A club in a Band 1 LGA may find itself in a Band 2 LGA in the following year.

(b) The banding of LGAs means that it may be more or less difficult to increase a GMT for a venue (depending on whether an LIA is required, and if so, which class of LIA) and to source the purchase of PMEs for the increased GMT. The value of the PMEs from within an LGA may be increased if the LGA of the venue is a Band 3 LGA than if the club were in a Band 1 or Band 2 LGA.

6. **RETAIL SHOPPING CENTRES AND REGISTERED CLUBS/GAMING MACHINES**

6.1 **Retail Shopping Centres and the establishment or relocation of registered clubs within them**

(a) The matters contained in section 37B of the Gaming Machines Act will only be relevant if the registered club is seeking to move or establish itself in a ―retail shopping centre".

(b) A ―**retail shopping centre**" means ―a cluster of premises promoted as, or generally regarded as constituting, a shopping centre, shopping mall or shopping arcade".

(c) Excluded from the definition of ―retail shopping centre" are outdoor/unenclosed pedestrian malls and retail shops in the Sydney CBD.[81]

6.2 **Why is section 37B important?**

(a) Section 37B of the Gaming Machines Act is critically important if a club proposes to carry out a development which includes a ―retail shopping centre" and the development results in the removal of a club licence, or the extension of the premises of a club, to premises that are part of the ―retail shopping centre".

(b) If an application is granted under the Liquor Act that results in the removal of a club licence, or the extension of the premises of a club, to premises that are part of a ―retail shopping centre", the GMT for the club is to be set at zero.

(c) In general terms, if a club's premises, upon completion of the development, forms part of the ―retail shopping centre", the club would not be able to operate poker machines from those premises.

6.3 **Are there any ways to avoid the club's GMT being set at zero if the development includes a "retail shopping centre"?**

(a) A club's GMT will not be reduced to zero if the following requirements are met for the proposed removal/relocation of a club licence or extension to premises that are part of a retail shopping centre or proposed retail shopping centre:

[77] Section 37A(2) of the Gaming Machines Act
[78] Section 37A(3) of the Gaming Machines Act
[79] Section 37A(3) of the Gaming Machines Act
[80] Section 33 of the Gaming Machines Act
[81] Clauses 138 and 138B Gaming Machines Regulation

(i) the retail shopping centre must be comprised of less than 40 shops;

(ii) there is no direct access to the club's premises from the retail shopping centre;

(iii) where the club's premises are being removed to other premises, the other premises are situated in the same suburb or town as the previous premises;

(iv) where the club's premises are being extended, the club's premises remain predominantly where they were before the extension;

(v) the GMT for the club's premises is no more than the GMT for the club's premises immediately before the club licence was removed or the premises were extended.

(b) A club's GMT will not be reduced to zero if it meets very specific criteria under the Gaming Machines Regulation as follows:

(i) the club was occupying premises in that same retail shopping centre as at 2 April 2002;

(ii) patrons will not be able to gain access to the club's premises directly from the retail shopping centre; and

(iii) the GMT for the club's premises is no more than the GMT for the club's premises immediately before the club licence was removed or the premises were extended.[82]

(c) If an LIA is required for the new premises because they are considered a ―new club" under the Gaming Machines Act, consideration may also need to be given as to whether there is a school, hospital or place of public worship in the ―immediate vicinity", thereby preventing the LIA being approved by the Authority.

7. GAMING MACHINE ADVERTISING

7.1 Under section 43 of the Gaming Machines Act, clubs are generally prohibited from publishing gaming machine advertising.

7.2 ‗**Gaming machine advertising**' means any advertising that promotes or is intended to promote playing approved gaming machines in the club (or the supply/sale/manufacture of gaming machines).

7.3 A club will breach this prohibition if it publishes any such material by oral, visual, written or other means (for example dissemination by means of cinema, video, radio, electronics, the internet or television or by means of promotional material such as club journals, brochures or flyers).

7.4 Some exceptions are set out in clause 41 of the Gaming Machines Regulation, which include that a Club may publish gaming machine advertising:

(a) in any promotional material provided by that club to a member only (by post or electronically) if:

(i) the member has expressly consented to receiving the promotional material and that consent has not been withdrawn;

(ii) the material contains a statement to the effect that player activity statements are available on request;

(iii) the material contains a problem gambling notice;

(iv) the material contains a statement to the effect that the member may at any time withdraw his or her consent to receiving any further promotional material;

(v) the material includes other information or advertising apart from gaming machine advertising;

[82] Clause 40B of the Gaming Machines Regulation

(vi) the club keeps a written record of the member's consent to receiving the promotional material, and

(b) which appears or is stated inside the club's premises and which cannot be seen or heard from outside.

(c) Again, as a practical matter clubs may include an option for a member to give consent on the membership application/renewal form.

8. RESPONSIBLE SERVICE OF GAMBLING

8.1 As everybody is no doubt aware gambling has been a hot topic in New South Wales and Australia recently.

8.2 Indeed, as with responsible service of alcohol, the government was so keen to ensure that it was seen to be acting on this community concern that it made gambling harm minimisation an object of the Gaming Machines Act.

8.3 The objects of the Gaming Machines Act are:[83]

(a) to minimise harm associated with the misuse and abuse of gambling activities;

(b) to foster responsible conduct in relation to gambling;

(c) to facilitate the balanced development, in the public interest, of the gaming industry;

(d) to ensure the integrity of the gaming industry; and

(e) to provide for an on-going reduction in the number of gaming machines in the State by means of the tradeable poker machine entitlement scheme.

8.4 The Authority, the Minister for Gaming and Racing, the Director-General, the Commissioner of Police and all other persons having functions under the Gaming Machines Act are required to have due regard to the need for gambling harm minimisation and to foster the responsible conduct of gambling activities when exercising functions under the Gaming Machines Act. In particular, due regard is to be had to the need for gambling harm minimisation when considering for the purposes of this Act what is or is not in the public interest.

8.5 The Gaming Machines Act envisages two types of harm associated with gambling:

(a) financial harm; and

(b) social harm inflicted on individuals and families.

8.6 Responsible gambling compliance

(a) Part 4, Division 3 of the Gaming Machines Act and Part 3 of the Gaming Machines Regulation require that clubs implement certain practices in relation to the responsible service of gambling.

(b) These practices include:

(i) displaying signage and information including display of counselling signage and of information concerning chances of winning prizes on gaming machines;

(ii) moving ATM and EFTPOS facilities out of gaming areas;

(iii) restricting gaming machine promotions;

(iv) limiting the value of cheques to be cashed to $400;

(v) requiring payouts over $2,000 to be paid by cheque;

(vi) prohibiting gambling on credit, and since the GMAA amended the Gaming Machines Act, venues must not permit ATMs or other cash dispensing facilities within the venue if they are capable of providing cash from a credit card account;

(vii) displaying clocks in gambling areas; and

[83] Section 3 of the Gaming Machines Act

(viii) providing training courses for management and staff.

(c) The Director of Liquor and Gaming may direct that a gaming machine be moved or screened if it is considered that the machine's location is designed to attract attention from outside the venue and is contrary to the public interest.[84]

8.7 Responsible gambling practices

(a) The Authority expects that clubs will implement minimum responsible gambling practices.

(b) Clubs must keep a register containing records that establish that all employees have completed an approved Responsible Gambling course as applicable to gaming employees.

(c) Clubs must also record the referral of any patrons to problem counselling services.

(d) Clubs should operate a self exclusion scheme.

(e) A self exclusion scheme is a voluntary scheme that, as the name suggests, allows the club to exclude the member from gambling at the club.

(f) The elements of a self exclusion scheme are:

(i) the club must not refuse to participate;

(ii) participant gives written undertaking not to gamble for a period specified in the undertaking;

(iii) the participant must be given an opportunity to get legal advice;

(iv) the club must refer the participant to counselling services;

(v) the participant must be identified to club staff;

(vi) the availability of the scheme must be publicised to members; and

(vii) a participant must not withdraw from the scheme within a period of 3 months after requesting participation in the scheme

8.8 Reynolds v Katoomba RSL

(a) This was the first case that considered what a club's duty of care was to patrons with gambling problems.

(b) Mr R had a gambling problem that developed over time.

(c) Mr R sued the club alleging that the club was negligent, had breached its statutory duty and had acted unconscionably.

(d) The Court held that:

(i) It was not satisfied that the club knew or should have known that the member had a gambling problem.

(ii) Any loss suffered by the member was suffered by free choice, it was the member's decision about what he did with his money.

(iii) What duty did the club owe to Mr R? They could not have barred him as he had done nothing wrong. The rules of the club did not allow it (unilaterally) to restrict his use of gambling facilities. The club had no right to restrict his use of the ATM. The club was entitled (although not obliged) to cash Mr R's cheques.

(iv) The club did not owe Mr R a duty of care to prevent him from harming himself because of his excessive gambling. The actions or inaction of the club was not the cause of the member's loss.

[84] Section 44A of the Gaming Machines Act

(e) This decision was appealed to the New South Wales Court of Appeal. The Court dismissed the appeal and upheld the decision against Mr R confirming that the Club owed no duty of care.

(f) The above case was decided in 2001. In 2001 the Gaming Machines Act was enacted and also the Gaming Machines Regulation 2002 requiring clubs to implement responsible gambling practices. If a club does not implement or observe responsible gambling practices, then a court may take a different view in respect of the club's obligations to the patron.

9. DISCIPLINARY ACTION

9.1 The Director of Liquor and Gaming or the Commissioner of Police may make a complaint to the Authority in relation to a registered club (including in relation to a manager or close associate of a registered club, such as a director or secretary).[85]

9.2 The grounds on which a complaint may be made to the Authority include:

(a) contravention of the Gaming Machines Act or Gaming Machines Regulation;

(b) conviction for an offence under the Gaming Machines Act or Gaming Machines Regulation;

(c) engaging in conduct that has encouraged, or is likely to encourage, the misuse and abuse of gambling activities in the venue; and

(d) failure to pay tax under *the Gaming Machine* Tax Act 2001 (NSW).

9.3 The Authority can either take no action after taking account of submissions of the parties or, if it is satisfied that the complaint is made out, it has wide powers to, among other things:

(a) order the registered club to pay a penalty of up to $275,000 or, if circumstances of aggravation exist in relation to the complaint, a penalty of up to $500,000;

(b) cancel the registered club's licence under the Liquor Act; or

(c) suspend the registered club's licence under the Liquor Act as the Authority thinks fit.

9.4 As registered clubs are also subject to the Registered Clubs Act and Liquor Act, they are subject to separate and potentially cumulative disciplinary procedures and action as contained in those Acts.

10. MISCELLANEOUS MATTERS CONCERNING HARDSHIP MACHINES AND THE GMAA

10.1 Existing registered clubs or registered clubs which had development projects considered under the pre GMAA changes should consider the post GMAA changes to the Gaming Machines Act and whether these will impact on their development, particularly in relation to relocation of venues which are part of retail shopping centres.

10.2 Large scale clubs which paid a levy in July 2007 to retain PMEs they were otherwise required to forfeit by 2 April 2007 (**retained PMEs**) can either:

(a) Convert those retained PMEs to tradeable entitlements and increase their GMT by the number of the retained PMEs, subject to forfeiture to the Authority of 1 PME in every 2 transfer blocks; or

(b) Transfer the retained PMEs to another club, without forfeiture of any of the retained PMEs.[86]

10.3 There are no longer free PMEs available for new and small clubs.

10.4 Monthly meter readings are no longer required, but clubs are still required to provide, on a monthly basis to their boards of directors, a cash flow analysis, comparison of cancelled credit and jackpot wins meter readings with corresponding entries in the

[85] Section 129 of the Gaming Machines Act

[86] Clause 44 of Schedule 1 of the Gaming Machines Act

club's payout sheets and a comparison of the money out or cancelled credits payments meter readings with the value of gaming machine tickets, both redeemed and unclaimed.[87]

10.5 The very limited application of section 28 of the Gaming Machines Act means that there will not be any or hardly any applications for hardship gaming machines. Those clubs which have met the conditions of their existing hardship gaming machine grants, may seek to have PMEs granted for those hardship machines.

10.6 There is a cap on multi-terminal gaming machines in clubs of 15% of the overall number of gaming machines in each venue. Excess multi-terminal machines are to be reduced by 30 January 2014, otherwise their authorisations will be cancelled by the Authority.[88]

11. AVOIDING COMMON OFFENCES

11.1 Effective management means avoiding the commission of the most common offences. It also means ensuring that staff are aware of their obligations. The most common offences are:

(a) Cashing of cheques and payment of prize money contrary to clauses 29 and 30 of the Gaming Machines Regulation.

(b) Providing promotional material in relation to gaming machines contrary to the exceptions or failure to display requisite signage (sections 43 and 44 of the Gaming Machines Act).

(c) Permitting minors in gaming areas (sections 50 to 53 of the Gaming Machines Act).

This chapter covers the law in NSW. Clubs in the ACT are referred to ACT legislation including the *Gaming Machine Act 2004, Gaming Machine Regulation 2004, Gaming & Racing Control (Code of Practice) Regulation 2002.*

[87] Clause 18 of the Gaming Machines Regulation
[88] Section 61A of the Gaming Machines Act

LIABILITY OF GOLF CLUBS AND THEIR MEMBERS FOR GOLF BALLS OUT OF BOUNDS

1. INTRODUCTION

The penalty for a ball out of bounds can be far more severe than that prescribed by the Rules of Golf.

With the increasing popularity of golf both as a recreational and professional activity, the development of golf course residential estates and the on-going development of the road and transport infrastructure surrounding golf courses and residential estates, conflict between golf clubs and third parties whether they be residents, pedestrians or motor vehicle drivers, will inevitably increase.

Excluding persons lawfully (or in the case of trespassers, unlawfully) on the course, the people likely to suffer injury, either to their person or their property as a consequence of golf activity on a golf course are passing motorists, passing pedestrians and occupiers of adjoining properties. There is today much greater risk than ever before of golf clubs and possibly their members being liable at law as a consequence of continuing to ignore the consequences of the out of bounds golf ball.

This chapter is intended to be an overview only and to highlight areas of potential legal liability for golf clubs and their members. It is not intended to be an exhaustive analysis of legal rights, liabilities and consequences. If you believe some of the matters identified in this analysis create potential liability for your golf club, and if there is any doubt about the remedial action to be taken and how to minimise that potential legal liability, legal advice specific to your situation should be sought.

Against that background, this chapter identifies the legal and liability issues and gives some suggestions in relation to the risk management and assessment processes that ought to be undertaken in the course of prudent golf club management.

2. LIABILITY ISSUES AFFECTING THIRD PARTY MOTORISTS AND PEDESTRIANS (OUTSIDE THE GOLF COURSE)

There are a number of reported cases dealing with damage to property outside golf course grounds and the principles of negligence and nuisance which the Courts have determined as governing those issues, apply equally to the personal injury situation. Having regard to the high incidence of golf balls being hit onto metropolitan roads, no club will be anxious to be a test case.

2.1 Principles relating to injury/damage on the course

The Courts have already determined in relation to on-course accidents that:

(a) a player who was blinded in one eye as a consequence of being hit by a golf ball from a practice tee should recover a substantial sum of money from the golf club;[89]

(b) an inexperienced golfer may be found liable in negligence and ordered to pay damages to a more experienced playing partner struck in the eye during social play,[90] and

(c) a player was liable in negligence for $2.6 million in damages where they caused another player a serious head injury after they did not ensure it was reasonably safe to hit the ball.[91]

2.2 Application to injury/damage off the course

Because the third party passer-by outside the golf course may not even be aware of the risks involved or associated with the golf course, it is not difficult to see why the duty of care owed by clubs and players to protect and avoid injury to those people, is likely to be higher than the duty of care that is owed to persons on the golf course. Persons on the golf course have to some extent voluntarily assumed some risk. A player who was hit in the eye with a ball at a Queensland golf club was taken to have voluntarily accepted the risk by standing where he did when he could have moved further away from the fairway or behind a tree while knowing the player was about to hit the ball.[92]

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89 *The Albany Golf Club Inc v John Richard Carey* (1987) Aust Torts Reports 80-139.

90 *Crawford v Bonney*, unreported, 25 May 1995, Supreme Court of Tasmania.

91 *Ollier v Magnetic Island Country Club Inc and Anor* [2004] QCA 137.

92 *Pollard v Trude* [2008] QCA 421.

If a passing motorist can recover the damages to his Porsche motor car[93] damaged by a golf ball struck from a golf course where the ball had gotten through a Cyclone wire fence constructed specifically to prevent balls escaping onto the road, there is no doubt whatsoever that there is likely to be liability to a motorist or passing pedestrian who is injured.

3. THE CRITERIA FOR DETERMINING A POTENTIAL FOR NEGLIGENCE ON THE PART OF THE GOLF CLUB

The test to be applied in determining whether the Club has acted negligently involves evaluating what a reasonable person (in this case the reasonable golf club manager and board of directors) would do by way of response to the risk.

Apply the key elements of the reasonable person test listed below to your golf course's road hole(s) and holes adjoining residential estates to consider your potential liability:

(a) the magnitude of the risk;

(b) the degree of probability of its occurrence;

(c) the expense, difficulty and inconvenience of taking alleviating action; and

(d) any other conflicting responsibilities which a golf club might have.

4. WHEN TO TAKE ACTION

What can you do by way of response to the obvious risk associated with balls being hit out onto an adjacent or adjoining roadway or neighbouring residence in circumstances where:

(a) there is an adjoining or adjacent public road;

(b) there is a road (albeit within Club grounds) used by members of the club and public;

(c) there is a neighbouring residential development;

(d) it is reasonably foreseeable that a golf ball could go over or through a fence onto the road or into the neighbouring property;

(e) in the case of an unfenced road, it is reasonably foreseeable that a golf ball could strike a motorist or person on it;

(f) it is reasonably foreseeable that a golf ball going over or through a fence could cause damage or injury to road users, pedestrians, passers-by or neighbours and their property; or

(g) in cases where there is no fence, it is reasonably foreseeable that a golf ball could cause damage or injury to road users, pedestrians, passers-by or neighbours and their property.

The obvious response is that immediate remedial action must be undertaken or at the very least, planned to be undertaken.

One can safely expect that if such action were not taken, the court would find the club and possibly even the player, liable either in negligence or nuisance to any passing motorist, pedestrian or occupier of adjoining property injured by an out of bounds golf ball. The potential for such liability may well be mitigated if the club is able to demonstrate that at the time of the incident it had in place an appropriate risk assessment and remediation program.

It is also important to realise that where the risk of damage or injury in the above cases is more than a mere possibility and the club is aware or should be aware of the frequency of escaping balls, that courts will expect at the very least that clubs will take the obvious steps to protect people from the risk.

5. WHAT FREQUENCY OF GOLF BALL ESCAPE CALLS FOR ACTION?

Views might differ about the seriousness of the risk or the frequency of its occurrence, however, if the courts find that it was sufficient enough to warrant the taking of additional precautions, then the golf club will be in breach of its duty of care in failing to take such precautions. In our view it would be a rare case where it would be justifiable not to take steps to eliminate a real risk even if it was determined to be small or if the circumstances appeared to make it appropriate to neglect it.

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[93] *City of Richmond v Delmo*, unreported, 13 November 1992, Supreme Court of Victoria.

In the *Delmo* case involving the damage to the Porsche, there was evidence that, since a particular section of fence through which the ball passed had been raised from 12 to 22 feet, there had been a 90% reduction in the problem of golf balls escaping onto the roadway. There was also evidence that only once every 6 months was it reported by members of the public that a ball had gone over the fence since that section of the fence had been raised. Nevertheless, the court determined that the fact that complaints come in at the rate of one every 6 months, was only a very limited indication of the extent of the problem. The court determined that it would be reasonable to assume that more balls had escaped from the golf course and that more balls had done so in a manner which caused danger than was reflected by the frequency of formal complaints.

Accordingly, where any club sensibly keeps a log or incident report of such matters, that in itself will often be the very evidence by which the question of the reasonable foreseeability of the ball going over the fence would be determined against the interests of the golf club.

On the other hand, the injured or damaged motorist does not always succeed, if it can be shown that there was no negligence on the part of the golf club. An unnamed member commenced an action against The Lakes Golf Club Limited when the member's car, parked in the Club's carpark near the ninth fairway, was damaged by a ball. The issue of steps taken by the Club to prevent this sort of accident (in this case the Club had planted trees) and the frequency of occurrences (there had only been a small number of complaints about damage) were central to the Court's decision.[94]

6. HOW SOON SHOULD ACTION BE TAKEN?

Historically golf clubs are reluctant to change golf course design, particularly in relation to a long established club and course. Generally, there is a reluctance to relocate tees or greens for reasons of cost, disruption to players, history and in some cases accreditation as a championship course. Whilst the club may well prefer initiatives such as planting trees and erecting fences, such initiatives are not necessarily adequate to remove or mitigate the risk of liability. Nonetheless, there is legal authority[95] to suggest that where the only reasonable alternative open to a golf club to avoid the risk of liability or a danger (in relation to which injury is foreseeable), involves the re-siting or relocation of a tee, a fairway or a green, such action ought be taken.

Some alleviating actions may be simple, for example increasing the height of a fence or the introduction of interlocking mesh. However, where the only reasonable response to the danger might be to re-site a green or a tee or to restrict the use of a tee, a golf club would be in breach of its duty of care to the relevant third party motorist, passer-by or neighbour in permitting players to continue to play on a hole where such play might place those persons in danger.

Such an approach or suggestion may not please the traditionalists. However, consider for a moment, the golf club manager's worst case scenario: a mother and child fatality arising from a head-on collision as a consequence of a windscreen being shattered by a golf ball.

In such a situation, it is most unlikely that a court would have any regard to a submission by way of a defence asserting that *"this was the way that Robert Trent Jones designed the hole to be played".* The court would well recognise the reality that over the past 30 or 50 years (as the case may be), the growth of the residential development surrounding the golf course and the transportation infrastructure servicing such development has so dramatically changed that what was appropriate when the golf course was first designed, may no longer be appropriate today. History or sentiment will play no part in the court's determination of the question as to whether the club was negligent in allowing its members to continue to play on such a hole not having taken appropriate steps to avoid the obviously foreseeable risk.

Today it will be relatively easy to have a golf course expert express a view that, by reference to modern golf course design in the urban environment, the golf course design of years gone by (particularly, the width of fairways), is in many cases no longer adequate or appropriate bearing in mind the encroaching urban environment outside the boundaries of the golf course.[96]

[94] *Worral v Lakes Golf Club*, unreported, 24 August 1990, Supreme Court of New South Wales.

[95] `Ibid, above n 1.

[96] In Ibid, above n 1, Brian Crafter, the highly experienced golf professional and architect of the South Australian Golf Association called as an expert witness in the litigation, expressed the opinion that the practice fairway being less than 60 metres in width was "barely adequate". In that particular case he described the golf course as being "of minimum acceptable level …".

7. DAMAGE TO ADJOINING RESIDENCES

Without becoming too legalistic, you may safely assume that, generally speaking, the same factors that govern the question of negligence in the context of personal injury occurring on a roadway, apply also to personal injury or damage to property whether to residences or otherwise, adjoining golf courses. In fact, in those cases the situation may be exacerbated because in addition to the possibility of legal action for negligence the quite different law of nuisance might require a golf club to take appropriate remedial action in circumstances where the club might not be negligent.

8. NUISANCE

There are circumstances where the court might well find a golf club liable in nuisance but not negligence. In one older English case the court held, in the circumstance where a golf ball struck from a tee adjacent to a main highway shattered the windscreen of a taxi and the driver's eye was irreparably injured by the glass, that the golf course (as designed), constituted a public nuisance and awarded substantial damages to the Plaintiff.[97] Not surprisingly, American courts have also awarded damages to motorists in similar circumstances.

In the case of golf ball nuisance, most occupiers of property in the vicinity of a golf course probably have the standing to sue whether they are owners or occupiers. A resident living beside a golf course succeeded in a case against a Club for nuisance amounting to a *"substantial interference"* with her enjoyment of her home where only two or three balls each week were hit into her property.[98] After she first complained of finding between 12 and 20 balls on her property each week which broke some windows and roof tiles, the Club moved the closest hole so that only two to three balls each week were then hit onto her property. However, the Club was held liable from the time that they knew of this or should have known about this, in this instance from the date of the resident's first letter complaining about the problem before the hole was moved. The Court rejected the Club's argument that it had taken reasonable steps to avoid the problem as some balls were still causing a nuisance.[99]Whilst it appears to be the case that golf clubs (or their insurers) generally accept their responsibility to pay for such physical damage to property, it is rare, but nevertheless not unknown, for an occupier of such an adjoining property to be struck by a golf ball. In that circumstance the golf club (or its insurer) faced with an action for damages arising out of blindness or some other serious injury might not be as ready to make good the damage as it might be in relation to a broken window.

9. WHAT ARE THE REMEDIES FOR NUISANCE?

The Court may find the occupier's damage is simply compensable by way of a monetary award. Alternatively, the court might determine that damages is not an appropriate remedy and may actually injunct or restrain the golf club in absolute terms from using a particular hole until appropriate remedial action is taken. The court might impose certain conditions on the use of a hole.

Of course, each case needs to be determined on its individual merits. However, in determining whether it will permit a nuisance to continue or otherwise restrain it, locality is not the only matter to which the court will have regard in determining which activities are reasonable and which are not.

The growing popularity of golf course residential estates means that locality by itself is not the central issue in these sorts of nuisance cases. Courts will now accept that owners living beside golf courses must accept some balls entering their properties as part of the "*give and take*" of the location. That is reasonable in most circumstances. What the court will determine to be unreasonable and possibly open to be restrained by injunction is poor design of the course leading to interference and enjoyment of the land by the adjoining owner.

More so in nuisance than in negligence cases, the courts do give more consideration to the frequency of balls entering the complainant's premises, together with the duration of the nuisance, and balances this against any initiatives taken by the golf course to remedy or reduce the nuisance. Typically, such initiatives include the redirecting of tees, signage, the planting of trees and the erection of fences or nets. Where the frequency of straying golf balls is only a few balls per week, most courts are likely to consider the cost of remedying the problem disproportionate to the potentiality of damage. However, where the frequency and duration of the nuisance is substantial and there is regular property damage

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[97] *Castle v St Augustine's Links Ltd* (1922) 38 TLR 615.
[98] *Challen v The McLeod Country Golf Club* [2004] QCA 358.
[99] See also *Champagne View Pty Ltd v Shearwater Resort Management Pty Ltd* [2000] VSC 214.

such as broken roof tiles, windows or screens, the court is more likely to provide a remedy to the complainant.

In the case of the out of bounds golf ball, it is not necessarily a defence for the golf club to claim that "*the club was here first*" and that the adjoining householder "*came to the nuisance*" or "*knowingly assumed the risk*". The courts have determined that to give effect to the submission of "*coming to the nuisance*" would negate the clear principle that parties complaining of a nuisance are not to be deprived of an action just because the nuisance complained of was in existence before they entered occupation of their properties.[100]

10. IS THERE A SOLUTION?

In most cases, there is a balancing exercise required to achieve a reasonable balance in the competing uses of the land. In some cases an injunction to restrain the use for a particular fairway may be granted, in others it will not.[101] Each case depends on its merits but if there is a risk of injury or a history of injury in circumstances where no satisfactory alleviating action has been undertaken, then the legal consequences for the golf club and in some circumstances its members, might be such as to render them unable to be ignored.

11. HOW TO MITIGATE THE POTENTIAL FOR LEGAL LIABILITY

Understanding the liability issues is a required starting point for any golf club proprietor, board member or general manager.

11.1 The risk assessment analysis

Having understood the potential liability, the club should then focus upon identifying, by reference to its own circumstances, whether or not it has any holes which might attract liability of the type discussed above. This is the risk assessment analysis. This can often be done with the help of the club's insurance broker.

11.2 Prioritising the risk

Having undertaken the risk assessment and on the assumption that there is more than one risk to be analysed, those risks should be prioritised in order of seriousness and potentiality of liability for the club and/or its members in consultation with the club's insurance broker and or legal advisers.

11.3 Implementation of the alleviating actions

Set a time schedule for implementation. Where the risk has been assessed, analysed and determined to be rectified, implementation needs to be carried out under executive authority. Consultation with members, whilst desirable, should not be allowed to hold up the process.

11.4 Local council/authorisation

In a number of circumstances where structures are to be built to alleviate a high risk situation, application for development consent will need to be sought from the relevant local government authority.

11.5 Warning signs

Placing general warning signs at the entry to your course listing the particular risks which players might be taking, such as the risk of injury from a golf ball, can limit your liability for injury suffered on course by players or spectators. You can claim that they probably read the sign and accepted this risk. However, motorists or residents outside of the golf course cannot be warned of the potential risk of injury and cannot be taken to have accepted the risk of wayward balls. The best approach is then to warn players that they could be liable or could render the Club liable for damage caused by balls hit out-of-bounds at particularly problematic points of the course.

11.6 Warning signs may highlight that:

(a) your Club does not accept responsibility for injuries suffered on the course; or

(b) players may be liable for harm to people or property caused by hitting their ball out-of-bounds.

These signs would only be effective under section 5M of the *Civil Liability Act 2002* (NSW) where they are reasonably likely to warn players or spectators. They must then be placed where they will be seen. If they are too small or surrounded

[100] In *Campbelltown Golf Club v Winton & Anor* [1998] NSWCA 51 rejected a submission that the doctrine of 'coming to the nuisance' should be applied to reduce an adjoining owner's damages. The adjoining owner's property in that case had been "*peppered with golf balls on a daily basis"*.

[101] See *Lester Travers v City of Frankston* [1970] VR 2 where the court determined that intrusion onto the plaintiff's premises of golf balls constituted a private nuisance and granted the plaintiff an injunction restraining the defendant from permitting persons playing golf on the golf course from hitting balls into the plaintiff's property.

by other signs, players may not be taken to have accepted these risks.[102]

Where they are general warnings, they must list particular risks such as the risk of injury by a ball or a golf club if they are to be effective. An indoor cricket player who was hit in the eye has been taken to have been warned of the risk of injury by the ball, the bat or another player as he was warned by a sign at the sports centre of these risks. [103] However, you should always consult your insurer and seek legal advice before relying on warning signs to limit your liability.

12. WHAT IF COUNCILS REJECT DEVELOPMENT APPLICATIONS FOR ALLEVIATING ACTION?

It is more than likely that the very persons whose interests and property you are seeking to protect are likely to object to the installation of high fencing or netting on the basis of its disturbance to the visual amenity and enjoyment of their immediate neighbourhood. There will be circumstances where council, acceding to such objections, will reject the development application.

The rejection of a development application is not usually an excusable basis for not proceeding with remedial action directed at avoiding the identifiable risk of damage to property or person. It is unlikely that a court determining an action for damages arising from such an instance will accept that the club will have done all that might reasonably be expected of it, if it simply lets matters lie upon rejection of a development application. Legal advice will need to be sought and it may be incumbent upon the club to appeal the rejection of the development consent to the Land and Environment Court.

It must be noted however, that both the Council and The Land and Environment Court as responsible planning authorities, determine matters before them by reference to planning and environmental factors which are not necessarily and often not, the same factors to which the club must have regard in seeking to reduce or ameliorate its potential liability situation.

Rejection of a development application ultimately by the Land and Environment Court may well require the golf club to take other action to minimise the identified risks including consideration of redesign or closing the hole if it is to avoid the consequences of the foreseeable risks associated with preservation of what may now be an inappropriate status quo.

13. THE INSURANCE PERSPECTIVE

There are a few points that all clubs should bear in mind in relation to their liability insurance:

(a) To avoid the insurer finding any excuse to refuse cover, admission of liability (whether express or by implication) for any loss, damage or injury should be avoided; even when making a payment to third parties. For example paying an injured person's initial medical bills or bills for damage to their car (however well-intentioned) without a release could well amount to an admission of liability. Most if not all insurers require that not only do you **not admit liability** but also that under no circumstances do you attempt to settle any claim. Insurers require you to refer the matter to your insurance broker or them immediately.

(b) If property bordering the golf course is regularly damaged by stray balls it should come within the club's maintenance program as if it belonged to the club so that the problem may be addressed and monitored. The insurer will apply the multiple excess principle when there is a large claim (eg water damage) as a result of a house being damaged by golf balls.

(c) It is important to advise your insurer/broker of any liability payments made to third parties which fall under the insurance policy excess. If the club does not comply with this duty of disclosure the insurer could be entitled to **reduce or avoid liability** in the event of a claim under the insurance contract and may even allow the insurer to cancel the policy. This disclosure could simply be a summary of the number of incidents and the amount paid in dollars annually.

14. THE OUT OF BOUNDS PROBLEM

The problems and liability issues discussed in this paper do not just reflect an academic analysis of some of the legal issues. It is a very real and immediate problem which has already confronted and been addressed by many Australian golf

[102] *Mikronis v Adams* (2004) 1 DCLR (NSW) 369.
[103] *Woods v Multi-Sport Holdings Pty Ltd* (2002) 208 CLR 460.

clubs. A survey conducted by the Golf NSW Limited showed:[104]

(a) Of the clubs that identified problems, the vast majority involved a roadway and neighbouring properties. Only half of these clubs have taken action to resolve the problem.

(b) Over half of the clubs redesigned or altered the playing characteristics of holes, with many taking holes out of play. The average time out of play per hole was 12 weeks.

(c) Almost half of the clubs have installed higher fences or nets.

(d) Of the Clubs who have encountered out-of-bounds problems, 19% have reached the point of actually being sued.

15. **WHAT TO DO? FURTHER ADVICE**

(a) If, after reading this paper, you have identified problems and problem holes that apply to your golf course you will need to take the following action: Take immediate action to alleviate apparent risks by placing signs warning players to these dangers at particularly problematic points on your course. However, you should always check the signage with legal advisers and your insurer to obtain their approval and ensure they do not admit liability or otherwise void your insurance policy.

(b) Consider whether higher fences or nets will solve the problem.

(c) Resort to tree planting as a longer term remedy.

(d) Consider restricting club selection ie; no drivers off certain holes.

(e) If other steps are unsatisfactory or if the problem is still apparent you may need to consider redesign of the course. Obviously a competent course architect will be needed to recommend design changes.

(f) The exercise can be co-ordinated with the help of your insurance broker or insurer with appropriate advice from your legal adviser. There will always be the issue of cost versus risk. The desire not to spend members' money will not be an excuse.

This chapter covers the law in NSW. Clubs in the ACT are encouraged to seek specific legal advice, though similar principles may apply.

[104] Survey of 83 metropolitan and 125 country Golf Clubs conducted August 1999. The figures referred to in this paper only relate to metropolitan clubs as the circumstances and relative geographic isolation of many country clubs are often unique. However, country clubs within large towns or regional centres should consider themselves from the point of their risk assessment analysis, as being in a similar position to metropolitan clubs.

AMALGAMATIONS

1. INTRODUCTION

This chapter on amalgamations only applies to registered clubs.

Amalgamations are becoming more common in the club industry due to a range of increased financial and operational pressures on Clubs. A new procedure was implemented in the changes to the *Registered Clubs Act 1976* (**Registered Clubs Act**) and the *Liquor Act 2007* (**Liquor Act**) which came into effect in July 2008 to streamline the process, and amalgamations can be a way of building a stronger and more viable Club.

The process must be carefully followed and Clubs must take care that they complete careful due diligence. Each Club's Board has a duty to carefully weigh up the risks and likely benefits of the amalgamation before proceeding. Ultimately, each Club's Board must be satisfied that the amalgamation is in the best interests of its members as a whole. Clubs are encouraged to get legal and financial advice when considering an amalgamation.

This chapter provides an overview of the process primarily for Clubs incorporated as companies limited by guarantee. Any Club which is incorporated as a co-operative is likely to be subject to additional requirements under the *Co-operatives Act 1992*, and is encouraged to seek specific legal advice before entering into an amalgamation.

2. WHAT IS AN AMALGAMATION?

Registered clubs now operate under a 'club licence' held in accordance with the Liquor Act, rather than the old certificate of registration. An amalgamation occurs when the club licence held by one Club is transferred to another Club. Generally, an amalgamation occurs between 2 registered Clubs, but it can involve any number of registered Clubs that amalgamate into a single Club.

The Club which transfers its club licence to another Club is called the 'dissolving club'.

A Club to which the dissolving club transfers its club licence is called the 'parent club'.

The Casino, Liquor & Gaming Control Authority (**Authority**) will only approve the transfer of a club licence and the amalgamation if it is satisfied that:

2.1 the parent club will meet the requirements set out in section 10(1) of the Registered Clubs Act;

2.2 the parent club will be financially viable;

2.3 the proposed amalgamation is in the interests of the members of each of the Clubs that are amalgamating; and

2.4 the proposed amalgamation has been approved in principle at separate extraordinary general meetings of the ordinary members of each of the Clubs proposing to amalgamate (being in each case an approval given by a majority of the votes cast at the meeting).

3. WHICH CLUBS CAN AMALGAMATE?

Any registered Club may amalgamate with another registered Club **unless** either of those Clubs has already amalgamated with 10 other Clubs. The Clubs involved in the amalgamation must generally be situated in the same area (within a 50 km radius of the main premises of the parent club). Clubs outside the same area may only amalgamate with the specific approval of the Authority:

3.1 if the Authority is satisfied that the dissolving Club cannot amalgamate with a Club in the same area, it may approve an amalgamation with a Club outside that area which has similar objects to the dissolving club; or

3.2 if the Authority is satisfied that the dissolving Club cannot amalgamate with a Club in the same area or a Club with similar objects, it may approve an amalgamation with any other registered Club.

4. AMALGAMATION PROCESS

4.1 Expressions of interest

A dissolving club must first seek expressions of interest from other registered Clubs in the same area. Clubs may call for expressions of interest by advertising through ClubsNSW and in newspapers. The Office of Liquor, Gaming & Racing (**OLGR**) has a prescribed form the dissolving club must use to call for expressions of interest, which can be found on its website www.olgr.nsw.gov.au

When calling for expressions of interest, a dissolving club should:

(a) identify the criteria against which expressions of interest will be assessed (including any issues specific to the dissolving club, for example, preservation of certain traditions);

(b) identify a timeframe to complete the assessment of the expressions of interest;

(c) provide the same information to all Clubs submitting an expression of interest, to avoid any suggestion of bias and help ensure that the best possible deal is secured; and

(d) assess all expressions of interest in the same way and against the same criteria to ensure a fair and transparent process.

It may be appropriate to have a short deed of confidentiality, if the any club involved in the expression of interest process will need to disclose any information which is not publicly available and is particularly confidential/sensitive for commercial or other reasons.

4.2 **Due diligence**

It is recommended that once a parent club has been selected through the expression of interest process, both the parent club and the dissolving club undertake a full due diligence (if this has not already been done).

It is particularly important for the parent club that:

(a) it is aware of the liabilities of the dissolving club that it is taking on (for example, mortgages, charges, hire purchase arrangements, trading debts, employee entitlements, existing or potential litigation or insurance claims);

(b) it is aware of the contractual obligations of the dissolving club that it will be taking on (for example, contracts with suppliers, leases and licences, special agreements with a sub-branch or associated organisation);

(c) if it is taking on any real property of the dissolving club, whether that has any mortgages, caveats, restrictions, leases, easements or other encumbrances registered on the title;

(d) it has a full picture of the dissolving club's financial situation; and

(e) it is confident that the amalgamation will result in a financially viable parent club.

It is particularly important for the dissolving club that:

(f) it is confident that any specific requirements (for example, preservation of traditions) can be maintained by the parent club;

(g) the parent club has a financially viable strategy to move forward after the amalgamation; and

(h) the parent club will be financially viable.

4.3 **Memorandum of Understanding**

The dissolving club and the parent club (or amalgamated Club) must enter into a memorandum of understanding which covers the following issues:

(a) the manner in which the premises and other facilities of the dissolving club will be managed and the degree of autonomy that will be permitted in the management of those premises and facilities;

(b) a list of the traditions, amenities and community support that will be preserved or continued by the amalgamated Club;

(c) intentions regarding the future direction of the amalgamated Club;

(d) the extent to which the employees of the amalgamated Club will be protected;

(e) intentions regarding the following assets of the dissolving club:

  (i) any core property (within the meaning of section 41J of the Registered Clubs Act) of that Club;

  (ii) any cash or investments held by that Club;

  (iii) any poker machine entitlements allocated under the *Gaming Machines Act 2001 (NSW)* in respect of the premises of that Club,

(f) the circumstances that would permit the amalgamated Club to cease trading on the premises of the dissolving club or to substantially change the objects of the dissolving club; and

(g) an agreed period of time before any action referred to in paragraph (f) can be taken by the amalgamated Club.

The amalgamated Club is not permitted to dispose of any core property of the dissolving club for 3 years after completion of the amalgamation without

the approval of the Authority. The Authority will only approve this if it is necessary to ensure the financial viability of the parent club and the members of the dissolving club have also given approval.

The memorandum of understanding must be made available to the members of each Club at least 21 days before the General Meetings are held to approve the amalgamation in principal, as set out in paragraph 4.4 below. The memorandum of understanding must also be available for inspection on the premises of both Clubs and on their websites (if any) during that period.

There may be other commercial terms that need to be agreed in relation to the amalgamation, which are not covered by the memorandum of understanding. For example, the circumstances in which either Club may terminate the process, practical issues with transferring members and assets/liabilities, and, provisions regarding any due diligence not completed when the memorandum of understanding is signed. In that case a separate deed of amalgamation may be required in addition to the memorandum of understanding.

4.4 Notice to members and General Meeting

A notice to the members notifying them of the proposed amalgamation must be posted on the noticeboard of each Club and on their websites (if any). There is no prescribed form for this notice.

The amalgamation must be approved in principal by the ordinary members of each Club at a ‗special or extraordinary' General Meeting of their own Club called for that purpose. The approval cannot be given at an Annual General Meeting. Each Club must call and hold a General Meeting in accordance with the usual procedure under the *Corporations Act 2001 (Cth)* and its own constitution.

The only unusual factor is that under the Registered Clubs Act, the ‗ordinary members' of the Club are entitled to vote. This includes all members elected to membership of that Club other than provisional, honorary and temporary members. That may mean that members who do not normally have the right to vote at General Meetings will be entitled to vote on the approval of the amalgamation.

4.5 Application to the Authority

If the members of both Clubs approve the amalgamation in principal at their General Meetings, an application will be lodged with the Authority for approval of the amalgamation. The Authority will advertise the application and any person may make submissions about it. The Authority may also require further information to be provided before it makes a decision.

If the Authority approves the application, then the club licence of the dissolving club will be transferred to the parent club and the amalgamation occurs when that takes place. Arrangements must be made to transfer assets and liabilities to the parent club at that time, and an invitation should be issued to all members of the dissolving club to become members of the parent club on completion of the amalgamation.

5. COMPLETING THE AMALGAMATION

5.1 Transfer of assets and liabilities

Assets and liabilities of the dissolving club may be transferred to the parent club:

(a) prior to winding up of the dissolving club under a deed of amalgamation; or

(b) by the liquidator on winding up of the dissolving club.

This decision should be made by the Clubs involved in the amalgamation after considering advice from their legal and financial advisors.

5.2 Winding up

On completion of an amalgamation, a dissolving club would usually go into voluntary liquidation. In summary the process is:

(a) the Board of the dissolving club must make a declaration of solvency (which can only be done if the dissolving club would be able to meet its debts as and when they fall due in the following 12 months);

(b) a General Meeting of the members of the dissolving club must be called to approve the voluntary liquidation (which must be approved by special resolution);

(c) the members of the dissolving club must appoint a registered liquidator who has consented to act, at the General Meeting; and

(d) the liquidator will then attend to the liquidation of the dissolving club.

This chapter covers the law in NSW. Clubs in the ACT are subject to separate legislation and are encouraged to seek legal advice on amalgamations.

PRIVACY

1. INTRODUCTION

There is a range of legislation regarding the privacy of individuals who attend Club premises or who disclose information to Clubs. This chapter focuses on the information provided by individuals like members, as that is the area in most which privacy issues arise. Some other applicable legislation is also referred to at the end of this chapter.

'Privacy' is not the same as 'confidentiality'. Obligations to keep certain information confidential may be imposed by other laws (for example, a director's duty of confidentiality under the *Corporations Act 2001 (Cth)* (**Corporations Act**) or under contracts. These obligations are separate to the obligations imposed under privacy law.

2. DOES THE PRIVACY ACT APPLY TO YOUR CLUB?

Most substantial businesses, including Clubs, are required to comply with the *Privacy Act 1988 (Cth)* (**Privacy Act**) when handling 'personal information'. The Privacy Act sets out 10 key principles, the National Privacy Principles (**NPPs**), which require Clubs to handle 'personal information' responsibly. The NPPs can be found at www.privacy.gov.au.Clubs must implement appropriate policies and procedures about how they use, disclose, keep secure, maintain, and provide access to the 'personal information' they hold about individuals.

BRIEF SUMMARY OF NPPS

1. Collection

A Club must only collect an individual's personal information that it needs for its functions and activities, and only by fair and lawful means.

2. Use and Disclosure

A Club must only use an individual's personal information for the primary purpose for which it was collected, or a secondary purpose permitted under the Privacy Act.

3. Data Quality

A Club must take reasonable steps to ensure that the personal information it uses is accurate, complete and up to date.

4. Data Security

A Club must take reasonable steps to protect the personal information it holds, and destroy or de-identify that information once it is no longer needed.

5. Openness

A Club must clearly set out its privacy policy, and address requests about personal information in accordance with the Privacy Act.

6. Access and Correction

A Club must provide a person with access to their personal information except as otherwise specified by the Privacy Act.

7. Identifiers

A Club must ensure that the identifiers it adopts for an individual do not conflict with the identifiers adopted by a specified agency (such as a Government department).

8. Anonymity

A Club must allow individuals to transact with the Club anonymously where practical and lawful.

9. Transborder Data Flows

A Club may only transmit an individual's personal information to someone in a foreign country in limited circumstances.

10. Sensitive Information

Clubs must only collect sensitive information (such as health information – see also paragraph 6.2) in limited circumstances.

The Privacy Act (including the NPPs) applies to Clubs with an annual turnover of more than $3 million. Annual turnover for a financial year is made up of:

(a) proceeds of sales of goods and/or services;

(b) commission income;

(c) repair and service income;

(d) rent, leasing and hiring income;

(e) government bounties and subsidies;

(f) interest, royalties and dividends; and

(g) any other operating income.

The majority of Clubs will need to comply with the Privacy Act. Even if your Club does not have sufficient turnover at present to be bound by the Privacy Act, it is recommended that you use the NPPs as a guide to handling personal information anyway, to ensure best practice and have an appropriate system in place ready for the time when your turnover reaches the threshold.

3. WHAT IS 'PERSONAL INFORMATION'?

'Personal information' is information or an opinion about an individual whose identity is clear, or can be reasonably ascertained, from that information or opinion.

The NPPs apply to personal information that Clubs collect about individuals for inclusion in records such as membership records, badge numbers or membership numbers (including records in the Club's databases) or generally available publications. The NPPs apply whether the information is true or not, and whether the information is recorded in material form or not.

Information collected about an individual is not personal information if it does not, or cannot be reasonably used to, identify the individual. Therefore, Clubs should consider whether de-identified information would be just as useful when they are collecting information from members and others.

4. WHAT ABOUT EMPLOYEE RECORDS?

The NPPs do not apply to certain employment records of Club employees (such as employment contracts, or records of training, discipline, resignation or termination) when such records are used within the context of a current or former employment relationship. Not all employee records will fall within this exemption. Clubs should get advice if they are unsure at any time as to whether the Privacy Act applies to a particular record, and, what happens if they release that record to another person (for example, a workers' compensation insurer).

5. WHEN CAN A CLUB COLLECT PERSONAL INFORMATION?

Clubs can only collect personal information actually needed for their functions and activities. Clubs should identify what information they collect (or propose to collect), assess whether that information is truly necessary, and for which of their functions and activities the information is required

6. HOW CAN PERSONAL INFORMATION BE COLLECTED?

Clubs collect personal information when they gather, acquire or obtain such information from any source and by any means. This would include collection of information by Club staff, or by a contractor such as a marketing or research company.

6.1 Collecting general personal information

When a Club collects information it must:

(a) disclose to the individual:

- (i) who the Club is;
- (ii) how to contact the Club;
- (iii) that the individual can later access the information;
- (iv) how the Club will use the information;
- (v) who the Club may disclose the information to;
- (vi) any law requiring the Club to collect the information; and
- (vii) any consequences of the individual not providing the information (such as not being able to process the individual's application for membership),

(b) only collect information which is necessary;

(c) only collect information by fair and lawful means (if a Club can de-identify the information or allow the individual to interact with the Club anonymously, it should do so); and

(d) only collect personal information from the individual directly (if this is not possible the Club must ensure the person or organisation collecting the information informs the individual of the details listed above. The Club should also have a contract in place requiring that person or organisation to treat personal information appropriately).

6.2 Collecting sensitive information

There are different rules applying to the collection and use of 'sensitive information'. Although Clubs will not collect 'sensitive information' in most circumstances, if it is necessary for any reason then additional care should be taken, see NPP 10.

'Sensitive information' includes personal information (which may be an opinion) about an individual's:

(a) racial or ethnic origin;

(b) political opinions;

(c) membership of a political association;

(d) religious beliefs or affiliations;

(e) philosophical beliefs;

(f) membership of a professional or trade association;

(g) membership of a trade union;

(h) sexual preferences or practices;

(i) criminal record;

(j) health; or

(k) genetic information.

6.3 Do other laws apply?

There is also other legislation that requires certain records to be kept confidential and secure, for example, the *Commission for Children and Young People Act 1998 (NSW)* imposes certain requirements for using and disclosing the information in background checks conducted on people working with children, see the chapter on Working with Children and Young People. Clubs should ensure that records containing sensitive information or other protected information are kept secure and only used in the authorised manner.

7. HOW CAN CLUBS USE AND DISCLOSE PERSONAL INFORMATION?

The general rule is that Clubs must only use or disclose personal information for the 'primary purpose' for which they collect the information in the first place. For example, if a Club collects personal information from an individual so it can process that individual's application to become a member, then the Club can only use that information directly in relation to that person's membership.

However, a Club can use or disclose personal information for a 'secondary purpose' (a purpose related to the primary purpose) if the individual would reasonably expect that the Club would use the information in that way, or if the individual consents.

Clubs should consider if they are likely to provide information to affiliated Clubs or associations, sponsors or other third parties. If so, the individual should be advised at the time when the personal information is collected, otherwise the individual's specific consent may be required prior to using the information.

8. EXCEPTIONS TO THE RULE

Personal information may be disclosed and used for a secondary purpose without consent if:

(a) the Club has reason to believe the use or disclosure is a necessary part of an investigation or reporting of a suspected unlawful activity;

(b) the use or disclosure is required or authorised by law; or

(c) the Club reasonably believes the use or disclosure is necessary for a range of law enforcement functions or activities carried out by, or on behalf of, a government enforcement agency.

There is some specific legislation requiring the Club to report transactions or information that it believes may be relevant to tax evasion or enforcement of laws relating to proceeds of crime. It is recommended that Clubs seek legal advice if this situation arises to ensure there are no inadvertent breaches of the law.

9. WHAT ABOUT DIRECT MARKETING?

9.1 General Principles

Clubs may use personal information for direct marketing purposes if that was the primary purpose for which the information was collected, as disclosed to the individual at the time of collection.

Clubs may only use personal information for direct marketing (without the individual's consent) if:

(a) it is impractical to obtain the individual's consent before using the information;

(b) the individual has not requested the Club not send direct marketing material;

(c) the Club will not charge the individual a fee for complying with the individual's request that it not send direct marketing materials;

(d) each direct marketing communication sent to the individual contains a clear 'opt out' notice so the individual can request not to receive any further direct marketing materials; and

(e) each direct marketing communication contains the Club's address and contact details.

A Club should not use 'sensitive information' (see paragraph 6.2 above) for direct marketing without consent.

As a practical matter, Clubs may include a request for consent to send out direct marketing materials on membership application/renewal forms.

9.2 Spam

Please see the chapter on Spam.

9.3 Gaming Machine Advertising

Under section 43 of the *Gaming Machines Act 2001 (NSW)*, Clubs are generally prohibited from publishing gaming machine advertising. 'Gaming machine advertising' means any advertising that promotes or is intended to promote playing approved gaming machines in the Club (or the supply/sale/manufacture of gaming machines).

A Club will breach this prohibition if it publishes any such material by oral, visual, written or other means (for example dissemination by means of cinema, video, radio, electronics, the Internet or television or by means of promotional material such as club journals, brochures or flyers).

Some exceptions are set out in section 47 of the *Gaming Machines Regulation 2002 (NSW)*, which include that a Club may publish gaming machine advertising:

(a) in any promotional material provided by that Club **to a member only** (by post or electronically) if:

(i) the member has **expressly consented** to receiving the promotional material and that consent has not been withdrawn;

(ii) the material contains a statement to the effect that player activity statements are available on request;

(iii) the material includes a problem gambling notice;

(iv) the material contains a statement to the effect that the member may at any time withdraw his or her consent to receiving any further promotional material;

(v) the material includes other information or advertising apart from gaming machine advertising; and

(vi) the Club keeps a written record of the member's consent to receiving the promotional material, or

(b) which appears or is stated inside the Club's premises and which cannot be seen or heard from outside.

Again, as a practical matter Clubs may include an option for a member to give consent on the membership application/renewal form.

10. DO CLUBS NEED A PRIVACY POLICY?

All Clubs collecting personal information should have a clearly expressed policy about the way they collect and handle personal information (**Privacy Policy**) and should make the Privacy Policy available. The Privacy Policy should reflect the actual activities of the Club and the uses to which personal information will be put. A standard policy will not be sufficient if it is not an accurate statement about the Club's methods of handling personal information.

A Club's Privacy Policy should contain at least the following information:

(a) whether the Club is bound by the NPPs;

(b) any exceptions that may apply to personal information the Club holds; and

(c) that an individual can obtain more information from the Club about the way the Club manages personal information.

11. ACCURACY AND SECURITY REQUIREMENTS

11.1 Ensuring accuracy, completeness and currency

Clubs are required to ensure the personal information they hold is accurate, complete and up to date, at the time they actually collect, use or disclose the information. However, Clubs may be obliged to correct personal information at other times if the update is requested by the individual to whom the information relates.

11.2 Ensuring security

Clubs should maintain the security of personal information. This includes having appropriate levels of computer and network security, communications security, and physical security. To assist in doing this Clubs should consider:

(a) regularly conducting a risk assessment;

(b) developing a security policy;

(c) training staff in compliance with the Club's Privacy Policy, and privacy and security awareness (this might include obtaining appropriate proof of identity before releasing information about a member face to face or by phone/email);

(d) monitoring compliance with any Privacy Policy or security policy;

(e) looking at Australian and international standards as a guide; and

(f) depending on the size of the Club and the information it collects, having an external privacy audit conducted from time to time.

Clubs should take reasonable steps to destroy or permanently de-identify personal information they no longer need.

12. PROVIDING ACCESS TO AN INDIVIDUAL'S PERSONAL INFORMATION

Generally, a Club must provide an individual with access to any personal information the Club holds about them. If the individual establishes that the information is not accurate, complete or up to date, the Club must take reasonable steps to correct the information.

The Club may deny access if:

(a) the request is frivolous or vexatious;

(b) providing access to the information would:

  (i) pose a serious and imminent threat to the life or health of any person;

  (ii) have an unreasonable impact on the privacy of another person;

  (iii) reveal the Club's intentions in relation to negotiations with the individual in such a way as to prejudice those negotiations;

  (iv) be unlawful or prejudice an investigation; or

  (v) the information relates to legal proceedings between the Club and the individual, and the information would not be accessible by discovery.

13. WHAT HAPPENS IF A CLUB BREACHES THE PRIVACY ACT?

A person may lodge a complaint with the Privacy Commissioner that a Club has failed to comply with the Privacy Act. This could result in the Club being ordered to take remedial steps or pay compensation.

14. IMAGES AND PHOTOGRAPHS

14.1 Privacy Act requirements

Images (including recorded footage and photos) of a person may form part of a record of personal information. Clubs will need to obtain consent from members or any other individuals before using their photograph in marketing or other material. Photos taken for membership cards should only be used for that purpose.

14.2 CCTV systems – OLGR Standards

CCTV and other surveillance is becoming a more significant issue in today's society. The Office of Liquor, Gaming and Racing (**OLGR**) has guidelines which set minimum standards for operating CCTV systems in licensed premises including Clubs. The OLGR policy does not override any applicable legislation, so Clubs also need to be aware of current law on this issue. While it is not mandatory to follow the guidelines unless specified on the club licence, they are a useful resource and can be obtained from the OLGR's website www.olgr.nsw.gov.au

CCTV surveillance should not be carried out in change rooms, toilets or similar facilities.

14.3 Surveillance of Club employees

The *Workplace Surveillance Act 2005 (NSW)* sets out restrictions on surveillance of Club employees (including casual employees, part time employees and volunteers) at work. An employee must not be subjected to any surveillance:

(a) unless they have been given 14 days prior notice (or notice before they are employed in the case of new employees); and

(b) when they are not at work.

Clubs which do not currently have surveillance in place must give this notice before implementing it. The notice must include:

(c) the kind of surveillance to be carried out (for example, CCTV or electronic surveillance of computer use);

(d) how the surveillance will be carried out;

(e) when the surveillance will start;

(f) whether the surveillance will be continuous or intermittent; and

(g) whether the surveillance will be for a specified period or ongoing.

Any cameras must be placed in reasonably obvious places and should be clearly signposted. Any vehicles involving tracking or other related surveillance must be clearly signposted.

Computer surveillance can only be carried out in accordance with a policy previously notified to an employee. There are also restrictions on blocking an employee's access to the Internet and emails which should be considered in the circumstances of each case before any such action is taken.

Employees (and indeed any other person) must not be subject to surveillance in change rooms, toilets or similar facilities.

14.4 General Surveillance and recording

The *Surveillance Devices Act 2007 (NSW)* sets out restrictions on installation and operation of surveillance devices. Generally devices must not be installed or operated without the consent of the parties owning or occupying the property (eg premises or a vehicle). In most circumstances this will not be relevant for Clubs, though cameras which record private property of a third person may cause a nuisance which is then actionable by the property owner or occupier.

Clubs should also ensure that they do not record any private conversations (for example recording telephone calls for training purposes) without obtaining the consent of the persons involved.

14.5 Covert surveillance

Covert surveillance of employees and other individuals is generally prohibited. Clubs should not attempt anything of this nature without first obtaining legal advice, as significant penalties may be imposed.

15. HEALTH RECORDS

In some cases Clubs may collect information about a person's health. Additional obligations will then apply under the *Health Records and Information Privacy Act 2002* (*NSW*) (**HRIP Act**). The HRIP Act applies to all private sector organisations that are health service providers or which collect, handle and use health information.

15.1 What is a health service?

Health services include:

(a) medical, hospital and nursing services;

(b) dental services;

(c) mental health services;

(d) pharmaceutical services;

(e) ambulance services;

(f) community health services;

(g) health education services;

(h) welfare services necessary to implement any services referred to above;

(i) services provided by podiatrists, chiropractors, osteopaths, optometrists, physiotherapists, psychologists and optical dispensers in the course of providing health care;

(j) services provided by dietitians, masseurs, naturopaths, acupuncturists, occupational therapists, speech therapists, audiologists, audiometrists and radiographers in the course of providing health care; and

(k) services provided in other alternative health care fields in the course of providing health care.

15.2 **Does the HRIP Act apply to your Club?**

The HRIP Act will apply if your Club provides any of the health care services set out in paragraph 15.1 above, for example, if the Club operates its own gym or health club and the services available would fit into any of these categories (for example, a dietician's advice or physiotherapy).

The HRIP Act will also apply if the Club handles health information and has turnover of more than $3 million. For example, if the Club leases premises to an independent gym but collects and holds health information from its members on behalf of the gym.

15.3 **What are the requirements of the HRIP Act?**

The HRIP Act sets out 15 Health Privacy Principles (**HPPs**) regulating the collection, use and handling of health information. If the HRIP Act applies to its operations, then the Club must comply with the HPPs. It is recommended that Clubs include these issues in their Privacy Policy where applicable.

This chapter covers the law applicable in NSW. Clubs in the ACT should note that the Privacy Act is likely to still apply to them. Additional ACT legislation including the *Human Rights Act 2004* and the *Health Records (Privacy & Access) Act 1997* may have application to ACT Clubs.

DISCRIMINATION, HARASSMENT AND BULLYING

1. INTRODUCTION

There is a range of Federal and State legislation about discrimination, harassment and bullying which applies to Clubs. This area of law can be complicated because of the intersection of this legislation, and Clubs are encouraged to develop a working knowledge of the areas of their operations which are likely to be affected.

Under much of the applicable legislation your Club will be responsible for acts of unlawful discrimination, harassment and bullying carried out by its employees, agents, and any volunteers or unpaid trainees in its business. There may be a defence if the Club took all reasonable steps to prevent such behaviour occurring, so it is important for Clubs to be proactive in this area and put appropriate policies and procedures in place. Boards, managers and Club employees should also be aware that any individual who breaches the law may be personally held responsible.

2. LEGISLATION SUMMARY

2.1 General Federal legislation

Racial Discrimination Act 1975 (Cth).

Sex Discrimination Act 1984 (Cth).

Disability Discrimination Act 1992 (Cth).

Age Discrimination Act 2004 (Cth).

Human Rights & Equal Opportunity Commission Act 1986 (Cth).

Defence Reserve Service (Protection) Act 2001 (Cth).

2.2 General NSW legislation

Anti-Discrimination Act 1997 (NSW) (**Anti-Discrimination Act**).

Administrative Decisions Tribunal Act 1997 (NSW).

2.3 Employment related legislation

There is also other legislation relating to discrimination, bullying and harassment in the context of employment, for example, the *Occupational Health & Safety Act 2000 (NSW)* and the *Equal Opportunity For Women In The Workplace Act 1999 (Cth)* (**EEO Act**). Other industrial legislation is likely to change with the introduction of the new Federal industrial relations law and is not covered in this chapter.

3. WHEN IS DISCRIMINATION UNLAWFUL?

3.1 Prohibited factors

Distinguishing between people, or treating people differently, is not always unlawful discrimination. In fact, it can be appropriate in some limited circumstances (for example, providing additional assistance to a person with a disability to allow them to access and use the Club's facilities in the same way as other members).

It is generally unlawful to discriminate against a person on the grounds set out in this paragraph 3.1 when providing or receiving goods and services, or in relation to education or accommodation. Discrimination by a Club based on any one (or more) of the following factors will generally be unlawful:

(a) sex;

(b) pregnancy;

(c) marital/domestic status;

(d) race, colour, nationality, descent, ethnic or ethno-religious background;

(e) disability (actual or presumed, past, present or future) - both physical or mental - partial or temporary;

(f) homosexuality;

(g) transgender identity;

(h) HIV/AIDS status;

(i) age;

(j) a person's responsibility as a carer for, among others, family members; and/or

(k) a person's membership of, and commitments to, the Australian Defence Force Reserve.

3.2 Direct and indirect discrimination

There are different definitions of ‗unlawful discrimination' in the legislation referred to above. However, in summary:

(a) **Direct Discrimination**

A Club must not treat a person less favourably because of one or more of the

factors set out in paragraph 3.1 above, than the Club would treat a person who is not affected by that factor, in circumstances which are substantially similar.

It does not matter whether the person discriminated against is actually affected by one or more of the factors in paragraph 3.1 above, it is sufficient if they are discriminated against because they are thought to be affected by one or more of those factors, or, they are closely associated with a person who is or is thought to be so affected.

(b) **Indirect Discrimination**

A Club must not require a person to comply with an unreasonable requirement or condition they cannot meet because of a factor referred to in paragraph 3.1 above, but which a substantially higher proportion of persons unaffected by that factor would be able to meet.

3.3 **Registered Clubs issues**

Most of the legislation referred to above includes sections specific to registered clubs. Generally, a registered club will unlawfully discriminate against a person if, because of one or more of the factors set out in paragraph 3.1 above, the Club:

(a) refuses or fails to accept the person's application for membership;

(b) discriminates against that person in the terms on which it is prepared to admit the person to membership;

(c) denies the person access, or limits the person's access, to any benefit provided by the Club;

(d) deprives the person of membership or varies the terms of the person's membership; or

(e) subjects the person to any other detriment.

4. **EXCEPTIONS**

There are certain situations where discrimination will not be unlawful on the grounds outlined above, but these are very limited. A few examples of exceptions are set out below, but Clubs are encouraged to seek legal advice on this issue as required.

4.1 **Disability**

(a) If a member's access to any benefit(s) provided by the Club would require the benefit to be provided in a special manner causing unjustifiable hardship on the Club because of the member's disability, it is not unlawful to deny or limit access to the benefit(s) concerned.

(b) Clubs for persons with disabilities may refuse membership to persons without that disability.

4.2 **Cultural and Ethnic Grounds**

A Club may refuse membership to a person who is not a member of the group of people with an attribute for whom the Club was established. This exception usually applies to preserve a minority culture.

4.3 **Sex/gender**

(a) Sex discrimination is generally not unlawful where it is not practicable for a benefit to be enjoyed simultaneously/to the same extent by men and women. However, the Club must provide the same or an equivalent benefit for men and women separately, or, give men and women a fair and reasonable proportion of the use and enjoyment of the benefit.

In particular, Clubs must give members of both sexes access to golf courses over the course of the whole week (including premium days of Saturday and Sunday) in a fair and reasonable way, and without unfairly disadvantaging any class of members.

This might be based on the proportionate membership of the Club or by having different levels of playing rights related to different categories of membership unrelated to sex. As each Club has a different tradition, membership structure, number of members etc each Club has to consider a fair and reasonable solution for its circumstances.

(b) Refusing membership to a person of the opposite sex is not unlawful discrimination if membership of the Club is available to persons of only one sex.

4.4 Age discrimination in registered clubs

Age discrimination is lawful in registered clubs in relation to membership discounts on the basis of age and giving special benefits on the basis of age where that is necessary to meet that person's special needs or provide equal access to the Club's benefits and facilities.

5. VICTIMISATION

All applicable legislation prohibits victimisation of a person for:

(a) making a complaint or starting proceedings about alleged discrimination;

(b) giving evidence or information in connection with complaints or proceedings about discrimination;

(c) making an allegation of discrimination; or

(d) doing anything required or permitted under the applicable legislation.

(e) It is also prohibited to victimise a person if it is expected or suspected they have done, or will do, any of these things.

6. VILIFICATION

Vilification of a person because of their:

(a) race;

(b) homosexuality;

(c) HIV/AIDS status; or

(d) transgender identity

is unlawful under the Anti-Discrimination Act. Vilification includes inciting hatred towards, serious contempt for, or severe ridicule of, a person or group of persons by a public act.

7. DISCRIMINATION IN EMPLOYMENT

In the employment context, it is unlawful to discriminate against employees or independent contractors on the ground of sex, marital status, potential pregnancy, pregnancy or disability in relation to:

(a) terms and conditions of employment;

(b) denial or restriction of opportunities for promotion, transfer, training or any other benefits associated with employment; and/or

(c) subjecting the person to any detriment.

8. EQUAL EMPLOYMENT OPPORTUNITY

8.1 What is equal employment opportunity?

Equal Employment Opportunity (**EEO**) is a positive way of describing the absence of discrimination in the workplace. It means that employment decisions are not made on the basis of inappropriate factors, such as the grounds of discrimination listed above. Basing employment decisions on such grounds is unfair and also unlawful. In order to ensure EEO, employment decisions are made on the basis of the individual merit of employees.

8.2 Policies and reporting requirements

Under the EEO Act, Clubs with more than 100 employees (including casual and part time employees) must develop and implement a program for equal opportunity for women in its workplace. The program must be designed to ensure:

(a) appropriate action is taken to eliminate all forms of discrimination by the Club against women in relation to employment matters; and

(b) measures are taken by the Club to contribute to the achievement of equal opportunity for women in relation to employment matters.

Clubs affected by the EEO Act must also lodge reports with the Equal Opportunity for Women in the Workplace Agency on their workplace program for each 12 month period commencing from 1 April, unless an exemption has been obtained.

9. HARASSMENT AND BULLYING

9.1 When is harassment unlawful?

It is unlawful for a Club to harass a person on the grounds of:

(a) sex;

(b) pregnancy;

(c) race (including colour, nationality, descent, ethnic or ethno-religious background);

(d) age;

(e) marital or domestic status;

(f) homosexuality (actual or perceived);

(g) disability (actual or perceived, past, present or future);

(h) transgender status (actual or perceived); and

(i) carers‘ responsibilities, actual or presumed (in relation to employment only).

9.2 **What is harassment?**

Unlawful harassment is unwanted behaviour that humiliates, offends or intimidates a person and targets them on the grounds set out in paragraph 9.1 above. It can also include such behaviour based on that person‘s relationship with another person affected by any factor in paragraph 9.1.

Unlawful harassment will often be repeated behaviour, but in some circumstances a single act can be enough to be unlawful harassment.

Harassment is not always intended; acts or behaviour which are thought to be funny or do not mean much to one person may hurt or offend another. Harassment can be obvious or subtle, direct or indirect (for example, where a hostile feeling/environment is created without any direct attacks being made on a person).

In general, a person will be harassed if they are the target of inappropriate behaviour on one of the grounds in paragraph 9.1, which they do not want, and which a reasonable person would find offensive, humiliating or intimidating if they were in that person‘s circumstances.

9.3 **What is not harassment?**

Harassment does not include:

(a) a relationship or behaviour that is freely and willingly accepted by all persons involved;

(b) appropriate management and/or performance management in an employment context; and

(c) behaviour that is based on mutual attraction and respect, and, which is consensual, welcomed and reciprocated.

9.4 **Examples of harassment**

Harassment can be difficult to identify depending on the circumstances. Below are just some examples:

(a) Verbal harassment:

(i) making fun of someone;

(ii) imitating someone‘s accent;

(iii) spreading rumours;

(iv) obscene telephone calls/unsolicited letters, faxes or e-mail messages;

(v) repeated unwelcome invitations;

(vi) offensive jokes;

(vii) belittling someone‘s contribution in front of other workers;

(viii) threats or insults; and

(ix) the use of language that is not suitable in the workplace.

(b) Non-verbal harassment:

(i) unwelcome practical jokes;

(ii) displaying or circulating racist cartoons or literature;

(iii) mimicking someone with a disability;

(iv) offensive hand or body gestures; and

(v) deliberately ignoring someone.

(c) Sexual harassment:

(i) uninvited physical contact such as massaging a person without invitation or deliberately brushing up against them;

(ii) uninvited kisses or embraces;

(iii) smutty jokes or comments;

(iv) making promises or threats in return for sexual favours;

(v) display of sexually graphic material including posters, pin ups, cartoons, graphics or messages left on notice boards, desks or common areas;

(vi) repeated invitations to go out and/or sexual invitations after prior refusal;

(vii) ―flashing” or sexual gestures;

(viii) sex-based insults, threats, teasing or name calling;

(ix) staring or leering at a person or at parts of their body;

(x) touching or fiddling with a person's clothing (for example, lifting up skirts or shirts, flicking bra straps or putting hands in a person's pockets);

(xi) sexually explicit conversation;

(xii) persistent questions or insinuations about a person's private life; and

(xiii) stalking.

(d) Physical harassment:

(i) assault or attempted assault;

(ii) tampering with a person's work, work area, equipment or personal belongings;

(iii) deliberately locking a person in or out; and

(iv) pushing, shoving or jostling.

9.5 What is bullying?

Bullying is inappropriate behaviour that targets a person or a group of persons in a repeated or systematic way. Generally, behaviour will amount to bullying if a reasonable person would expect that behaviour to victimise, humiliate, undermine or threaten the person(s) at which it is directed, in the particular circumstances.

9.6 What is not bullying?

Bullying does not include:

(a) behaviour that is freely and willingly accepted by all persons involved;

(b) appropriate management and/or performance management in an employment context; and

(c) welcome behaviour that is based on respect.

9.7 When is bullying unlawful?

Bullying is unlawful in an employment context when it creates a risk to health and safety. In some circumstances penalties may be imposed on the Club, the Board and employees if they permit bullying to occur.

Bullying between individuals is not usually unlawful outside the employment context unless it amounts to unlawful harassment or assault. However, such behaviour detracts from the facilities and benefits offered by the Club and can discourage others from attending Club premises.

Clubs may consider it appropriate to put by-laws in place and take disciplinary action where bullying occurs outside of the employment context. For example, bullying behaviour by a member to another member or a guest in the Club's premises would be inappropriate and disciplinary action could be required under the Club's Constitution.

9.8 Examples

These are just some examples of bullying:

(a) verbal abuse;

(b) intimidating behaviour and threats;

(c) in an employment context:

(i) inappropriate performance or other management of more junior staff;

(ii) unjustifiable threats to a person's employment;

(iii) denying opportunities for training, promotion or interesting work;

(iv) setting unachievable targets and deadlines;

(v) belittling a person (in private and in front of others); and

(vi) excluding or isolating an employee.

10. POTENTIAL PENALTIES

10.1 NSW Legislation

A person may make a complaint to the Anti-Discrimination Board if they believe that they have been discriminated against under NSW legislation. This normally results in a conciliation conference being held to try and resolve the matter. However, it can progress to the Administrative Decisions Tribunal, which can impose a range of penalties if a breach has occurred including:

(a) awarding compensation of up to $100,000 (and potentially legal costs);

(b) ordering an apology/retraction be made and possibly that it be publicly published; and

(c) ordering that any other reasonable course of action be followed to redress the situation.

10.2 Federal Legislation

A person may make a complaint to the Human Rights and Equal Opportunity Commission in relation to alleged breaches of most Federal legislation, though in some cases there may be a special commission established under the relevant Act. The Commission usually follows a conciliation process to try and resolve the matter. However, claims may also be made in the Federal Court and Federal Magistrates' Court in certain situations.

Again, penalties that may be imposed for breaches of the legislation include:

(a) awarding compensation (and potentially legal costs);

(b) ordering an apology/retraction be made and possibly that it be publicly published; and

(c) ordering other action be taken to redress the situation.

11. PRACTICAL STEPS

(a) Ensure that senior officers and managers in the Club are aware of the Club's obligations (and their own personal obligations) under the relevant law. It may be appropriate to arrange training and obtain other updates on a regular basis.

(b) Implement an Anti-discrimination, Harassment & Bullying Policy and make sure that all staff are aware of the policy. This could cover recruitment as well as day to day employment situations.

(c) Implement a Complaints/Grievance Policy so that any issues can be dealt with promptly and fairly. Again, all staff should be made aware of the policy.

(d) Make sure that members are aware of any relevant by-laws and avenues for making reports or complaints.

(e) Make sure that discrimination, harassment and bullying issues are taken into account when doing risk assessments for occupational health & safety purposes.

(f) Review any policies or by-laws at least annually to ensure that they are still up to date and relevant.

(g) Act promptly and fairly to address any complaint that is received.

This chapter covers the law in NSW. Clubs in the ACT are referred to ACT legislation including the *Discrimination Act 1991* and the *Human Rights Act 2004*.

DISCIPLINARY PROCEEDINGS AGAINST MEMBERS

1. INTRODUCTION

Club members are entitled to ‗natural justice' or ‗procedural fairness' when facing disciplinary action by their club. The club must comply strictly with the procedures set out in its own constitution, and the applicable principles outlined in this chapter, to ensure that members are treated fairly and to minimise the risk of any legal challenge. Legal challenges have become more frequent and can be very costly to clubs. While it is not possible to completely remove this risk, it can be reduced by carefully following the correct process and not exceeding the club's disciplinary powers.

This is an area of club operations where courts and regulatory authorities have been willing to carefully scrutinise the actions of clubs, because of the effect that disciplinary decisions may have on members' rights. Therefore, it is important for clubs to ensure that their processes are fair, transparent and will stand up to independent scrutiny.

2. IMMEDIATE REMOVAL FROM THE CLUB'S PREMISES (REGISTERED CLUBS)

In some situations clubs may need to immediately remove a member or a guest from the premises. Under section 73 of the *Liquor Act 2007* (NSW) (**Liquor Act**), the club must not permit on its premises:

(a) any intoxication; or

(b) any indecent, violent or quarrelsome conduct.

Fines of up to $11,000 may be imposed if the club fails to enforce these requirements. Maintaining appropriate standards of behaviour is part of the club's responsibility to avoid risks to other members and guests and it also avoids the loss of amenity to the club's facilities which can arise from such behaviour.

If a member or a guest breaches these requirements then the following action should be taken:

(a) a senior staff member should politely request the person to leave the premises or refuse to admit the person if they are attempting to enter the club;

(b) if the person refuses to leave, staff should contact or attempt to contact a police officer or Club security for assistance in removing the person from the premises; and

(c) staff must refuse to serve a person any alcohol after becoming aware that the person is intoxicated.

Under section 77 of the Liquor Act, any authorised person (which includes the secretary, another employee or agent of the club, or the police) may refuse to admit to, or may turn out of, the club any person:

(a) who is at the time intoxicated, violent, quarrelsome or disorderly;

(b) whose presence on the premises renders the club liable to a penalty under the Liquor Act;

(c) who smokes, within the meaning of the Smoke-free Environment Act 2000 (NSW), while on any part of the premises that is a smoke-free area within the meaning of that Act;

(d) who uses, or has in his or her possession, while on the premises any substance that the authorised person suspects of being a prohibited plant or a prohibited drug; or

(e) whom the authorised person, under the conditions of the club licence or according to a term (of the kind referred to in section 134 of the Liquor Act) of a local liquor accord, is authorised or required to refuse access to the premises.

If a person is refused access to the club or removed from the club on these grounds, they must not attempt to re-enter the club (or remain in the vicinity) for at least 24 hours unless:

(a) the person reasonably fears for his or her safety if he or she does not remain in, or re-enter, the vicinity of the premises;

(b) the person needs to remain in, or re-enter, the vicinity of the premises in order to obtain transport; or

(c) the person resides in the vicinity of the premises.

While an authorised person is entitled to use a reasonable degree of force to remove a person from the premises in these circumstances, if someone refuses to leave then it is recommended that the police be contacted to minimise risk of injury to staff and others, unless the person's behaviour causes an immediate risk requiring urgent action. Alternatively, the club may engage security personnel (who must be properly licensed) where required.

Generally, refusing to admit a person to the club or removing them from the club under these sections of the Liquor Act is not disciplinary action conducted under the club's constitution. However, if a member is then cited to answer to the board/disciplinary committee (where a committee is set up under the club's constitution) for this behaviour, the usual disciplinary process under the club's constitution and the principles outlined in this chapter must be followed. These provisions of the Liquor Act are to protect the Club and its members and guests from immediate and urgent situations and are not, and must not be used as, an alternative to a proper disciplinary process.

It is recommended that clubs ensure that these powers to remove members and guests from the premises are reflected in the club's constitution, so that all members are aware of their obligations to behave appropriately and of the actions the club may take if they fail to do so.

3. DISCIPLINARY PROCEDURE - CONSTITUTION

Except in the specific circumstances set out in the Liquor Act as outlined in paragraph 2 above, a club does not have the power to deny a member access to facilities they are entitled to use under their class of membership, or, to suspend, reprimand or expel a member without holding a proper disciplinary hearing.

Guests of members are not subject to any disciplinary proceedings, but usually a club's constitution or by-laws would allow the club to remove a guest who acts inappropriately and prohibit a guest from accessing the premises when they have previously been asked to leave.

The club only has the power to discipline members to the extent set out in its constitution. The constitution is a legally enforceable contract between the club and each member, so clubs need to make sure that they comply with their obligations. The board/disciplinary committee (where a committee is set up under the club's constitution) must ensure that it is up to date with the process under the club's constitution and with current best practice in this area.

(a) Citation notice

The first step is usually to issue a notice to the member setting out the basis of the charge. A suggested form of letter is set out in the ClubsNSW Best Practice Guideline for Conducting Disciplinary Proceedings. The letter is intended to provide an example of the level of detail which is required to adequately advise the member of the charge. Before using this form of wording, clubs must ensure it is consistent with their own constitution. For example, if the club's constitution does not permit the board to immediately suspend a member pending determination of the charge, then such a suspension obviously cannot be included in the letter.

Some club's constitutions require that a member who is cited be advised of the possible range of penalties that could be imposed. This should be included in the citation notice where required.

(b) Member's legal advisors and other supporters

A member is entitled to get their own independent legal advice if a charge is brought against them under the club's constitution. However, since the case of *McNab v Auburn Soccer Sports Club Ltd (1975) 1 NSWLR 54*, it has been generally held that members do not have a right to legal representation at the actual hearing of a disciplinary matter before the board. A board hearing is not a judicial proceeding and permitting a legal representative to appear is only appropriate in exceptional circumstances such as:

(i) where the principles of natural justice cannot be met unless such representation is allowed;

(ii) where a club has a long established practice of permitting such representation; or

(iii) if the club has its own legal representative at the hearing, in which case the member would be at an unreasonable disadvantage if they

were not also permitted to have legal representation.

As a disciplinary hearing can be a stressful situation, if a member requests permission to have a support person attend the hearing with them, it is recommended that clubs agree unless there are compelling reasons why that is not appropriate in the circumstances (for example, if it relates to a matter that is highly confidential, or, the presence of that support person is likely to intimidate any witnesses). Any support person should agree in advance that they will not interrupt the proceedings or speak at the hearing, that they will leave the hearing at the request of the chairperson, and that they will not disclose any of the details of the hearing.

It may be appropriate to permit a charged member or a witness to have assistance from an interpreter if they will be unable to adequately express their case or follow the proceedings. Any interpreter should be properly accredited to ensure accuracy of translation. A friend, family member or unaccredited person should only be used where it is genuinely not possible to have an accredited interpreter available. Some government departments offer translation services from accredited interpreters by phone, which may be an appropriate alternative if an accredited interpreter cannot attend in person.

(c) **Hearing**

The ClubsNSW Best Practice Guideline for Conducting Disciplinary Proceedings sets out a suggested procedure for conducting the hearing which clubs may use as a guide (unless it is inconsistent with their own constitution).

If the member fails to attend the hearing, then the charge may generally be determined in the member‘s absence, taking into consideration any written submissions the member has made. The member should be informed formally in writing of the outcome of the proceedings as soon as possible after they have been concluded.

(d) **Imposing penalties**

As set out above, the club only has the powers set out in its constitution. Therefore, it cannot impose any penalty that is not specifically permitted by the constitution.

Example

If the board considers that it is appropriate to impose a 3 month suspension for particular behaviour but wishes to put a ‗suspended sentence‘ in place (so the penalty only takes effect if the member re-offends), it can only do so if this falls within its powers in the constitution. Otherwise, the penalty is likely to be void and unenforceable.

The board also needs to consider the extent of the penalty that it intends to impose, and carefully word its resolution to make sure that there are no unintended consequences.

Example

If a member is found guilty of conduct unbecoming of a member for bad behaviour while intoxicated in the club house, the Board may determine it is appropriate to suspend that member‘s right to access the club house **but** not that member‘s other rights (including the right to play). Such a resolution must be carefully worded so that not all the member‘s rights are suspended.

If a member is simply ‗suspended‘, this would tend to suggest all their rights and privileges as a member are suspended. It was established in the case of *Goldsmith v Moore Park Golf Club Ltd BC 200609240* that if a member is generally suspended from the rights and privileges of membership, that extends to all such rights and privileges. In that case, the member was suspended during the period for nomination and election to the board of a club, and was therefore ineligible to be elected to the board.

(e) **Publicising disciplinary action**

Generally, disciplinary proceedings should be conducted in a confidential manner wherever reasonably practicable. This is to ensure that the board remains unbiased by public opinion and to protect the privacy of the persons involved. If the club improperly releases details of the proceedings it can result in legal action being taken.

There has been a practice by some golf clubs to disclose the penalty imposed on a member on the Club notice board, to other clubs or to the District Golf Association or Golf NSW Limited. This should only be done if the penalty involves suspension or disqualification for a golf related matter. In that situation it is acceptable to advise the DGA or Golf NSW Limited that the member is not permitted to use the club as his or her home club for handicap purposes for the period of the suspension, or permanently if the member is expelled. However, this should be the strict limit of the disclosure. It is suggested that clubs take their own legal advice if this issue arises.

4. DISCIPLINARY PROCEDURE - PRINCIPLES OF NATURAL JUSTICE

As outlined above, members are entitled to natural justice in the conduct of disciplinary proceedings. The main principles are:

(a) the member **must** be given full particulars of the charge before any hearing, to allow the member to consider and respond to the charge;

(b) the member must be given a full and fair opportunity to be heard and to present his or her case in relation to any charge (and to call any relevant witnesses) **before** the board makes any determination as to the charge;

(c) if the member is if found guilty of the charge, the member must be given the opportunity to make submissions about the appropriate penalty **before** any penalty is imposed; and

(d) directors who hear and determine the charge **must not** be affected by either personal bias against the member or any issue of pre-determination of the charge. If there is any such conflict of interest the director(s) in question should stand aside.

The process set out in the ClubsNSW Best Practice Guideline for Conducting Disciplinary Proceedings is considered to comply with these principles. Therefore, if clubs follow that process in conjunction with their own constitution, the risk of breaching these legal requirements is substantially reduced.

5. MATCH COMMITTEE

One particular difficulty which often arises in golf clubs is how to address a charge which involves an alleged breach of the Rules of Golf. The Rules of Golf are generally administered by the match committee, which has powers delegated to it by the board under the committee provisions in the club's constitution.

Frequently, the club's constitution may provide that a committee may take disciplinary action against a member and report that action and reasons for the action to the board, together with a recommendation as to further action (if any) to be taken by the board.

A match committee may disqualify a member from a competition under the rules of that competition. However, the match committee generally does not have power to take disciplinary action under the club's constitution. Only the board or a properly constituted disciplinary committee of the board (if the constitution permits) may take action involving a reprimand, suspension or expulsion of a member from the club.

In the case of an alleged breach of the Rules of Golf, the match committee can only make a recommendation to the board as to whether a charge should be made against a member. The match committee must not pre-determine whether or not the charge is substantiated, as to do so will mean that any directors on the match committee may have made a determination on the alleged breach without reference to the principles of natural justice.

The appropriate procedure for the match committee when it receives a complaint concerning a member, is to refer that complaint to the chief executive officer for report to the board of directors. It is a board decision, rather than a match committee decision, as to whether a charge is made against any member under the club's constitution.

6. COMPLAINTS FOR BREACHES BY A CLUB

If a club fails to comply with its obligations when conducting disciplinary proceedings there are a range of actions that a member may take:

(a) the member may make a complaint to the Code Authority alleging the Club has breached its obligations under the ClubsNSW Code of Practice, which may impose a range of sanctions against member clubs which breach the Code;

(b) if the club is a registered club, the member may make a complaint to the Director of Liquor & Gaming who has the power to conduct an investigation and require the club to produce its records relating to the disciplinary proceedings; and

(c) proceedings may be commenced in the Supreme Court which has a range of powers to impose orders such as injunctions or financial penalties such as damages.

7. CONCLUSION

The board and any disciplinary committee should be familiar with the provisions in the club's constitution regarding the taking of disciplinary proceedings against members. It is important that clubs consult their legal adviser to confirm that their current procedure meets the requirements of the principles of natural justice.

This chapter covers the law in NSW. Similar principles will apply to Clubs in the ACT, depending on the Club's Constitution and ACT law.

WORKING WITH CHILDREN AND YOUNG PEOPLE

1. INTRODUCTION

Many Clubs run sporting, educational and community based programs for children. The vast majority of Club employees, contractors, volunteers and parents involved in these programs do a great job caring for and helping kids, and have a genuine commitment to ensuring their safety and wellbeing. However, working with children and young people is a great responsibility and this chapter is aimed at highlighting risk areas for Clubs so that they can put proper plans and procedures in place, to ensure that any program for children provides a safe and friendly environment for all involved.

When implementing programs and procedures to deal with these issues, Clubs will need to ensure that they always consider what is in the best interests of the child.

2. REQUIREMENTS OF THE CCYP ACT

2.1 Obtaining a declaration

The *Commission for Children and Young People Act 1998 (NSW)* (**CCYP Act**) requires Clubs to ask any person they intend to employ to work with children to disclose whether that person is prohibited from working with children. It is an offence for a Club to employ a prohibited person to work in such a role.

2.2 What is a 'prohibited person'?

A prohibited person is:

(a) someone who has been convicted of a serious sex offence, the murder of a child or a child-related personal violence offence; or

(b) a person who is a registrable person within the meaning of the *Child Protection (*Offenders *Registration) Act 2000 (NSW).*

2.3 Guidelines set by the Commission

The NSW Commission for Children and Young People (**Commission**) has published ‗The Working with Children Employer Guidelines' (**Guidelines**), which are available from the website www.kids.nsw.gov.au

The Guidelines include a detailed breakdown of:

(a) the legal requirements for employing people to work with children and young people;

(b) how to require disclosure from employees;

(c) doing a background check and when that is appropriate; and

(d) reporting requirements if any issues arise.

If a Club has junior members or conducts any functions or programs for children, the Club should make sure it is familiar with the Guidelines and other material available from the Commission. This chapter is a summary designed to help your Club identify whether the CCYP Act applies to its activities. If so, the Club will then need to make further investigations using the information available from the Commission or get professional advice.

3. DOES THE CCYP ACT APPLY TO YOUR CLUB?

If your Club employs people in child related employment, then the CCYP Act will apply.

3.1 What is child-related employment?

Child related employment is employment which:

(a) primarily involves direct contact with children;

(b) where that contact is not directly supervised by a person having the capacity to direct the employee in the course of the employment; and

(c) in any of the areas specified in the CCYP Act.

3.2 Who is an employee under the CCYP Act?

Under the CCYP Act the Club is taken to ‗employ' any person it engages under a contract to perform work. Employment means:

(a) performance of work under a contract of employment;

(b) performance of work as a self-employed person or as a subcontractor;

(c) performance of work as a volunteer; and

(d) undertaking practical training as part of an educational or vocational course.

3.3 What does 'primarily involving direct contact with children' mean?

Work will be ‗primarily' with children if direct face to face contact with children is essential to the job. A person employed to work in a crèche for members' children while members are using the Club's premises (e.g. gym facilities or the golf course) would be employed to work in direct contact with children.

On the other hand, bar staff generally do not generally have direct face to face contact with children when carrying out their job (even if they may deal with children incidentally from time to time), therefore, they are not employed in child related employment in the normal course of events.

3.4 When is an employee 'directly supervised'?

An employee is directly supervised if there is an authorised supervisor on hand to supervise their dealings with children and that supervisor is not absent for more than a few minutes at a time. If the employee works with children out of sight of their supervisor for more than a few minutes, then the employee is not directly supervised. The supervisor must be someone who has authority (delegated authority is acceptable) to give the employee directions about their dealings with children.

3.5 What are the relevant areas of operation?

Section 33 of the CCYP Act set out the relevant areas and the following is not a full list, but covers most of the areas likely to be relevant to Clubs:

(a) employment in pre-schools, kindergartens and child care centres (this would include if the Club operates a child care centre, or, if it has a crèche or child care available for members using its facilities);

(b) employment in clubs, associations, movements, societies, institutions or other bodies (including bodies of a cultural, recreational or sporting nature) having a significant child membership or involvement;

(c) employment in entertainment venues where the clientele is primarily children (this would include games arcades, sporting facilities with programs for children, school holiday care and programs, events for children such as theatre or similar programs);

(d) employment involving the private tuition of children (for example, golf lessons); and

(e) employment at overnight camps for children.

3.6 Not sure?

If you are not sure whether a job is child related employment, attachment 3 to the Guidelines includes a checklist to help you work out whether the CCYP Act applies.

4. WORKING WITH CHILDREN BACKGROUND CHECK

4.1 Is a background check needed?

A Working with Children Background Check is not required for every person who works in child related employment. It is only required for preferred applicants for paid child related employment, foster carers, ministers, priests, rabbis, muftis or other like religious leaders or spiritual officers of a religion entering into child-related employment.

This means that the Club should obtain a Prohibited Employment Declaration from all preferred applicants for **paid child related employment** (the other categories may not be relevant) and complete a background check before employing such a person. You cannot obtain a Working with Children Background Check on a person who does not fall into one of these categories.

4.2 How does the Club obtain a background check?

The Club will need to register with an Approved Screening Agency (details and forms can be found at www.kids.nsw.gov.au). The Club must then complete the relevant form, obtain the consent of the person being checked, and obtain confirmation of that person's identity. The information required from the Club and the person being checked is shown on the forms and in the Guidelines.

4.3 Other employment issues

When recruiting people to work with children it is important that the Club clearly explains the nature of the employment and its requirements with respect to child safety. Applicants should be made aware of the Clubs policies and procedures. It is also important for the Club to carefully select its preferred applicants. This should include a

thorough check of references and past employment.

If the Club rejects an applicant because of the results of background checking it may be required to notify the Commission in some cases. Clubs should check this on a case by case basis.

5. KEEPING RECORDS

5.1 How long to keep records

The Club must keep Prohibited Employment Declarations for 2 years after a person ceases to be employed by the Club. Consent forms for Working with Children Background Checks must be kept as long as the Club keeps the person's personnel records.

5.2 Maintaining confidentiality

Any information the Club obtains in relation to a Working with Children background Check (or a declaration) should be kept secure and confidential. It should only be disclosed to those people within the organisation who have a genuine need to know. In some circumstances, breaching confidentiality may be an offence!

Clubs should also be aware that privacy laws will apply to any information that is ‗personal information', ‗sensitive information' or ‗health information' collected in relation to an employee (or an applicant), for more information see the chapter on Privacy.

6. DEALING WITH INCIDENTS

Clubs that employ people in child related employment should have a procedure in place to investigate any complaints, allegations or genuine suspicions of inappropriate behaviour involving children.

6.1 Reporting requirements

If the Club investigates alleged misconduct by an employee in relation to working with children, it may need to make a report of its findings to the Commission if it finds that ‗reportable conduct' has occurred. This will be required once:

(a) the Club has undertaken an investigation;

(b) the investigation has been completed, either because you have enough information, or you cannot get any more information;

(c) a finding is made on the basis of the investigation as to whether the conduct is reportable under the CCYP Act; and

(d) a decision is made as to the disciplinary action, if any, that should be taken.

6.2 What is reportable conduct?

The Club will need to report any finding it makes that the following acts (**reportable conduct**) have occurred:

(a) any sexual offence or misconduct, committed against, with, or in the presence of, a child;

(b) any child pornography offence or misconduct involving child pornography;

(c) any child related personal violence offence;

(d) an offence of filming for indecent purposes committed against, with, or in the presence of, a child;

(e) any assault, ill treatment or neglect of a child;

(f) any behaviour that causes psychological harm to a child, whether or not the child consents;

(g) an act of violence committed by an employee in the course of employment and in the presence of a child has occurred; or

(h) there is some evidence that reportable conduct or an act of violence occurred, however the finding is inconclusive or there is insufficient evidence.

The Guidelines provide more detail on a range of issues to help Clubs in any investigations. For example, a definition of conduct that amounts to ‗ill treatment' or ‗neglect' is available. Because of the serious consequences arising from investigations and reports of this nature, Clubs must ensure that they are aware of the relevant law and Guidelines before proceeding.

6.3 **What is not reportable conduct?**

Some examples of conduct that would not normally fall into one of the categories listed above and would therefore not be reportable are (as indicated currently in the Guidelines):

(a) reasonable actions to discipline, manage or care for children (taking into account the circumstances of each case);

(b) touching a child on the shoulder (or other non-intimate part of their body) to attract their attention;

(c) raising your voice to attract attention, give directions or restore order to a group of children;

(d) conduct which is established to be accidental;

(e) providing medical care to an injured child;

(f) appropriately demonstrating to, or assisting a child, for example in a sporting context; and

(g) using **reasonable** force to prevent harm to a child, even harm by another child (e.g. by disarming a child who is intending to harm themselves or another child).

6.4 **When is reporting not required?**

The Club is not required to make a report to the Commission, if it completes its investigation and:

(a) it finds that an alleged incident was not reportable conduct;

(b) it finds that:

(i) the allegation was false or vexatious (an allegation which was not made on any real basis and which was malicious or intended only to cause distress);

(ii) the allegation was made in good faith but was based on a misunderstanding or misconception; or

(c) it finds that the conduct was appropriate or was reasonable for discipline, management or care of children in the circumstances.

6.5 **Conducting an investigation**

If a Club receives a complaint or becomes aware of any misconduct or alleged misconduct, then the matter should be investigated. It is important that any such situation is treated sensitively and confidentially (where possible) because of the very great harm that can occur if an investigation is mishandled.

It is strongly recommended that if an investigation is required, the Club carefully reviews the Guidelines and obtains independent expert advice. This is a complex area with far reaching consequences for the Club and any individuals involved, and this manual provides a brief overview only.

7. **OTHER RESOURCES**

The Commission has published many other useful resources, which may be relevant even if your Club does not employ a person in child related employment and only has incidental contact with children. A publication called ‗Child-safe, Child-friendly' includes a range of checklists and suggested procedures (including information on a complaints procedure) which will help Clubs appropriately manage and minimise risks. It also provides some suggestions on recruiting for child related employment.

This chapter covers the law in NSW. Clubs in the ACT should keep up to date with proposed legislative changes to introduce a more rigorous screening program for child related employment. In the meantime, it is recommended that Clubs consider whether a police check is required when recruiting, and personal references should be carefully checked.

SMOKE FREE ENVIRONMENT

1. THE OBJECT OF THE ACT

The *Smoke-Free Environment Act 2000* (NSW) (**SFE Act**) commenced on 6 September, 2000. The purpose of the Act is:

"....to promote public health by reducing exposure to tobacco and other smoke in enclosed public places".

2. THE APPLICATION OF THE ACT

The following terms are key to understanding the SFE Act:

Enclosed (in relation to a public place) means having a ceiling or roof and, except for doors and passageways, completely or substantially enclosed, whether permanently or temporarily.

Public Place means a place or vehicle that the public, or a section of the public, is entitled to use or that is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise).

Public is not defined by the Act and should be taken to have the ordinary meaning.

Smoke means smoke, hold, or otherwise have control over, an ignited smoking product.

Smoke-free area means any enclosed public place.

Smoking product means any tobacco or other product that is intended to be smoked.

3. SMOKING IN SMOKE-FREE AREAS

3.1 A breach is an offence

The Club must not allow any person to smoke in a smoke-free area. If the Club breaches this requirement, a penalty of $5,500 may be imposed on the Club and/or a penalty of $1,100 may be imposed on the Secretary/other responsible staff. Additionally, the Club must not provide ashtrays, matches, lighters or anything that might facilitate smoking within the smoke free area.

* If an individual smokes in a smoke free area they may be prosecuted and a fine of $550 imposed.

3.2 Defences for a Club

It is a defence to a prosecution if the Club establishes that neither the Club nor its employees/agents provided (otherwise than by sale) any ashtray, matches or lighter (or other thing that could facilitate smoking) in the smoke-free area concerned **and** that:

(a) neither the Club nor any employee/agent knew, or could reasonably be expected to have known, that the person concerned was smoking in the smoke-free area; or

(b) as soon as the Club or any employee/agent became aware that the person was smoking in the smoke-free area, the Club (or that employee/agent):

(i) required the person to stop smoking in the smoke-free area;

(ii) informed the person that the person was committing an offence by smoking in the smoke-free area; and

(iii) if the person continued to smoke after having been required to stop, required the person to leave the smoke-free area.

3.3 Requiring an offender to leave Club premises

(a) If the Club or an employee/agent requires a person to leave the Club for breaching the SFE Act they may require the person to pay for any food or beverage supplied to, or ordered by, that person (whether or not it has been consumed).

(b) Section 77 of the Liquor Act 2007 (NSW) states that the Club and an employee/agent of the Club or a police officer may require a person to leave the premises for breaching the SFE Act. In that case:

(i) if the person refuses to leave on request, they may be prosecuted and a fine of $5,500 imposed; and

(ii) reasonable force may be used to eject the person from the premises. However, to minimise the risk of injury to staff and other patrons it is recommended that the police or security personnel be contacted if a person refuses to leave.

4. EXAMPLES OF SMOKE-FREE AREAS

4.1 Schedule 1 of the SFE Act sets out a range of places that are ‗smoke-free areas‘, if they are also enclosed public places. This list includes:

(a) Shopping centres, malls and plazas.

(b) Restaurants, cafes, cafeterias, dining areas and other eating places.

(c) Schools, colleges and universities.

(d) Professional, trade, commercial and other business premises.

(e) Community centres or halls and places of public worship.

(f) Theatres, cinemas, libraries and galleries.

(g) Trains, buses, trams, aeroplanes, taxis and hire cars, and ferries and other vessels.

(h) Hostels (other than residential accommodation).

(i) Motels (other than residential accommodation).

(j) Fitness centres, bowling alleys and other sporting and recreational facilities.

(k) Childcare facilities.

(l) Hospitals.

(m) Casinos (other than a casino private gaming area or residential accommodation).

(n) Hotels (other than residential accommodation).

(o) Clubs (other than residential accommodation).

(p) Nightclubs.

4.2 Obviously, the Club‘s core activities will fall within paragraph (o). However, other Club facilities may also be covered, such as a gym/fitness centre, any child care facilities provided to members, and any dining area or cafe.

5. WHAT IS AN ‘ENCLOSED PUBLIC PLACE’?

5.1 Clause 6 of the Smoke-Free Regulation 2000 (NSW) (regulations) sets out the criteria which determine whether a public place is ‗enclosed‘ and therefore a smoke-free area. Clause 6 of the regulations is set out in 'Annexure A‘ at the end of this chapter.

5.2 In 2008, Dubbo RSL Memorial Club Limited and ClubsNSW took legal action in the NSW Supreme Court which has clarified the effect of the regulations. The following is a summary of the main points of the case:

***Dubbo RSL Memorial Club Ltd & Anor v Steppat & Ors* (2008) NSWSC 965**

1. The case was brought to determine whether the ‗outdoor gaming area‘ and ‗TAB outdoor area‘ at the Club were ‗enclosed public places‘ as defined by the SFE Act.
2. The ‗outdoor gaming area‘ was a walled and roofed area of approximately 75m^2, extending to a walled and unroofed area of approximately 84 m^2.
3. The ‗TAB outdoor area‘ was a walled and roofed area of approximately 125m^2, extending to a walled and unroofed area of approximately 75m^2.
4. There were folding doors that could be secured back to the walls at the entry to each unroofed area.
5. The regulations state that a public place is ‗substantially enclosed' if the total area of the ceiling and wall surfaces (the ***total actual enclosed area***) of the public place is more than 75 per cent of its ***total notional ceiling and wall area***.
6. The ***total notional ceiling and wall area*** is the sum of:
   (a) what would be the total area of the wall surfaces if:
      (i) the walls were continuous (any existing gap in the walls being filled by a surface of the minimum area required for that

purpose); and

(ii) the walls were of a uniform height equal to the lowest height of the ceiling; and

(b) what would be the floor area of the space within the walls if the walls were continuous as referred to in paragraph (a).

7. The Club argued that both the roofed and unroofed area of the ‗outdoor gaming area' was a single space, and, therefore the 75% requirement was met.

8. The Club made the same argument in relation to the ‗TAB outdoor area'.

9. The court decided that the ‗outdoor gaming area' was 2 separate spaces: the roofed area was a space used for drinking and playing gaming machines; the unroofed area was a space used primarily for socialising.

10. The regulations apply to spaces which have a ceiling or roof, uncovered areas do not fall within the calculation.

Therefore, each roofed and walled area was a single space (not including the walled but unroofed area). Smoke could not escape laterally or through the roof, and the 75% requirement was not met.

5.3 NSW Health has also published some information and guidelines on the way in which it interprets the SFE Act and regulations on its website which may be a useful resource for Clubs.

5.4 This can be a complicated issue and Clubs are advised to seek expert advice on the specific designs for any proposed outdoor gaming/smoking areas before commencing the project, to ensure compliance with the SFE Act and regulations.

6. EXEMPT AREAS

Part 3 of the SFE Act previously provided for certain areas of a bar, gaming room or recreation room in a Club to be exempt from the smoke-free area requirements. Those exemptions no longer apply, and the smoke-free requirements apply to all public places in Clubs.

7. SIGNS

The Club must display signs as prescribed by the regulations in any smoke free areas. Failure to display signs may result in a penalty of $2,750 being imposed on the Club and/or a penalty of $550 being imposed on the Secretary/other responsible staff.

7.1 Clause 4 of the regulations requires that signs must be clearly legible, and be displayed in sufficient numbers and in prominent positions so that they are likely to be seen by a person at a public entrance to, or within, the smoke-free area.

7.2 All smoke-free signage must include:

(a) the ‗smoking prohibited symbol' (as designated in AS 1319—1994, Safety signs for the occupational environment) with a diameter of at least 90 mm;

(b) the words ―NO SMOKING" in the letters of at least 20 mm in height;

(c) a reference to the name of the Act; and

(d) the words "Penalties may apply".

8. DUTY TO PREVENT SPREAD OF SMOKE

If smoking is allowed elsewhere on the Club's premises, the Club must take reasonable steps to prevent smoke from penetrating any smoke-free area. A penalty of $5,500 may be imposed on the Club for breach of this requirement and the Secretary/other responsible staff may be fined $1,100.

9. ENFORCEMENT OF THE ACT

9.1 The SFE Act is enforced by inspectors, who are Environment Health Officers from NSW Health.

9.2 Inspectors have the right, at any time, to:

(a) enter and inspect premises (either alone or with other persons);

(b) examine and inspect apparatus or equipment;

(c) take photographs, films and audio, video and other recordings as the inspector considers necessary;

(d) for the purpose of analysis, take samples of things to determine whether the Act or regulations are being complied with;

(e) for purposes other than analysis, take samples of anything that the inspector believes may be used as evidence that an offence has or is being committed under the Act or the regulations; and

(f) require records or documents to be produced which may be then taken away and retained for a reasonable period.

9.3 Inspectors may require the Club to stop any breaches of the SFE Act.

9.4 Inspectors may issue an ‗on the spot' penalty notice. While this may be paid immediately, Clubs are encouraged to seek legal advice if such a notice is issued to ensure that it is valid and identify any appropriate defences that may apply.

9.5 It is an offence to obstruct an inspector or fail to comply with an inspector‘s requirement (assuming they are acting in accordance with the SFE Act).

9.6 If an inspector wishes to enter Club premises, they should be asked to produce their certificate of authority, to ensure that they are a properly authorised person. All inspectors must produce their certificate of authority on request, and must not remain on the premises if they cannot produce the certificate.

9.7 Search warrants may be issued to inspectors in certain circumstances. Clubs are obliged to comply with a properly issued warrant, but again it is recommended that legal advice be obtained in these circumstances.

10. OCCUPATIONAL HEALTH AND SAFETY

The *Occupational Health and Safety Act 2000* (NSW) (**OHS Act**) places specific responsibilities on Clubs with respect to their employees and other persons who enter places of work or places controlled by the Club. In addition to ensuring the health, safety and welfare of employees, Clubs must ensure that other people are not exposed to risks to their health and safety arising from the conduct of the Club‘s undertaking while at the Club‘s place of work. More detail on the OHS Act can be found in the chapter on OH&S.

11. COMMON LAW – CIVIL CLAIM OF NEGLIGENCE

Clubs generally have a common law duty of care to members, employees and other persons using the Club‘s premises. In some circumstances, a Club may be held to have breached its duty of care and be responsible for damage caused by smoking. One example is the case of Sharp v Guinery t/as Port Kembla Hotel & Port Kembla RSL Club.

***Sharp v Guinery t/as Port Kembla Hotel & Port Kembla RSL Club* (2001) NSWSC 336**

1. Ms Sharp's principal exposure to tobacco smoke was during the course of her employment as a barmaid between 1972 and 1995.
2. She had two employers during the relevant period, one the hotel and the other the Club. She worked for 12 years with the hotel and 11 years with the Club. Ms Sharp was employed on a part time basis, working 10 hours per week on average.
3. Ms Sharp originally made two claims. One against the hotel and one against the Club. The hotel settled the matter prior to the hearing so the matter involved the Club only.
4. Ms Sharp alleged that her employer was negligent for a range of reasons, including:
   (c) exposing her to tobacco smoke and carcinogenic agents while she was at work;
   (d) failing to provide adequate ventilation in her workplace;
   (e) requiring her to work in areas where smoke and carcinogenic substances were concentrated;

(f) failing to take adequate precautions for her safety at work;

(g) exposing her to risk of injury which they knew or ought to have known and which could have been avoided by using reasonable care; and

(h) failing to implement a system whereby Ms Sharp was not exposed to fumes and carcinogenic agents.

5. It was found that Ms Sharp's cancer was caused or materially contributed to by the Club's negligence.

Although this is a summary only of the case, it demonstrates that the failure to make reasonable attempts to reduce environmental tobacco smoke is a basis for a common law negligence case.

Although in practice many members and users of a Club would be smokers, allowing smoking in prohibited areas within a Club's premises will continue to expose a Club to a claim in negligence as well as breaches of the SFE Act.

This chapter covers the law in NSW. Clubs in the ACT are referred to ACT legislation including the *Smoking (Prohibition in Enclosed Public Places) Act 2003* and the *Smoking (Prohibition in Enclosed Public Places) Regulation 2003.*

Annexure 'A'

(Clause 6 of the *Smoke Free Environment Regulation 2007*)

Smoke-free Environment Regulation 2007
Current version for 26 June 2009 to date (accessed 27 January 2010 at 11:56)

Clause 6

6 Guidelines for determining if a place is enclosed

(1) The provisions of this clause prescribe guidelines in relation to determining what is an enclosed public place and when a covered outside area is considered to be substantially enclosed for the purposes of the Act.

(2) A public place is considered to be substantially enclosed if the total area of the ceiling and wall surfaces (the ***total actual enclosed area***) of the public place is more than 75 per cent of its total notional ceiling and wall area.

(3) The ***total notional ceiling and wall area*** is the sum of:

(a) what would be the total area of the wall surfaces if:

(i) the walls were continuous (any existing gap in the walls being filled by a surface of the minimum area required for that purpose), and

(ii) the walls were of a uniform height equal to the lowest height of the ceiling, and

(b) what would be the floor area of the space within the walls if the walls were continuous as referred to in paragraph (a).

(4) The following are to be included as part of the total actual enclosed area:

(a) any gap in a wall or ceiling that does not open directly to the outside,

(b) any door, window or moveable structure that is, or is part of, a ceiling or wall, regardless of whether the door, window or structure is open (other than the area of any locked-open door or window).

(c) (Repealed)

(5) A gap in a wall or ceiling that opens directly to the outside (other than a gap caused by a door, window or moveable structure being open) is not to be included as part of the total actual enclosed area.

(5A) The area of a locked-open door or a locked-open window is not to be included as part of the total actual enclosed area.

(6) A gap, door, window or moveable structure required to be included as part of the total actual enclosed area is to be included as if the wall or ceiling were continuous and the gap, or the space occupied by the door, window or moveable structure, were filled by a surface of the minimum area required for that purpose.

(7) In this clause:

ceiling includes a roof or any structure or device (whether fixed or moveable) that prevents or impedes upward airflow.

locked-open door or ***locked-open window*** means a door or window that opens directly to the outside and is locked fully open (that is, secured in its fully open position by means of a key operated lock).

moveable structure includes a retractable awning, umbrella or any other moveable structure or device, but does not include a security grill, shutter or screen that is used to secure premises only when the premises are not open for business and is fully open at all other times.

wall includes any structure or device (whether fixed or moveable) that prevents or impedes lateral airflow.

PROCEDURES FOR CHANGE OF AUDITOR

1. INTRODUCTION

This chapter relates to Clubs that are public companies under the *Corporations Act 2001 (Cth)* (**Corporations Act**). Almost all golf clubs that are also registered clubs are public companies limited by guarantee. This chapter is a summary of some of the steps involved in a change of auditor and only provides an overview. Any Club considering a change of auditor should obtain legal advice on the procedure (including timeframes) and on the appropriate wording of the resolutions that must be passed.

An auditor does not have a lifetime right to be the auditor of the Club. An auditor holds office until he or she:

(a) dies;

(b) is removed or resigns from office;

(c) ceases to be capable of acting or ceases to be auditor because of a conflict of interest as prescribed by the Corporations Act.

To ensure independence of the auditor from the Board and management of the Club, the Corporations Act imposes procedures for changing the Club's auditor. The procedures must be strictly followed, and failure to do so could involve the Club and its Board and management in a breach of the Corporations Act.

2. REMOVING THE AUDITOR

An auditor may be removed from office by an ordinary resolution passed by the members who are present and voting at a General Meeting of the Club, but only if:

(a) written notice of the resolution to remove the auditor is given by a member to the Club at least 2 months before the General Meeting is to be held (however, this notice period may be shortened to not less than 21 days if the Club calls a General Meeting after the notice of resolution is given to the Club);

(b) as soon as possible after receipt of the notice from the member, the Club sends a copy of the notice to the auditor and to the Australian Securities and Investments Commission (**ASIC**);

(c) the auditor is given the opportunity, within 7 days of receiving the notice, to :

  (i) make representations in writing to the Club; and

  (ii) request the Club that, prior to the General Meeting at which the resolution to remove him or her is to be considered, a copy of those representations be sent by the Club to every member to whom notice of the General Meeting is sent;

(d) the auditor has the opportunity to require his or her representations to the Club to be read out at the General Meeting; and

(e) the auditor is given the right to speak at the General Meeting.

If the ordinary resolution is passed at the General Meeting, the Club must notify ASIC within 14 days that the auditor has been removed from office.

3. RESIGNATION OF AUDITOR

An auditor may resign by giving the Club written notice if:

(a) the auditor has applied to ASIC in writing (with reasons), for consent to resign as auditor;

(b) the auditor, at the same time as making the application to ASIC, has notified the Club that he or she is making the application to ASIC; and

(c) ASIC has consented to the auditor's application.

The Club must notify ASIC within 14 days of receiving a notice of resignation from the auditor.

4. APPOINTMENT OF AN AUDITOR

4.1 General

An auditor must be an appropriately qualified independent person with no conflict of interest, and cannot be appointed without their written consent.

4.2 **Casual vacancy - removal**

If an auditor has been removed, the Club may, by special resolution at the same General Meeting in which the auditor was removed:

(a) appoint a new auditor (if the new auditor has been given notice of their nomination to be auditor); or

(b) adjourn the General Meeting to permit notice of nomination to be given to the new auditor, who may then be appointed at the adjourned General Meeting provided the nomination form was received 14 days prior to that date.

4.3 **Casual vacancy - general**

If the office of the auditor falls vacant for any reason other than the auditor being removed by the members of the Club, the Board must appoint the auditor within 1 month, unless the members appoint a replacement at a General Meeting. Any auditor appointed by the Board in these circumstances will hold office only until the next Annual General Meeting.

A nomination to appoint an auditor must be given by a member to the Club at least 21 days prior to the Annual General Meeting. When the Club receives a notice of nomination, the Club must, at least 7 days before the Annual General Meeting or at the time the notice of Annual General Meeting is given, send a copy of the nomination to:

(a) each person or firm nominated to act as auditor;

(b) each current auditor of the Club (if any); and

(c) each member who is entitled to receive notice of General Meetings.

The Club must notify ASIC of the appointment of a new auditor. If the Club is unable to or otherwise fails to appoint an auditor, ASIC may appoint the auditor.

5. **CO-OPERATIVES**

Similar rules apply to changing or removing the auditor of a Club which is a co-operative, as Schedule 3 of the *Co-operatives Regulation 2005 (NSW)* modifies the Corporations Act so that it applies to co-operatives. However, co-operatives should carefully check the rules and reporting requirements as they vary slightly.

This chapter is written for Clubs in NSW, However, Clubs in the ACT which are corporations under the *Corporations Act 2001* are likely to be subject to the same requirements.

CORPORATE GOVERNANCE AND MEETING PROCEDURES

1. INTRODUCTION

Most Clubs are public companies limited by guarantee and are subject to the *Corporations Act 2001 (NSW)* (**Corporations Act**). A very small minority are Co-operatives and therefore this chapter primarily deals with duties applicable to directors of public companies. The primary sources of directors' and officers' duties are the general or ‗common' law, the Corporations Act, the *Registered Clubs Act 1976 (NSW)* (**Registered Clubs Act**) for registered clubs only, and the Club's own constitution. Duties are also imposed by other legislation, for example the *Occupational Health and Safety Act 2000 (NSW)*, but this chapter focuses primarily on the duties relating to good corporate governance.

2. CORPORATIONS ACT – PRINCIPAL DUTIES

Directors, Club Secretaries and other senior managers as officers of the company need to be aware of their duties to the Club at all times. The ClubsNSW Directors Guide (9th Edition) includes a comprehensive overview of these obligations and it is recommended that Clubs familiarise themselves with that information. This chapter is intended to provide a summary of key duties and some practical guidance on issues that are likely to arise in the day to day operations of a Club.

2.1 Who has duties under the Corporations Act?

Although there are obligations under the Act that apply exclusively to directors, the key duties outlined below in this paragraph apply to all ‗officers'. An ‗officer' includes each director, the Secretary, and any person:

(a) who makes decisions affecting the business of the Club;

(b) who has the capacity of significantly affecting the Club's financial standing; or

(c) whose instructions the directors are accustomed to following.

This will usually include the Chief Executive Officer/Secretary and may include other management staff.

2.2 Duty of Care (section 180 of the Corporations Act)

Directors and officers must make their decisions with due care and diligence.

The standard which directors and officers must exercise is the standard that a reasonable person would exercise if they were a director or officer of a corporation in the Club's circumstances and held the same office and had the same responsibilities as the director or officer in question. This requires directors and officers to take steps to educate and inform themselves about the business of the Club and to enable themselves to be in a position to effectively monitor that business.

As a guide, a director or officer who makes a business judgement will exercise due care and diligence if they:

(a) have made the business judgement in good faith and for a proper purpose;

(b) do not have a material personal interest in the event;

(c) inform themselves about the subject matter of the judgement to the extent they reasonably believe to be appropriate; and

(d) rationally believe the judgement is in the best interests of the Club.

Stop Press!

The recent cases regarding James Hardie are both a warning and a guide for Directors and Club managers on proper decision making practice, as members of James Hardie's Board and management have been found to be in breach of their duties in the recent NSW Supreme Court decisions.

James Hardie issued a press release in February 2001 announcing a ―fully-funded" foundation to compensate victims of the well-publicised asbestos exposure caused by its products. The release included a statement by Chief Executive Officer Peter Macdonald that:

> *"James Hardie is satisfied that the Foundation has sufficient funds to meet anticipated future claims."*

It was revealed just two years later that the $293 million fund was suffering an $800 million shortfall. ASIC took action against the directors and officers for breaching their duties of care and diligence under section 180(1) of the *Corporations Act 2001* (Cth). Justice Gzell found that each director breached the duty to act with due care and diligence by approving the over-emphatic press release which misled and deceived the public. His Honour rejected various claims by the directors including that two of them had not been given a copy of the release, and that they would not have voted for it had they known its content was misleading. He determined that:

> *"Once asked, the Board had a duty to consider its content carefully."*

The CEO, CFO and general counsel were also found to have breached their duties by failing to properly advise the Board that the consultants' advice was limited, as it was not based on key assumptions such as future claim costs. Fines and bans from serving on company boards have been imposed on the directors and those other senior officers of the company.

2.3 Duty to act in good faith for a proper purpose (section 181 of the Corporations Act)

Directors and officers must carry out their duties and exercise their powers in good faith in the best interests of the Club and for a proper purpose.

To determine whether a director or other officer has acted in good faith, that person's intentions are relevant. The receipt of a benefit from the decision may be grounds to challenge the good faith of a director's or other officer's decision, so care should be taken to avoid any improper bias or perception of improper bias.

2.4 Improper use of position (section 182 of the Corporations Act)

Directors and officers must not improperly use their position to gain an advantage for themselves or another person, or cause detriment to the Club.

Misuse of a director's or officer's position typically arises where an officer appropriates Club property without authority and then uses it for their own purposes or for the benefit of another person.

Directors and other officers must not make ‗secret profits' or take advantage of situations that arise only because of their position in the Club.

2.5 Improper use of information (section 183 of the Corporations Act)

Directors and other officers must not use information they gained while holding that office in the Club to gain an advantage for themselves or another person, or cause detriment to the Club.

Officers must keep proprietary and other confidential information of the Club confidential and they must not disclose it except as properly authorised. Information which would reasonably be considered as ‗confidential' or which is disclosed to a director or other officer on a confidential basis should not be disclosed. Generally, information which is insignificant, trivial or is already publicly available is not confidential. However, if that information has particular significance to the Club or would be sensitive when combined with other publicly available information, then it may still be ‗confidential'. Even disclosing information as to who voted in what way on a particular resolution may be detrimental to the Club and a breach of a director's or officer's duties.

There are also circumstances which do not involve bad faith or deliberate wrong doing but may still involve a breach of this duty. For example, disclosure of information which benefits a certain group of the Club's members or a related organisation such as a sub-branch or sub-club might still be detrimental to the Club as a whole. Thomsons Lawyers has assisted Clubs to successfully take legal action against directors for improper use of the Club's information.

Case in point!

A director of an RSL Club disagreed with the Board and resigned. His resignation letter included references to confidential Board information including financial information. He copied his letter to the President and executive committee of the associated RSL sub branch (a separate legal entity), who were also members of the Club.

The director stated he did this so the sub branch would be aware of the Club's financial status and intentions, and be able to protect itself. The director refused to give the Club undertakings not to reveal the information further and to return confidential Board documents. The Club gave several warnings before starting legal proceedings to obtain an injunction. The Court decided:

- the director owed a duty of confidentiality to the Club even though he had resigned;
- by disclosing confidential Board information to another legal entity (the sub branch) the director breached his obligations of confidentiality in common law, in contract and under the Corporations Act; and
- the director's reasons for disclosing the information were to justify his own actions and discredit the Board, which was detrimental to the Club.

The court granted the Club's application for an injunction and ordered the director to pay costs.

Although this case related to an RSL Club and its sub branch, the principles also apply to other clubs including golf clubs, and their associated organisations and sub clubs. The courts take directors' duties very seriously and will hold directors liable for breaches of confidentiality. Directors of registered clubs (and other clubs) are held to the same standards as the directors of any other public company.

Confidential information can be disclosed:

(a) with the approval of the Board, but only to the extent approved;

(b) if the Club ceases to treat the information as being confidential, for example, if it has already been made public by the Board/management in an authorised manner;

(c) if required by law, for example if a subpoena is issued in court proceedings (but legal advice should be obtained before the information is disclosed); and

(d) if required by regulators, for example ASIC or the Casino, Liquor & Gaming Control Authority.

A director or officer is still bound by their obligations of confidentiality even if they have resigned, been removed or retired from that office. Therefore, if a director or officer cannot agree with a decision of the Board on a matter of principle to the extent that they resign, that person will still be prohibited from disclosing confidential Club information.

2.6 Offences (section 184 of the Corporations Act) and penalties for breach of duty

A director or officer commits an offence if they are reckless, dishonest or fail to carry out their duties in good faith in the best interests of the Club and for a proper purpose.

A fine of up to $200,000 may be imposed and a person may be disqualified from holding office for a breach of sections 180 to 183 of the Corporations Act.

A fine of up to $220,000 and/or a prison sentence of up to 5 years may be imposed for a breach of section 184 if a director's or officer's conduct is reckless, dishonest, in bad faith and not for a proper purpose.

2.7 Material personal interest

The requirement to disclose to the Board a material personal interest that a director has in a matter before the Board applies only to directors under section 191 (and following) of the Corporations Act. It does not apply to other officers of the Club.

A director who has a material personal interest in a matter that relates to the affairs of the Club must give the other directors notice (which may be a standing notice) of the interest unless:

(a) it arises because the director is a member of the Club and is held in common with the other members;

(b) it arises in relation to the director's remuneration as a director, as approved by the members of the Club;

(c) it relates to a contract the Club is proposing to enter into that is subject to approval by the members and will not impose any obligation on the Club if it is not approved by the members;

(d) it arises merely because the director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Club;

(e) it arises merely because the director has a right of subrogation in relation to a guarantee or indemnity;

(f) it relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the Club (but only if the contract does not make the Club or a related body corporate the insurer);

(g) it relates to any payment by the Club or a related body corporate in respect of an indemnity permitted under section 199A of the Corporations Act or any contract relating to such an indemnity;

(h) it is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the director is a director of the related body corporate; or

(i) all the following conditions are satisfied:

   (i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the Club;

   (ii) if a person who was not a director at the time when the notice was given is appointed as a director, the notice is given to that person;

   (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or

(j) the director has given a standing notice of the nature and extent of the interest and the notice is still effective.

A ‗material personal interest' is not defined. However, the courts have held that it must be of substance to the matter under consideration by the Board. It would include anything that could reasonably be seen to have the capacity to influence a director's vote on an issue.

2.8 Preventing insolvent trading

Again, the obligation to prevent insolvent trading under section 588G of the Corporations Act only applies to directors, not to other officers. However, other officers may be penalised if they were aware of insolvent trading and failed to bring it to the attention of the Board (or the auditors/regulators in certain circumstances). If a director or officer of the Club has concerns about the Club's financial situation, then the matter should be investigated and it may be necessary to seek independent financial advice.

Generally, directors must act in the interest of the Club. However, in certain circumstances it is appropriate to consider the interests of other, such as creditors of the Club. Section 588G of the Corporations Act places liability on directors in certain cases where they allow the Club to incur debts when either the Club is insolvent or the incurring of the debt will render the Club insolvent.

A director breaches this duty if the director fails to prevent the Club incurring debts where there are reasonable grounds for suspecting that the Club may not be able to pay those debts as and when they fall due. This requires directors to be reasonably aware of the financial position of the Club and to ensure that there are adequate reporting and supervisory systems in place.

There are some defences to a breach of this duty, such as that the director:

(a) expected on reasonable grounds that the Club would remain solvent on the basis of the information provided by a competent and reliable person responsible for providing that information;

(b) did not take part in the management of the Club when the debt was incurred for a good reason (such as severe illness); or

(c) took all reasonable steps to prevent the Club incurring the debt.

However, those defences will not be available if the director has not taken a reasonable and diligent interest in the Club's financial position. Directors are potentially liable to pay compensation of an amount equal to the loss suffered by any unsecured creditor if this duty is breached.

3. **REGISTERED CLUBS ACT**

The Registered Clubs Act imposes supplementary duties:

(a) directors who have a material person interest in a matter which affects the Club must disclose this to the Board as soon as possible, and the disclosure should be noted in the minutes of the Board meeting at which the disclosure is made;

(b) a director or ‗top executive' who has a financial interest in a hotel must declare this to the Secretary in writing within 14 days;

(c) directors and ‗top executives' must disclose any gift or benefit valued at over $500 from an affiliated body using the form required by the OLGR (such as a sporting club associated with the Club which has been given a grant or donation by the Club within the last 12 months);

(d) gifts received by a director or any employee of a Club from any person or organisation that contracts with the Club must be declared in a written return each year.

Directors and employees should be aware that a range of small gifts that value over $500 in aggregate must be declared. The Secretary will ensure that a register is kept of declared interests, gifts and benefits as required. Additional information can be found in the Chapter on Introduction to the Registered Clubs Act 1976 (NSW) and Registered Clubs Regulation 1996 (NSW).

4. **GENERAL LAW DUTIES**

Many general duties are reflected in the Corporations Act. Under general law directors have a ―fiduciary" duty to the Club, which means a duty to act in good faith in the best interests of the Club. Directors must:

(a) not act for private purposes or to gain benefits for themselves or another person at the Club's expense;

(b) exercise independent judgement when making decisions; and

(c) must not use their position for any ulterior purpose. This includes not misusing the Club‘s information and property (including intellectual property and associated information) for improper purpose.

There are a number of general law remedies available to Clubs and others for breach of a duty by a director, such as injunctions and declarations, damages and compensation, accounts of profits, rescission, tracing of assets and the creation of trusts. If a director breaches one of the key duties under the Corporations Act, it is likely that the director is also in breach of general law obligations (and conversely).

5. CLUB'S CONSTITUTION

The Club‘s Constitution is a contract between the Club, members and the Board. Directors should have a good working knowledge of their Club‘s Constitution and note that additional obligations may be imposed by it.

6. BOARD OF DIRECTORS

6.1 The powers of the Board and directors

Individual directors generally do not have any power to act or make decisions on behalf of the Club, apart from the power of the chairperson or president to call board meetings or general meetings and to chair those meetings. Directors must act together as a Board to set goals and policies for the Club and to oversee the conduct of the Club‘s management in carrying out those goals and policies.

The powers of the Board can only be exercised by a valid resolution. Directors must ensure that any decision is made after proper examination of the merits and disadvantages of each proposed course of action and, if relevant, appropriate professional advice should be obtained.

The Board should not attempt to interfere with the day to day running of the Club or interfere with staff or contractors in the performance of their duties. These issues are the responsibility of the Secretary and management or executive team.

6.2 Key functions of the Board

The Board‘s key functions include:

(a) maintaining the Club‘s objects and values;

(b) establishing the Club‘s strategic business plan;

(c) appointing the Secretary and overseeing the performance of the Secretary and management team;

(d) overseeing risk management, legal compliance and corporate governance;

(e) establishing policies for management and business operations; and

(f) reviewing the progress of the Club towards achieving its goals.

6.3 Delegation

The Board may delegate responsibilities to:

(a) a Board committee;

(b) a single director;

(c) an employee (such as the Secretary); or

(d) any other person.

A delegate must act within the limits set by the Board, and their acts are generally binding on the Board and the Club.

6.4 Obtaining independent advice

The Board is entitled to obtain independent legal, financial and other expert advice, and should do so when it considers it appropriate. When making decisions, directors may rely on the advice of:

(a) an employee of the Club whom the director believes, on reasonable grounds, to be reliable and competent in relation to the matters concerned;

(b) a professional adviser or expert in relation to matters that the director believes, on reasonable grounds, to be within the person‘s professional or expert competence; or

(c) another director or officer in relation to matters within the director‘s or officer‘s authority; or

(d) a committee of directors on which the director did not serve in relation to matters within the committee‘s authority.

A director is only entitled to rely on such advice in good faith and after making an independent assessment of the information or advice, having regard to the director‘s knowledge of the Club and the complexity of the structure and operations of the Club.

6.5 Resolutions and minutes

The Board must meet as required to properly conduct the business of the Club, and at least once a month if the Club is a registered Club. Board meetings are usually less formal than Annual General Meetings and General Meetings of the Club. However, it is essential that Board resolutions are properly put and passed, and that the minutes of the meetings clearly record any resolution made, any action that has to be taken and any declaration of interests by a director. The procedures for proposing and passing resolutions at Board meetings are the same as those procedures which apply at General Meetings.

While it is expected that directors treat each other and any other person present at a Board meeting with courtesy and respect, it is appropriate for robust debate to occur when directors do not agree on any matter before the Board. Directors should consider relevant issues and points of view before making a decision.

It is not generally necessary (or in many cases appropriate) to record each meeting word for word in the minutes, the minutes must accurately record the meeting and be in sufficient detail to later (in some cases many years) give a picture of the issues considered at the meeting and any resolutions passed. This is an important issue for many Clubs which are in the process of negotiating contracts. Minutes should reflect the terms on which any contracts were agreed to by the Club.

Minutes should be confirmed as a true and correct record of the meeting by the chairperson of the meeting within a reasonable time after the meeting and entered into the Club‘s records within 1 month. Once minutes are confirmed they are evidence of the proceedings recorded.

Members of the Club do not generally have the right to inspect or have access to the minutes of Board meetings. Members will normally only have the right to inspect the minutes of General Meetings. The minutes of Board meetings are confidential and any breach of confidentiality by a director is likely to be a breach of the director‘s duties.

6.6 Procedures at Board meetings

A Club‘s constitution generally provides a basic procedure in terms of how Board meetings are called, who chairs them, the quorum required, voting procedures and the recording of minutes.

The voting procedure can be either by a show of hands or by secret ballot, if called for. Such voting procedures are not covered by the Corporations Act; however they may be in the Constitution or by-laws of the Club.

Once a resolution has been passed by a Board, even if not unanimously, it is binding on the Board unless overturned by a rescission motion. As a general rule, individual directors must support the decisions of the Board, even if they do not agree with them. If a director votes against a motion at a board meeting he or she may request that the dissenting vote is recorded in the minutes. However, the director is bound by the majority decision. If the director feels strongly about the issue he or she may make further written comments to the Board or introduce a rescission motion. A dissenting director must not speak against the issue if it is taken subsequently to a General Meeting to consider a resolution arising from the Board decision. In extreme cases of disagreement a director may resign.

Of course, a director is entitled (and sometimes obliged) to report to the appropriate authorities if the conduct of the Club‘s affairs is contrary to law. If a director becomes aware of such a situation the director may wish to take independent legal advice on their rights and obligations.

The ClubsNSW *Best Practice Guideline for Board Operation* provides a useful resource for the proper conduct of Board meetings.

6.7 Training and skills

As directors are subject to a wide range of laws, and Club‘s operations are becoming more heavily regulated, it is recommended that newly elected or appointed directors undertake training in their role. New directors should also be given an induction pack by their Club which includes a copy of the Club‘s Constitution, by-laws and key policies, copies of the charters of any Board Committees, copies of recent annual reports and a schedule of Board and committee meeting dates.

Even experienced directors may benefit from a skills update or training course. A range of corporate governance and Board training courses are offered by organisations such as the Club Directors‘ Institute, Club Managers Association Australia, and the Australian Institute of Company Directors. Thomsons Lawyers can also provide training seminars and courses tailored to your

Club's specific circumstances and which are coordinated with the Club's other consultants where necessary.

7. CONTRACTS

7.1 Authority to approve contracts

It is recommended that Boards establish delegated authority by resolution for some contracts to be approved and signed on behalf of the Club by the Secretary or other employees according to their level of seniority and responsibility and the limits imposed by the Registered Clubs Act (where applicable) as set out in this chapter. This helps the Club to function efficiently on a day to day basis. However, major contracts should be reserved for approval by the Board. Contracts can be regarded as ‗major' because of the dollar value or critical importance to the Club's ongoing operations.

The Board must protect the Club's interests by ensuring that it delegates authority to enter into contacts carefully and appropriately and that it does not create the impression that such authority exists where it does not. Where specific delegated authority has been given to an employee, the Board must clearly outline the extent of the authority delegated.

If a Club holds out that a director, officer or employee has authority to enter into a contract or dealing on behalf of the Club, another person may rely on that and the Club is likely to be bound by the contract. This is the case whether or not that director, officer or employee had actual authority to enter into the contract. On the other hand, if a director, officer or employee independently and falsely makes out they have authority of the Club, then the Club would not normally be bound by this.

7.2 Contracting process - Registered Clubs

Registered clubs are prohibited from entering into a contract with any of the following:

(a) the Secretary;

(b) the Approved Manager of secondary Club premises;

(c) a close relative of any of those persons; and

(d) a company or other body (such as a unit trust or discretionary family trust) in which any of those persons has a controlling interest (this means where the person and/or their close relatives have the capacity to determine the outcome of decisions about the financial and operating policies of the company or body).

There are exceptions for Clubs outside the metropolitan area and where an open tender process has been followed.

Registered clubs are also prohibited from entering into contracts in which a director has a pecuniary interest (for example, if the director is a major shareholder in a cleaning company which provides service to the Club), unless the contract has first been approved by the Board.

7.3 Contracting process – general

Directors are obliged to declare any conflicts of interest they may have in relation to a contract, see paragraph 2.7.

It is also recommended that if the Board delegates authority to approve and sign contracts to Club employees it also puts an internal Conflicts of Interest Policy in place. That policy should require employees to disclose to their manager any conflict of interest they may have in relation to a contract that they are negotiating or proposing to approve.

For privacy reasons it may not be appropriate to require the employee to disclose full details of the conflict in some circumstances; it is usually sufficient for them to simply advise that a conflict exists. That employee should hand over the negotiation and approval of the contract to another appropriate manager or employee within the Club. This protects both the Club and the employee from any suggestion of bias or misconduct.

7.4 Finalising contracts

Subject to any limitations in its constitution, a Club may sign a contract as follows:

(a) it can be signed by 2 directors (without using the seal) under section 127 of the Corporations Act;

(b) it can be signed by 1 director and the Secretary (without using the seal) under section 127 of the Corporations Act;

(c) it can be executed using the seal and having the document signed on behalf of

the Club in accordance with the constitution; or

(d) it can be signed by an authorised officer of the Club under a current delegation of authority from the Board.

The Club should also check that the other party(s) to the contract sign correctly. Searches should be done to ensure that the correct details are used on the contract, see the chapter on Use of Company Names, Business Names and Logos.

Once a contract is finalised, the Club should keep a signed original in its contract register along with copies of the other party's/parties' insurance policies (if appropriate) and notes of any key dates (such as fee review dates, option/renewal dates, dates of expiry of insurance).

7.5 Registered Clubs – special contracts (loans and employment)

All employment contracts between a registered Club and a top executive must first be approved by the Board.

Registered clubs are prohibited from making loans to:

(a) a director; and

(b) an employee (unless the overall loan does not exceed $10,000 and is first approved by the Board, or it is a term of the employment contract with that employee.

8. GENERAL MEETINGS

Sections 4A and 4B of the ClubsNSW Directors Guide (9th edition) sets out a comprehensive summary on Annual General Meetings and General Meetings of Clubs and it is not proposed that this manual will duplicate that information.

This chapter focuses on additional information that may be useful for meetings. Clubs should also note that there is a ClubsNSW Best Practice Guidelines for the Conduct of Board Elections which provides guidance on that issue.

Procedure at general meetings

There are two types of motions that can be put to a meeting:

(a) substantive motions (for example, a special resolution to amend the Club's constitution); and

(b) procedural motions (for example, a motion to put a particular matter to the vote).

Once passed, a motion becomes a resolution.

8.2 Debating a motion

The usual order of debate of a motion is:

(a) the mover of the motion proposes and speaks to the motion;

(b) the seconder of the motion speaks to the motion;

(c) other speakers to the motion - preferably alternatively for and against the motion;

(d) amendments (if any) are moved;

(e) other speakers to any amendment;

(f) voting on any amendment;

(g) further speakers to the amended motion (if amendments were made);

(h) reply by mover of the motion; and

(i) voting on the motion.

Most Clubs do not have ‗standing orders' about the order of debate on a motion, however, if any such rules exist they must be followed in addition to any requirements specified in the Club's Constitution.

8.3 Common terms and issues

Seconder	By law a seconder is not always required. However, the chair should usually call for a seconder to determine whether the motion has initial support and to prevent waste of time in lengthy discussions if there is no such support.

Withdrawal of motion	The mover of a motion may usually only withdraw it if the meeting gives leave to do so (by unanimous consent) and it has not already been amended. Permission of the seconder is not sufficient as other persons may have refrained from bringing the matter forward after seeing it on the agenda for the meeting.

Rescission of resolutions	• A resolution can be overturned by the passing of a rescission motion either at the meeting at which the resolution was passed or at a later meeting. • A resolution which has been acted upon and which is subsequently rescinded remains a valid resolution as far as such past acts prior to rescission are concerned. A rescission motion cannot have retrospective effect. • The giving of a notice of rescission does not affect the standing of the resolution. The original resolution can be acted upon until such time as a rescission actually occurs.

Points of order	• A point of order is taken when a person officially draws the attention of the chair of a meeting to an alleged irregularity in the proceedings. The type of irregularity can either be factual or involving an opinion. • The correct way in which to raise a point of order is for the member to say, ‗point of order' immediately after the alleged irregularity has occurred. • A point of order takes precedence over all other business including procedural motions. The point of order can be debated with speakers for and against and then a ruling is given by the chair either upholding or dismissing the point of order.

Points of Order (cont)	• If a member disagrees with the ruling of the chair on the point of order then dissent can be made from the chair's ruling. This is done by calling ‗that the chair's ruling be dissented from'. A temporary chair should take the chair during the vote. The question is put in the following form: ‗That the chair's ruling be upheld'. This is then voted upon by the meeting. • A dissent motion is not a motion of no confidence in the chair. It is used either to correct a genuine mistake on the chair's part, or to give legitimate effect to the will of the meeting.

8.4 Role of chair

The Club's Constitution will generally provide that the most senior officer (usually the chairperson or the president) chairs all Board and General Meetings. Understandingly this role is important because it may determine whether a meeting is productive. The chair should:

(a) supervise the preparation of the agenda and any background papers to be distributed in connection with the meeting;

(b) check that all persons entitled to receive a notice of the meeting do so and that the notice conforms to the Corporations Act and the Club's Constitution;

(c) verify the accuracy of any minutes to be presented to the meeting for confirmation;

(d) be familiar with any correspondence, reports, or other material to be brought forward;

(e) formally declare the meeting open after determining that a quorum is present;

(f) introduce herself or himself and the official party, welcome guest speakers etc, and, if appropriate, to explain the procedure to be followed;

(g) preside over and control the meeting, conducting it fairly and impartially and according to the Club's Constitution and the Corporations Act and any other applicable law;

(h) sign minutes of meetings as correct when they have been confirmed;

(i) introduce guest speakers and to arrange for votes of thanks to them;

(j) in the case of elections, to ensure the appointment of a returning officer and to invite that person to declare the result at the appropriate stage; and

(k) sign for identification purposes any document (for example, a new constitution) which may require this procedure.

8.5 **Behaviour at meetings**

It is expected that all persons attending an Annual General Meeting or General Meeting will behave courteously and respectfully at all times, in accordance with the Club's Constitution and any standing orders or other rules. The chair has the authority to:

(a) see that motions and amendments are respectfully worded, consistent with the Club's Constitution, unambiguous and in order;

(b) call speakers one at a time and in appropriate sequence;

(c) prevent irrelevant remarks, tedious repetition and objectionable language;

(d) insist that motions and amendments are in writing in appropriate circumstances;

(e) ensure that members entitled to speak at the meeting are not unreasonably denied an opportunity to be heard;

(f) prevent excessive heckling, but be tolerant of reasonable interjections;

(g) preserve order, and, if necessary, eject offending members; and

(h) ensure that only persons entitled to be present (or invited by the Board) are admitted to the meeting.

9. VOTING AT GENERAL MEETINGS

9.1 Members' voting rights

Members' voting rights must be identified before the start of a General Meeting or Annual General Meeting. For example, in some golf clubs only certain classes of members have the right to vote upon special resolutions to amend the Constitution of the club.

In Registered Clubs usually at least 50% of the full members of a Club (as defined in the Registered Clubs Act), must be voting members. This is more fully set out in the Chapter on Introduction to the Registered Clubs Act and Registered Clubs Regulation.

9.2 Employees voting and standing for the Board

An issue which often arises is whether employees, who are members of the Club, are entitled to vote at General Meetings or be elected to the Board. Permanent employees of a registered club (which includes full-time and part-time employees) are prohibited from being elected to the Board or voting at any General Meeting or on the election of the Board. Casual employees who are members of a Registered Club are entitled to any privileges of their class of membership.

Employees of Clubs which are not Registered Clubs, may stand for election and vote in accordance with the Club's Constitution.

9.3 Abstaining from voting

Generally, votes are counted on the basis of the ‗members present at the meeting, entitled to vote and voting' on the particular resolution in question. If a member abstains from voting, that member should not be counted in determining the result of the vote. For example, for a special resolution requiring a 75% majority:

(a) if there are 90 members present, but only 80 members vote because 10 abstain; then

(b) the relevant figure in determining whether there has been a 75% majority is 80 members and not 90 members.

9.4 Proxy voting

Proxy voting is permitted under the Corporations Act and the procedure in the Corporations Act and the Club's Constitution should be carefully followed by any Club which is not a Registered Club.

Section 30(1)(d) of the Registered Clubs Act specifically prohibits proxy voting in registered Clubs.

10. NON-MEMBERS ATTENDING MEETINGS

Non-members (for example, lawyers, architects and other expert advisers) are entitled to attend a General Meeting only at the invitation of the Board. Such experts may only address the meeting as invited and would not be permitted to vote unless they have voting rights as members.

11. MEMBERS' RESOLUTIONS

Unless the Club's Constitution specifically grants members the right to put forward resolutions to a General Meeting, then an individual member does not have such a right. The preferred procedure is for a member to write to the Board with a proposal. If the Board believes that the proposal has merit, the proposal would be put forward to a General Meeting by the Board.

If the Board does not support the proposal, then the member should be advised. The member could then request a General Meeting be held or attempt to gain support for the resolution from other members under the provisions of the Corporations Act.

12. POWERS OF THE BOARD & POWERS OF MEMBERS

Sometimes, the members may seek to direct the Board to act in a certain way. The members in a General Meeting cannot usually direct the Board to take certain action unless it relates to a matter specifically reserved to the members by the Club's Constitution or by law. The Board is elected by the members to run the Club and it is not generally open to the members in a General Meeting to direct the activities of the Board. The ultimate sanction available to the members in a General Meeting if they are dissatisfied with the Board, is either to vote out the directors at the next election or to call a General Meeting under the Corporations Act for the purpose of removing one or more current directors from office.

This chapter covers Clubs in NSW. Similar principles are likely to apply to Clubs in the ACT, and Clubs are referred to the ClubsACT Code of Governance and Guidelines for useful information.

USE OF COMPANY NAMES, BUSINESS NAMES AND LOGOS

1. INTRODUCTION

A Club must understand how to correctly use its registered company name, business name and logos/brands to ensure that it does not breach any applicable law, and to ensure that it obtains appropriate registration to protect its intellectual property. The Club must properly disclose its name and identity so the public knows who it is really dealing with when it uses the Club's facilities or transacts with the Club.

2. CORPORATIONS ACT AND THE COMPANY NAME

The *Corporations Act 2001 (Cth)* (**Corporations Act**) sets out how a company incorporated in Australia and registered with the Australian Securities and Investments Commission (**ASIC**) must use its company name, its Australian Company Number (**ACN**) and/or its Australian Business Number (**ABN**). Most Clubs are public companies limited by guarantee, incorporated in Australia and registered with ASIC, so the Corporations Act will apply. Clubs which are co-operatives should refer to the *Co-operatives Act 1992 (NSW)*.

2.1 What does the Corporations Act require?

A Club must display its full company name clearly on the first page of 'public documents' and 'negotiable instruments.' For most Clubs, their full registered company name will be:

(a) the company name (as registered with ASIC); and

(b) the ACN or ABN.

It is not sufficient to use only an abbreviation of the Club's name, such as 'XYZ Golf Club' instead of 'XYZ Golf Club Limited ABN 00 000 000 000' on these documents. A brand/logo can appear prominently, however the full company name must also be set out clearly.

A Club must display its full company name and the words 'registered office' prominently at its registered office. It must also display its full company name at every other place of business open to the public (for example, secondary Club premises).

2.2 What is a 'public document'?

A 'public document' includes:

(a) an instrument signed, issued or published by the Club which is required by law;

(b) an instrument signed or issued on behalf of the Club in relation to any transaction or dealing (such as a contract); or

(c) any of the following which is signed or issued on behalf of the Club:

(i) a business letter;

(ii) a statement of account;

(iii) an invoice or receipt;

(iv) an order for goods or services; or

(v) an official notice.

2.3 What are 'negotiable instruments'?

Negotiable instruments are a special class of legal document and include bills of exchange (such as cheques), promissory notes, and bearer and registered debentures. Not many of these documents will be relevant to your Club, except for cheques.

2.4 What about online?

If your website permits people to enter into transactions with the Club (such as making payments, making orders or completing membership applications), your Club's full company name must be clearly shown.

3. USING A BUSINESS/TRADING NAME

If your Club is carrying on business using a name other than its full company name, it must register that name with the NSW Office of Fair Trading under the *Business Names Act 2002 (NSW)*. An example of a business or trading name could be:

> 'XYZ Golf Club Limited ABN 00 000 000 000' actually trading and marketing the Club under the name 'Club XYZ'.

The Club must:

(a) not issue or sign any letter, statement, invoice, notice, publication, order for goods or services, receipt or other business document in connection with the carrying on of business under that name unless that

business name appears legibly on the document;

(b) display the business name so that it is obvious to the public at each place at which the Club carries on business using that business name; and

(c) display its certificate of registration of the business name so that it is obvious to the public at the main premises at which the Club carries on business using that name.

Information about registering, maintaining and using business names is available from the Office of Fair Trading website www.fairtrading.nsw.gov.au

4. USING A BRAND/ LOGO/ DOMAIN NAME

4.1 Registering a trade mark

Logos are generally known as ‗trade marks‘ and while there is no requirement to register a trade mark, doing so will assist to protect your Club‘s rights. The Club may be able to register its trade mark under the *Trade Marks Act 1995 (Cth)* (**Trade Marks Act**) with IP Australia, the Commonwealth government body that administers trade marks, patents and designs.

Registration of a trade mark is not automatic. If your Club wishes to register its logo/brand it will need to make an application to IP Australia. If your Club‘s application is successful, the Trade Marks Act generally gives your Club the right to take action against anyone using the same or a similar trade mark in relation to similar goods or services.

4.2 Unregistered brands/logos

Trade marks that are not registered may still be protected under general or ‗common‘ law. If another person starts using the same logo/brand (or a logo/ brand that is deceptively similar) as your Club, you may be able to bring an action for ‗passing off‘.

4.3 Domain names

If your Club has a website or intends to start a website with an ―.au” domain name it will need to register with .au Domain Administration (auDA) Ltd at www.auda.org.au

5. CLUBS' OBLIGATIONS TO OTHERS

Clubs are also subject to the law relating to the intellectual property (and other) rights of others, and this means that before your Club:

(a) takes steps to change its full registered company name; or

(b) starts using any trading or business name, brand or logo, or domain name,

you will need to check that you are not infringing on anyone else‘s existing name or other rights. If your Club uses a name, branding or logo that is the same or deceptively similar to someone else‘s, that person may take action against the Club!

Some words and logos can only be used by special permission (for example, ‗RSL‘) and using some words and logos is prohibited. Clubs should investigate whether any proposed name or logo is available for use before they start using and marketing under that name and/or logo.

6. KNOW WHO YOUR CLUB IS DEALING WITH

The Club will enter into transactions with a range of people; some will be individuals, some partnerships, some companies, and some other entities such as incorporated associations. It is important for the Club to know who it is really dealing with whenever it enters into a transaction with another person or organisation.

Clubs should ensure that any individual or entity that they deal with is clearly identified on any relevant documents, and this will involve checking the person‘s details. If the Club is dealing with a sole trader or partnership, the Club will at least need to check the ABN to ensure that the details are correct and up to date.

If the Club is dealing with a company, then at least an ASIC search should be conducted to identify the correct registered company name and ACN/ABN. Remember, business names and logos are not legal entities and cannot be contracted with; the Club must contract with the person or entity who owns the business name or logo. That person must be clearly identified on all relevant documents

This chapter covers Clubs in NSW. Paragraphs 2, 4, 5, and 6 are also likely to apply to ACT Clubs. Clubs in the ACT are also referred to ACT legislation including the *Business Names Act 1963* and *Business Names Regulation 1966*. Additional resources can be found at the Office of Regulatory Services at www.ors.act.gov.au

SPAM

1. THE SPAM ACT 2003

The *Spam Act 2003 (Cth)* (**Spam Act**) prohibits Clubs from sending unsolicited commercial electronic messages or ‗spam‘. Clubs sending electronic advertising, newsletters, invitations or other communications with promotional intent to their members or to others must ensure they comply with the Spam Act.

1.1 What is an 'electronic message'?

An ‗electronic message‘ covers a broad range of electronic communication including email, telephone calls, SMS and MMS multimedia and instant messaging.

1.2 What makes an electronic message 'commercial'?

Commercial electronic messages are also very widely defined and include any electronic message where the purpose is to:

(a) offer to supply goods or services;

(b) advertise or promote goods or services;

(c) advertise or promote a supplier, or prospective supplier, of goods or services;

(d) offer to supply land or an interest in land;

(e) advertise or promote land or an interest in land;

(f) advertise or promote a supplier, or prospective supplier, of land or an interest in land;

(g) offer to provide a business opportunity or investment opportunity;

(h) advertise or promote a business opportunity or investment opportunity;

(i) advertise or promote a provider, or prospective provider, of a business opportunity or investment opportunity;

(j) assist or enable a person, by a deception, to dishonestly obtain property belonging to another person;

(k) assist or enable a person, by a deception, to dishonestly obtain a financial advantage from another person; or

(l) assist or enable a person to dishonestly obtain a gain from another person.

Ordinary personal and business communication (e.g. between the Club and its contractors) is not prohibited.

2. COMPLIANCE REQUIREMENTS

2.1 Club's obligations

To comply with the Spam Act Clubs must not send commercial electronic messages without the recipient‘s consent. Additionally, any commercial electronic message must:

(a) identify the Club as the sender;

(b) provide contact information; and

(c) include a functional unsubscribe or ‗opt-out‘ facility.

If a Club plans to market its facilities and services using email or other electronic messages, it must be familiar with the Spam Act and get recipient consent. Clubs should also ensure that they only obtain address information in a lawful way. Use of address harvesting software is prohibited.

2.2 Contractors

If a contractor (such as marketing or research company) will be assisting the Club, the Club should at least ensure that the agreement with that contractor requires compliance with all applicable laws including the Spam Act.

If the Club uses addresses or other information provided by a third party, it is important that the Club ensures that the information was lawfully obtained and may lawfully be used by the Club.

3. OTHER ISSUES - DIRECT MARKETING

3.1 Other relevant legislation

Other legislation applicable to direct marketing, and specifically gaming machines advertising, is covered in the Chapter on Privacy.

3.2 Telemarketing

This manual does not cover ‗cold call‘ telephone marketing or surveys as that is not a marketing tool commonly used by Clubs. However, there is legislation imposing restrictions and procedural

requirements, and any Club considering this method should obtain legal advice first.

SUMMARY FROM SPAM ACT

- The Spam Act sets up a scheme for regulating commercial e-mail and other types of commercial electronic messages.
- Unsolicited commercial electronic messages must not be sent.
- Commercial electronic messages must include information about the individual or organisation who authorised the sending of the message.
- Commercial electronic messages must contain a functional unsubscribe facility.
- Address-harvesting software must not be supplied, acquired or used.
- An electronic address list produced using address-harvesting software must not be supplied, acquired or used.

This chapter covers Clubs in NSW. However, as this is Federal legislation it is likely to apply to ACT Clubs

OCCUPATIONAL HEALTH & SAFETY

1. INTRODUCTION

The *Occupational Health and Safety Act 2000 (NSW)* (**Act**) and *Occupational Health and Safety Regulation 2001 (NSW)* (**Regulation**) regulate occupational health and safety matters in NSW. However, it should be noted that there is a proposal for OHS matters to be regulated on a national basis and the Federal and State governments are currently considering this proposal. The introduction of a national system for OHS regulation may result in a number of changes to the obligations of employers and employees in this area.

This chapter is intended only as an overview of an employer's general obligations under the current Act and Regulation.

The Act and Regulation require employers, including clubs, to be pro-active and pre-emptive in relation to occupational health and safety matters. The purposes of the Act include:

(a) to secure and promote the health, safety and welfare of people at work;

(b) to protect people at a place of work against risks to health or safety arising out of the activities of persons at work;

(c) to promote a safe and healthy work environment for people at work that protects them from injury and illness and that is adapted to their physiological and psychological needs;

(d) to provide for consultation and cooperation between employers and employees in achieving the objects of the Act;

(e) to ensure that the risks to health and safety at a place of work are identified, assessed and eliminated and controlled;

(f) to develop and promote community awareness of occupational health and safety issues;

(g) to provide a legislative framework that allows for progressively higher standards of occupational health and safety to take account of changes in technology and work practices, and

(h) to deal with the impact of particular classes or types of dangerous goods and plant at, and beyond, places of work.

The Act and Regulation are administered by the Workcover Authority of New South Wales.

2. APPLICATION

The Act and Regulation apply to all places of work with some limited exceptions. An employee may be ‗at work' even when they are not on the club's premises. For example, an employee of a club sent to perform work at a third party's premises would in most cases be deemed to be at a ‗place of work' for the purposes of the Act. Obligations under the Act fall upon employers, self employed persons, controllers of work premises, plant or substances (among others).

Other safety and health legislation deals with specific workplace locations such as doorways and ventilation or air conditioning.

3. DUTIES OF EMPLOYERS

The Act sets out the primary obligations of employers. Section 8 of the Act states that an employer must ensure the health, safety and welfare at work of all the employees of the employer. That duty extends (without limitation) to the following:

(a) ensuring that any premises controlled by the employer where the employees work (and the means of access to or exit from the premises) are safe and without risks to health;

(b) ensuring that any plant or substance provided for use by employees at work is safe and without risks to health when properly used;

(c) ensuring that systems of work and the working environment of the employees are safe and without risks to health;

(d) providing such information, instruction, training and supervision as may be necessary to ensure the employees' health and safety at work; and

(e) providing adequate facilities for the welfare of the employees at work.

The duty to ensure the health, safety and welfare of employees is both preventative and remedial in nature. To discharge that obligation, employers must take pro-active steps to prevent hazards as well as to act to remedy those hazards discovered at a workplace.

In addition, an employer must ensure that people other than employees are not exposed to risks to their health or safety arising from the conduct of the employer's undertaking while they are at the employer's place of work. This means that a club's obligations to manage the safety of independent contractors, such as contract cleaners or caterers, are virtually the same as those towards its own employees.

4. IDENTIFYING, ASSESSING AND ELIMINATING FORESEEABLE HAZARDS

Chapter 2 of the Regulation requires an employer to identify foreseeable hazards that may arise from the employer's business, to assess the risks of those hazards and eliminate them, or if not reasonably practicable to do so, to control the risks.

An employer must be pro-active in identifying potential risks and must take measures in accordance with the Act to ensure the safety and welfare of persons (employees and non employees) at the workplace.

An employer's obligations regarding hazard identification, assessment, elimination or control must be considered in relation to potential to harm the health or safety of:

(a) any employee of the employer; or

(b) any other person legally at the employer's place of work (eg an independent cleaning contractor).

Chapters 4 and 5 of the Regulation impose specific hazard identification, assessment, elimination and control requirements on particular persons such as controllers of workplaces and in relation to particular hazards such as manual handling and electricity. Chapter 2 sets out general obligations and the key provisions are outlined below.

Clause 16 of the Regulation requires an employer to obtain necessary information to enable the employer to fulfil the employer's obligations concerning hazard identification, assessment, elimination or control and provision of information to employees. The information obtained by an employer regarding these matters must be from an authoritative source.

5. RISK IDENTIFICATION

Clause 9 of the Regulation provides that an employer must take reasonable care to identify any foreseeable hazard that may arise from the conduct of the employer's undertaking.

Reasonable care must be taken to identify hazards arising from (among others):

(a) the work premises;

(b) the work practices, work systems and shift working arrangements (including hazardous processes, psychological hazards and fatigue related hazards);

(c) plant (including the transport, installation, erection, commissioning, use, repair, maintenance, dismantling, storage or disposal of plant);

(d) dangerous goods (including storage and handling);

(e) hazardous substances (including storage/handling/use/transport/disposal);

(f) the presence of asbestos installed in the place of work;

(g) manual handling (including the potential for occupational overuse injuries);

(h) the layout and condition of place of work (including lighting conditions and workstation design);

(i) biological organisms, products or substances; and

(j) the physical working environment (including the potential for any one or more of the following:

- (i) electrocution;
- (ii) drowning;
- (iii) fire or explosion;
- (iv) people slipping, tripping or falling;
- (v) contact with moving or stationary objects;
- (vi) exposure to noise, heat, cold, vibration, radiation, static electricity or a contaminated atmosphere;

(vii) the presence of a confined space; and

(viii) the potential for workplace violence.

Effective procedures must be in place and implemented to immediately identify hazards prior to using premises as a place of work, before and during installation, erection, commissioning or alteration of plant, before changes to work practices and systems of work are introduced, before hazardous substances are introduced to a place of work, while work is being carried out and when new or additional information from an authoritative source relevant to the health or safety of the employees becomes available.

6. RISK ASSESSMENT

When assessing risks, information from authoritative sources should be considered. Pursuant to clause 35 of the Regulation, when conducting a risk assessment, the controller of a workplace is to:

(a) have regard to the likelihood of an injury or illness occurring and the severity of that illness or injury;

(b) review available information relevant to the particular hazard;

(c) identify the factors contributing to the risk;

(d) identify the actions necessary to eliminate or control the risk; and

(e) identify records that need to be kept to ensure that the risks are identified or controlled.

7. REVIEW OF RISK ASSESSMENTS AND CONTROL MEASURES

7.1 Review

Clause 12 of the Regulation provides that employers must review a risk assessment, and any measures adopted to control the risk (where those measures have been adopted because it is not reasonably practicable to eliminate the risk), whenever:

(a) there is evidence that the risk assessment in no longer valid;

(b) injury or illness results from exposure to a hazard to which the risk assessment relates; or

(c) a significant change is proposed in the place of work or in work practices or procedures to which the risk assessment relates.

7.2 Other employer duties

Other key provisions of Chapter 2 of the Regulation include the following employer duties:

(a) To ensure that new employees receive induction training on arrangements and procedures for reporting and controlling health and safety risks (clause 13).

(b) To ensure that employees receive necessary supervision to ensure health and safety (clause 14).

(c) To provide appropriate personal protective equipment to persons at risk from hazards (clause 15).

(d) To provide first aid facilities (and trained first aid personnel where there are more than 25 persons at a workplace) (clause 20).

7.3 Controls

Control measures must be taken in the following order in order to minimise the risk to the lowest level reasonably practicable (clause 5 of the Regulation):

(a) substitute the hazard giving rise to the risk with a lesser hazard;

(b) isolate the hazard from the person put at risk;

(c) minimise the risk by engineering means;

(d) minimise the risk by administrative means (such as appropriate training, instruction or information); and/or

(e) using personal protective equipment.

A combination of the above is to be used if no one single control is sufficient.

8. CONSULTATION AND OCCUPATIONAL HEALTH AND SAFETY COMMITTEES AND REPRESENTATIVES

The Act requires employers to consult with their employees to enable them to contribute to decision making concerning matters affecting their health, safety and welfare at work. The Act prescribes the nature of consultation, when it is required and how it is to be undertaken. It is an

offence under the Act not to consult with employees on safety matters, attracting substantial penalties for non compliance.

8.1 **Nature of consultation under the Act (section 14):**

(a) Sharing of relevant information about occupational health, safety and welfare with employees.

(b) Employees must be given the opportunity to express their views and to contribute in a timely fashion to the resolution of occupational health, safety and welfare issues at their place of work.

(c) The views of employees are valued and taken into account by the employer.

8.2 **When consultation is required under the Act (section 15)**

(a) when risks to health and safety arising from work are assessed or when assessment of those risks is reviewed;

(b) when decisions are made about the measures taken to eliminate or control risks;

(c) when introducing or altering procedures for monitoring those risks (including health surveillance procedures);

(d) when decisions are made about the adequacy of facilities for the welfare of employees;

(e) when changes that may affect health, safety or welfare are proposed to the premises where persons work, to the systems or methods of work or to the plant or substances used for work;

(f) when decisions are made about the procedures for consultation; and

(g) in any other case prescribed by the regulations.

8.3 **Committees (sections 16 and 17):**

(a) Consultation may be undertaken with an occupational health and safety committee or committees established by the employer and employees (an OHS committee). An OHS committee must be established where 20 or more employees are employed and a majority of them request the establishment of a committee or if WorkCover so directs. More than one committee is to be established if a majority of these employees request it and the employer agrees or if WorkCover directs.

(b) Consultation may be undertaken with an occupational health and safety representative or representatives elected by the employees to represent them (an OHS Representative). An OHS representative is to be elected if at least one of the employees requests the election of the representative or if WorkCover directs.

(c) Consultation may be undertaken in accordance with other arrangements agreed by the employer and employees, subject to the requirements of the regulations. A union of the employees may represent, for the purpose of consultation in accordance with the agreed arrangements, any of the employees who request the union to represent them.

(d) The employer may make arrangements for the establishment of an OHS committee or the election of an OHS representative whether or not it has been requested by any of the employees of the employer.

(e) An OHS representative may also be appointed to an OHS committee.

9. RELATED OBLIGATIONS OF EMPLOYER WITH RESPECT TO CONSULTATION

An employer has the following obligations in connection with occupational health and safety consultation arrangements, pursuant to clause 27 of the Regulation:

(a) to record those arrangements;

(b) to provide members of OHS committees or OHS representatives with reasonable access to the employees they represent during working hours for the purposes of communication (this may include the right to send emails to employees, particularly emails to shift workers or those with irregular hours);

(c) to publicise those arrangements among existing and new employees to whom they relate;

(d) to provide reasonable facilities, and access during working hours to the workplace, for the purposes of occupational health and safety consultation arrangements (including

for the purposes of holding or conducting elections, meetings or inspections);

(e) to ensure that employer representatives on an OHS committee participate in the work of the committee on a regular basis;

(f) to ensure that employees participating in consultation (and in training for consultation) in accordance with consultation arrangements are paid as if they were engaged in the duties of their employment (whether they participate as representatives of employees or of the employer);

(g) to pay the costs reasonably and necessarily incurred by employees in connection with their participation in that consultation or training; and

(h) to facilitate the occupational health and safety consultation arrangements of another employer where employees of that other employer are working at the employer's place of work.

10. FUNCTIONS AND POWERS OF OHS COMMITTEES AND REPRESENTATIVES

Functions prescribed under the Act of an OHS committee or OHS representative include:

(a) keeping under review the measures taken to ensure the health safety and welfare of persons at the place of work;

(b) investigating any matter that may be a risk to health and safety at the place of work and attempting to resolve the matter, but if unable to do so, to request an investigation by an inspector (of WorkCover) for that purpose;

(c) assisting in the development of arrangements for recording workplace hazards and accidents;

(d) making recommendations on the training of OHS committee members and OHS representatives; and

(e) making recommendations on safety training of employees.

The work of an OHS committee and OHS representative should be considered by an employer as part of an employee's usual work. There should be no attempt to deduct wages for time spent by an employee carrying out their duties as an OHS committee member or OHS representative.

An OHS committee or OHS representative does not have the power to implement its recommendations or to order work to stop in respect of a matter considered unsafe, unless these powers are delegated by management of a club. Management of a club retain these powers unless delegated. However, an employee, OHS committee member or OHS representative may refuse to work if they honestly believe the work is a risk to safety or health.

An OHS representative has the right to inspect the workplace, accompany a WorkCover inspector on an inspection, require the employer to establish an OHS committee and to be present at interviews between a WorkCover inspector and employee on health and safety matters.

11. TRAINING OF OHS COMMITTEE MEMBERS AND OHS REPRESENTATIVES

An employer must ensure that each OHS committee and each OHS representative undertakes a course provided by a trainer accredited by WorkCover or a registered provider under the *Vocational Education and Training Accreditation Act 1990 (NSW)*. A record of the training undertaken by each member or representative must be kept until at least 3 years after the person ceases to be employed by the employer.

12. UNLAWFUL DISMISSAL AND VICTIMISATION

An employer must not impose a charge on an employee, or permit a charge to be imposed on an employee, for anything done or provided in pursuance of a specific requirement of the Act or regulations (section 22 of the Act).

An employer must not, among other things, dismiss an employee or alter his or her employment to his or her detriment because the employee makes a complaint about a workplace matter that the employee considers is not safe or is a risk to health, is a member of an OHS committee or an OHS representative or exercises any functions under the Act as such a member or representative (section 23 of the Act).

Substantial penalties are imposed for any contraventions of sections 22 and 23 of the Act, but particularly in relation to section 22.

13. CODES OF PRACTICE

WorkCover may prepare draft industry codes of practice to provide practical guidance to employers and others who have duties under the Act with respect to occupational health, safety and welfare. Codes of practice are of an advisory nature only unless called up in an Act or regulation. However, although failure to comply with an industry code of practice is not proof of a breach of the Act, the non observance of a code of practice is admissible as evidence in proceedings under the Act against an employer. An employer may bring evidence of alternatives for the discharge of the employer's obligations under the Act and Regulation and which may be shown to be equally as safe as those set out in an industry code of practice.

WorkCover has published codes of practice on, among others, occupational health and safety consultation, risk assessment and hot and cold environments. Clubs should obtain copies of the codes of practice relevant to their workplaces and if appropriate take action to comply with those codes.

14. ENFORCEMENT, PENALTIES AND OFFENCES AND LIABILITY OF DIRECTORS AND MANAGEMENT

14.1 Enforcement

The Act is enforced mainly through inspectors appointed by WorkCover. Inspectors have broad powers which include the power to search, inspect, examine and test, take photographs, copies and recordings, take away samples for analysis, require information from persons at the workplace, dismantle plant for the purpose of examination and issue investigation, improvement, prohibition or penalty notices. Inspections may relate to non compliance with the Act or the Regulation or associated legislation. Inspectors usually initiate a prosecution.

14.2 Penalties, orders and offences

In addition to substantial penalties which can be imposed for breaches of the Act or Regulation, orders can be made against an offender such as to publicise or notify an offence in a publication, such as an annual report, to carry out a specific occupational health and safety project, to remedy a matter within a specific period and to pay for costs of an investigation (sections 112 to 116 of the Act).

Certain offences are created for failing, without reasonable excuse, to comply with a direction of an inspector (section 66 of the Act).

If a club breaches the Act or the Regulations the penalties can be substantial. For example, the penalties that may be imposed for a breach of an employer's duties under section 8 of the Act (see paragraph 3 above) are:

(a) In the case of a club (being a previous offender)—$825,000 fine.

(b) In the case of a club (not being a previous offender)—$550,000 fine

(c) In the case of an individual (being a previous offender)—$82,500 fine and/or up to 2 years prison.

(d) In the case of an individual (not being a previous offender)—$55,000 fine.

14.3 Potential personal liability of directors and management

Section 26 of the Act provides that if a club contravenes, whether by act or omission, any provision of the Act or the Regulations, each director and each person concerned in the management of the club, is taken to have personally contravened the same provision unless the director or person satisfies the court that:

(a) he or she was not in a position to influence the conduct of the club in relation to the contravention; or

(b) he or she, being in such a position, used all due diligence to prevent the contravention by the club.

A prosecution against the individual directors or managers can take place whether or not the company is also prosecuted.

14.4 Post accident action

(a) If a workplace accident occurs, it is important to take immediate action to prepare for a prosecution. Such action should include a post accident investigation, gathering of evidence by, among other things, interviewing witnesses and taking their statements, and if appropriate (such as in cases of serious injury, significant penalty or likely prosecution), involve the club's solicitors early.

(b) There are prescribed circumstances for notification to WorkCover of occurrences such as the death or serious injury of a person or an injury or illness which results in an employee being unfit to attend their usual place of work for a continuous period of 7 days or more, or to perform their usual duties and major damage to plant or structure or other thing that impedes safe operation.

(c) Immediate steps should be taken to remove or control the risk of further incident. This may include closing off part of a workplace and erecting warning signs. In other cases, for example, if someone has been killed, plant within 4 metres should not be used, moved or disturbed pending investigations by WorkCover.

(d) An incident which results in or has the capacity to result in an illness or injury to an employee or non employee may require the reporting of the incident to a club‘s workers compensation and/or public liability insurer, as the case may be. In the case of injured employees, it may be necessary to coordinate a return to work plan or rehabilitation assessment with the workers compensation insurer.

(e) Consult with employees as required by the Act (such as consultation with the relevant OHS committee or OHS representative) and conduct review of risk identification, assessment and control measures. Implement further steps as necessary to remove or control the risk of further incident.

This chapter outlines the law in NSW. Clubs in the ACT are referred to the *Work Safety Act 2008*, resources can be found at the Office of Regulatory Services http://www.ors.act.gov.au/workcover

WORKPLACE RELATIONS

1. INTRODUCTION

1.1 The Australian industrial relations system has undergone considerable change in recent years. Following the election of the Federal Labour Government in 2007, the previous Federal industrial relations system, which had become known as ―WorkChoices”, was extensively changed.

1.2 The *Fair Work Act 2009* (**FW Act**) and related legislation commenced on 1 July 2009, however certain parts of the industrial relations system dealing with the Modern Award System and the National Employment Standards became operative on 1 January 2010.

1.3 Although there have been significant changes, certain aspects of the previous industrial relations system have been retained, including a focus on the role of the national industrial relations system. Corporations and their employees in the private sector remain part of the Federal industrial relations system and the State industrial relations systems will apply only to State government employees and Local government employees, with all other employees covered by the Federal System.

Golf clubs and their employees are therefore part of the Federal industrial relations system.

1.4 This chapter examines the operation of the Federal industrial relations system including the following topics:

(a) National Workplace Relations System

(b) National Employment Standards

(c) Modern Awards system

(d) Modern Award applying to Golf Clubs

(e) Enterprise Agreements.

(f) Industrial Action

(g) Termination of Employment

(h) General Protections.

(i) Right of Entry

2. NATIONAL WORKPLACE RELATIONS SYSTEM

2.1 The Federal industrial relations system applies to, ‗National System Employers' and ‗National System Employees'.

2.2 The FW Act defines a ‗National System Employer' as including a constitutional corporation. Golf clubs in New South Wales that are corporations will therefore come under the operation of the Federal industrial relations system.

2.3 Following the referral by the New South Wales Government of its industrial relations powers over private sector employers and their employees to the Federal industrial relations system, those golf clubs that are co-operatives, being incorporated under the *Co-operatives Act 1992* (NSW) will also be covered by the Federal industrial relations system.

2.4 A ‗National System Employee' is a person employed by a ‗National System Employer'.

3. NATIONAL EMPLOYMENT STANDARDS

3.1 From 1 January 2010 the National Employment Standards (**NES**) apply to all national system employees and any contravention by an employer will be a breach of the FW Act and can result in financial penalties being imposed on the employer.

3.2 The 10 minimal entitlements under the NES are:

(a) ***Maximum working hours*** - 38 hours per week plus reasonable additional hours.

(b) ***Flexible work*** – a right for certain persons to request flexible working hours. An employee who is a parent or who has responsibility for the care of a child may request the employer for a change in working arrangements to assist the employee to care for the child if the child is under school age or is under 18 and has a disability. The employer may refuse the request only on reasonable business grounds.

(c) ***Parental Leave*** – up to 12 months unpaid leave (and with a right to request a further 12 months), plus certain other forms of maternity, paternity or adoption related leave.

(d) ***Annual leave*** – 4 weeks‘ paid leave per year plus an additional week for certain shift workers. There is also a provision for the employer and employee to agree on the cashing out of paid annual leave entitlements with certain requirements.

(e) ***Personal leave*** – 10 days personal/carer's leave per year, 2 days unpaid carer‘s leave as needed and 2 compassionate leave (unpaid for casual) as needed.

(f) ***Community service leave*** – unpaid leave for voluntary emergency management activities, leave for jury service, plus a limited right to compensation for loss of wages.

(g) ***Long service leave*** – long service leave is currently still regulated under State statues but is likely to come under national regulation in the future.

(h) ***Public holidays*** – a paid day off on a public holiday except where reasonably requested to work.

(i) ***Notice of termination and redundancy pay*** – up to 5 weeks‘ notice of termination based on length of service and up to 16 weeks‘ severance pay on redundancy.

(j) ***Fair work information statement*** – right to receive a statement setting out information the employer must provide to employees in relation to the operation of the FW Act.

4. MODERN AWARD SYSTEM

4.1 In 2008 the Federal Minister for Industrial Relations issued a written request to the Australian Industrial Relations Commission (now Fair Work Australia) to undertake a process to modernise awards.

4.2 The modern awards became operative from 1 January 2010 and replaced a very significant number of Federal and State awards. The modern awards are predominantly industry based, including awards applying to registered clubs including golf clubs (see paragraph 5 below).

4.3 The modern awards together with the NES provide the minimum entitlements applying to national system employees.

4.4 FWA will conduct a review of all modern awards on a periodic basis as provided by the FW Act and there is a limited basis for the variation of modern awards.

4.5 FWA will also conduct annual minimum wage reviews which will result in adjustments to the minimum wages under each modern award. FWA will also make a national minimum wage order for employees not covered by awards.

4.6 A modern award must include a term enabling an employer and an employee to agree to vary the application of certain terms of the award to meet the general needs of the employer and individual employee.

The terms the employer and the employee may agree to vary are:

(a) arrangements for when work is performed;

(b) overtime rates;

(c) penalty rates;

(d) allowances; and

(e) leave loading.

4.7 The modern award will not apply to an employee (or to the employer) if the employee is a high income employee. To be a ‗high income employee‘, the employee must be guaranteed in writing by the employer to receive in excess of the ‗high income threshold‘ (an annual remuneration of $108,300 as at 1 January 2010 to be indexed).

Golf clubs may by agreement with the senior employees remove those employees from the application of the modern award, otherwise the modern award will continue to apply to those employees. However high income employees retain their unfair dismissal rights as the modern award ‗covers' their employment even though it does not ‗apply' to them because they have been designated as a high income employee (see paragraph 9 below)

5. **MODERN AWARD APPLYING TO GOLF CLUBS**

5.1 On 1 January 2010 the Modern Award System became operative.

5.2 The previous awards of the New South Wales Industrial Commission that applied to the operation of registered clubs in NSW, including golf clubs, ceased to operate and were replaced by the *Registered and Licensed Clubs Award 2010.*

5.3 The previous NSW industrial awards that were replaced included:

(a) *Club Employees (State) Award*;

(b) *Club Managers (State) Award*;

(c) *Bowling and Golf Club Employees (State) Award*;

(d) *Club Industry (Variety Artists) (State) Award*.

5.4 The coverage of the *Registered and Licensed Clubs Award* is stated to be that it covers employers of employees engaged in the performance of all or any work in or in connection with or for clubs registered or recognised under State, Territory or Commonwealth legislation and their employees in the classifications within Schedule A of the award, to the exclusion of any other Modern Award.

5.5 The *Registered and Licensed Clubs Award* therefore applies to club managers, club employees and also as relevant to golf clubs, persons engaged as green-keepers, gardeners, lawn mower drivers and general labours in the construction and maintenance of golf courses.

However, the *Registered and Licensed Clubs Award* specifically state that it does not apply to employees employed by an employer other than the club, where the employer operates a golf pro shop, driving range or other golfing facility, or provides golf coaching or other similar services which are accessible to the general public. Therefore the award will not apply to independent golf pros and their employees

5.6 Under the *Registered and Licensed Clubs Award 2010,* notwithstanding other provisions in the award, an employer and an individual employee may agree to vary the application of certain terms of the award to meet genuine individual needs of the employer and the individual employee. However the matters that may be varied must only concern:

(a) arrangements for when work is performed;

(b) overtime rates;

(c) penalty rates;

(d) allowances.

5.7 The *Registered and Licensed Clubs Award* states that termination of employment is provided for by the terms of the *National Employment Standards*:

Employees' Period of Continuous Service	Entitlement
Not more than 1 year	1 week
Not more than 1 year, but more than 3 years	2 weeks
More than 3 years, but not more than 5 years	3 weeks
More than 5 years	4 weeks
An additional period of 1 week is paid if the employee is over the age of 45 years and has completed at least 2 years of continuous service with the employer at the date of the notice of termination.	1 week

An employee is also required to give the requisite period of notice when giving notice for termination. If an employee fails to give the required notice, the employer may withhold from any moneys due to the employee on termination, under the award or the NES an amount not exceeding the amount the employee would have been paid under the award in

respect to the period of notice required to be given by the employee.

5.8 Redundancy provisions are also provided for by the National *Employment Standards* and the following severance payments are provided:

Period of Continuous Service	Redundancy Paid
At least 1 year, but less than 2 years	4 weeks
At least 2 years, but less than 3 years	6 weeks
At least 3 years, but less than 4 years	7 weeks
At least 4 years, but less than 5 years	8 weeks
At least 5 years, but less than 6 years	10 weeks
At least 6 years, but less than 7 years	11 weeks
At least 7 years, but less than 8 years	13 weeks
At least 8 years, but less than 9 years	14 weeks
At least 9 years, but less than 10 years	16 weeks
At least 10 years	12 weeks

However, clause 14.5 of the *Registered and Licensed Clubs Award 2010* provides a transitional provision that states that the higher redundancy provisions applying under the previous state awards such as the *Club Employees (State) Award* and the *Club Manager's (State) Award* will continue to apply to employees covered by those awards and employed prior to 1 January 2010. This transitional provision ceases to operate on 31 December 2014 and the provisions of NES will apply thereafter.

5.9 The classifications of work covered by the *Registered and Licensed Clubs Award 2010* are shown in clause 17 of the award and cover the previous classifications, by the state awards including club managers, club employees and ground and maintenance employees.

5.10 Allowances such as vehicle allowance, meal allowance, clothing and uniform allowances and equipment allowances are provided for in clause 18 of the *Registered and Licensed Clubs Award 2010*.

5.11 The ordinary hours of work are stated in clause 26 of the Registered *& Licensed Clubs Award 2010* and are 38 hours per week worked over a number of different cycles.

Clause 26.6 of the award provides special provisions for maintenance and horticultural employees and provides that their ordinary hours will be between 6am and 6pm Monday to Friday and 6am to 12 noon on Saturday and, by agreement between the employer and the majority of employees, the span of hours may be increased by up to one hour. The maximum number of ordinary hours worked on any one day will not exceed 8 hours Monday to Friday and 4 hours on Saturday.

6. ENTERPRISE AGREEMENTS

6.1 Under the FW Act there continues the emphasis on employers and employees reaching enterprise agreements, that will be the main vehicle for other than minimum wage increases, and enhanced conditions.

6.2 There is a single type of enterprise agreement, with no distinction between union and non-union agreements. The types of enterprise agreements can be single enterprise agreements, multi-enterprise agreements and also greenfields agreements. There are no longer statutory individual agreements.

6.3 The FW Act prescribes certain requirements with respect to the content of enterprise agreements:

(a) permitted matters:

(i) matters pertaining to the employment relationship;

(ii) matters pertaining to the relationship between the employer(s) and the employee organisation(s) that will be covered by the agreement;

(iii) deductions from wages for any purpose authorised by an employee;

(iv) terms about how the agreement will operate;

(b) mandatory terms:

(i) nominal expiry date not more than 4 years after approval;

(ii) requirement for a dispute settlement term;

(iii) requirement for a consultation term;

(iv) requirement for a flexibility term;

(c) terms that must not be included:

(i) terms that exclude any provision of the NES;

(ii) unlawful terms, including discriminatory terms.

6.4 The collective bargaining process under the FW Act operates as follows:

(a) a bargaining process is commenced by the employer initiating the bargaining, or the employer agreeing to commence bargaining;

(b) Fair Work Australia has power to make a majority support determination if the employer refuses to bargain and a majority of the employees wish to bargain;

(c) Fair Work Australia can also make a scope order to determine who will be covered by the enterprise agreement;

(d) the employer is required to notify employees of their right to have a bargaining representative within 14 days of the bargaining commencing;

(e) the parties are able to appoint bargaining representatives which can include a union representing the employees;

(f) bargaining representatives must comply with the good faith bargaining requirements under the FW Act and Fair Work Australia has the power to issue bargaining orders if good faith bargaining is not occurring;

(g) the approval process requires the employees to have access to the final agreement 7 days before voting commences;

(h) the agreement is lodged with Fair Work Australia within 14 days of agreement;

(i) Fair Work Australia approves the agreement if there has been genuine agreement between the parties and the agreement passes the better off overall test in relation to the relevant modern award applying to the work of the employees;

(j) the enterprise agreement becomes operative 7 days after approval by Fair Work Australia.

6.5 Good faith bargaining requires the bargaining representatives to conduct the negotiations so that they:

(a) Attend and participate in meetings at reasonable times;

(b) Disclose information in a timely manner (not confidential or commercially sensitive information);

(c) Respond to proposals by the other bargaining representatives;

(d) Give genuine consideration to proposals by other bargaining representatives and give reasons for responses;

(e) Refrain from capricious or unfair conduct that undermines freedom of association or collective bargaining; and

(f) Recognise and bargain with other bargaining representatives.

However, good faith bargaining does not require the making of concessions or that the bargaining representative will reach agreement on terms to be included in the agreement.

6.6 The enterprise agreement has to be approved by Fair Work Australia and the requirements for approval are:

(a) Parties have genuinely agreed to the enterprise agreement;

(b) The agreement meets the national employment standards;

(c) Passes the better off overall test (BOOT);

(d) The groups of employees to be covered by the agreement is fairly chosen;

(e) No unlawful terms in the agreement;

(f) The making of the agreement is consistent with good faith bargaining;

(g) The agreement has a nominal term not exceeding 4 years.

7. **INDUSTRIAL ACTION**

7.1 Only industrial action in relation to a proposed enterprise agreement is protected industrial action.

7.2 Industrial action is defined by the FW Act to mean action of any of the following kinds:

(a) Performance of work by an employee in a manner different from that which it has customarily performed or the adoption of a practice in relation to work by an employee, the result of which is a restriction or limitation on, a delay in, the performance of the work;

(b) A ban, limitation or restriction of the performance of work by an employee or the acceptance of or offering for work by an employee;

(c) A failure or refusal by an employee to attend for work or a failure or refusal to perform any work at all by employees who attend for work;

(d) The lockout of employees from their employment by the employer of the employees;

7.3 The types of industrial action that are a protected action for a proposed enterprise agreement, are the following:

(a) Employee claim action for the agreement;

(b) Employee response action for the agreement;

(c) Employer response action for the agreement.

Therefore, employers can only take industrial action in response to industrial action taken by employees. Employers cannot initiate industrial action.

7.4 A protected action ballot must be passed by employees before employee industrial action is taken.

7.5 An employee claim action for a proposed enterprise agreement requires that it is organised or engaged in for the purpose of supporting or advancing claims in relation to the agreement that are only about, or are reasonably believed to only be about permitted matters and organised against the employer who would be covered by the agreement and initiated by a bargaining representative.

7.6 Permitted matters is defined under the FW Act to mean:

(a) Matters pertaining to the relationship between an employer that will be covered by an agreement and that employer's employees who would be covered by the agreement;

(b) The matters pertaining to the relationship between each employer and any unions that will be covered by the agreement;

(c) Deductions from wages for any purpose authorised by an employee will be covered by the agreement; and

(d) How the agreement will operate.

7.7 Under the FW Act, before a person engages in employee claim action, notice must be given to the employer. The period of notice is 3 working days or the longer period to be specified in a protected action ballot issued by Fair Work Australia.

7.8 The significance of industrial action being protected is that no action lies under any law in relation to any action that is protected industrial action unless the industrial action has involved or is likely to involve personal injury or wilful or reckless, destruction of or damage to property.

7.9 Fair Work Australia has powers to issue orders to stop industrial action in certain circumstances as provided by the FW Act.

8. **TERMINATION OF EMPLOYMENT**

8.1 Under the FW Act there have been a number of significant changes to the law regarding termination of employment, in particular widening the access to the jurisdiction compared to the previous legislation.

8.2 A dismissal is unfair under the FW Act if it is:

(a) harsh, unjust or unreasonable;

(b) for small business – inconsistent with the small business fair dismissal code; or

(c) not a genuine redundancy.

8.3 Employees who can bring unfair dismissal claims include:

(a) employees who earn less than the high income threshold per year ($108,300 as at 1 January 2010 to be indexed annually); or

(b) are covered by a modern award or an enterprise agreement, and, have worked for an employer for more than six months or in the case of a small business employer (15 or less employees) have worked for more than 12 months.

8.4 For Fair Work Australia to have jurisdiction to hear an unfair dismissal claim, there must have been a termination of employment by the employer. If the employee resigns then a claim cannot be made. However, if the actions of the employer force the employee or leave the employee with no choice but to resign then this may be held to be a constructive dismissal and an unfair dismissal claim can be made.

8.5 In an unfair dismissal application the employee must show that the termination was harsh, unjust or unreasonable. The approached by Fair Work Australia and its predecessors is to determine whether the employee was accorded ~~a~~ fair go all round”.

8.6 Fair Work Australia must take into account a number of factors in determining whether a dismissal was harsh, unjust or unreasonable and these include:

(a) was there a valid reason in relation to the employee‘s capacity or conduct including its effect on the safety and welfare of other employees;

(b) was the employee provided with notice of the reason;

(c) was the employee given an opportunity to respond to the reason;

(d) did the employer unreasonably refuse to allow the employee to have a support person present during the discussions relating to dismissal and the employee has made such a request for a support person to be present;

(e) was the employee warned about unsatisfactory performance prior dismissal, where relevant;

(f) the extent to which the size of the employer‘s operation would be likely to impact on the procedures followed effecting the dismissal;

(g) the extent to which the absence of a dedicated human resources management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal; and

(h) any other matters Fair Work Australia considers to be relevant.

8.7 The termination on the basis of genuine redundancy has changed under the FW Act compared to its predecessor. An employee can no longer be terminated on a redundancy bases because of operational reasons.

The FW Act now provides that a dismissal cannot be unfair in cases of genuine redundancy if:

(a) the employee‘s position no longer needs to be filled because of changes to the business‘ operational requirements; and

(b) the employer complied with any obligations in a modern award or collective agreement in regards to consultation about the redundancy.

However, a dismissal will not be a genuine redundancy if it would have been reasonable to redeploy the individual within the employer‘s enterprise or the enterprise of an associated entity of the employer.

8.8 Under the FW Act there is a Small Business Fair Dismissal Code applying to small businesses - defined as having less than 15 full time equivalent employees (up to 31 December 2010) and 15 employees counted on a head count basis (from 1 January 2011).

Small business employers who comply with the Fair Dismissal Code will not be liable for an unfair dismissal claim.

8.9 Unfair dismissal claims will be heard by Fair Work Australia and are intended to be simpler, faster and less costly than the previous system. An application for unfair dismissal must be lodged within 14 days of the termination.

Fair Work Australia can generally conduct conferences or hold hearings in respect of unfair dismissal matters. However, the conferences must be held in private and Fair Work Australia will only hold hearings if it considers it appropriate and to do so taking into account the views of the parties and whether a hearing would be the most effective and efficient way of resolving the matter. Fair Work Australia can make a decision ―on the papers" by considering the documentary evidence during a conference.

8.10 The remedies that Fair Work Australia can apply are to reinstate the employee which is the primary remedy or to award compensation which is calculated as being up to a maximum of 26 weeks of the remuneration of the terminated employee.

Fair Work Australia will reduce the amount of compensation if it is satisfied that the misconduct of the employee contributed to the employer‘s decision to dismiss the employee.

The amount of compensation must not comprise any compensation for shock, distress or humiliation or other analogist hurt caused to the employee by the manner of the dismissal.

9. GENERAL PROTECTIONS

9.1 The FW Act provides for a set of general protections against discriminatory or wrongful treatment of employees.

9.2 The objects of the FW Act in relation to general protections are to protect workplace rights and, to protect freedom of association, to provide protection from workplace discrimination and to provide effective relief for persons who have been discriminated against, victimised or otherwise adversely affected as a result of contraventions of the FW Act.

9.3 A person has a workplace right if the person:

(a) is entitled to the benefit of, or has a role or responsibility under, a workplace law, workplace instrument or order made by an industrial body; or

(b) is able to initiate, or participate in, a process or proceedings under a workplace law or workplace instrument; or

(c) is able to make a complaint or enquiry to a person or body having the capacity under a workplace law to seek compliance with that law or a workplace instrument, or if the person is an employee in relation to his or her employment.

9.4 The FW Act states that the meaning of adverse action in relation to an employee is where the employer dismissed the employ, injures the employee in his or her employment or alters the position of the employee to the employee's prejudice or discriminates between the employee and other employees of the employer.

9.5 Importantly, the onus of proof is reversed in relation to contravention for a prohibited reason. Once it is established that a certain action has taken place, it is for the defendant to prove that the action was not for a prohibited reason. An example would be that if a union delegate is dismissed, the employer may have to produce evidence that the dismissal was motivated by something other than their status or activities in that role, such as poor performance.

10. RIGHT OF ENTRY

The FW Act provides rights for officers or employees of registered unions to enter workplaces during working hours but subject to many conditions. An official must hold a permit issued by Fair Work Australia which must be

satisfied that the official is a fit and proper person to hold a permit.

10.1 A permit holder may enter the workplace for one of two main purposes. There is a right of entry for a permit holder to investigate suspected breaches of the FW Act or a workplace instrument. The official must have reasonable grounds for that suspicion and the breach must relate to, or affect, one of their members.

10.2 The employer must ordinarily be given at least 24 hours' notice and details of the breach before entering the premises.

10.3 An official exercising a right of entry may demand the production of directly relevant documents such as timesheets or pay records, view work or conduct interviews with any current or potential members who are willing to be interviewed. However records relating solely to non-union members may only be generally assessed with the consent of those employees or by an order of Fair Work Australia.

10.4 The official must not disclose any personal information obtained during the inspection. Further the official must also comply with any reasonable request made by the employer concerning the location of interviews.

10.5 There is a further right for a permit holder to enter a workplace to hold discussions with current or potential union members but only during breaks from work. At least 24 hours' notice must be given and the employer can reasonably specify the location of the interview.

This chapter covers Clubs in NSW. Clubs in the Act which are corporations under the *Corporations Act 2001* are likely to be covered by this law, though local laws and standards may also apply.

PLANNING LAW

The planning process in New South Wales is undergoing substantial and wide reaching reforms. As at the date this manual was published, a significant number of those reforms have yet to come into effect. If a reform which has yet to come into effect is significant, the effect of the reform is described in italics in the relevant section of this chapter. Any reforms which have come into effect as at the date of publishing have been included in the relevant section of this chapter.

1. FUNDAMENTALS OF PLANNING LAW

1.1 What is development?

Nearly all development in NSW is regulated by the law. This means that:

(a) the use of land;

(b) the subdivision of land;

(c) the erection of a building;

(d) the carrying out of a work;

(e) the demolition of a building or work,

is development and the law will control that development.

1.2 What is the main legislation?

The principal pieces of legislation for controlling development are:

(a) *Environmental Planning & Assessment Act 1979 (NSW)* (**EP&A Act**) (as amended from time to time by the Environmental Planning & Assessment Amendment Act 2008 (NSW) as part of the planning reform process).

(b) Environmental Planning & Assessment Regulation 2000 (NSW) (**EP&A Regulation**).

1.3 Who is responsible for the legislation?

This legislation is administered by the Department of Planning NSW, a department of the NSW State Government, but it is the local council (**Council**) that will be the principal point of contact for most development.

TIPS!

- Most development undertaken by Clubs will be regulated by Council, and Council's Local Environmental Plan (**LEP**), and any relevant Development Control Plans (**DCP**) are likely to directly regulate any development a Club proposes to undertake.
- Before undertaking any development, Clubs should obtain advice about the controls relevant to that particular type of development and ensure that the proposed development is in fact permissible.
- As Council will generally be the authority that controls development on Club premises, it is recommended that senior Club staff introduce themselves to relevant Council officers and seek to establish a working relationship with those officers. This provides a line of communication with respect to advice about development the Club proposes to undertake and will also provide a useful point of contact for environmental issues that may arise out of the Club's operations.

2. CONTROLLING DEVELOPMENT — GENERAL

2.1 Are there any policies or other documents that control development?

The EP&A Act allows the creation of 'environmental planning instruments' (**EPIs**) to control development. There currently are 3 types of EPI:

(a) State Environmental Planning Policy (**SEPP**).

(b) Regional Environmental Plan (**REP**) (the provisions of which will over time be incorporated into SEPPs and LEPs as part of the planning reform process).

(c) Local Environmental Plan (**LEP**).

2.2 **Are there controls other than an EPI?**

Another plan which is likely to be relevant to development is a Development Control Plan (**DCP**) which provides more detail of the controls imposed on development than that provided in an LEP. Those controls include controls relating to:

(a) building heights;

(b) set backs from roadways;

(c) car parking requirements; and

(d) pollution and waste water controls.

DCPs are generally made by Councils and may be site specific. It is not uncommon for a golf course to be subject to a site specific DCP made by Council.

Site specific DCPs may also be prepared by the owner of land (and submitted to the relevant planning authority for approval and adoption) if an EPI requires or permits such a DCP to be prepared before a development can be carried out. The relevant EPI will set out the requirements for the making and content of the owner initiated DCP.

2.3 **Must a club always comply with an EPI?**

The provisions of EPIs are legally binding on Councils and any person wishing to carry out development. However, ‗State Environmental Planning Policy No. 1 — Development Standards' (**SEPP1**) provides a mechanism for an applicant for a DA to make a written objection to the application of a particular standard to a proposed development, and Council may approve the development despite the standard.

SEPP1 cannot be used to circumvent a prohibition on development. For example, an application cannot be made under SEPP 1 seeking consent for development that would otherwise be prohibited in the zone.

2.4 **Must a club always comply with a DCP?**

As the requirements of a DCP do not usually have the force of law, it is possible for development to vary from the requirements of a DCP. It is important to keep in mind that the DCP is a document which guides development. Development which complies with a DCP is more likely to be approved than development that does not.

TIPS!

- LEPs and DCPs will be most relevant to the majority of development undertaken by Clubs.
- To assist your Club to obtain prompt and cost effective consent from Council (or any other relevant consent authority), development should be designed to maximise compliance with the LEP and DCP.
- Of course, the cost of obtaining a ‗quick consent' must be weighed against the additional commercial benefit that might arise if the relevant controls can be (on proper grounds) avoided to allow a more profitable development to be undertaken.

3. **CONTROLLING DEVELOPMENT — ON A PARTICULAR SITE**

3.1 **How can a club determine what development can be undertaken on land?**

The short answer to this question is to obtain from the local Council a certificate for the land issued under Section 149 of the EP&A Act, which will specify the zoning.

3.2 **What is 'zoning'?**

Most landowners will be familiar with the concept of ‗zoning'. Land is traditionally zoned according to categories such as ‗residential', ‗commercial', ‗industrial' or ‗recreational'.

3.3 **How does zoning control development?**

The objective of zoning is to ensure that development within a particular zone is compatible with other development within that zone. Any EPI, but particularly an LEP, will stipulate what development:

(a) is permissible in the zone without consent;

(b) is permissible in the zone with consent;

(c) is prohibited in the zone.

The fundamental step is to work out whether the type of development you want to undertake can be conducted in the zone (with or without consent) — or whether it is in fact prohibited.

3.4 Other than the LEP, do clubs need to consider any other EPI?

Yes. In addition to the LEP, any other relevant EPI will need to be considered. The Section 149 certificate should list what current REPs and SEPPs apply to the land.

3.5 What is 'characterising' the development?

EPIs, and particularly LEPs, characterise development for *certain purposes* to be either permissible without development consent, permissible only with development consent and otherwise prohibited. It is working out the **purpose** of the development that leads to its **characterisation**, i.e. ‗this is development for the purpose of [state its character]'.

This is a fundamental step in the development process. The entire project can turn on how the development is to be characterised. Characterising the development — to determine whether it is permissible or not — and determining what controls apply to the development may require the input of appropriate professionals.

3.6 What if the development is prohibited?

If the development is prohibited it cannot be undertaken without a re-zoning of the land on which the development is to take place (only done at the discretion of the relevant authority by the making of a new LEP) or by the Minister, directing in writing, that a development application can be made even though the development is prohibited.

3.7 Are there any opportunities to affect the zoning of land?

The zoning of land, through the making of LEPs (and other EPIs), is a matter solely at the discretion of the relevant authority (which, following the implementation of the proposed planning reforms, will be the Minister). There are no operative provisions in the legislation that entitle a landowner to make a formal application for the making of an LEP/re-zoning of land. Informal approaches can be made to Council, but as noted above, it is entirely at the discretion of the relevant authority as to whether an LEP will be made.

3.8 What if an LEP is made that detrimentally affects a club's land?

A decision to re-zone land can have a detrimental effect for the landowner. For example, the range of uses may be limited on the making of a new LEP — perhaps even the current use will be unlawful under the new LEP (in which case issues of existing use rights will arise).

The relevant authority is obliged to observe the procedures set out in the legislation when making an LEP. There are opportunities for the public to comment on the making of an LEP. However there is no opportunity to lodge an appeal on the merits of the making of an LEP.

TIPS!

All Clubs should have a current copy of the Section 149 Certificate that applies to their land. This will indicate the zoning of the premises and will assist in interpreting the LEP.

- Most development undertaken by Clubs (such as alterations to the clubhouse and golf course) is likely to require consent. As such development is consistent with a golf club's core operations, it is likely that the zoning of land on which it is to take place will permit the development. Accordingly it should be relatively easy to characterise most development as for the purpose of the Club and therefore permissible with consent.
- Issues might arise if development will be undertaken on adjoining land not already zoned for Club purposes, where development might encroach upon footpaths or roads, or where development will be undertaken for purposes other than the Club's core operations (for instance, retail, commercial or industrial development). In those circumstances, special care should be taken to ensure the development is permissible and in accordance with the zoning of the relevant land.
- In certain circumstances it may even be possible to obtain a ‗spot re-zoning' so that development can go ahead on land that would otherwise not be zoned for the purpose of the development. However, it may be extremely difficult (if not impossible) to obtain a ‗spot re-zoning' on the completion of the planning reform process.

4. DEVELOPMENT THAT DOES NOT REQUIRE CONSENT

4.1 Will the LEP show a club that it does not require consent?

As noted earlier, any EPI, but particularly an LEP, will set out what development is permissible without consent. Even though consent may not be required, the relevant EPIs and instruments that apply to the land may provide other controls on the way that development can be carried out.

4.2 Does 'exempt development' require consent?

An EPI, including an LEP, can provide that development of a specific class or description is ‗exempt development' and consent is not required to undertake this development.

EPIs (usually an LEP) or DCPs generally set out the type of development, and its characteristics, which will satisfy the definition of exempt development.

SEPP (Exempt and Complying Development Codes) 2008, SEPP 60 Exempt and Complying Development and the NSW Commercial and Industrial Code also set out the type of development which satisfies the description of exempt development.

4.3 If development does not need consent can it still require assessment?

One further point needs to be made. Development that does not require consent, because it will be undertaken on land that is not zoned, or because it is permissible on zoned land without consent, may still require environmental impact assessment under Part 5 of the EP&A Act if the development is likely to significantly affect the environment.

TIPS!

- Although the categories of ‗exempt development' are limited, a Club should always consider whether relatively minor development can be characterised as exempt development.
- Exempt development generally includes works such as the installation of rainwater tanks, minor building alterations (for example, the replacement of doors and windows and other non-structural works), the construction of access ramps for the disabled, certain advertising and works for the purposes of landscaping. But reference should always be made to the relevant LEP or DCP to determine whether a particular development is exempt and whether there are any other controls on that development which need to be considered.
- If development can be properly characterised as being for a purpose for which consent is not required, the Club can undertake that development without troubling the Council. **Beware!** - Fines can be imposed, and an order to demolish building work can be made, if consent is not obtained when it should have been!

5. DEVELOPMENT THAT REQUIRES CONSENT

5.1 What development requires consent?

The general categories of development that require consent are:

(a) complying development (which is a minor form of local development);

(b) local development; and

(c) State significant development.

Both local development and State significant development can be:

(d) Designated development; or

(e) Integrated development.

In some cases local development and State significant development can be both integrated development and designated development. The development application will be processed and assessed by the relevant consent authority according to the type of development.

5.2 What is complying development?

Complying development is common and routine development which has a predictable and minor impact on the environment and which can be regulated by specific pre-determined standards.

LEPs or SEPP (Exempt and Complying Development Codes) 2008 and the NSW

Commercial and Industrial Code identify what is complying development.

Complying development does not require development consent but can be authorised on the issue of a complying development certificate by Council or an accredited certifier. The development must then be carried out in accordance with any relevant standards for that development.

5.3 **What is local development?**

Local development is development that requires consent and is not State significant development. It is the most common type of development that requires consent and most development carried out by golf clubs will be local development. Examples of such development include:

(a) alterations and additions to the club house which are not minor;

(b) the construction of greenkeepers' or machinery sheds; and

(c) major alterations to the golf course.

5.4 **What is State significant development?**

State significant development includes:

(a) development declared to be such under State Environmental Planning Policy (Major Projects) 2005; and

(b) development where the Minister is of the opinion that the development is of State or regional planning significance and is declared as such.

Examples of State significant development which might be relevant to golf clubs include:

(a) the construction of large scale resort facilities; and

(b) the construction of large scale mixed use developments which might be comprised of a mixture of hospitality, retail, accommodation and leisure components.

The Minister is the consent authority for State significant development. However, in certain circumstances, the Minister may delegate that authority to the Planning Assessment Commission.

5.5 **What is designated development?**

Designated development is development that:

(a) is declared to be designated development by an EPI;

(b) falls within one of the categories of Schedule 3 of the EP&A Regulation; or

(c) is identified as such in planning instruments such as SEPP 14 – Coastal Wetlands (1985).

(d) In general terms, it is development that will have a significant impact on the environment and includes development for the purposes of:

(e) aquaculture;

(f) mines; and

(g) chemical industries.

(h) Examples of designated development which might affect golf clubs in particular include:

(i) the construction of artificial water bodies located within 40 metres of a natural water body, wetland or an environmentally sensitive area or which are located in an area of high watertable or acid sulphate, sodic or saline soils; and

(j) the construction of sewerage systems or works which have an intended processing capacity of more than 20 persons equivalent capacity or 6 kilolitres per day and are located on a flood plain, within a coastal dune field, within a drinking water catchment, within 100 metres of a natural water body or wetland or within 250 metres of a dwelling not associated with the development.

If development is designated development then an Environmental Impact Statement must be prepared and lodged with the development application, certain notification and advertising provisions of the legislation must be observed and objectors to the development have appeal rights to the Land & Environment Court.

5.6 **What is integrated development?**

Integrated development is development that requires both development consent and the approval of other relevant authorities as specified in the EP&A Act.

For instance, golf clubs that have the advantage of natural water courses will require the approval of the appropriate regulatory authority, such as

the Department of Water and Energy for any development in the vicinity of the water body. Such development will be integrated development and the relevant authority will provide its suggested conditions of consent to the relevant consent authority.

6. THE DEVELOPMENT CONSENT PROCESS

6.1 How is development consent obtained?

If consent is required to undertake the development, then a development application (**DA**) must be lodged with the consent authority — usually the relevant Council but sometimes the Minister for Planning in the case of State significant development and major projects.

Under the recent NSW planning reforms, certain functions of Council relating to the assessment and determination of development applications have been removed from Council and placed in the hands of newly established planning bodies such as the Planning Assessment Commission, Joint Regional Planning Panels (JRPP) and Independent Hearing and Assessment Panels (IHAP).

For instance, the JRPP will consider and determine regionally significant developments valued over $5 million. The JRPP will be identified in an EPI as the consent authority for such development.

Similarly, Councils must establish an IHAP to review and assess any aspect of a development application or planning matter if required to do so under an EPI. Whilst Councils will not be bound by the assessment of an IHAP, they will need to provide the Department of Planning with a report as to the reasons for any decision which are made by Council that are not in accordance with an assessment by an IHAP.

6.2 Who can make the development application?

The DA is made by the owner of the land on which the development is to take place, or can be made by any other person with the consent of the owner. The DA is usually made on a form provided by Council and is likely to require other documents in support of the DA.

6.3 Can other approvals during the development application process be obtained?

Yes. Some development (ie integrated development) requires consent from Council and the approval (or approvals) of other relevant authorities before it can be undertaken. Some of those approvals can be foreshadowed in the consent process and the general terms of those approvals obtained from the appropriate authority.

Certain other approvals required to undertake development — for example, an approval to use a building as a place of public entertainment, or to carry out stormwater or sewerage work, or to place waste in a public place, or to subdivide land — can be obtained during the consent process from the Council.

6.4 What does a club need to do to lodge a development application?

The procedure for lodging an application to obtain consent is essentially:

(a) lodging a document (usually a form) which contains the information required by the EP&A Regulations;

(b) lodging with the development application the documents required by the Regulation, including necessary plans, sketches, shadow diagrams and a Statement of Environmental Effects; and

(c) paying the required fee.

6.5 Will the DA be advertised?

A Council will advertise the development application. This will usually consist of advertising the DA in a local newspaper and notifying neighbours to the land upon which the development is proposed to take place. Council's LEP, or a DCP, will contain the requirements for advertising and notifying a DA.

6.6 Are there any special requirements when a DA is lodged for integrated development?

When the consent authority receives a DA for integrated development it must forward a copy of the DA to the ‗approval body' whose approval is required. The approval body must provide the general terms of any approval. This is so the consent granted by the consent authority can be consistent with the general terms of any approval. The approval body can require further information from the applicant. If the approval body advises that it will not grant an approval for the development then the consent authority must refuse consent to the application.

6.7 **Are there any special requirements when a DA is lodged for designated development?**

When a DA is lodged for designated development, it must be accompanied by an Environmental Impact Statement (**EIS**). The form and content of an EIS are set out in the EP&A Regulations. The applicant must also consult with the Department of Planning who will provide comment on the form and content of the EIS. A DA for designated development also gives rise to quite specific opportunities for the public to comment upon the development.

6.8 **Are there any special requirements when a DA is lodged for State significant development?**

State significant development is usually identified in an EPI which will also identify where the DA should be lodged (either with the Department of Planning or the relevant local council). In any event, the Minister or Planning Assessment Commission will usually be the consent authority for the DA.

6.9 **Are there any special requirements when a DA is lodged that will effect vulnerable wildlife?**

If the DA is for development:

(a) on land that is, or is part of, critical habitat; or

(b) is likely to significantly affect threatened species, populations or ecological communities or their habitats,

then:

(c) a species impact statement must be lodged with the DA; and

(d) the consent authority must seek the concurrence of the Director General of National Parks & Wildlife.

TIPS!

- The EP&A Regulation sets out the information to be included with the DA and the documents to accompany a DA. However, it is the Council that will ultimately determine the DA — and Clubs are advised to approach the relevant Council officer to identify how much information will need to be provided to undertake the development concerned. Relatively minor development does not require as much documentation as major development. The Council should be provided with sufficient material to allow it to undertake an assessment of the DA. The Club should not retain unnecessary consultants, or incur unnecessary expense, in circumstances where Council does not require that information.
- Clubs should also take advantage of the DA process to obtain any other approvals that are necessary to carry out the development. Those approvals are likely to relate to use of a place for public entertainment; water supply, sewerage and stormwater drainage work in connection with a development, management of waste, construction activities that may encroach upon a road or be carried out near a waterway, installing or operating amusement devices and operating a public car park.

It may also prove worthwhile if a Club approaches its neighbours and advises them of any development the Club proposes to undertake. If a neighbour makes any relevant comments, and the comments can be addressed by minor amendments to the DA, then the Club's development will proceed more smoothly if it has already addressed neighbours' objections. Clubs should, as far as possible, seek to retain control over the proposed development, the advice given to neighbours, and its assessment through Council. This will help ensure that any problems raised by Council can be readily addressed and the development will be assessed as quickly as possible.

7. ASSESSING THE DA AND MAKING A DECISION

7.1 How is the development application assessed?

When assessing the DA the consent authority is to take into account those matters that are set out in the EP&A Act that are relevant to the development which include:

(a) the provisions of any EPI or draft EPI;

(b) the provisions of any DCP;

(c) the Regulations;

(d) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;

(e) the suitability of the site for the development;

(f) any submissions made by the public; and

(g) the public interest.

The consent authority will particularly consider how the proposed development complies with the relevant standards, specifications and requirements of the LEP and any relevant DCP. The greater the discrepancy between the development and the relevant controls, the greater the risk of consent being refused. However it is rare to find a development that totally complies with the relevant planning controls.

7.2 What do the EP&A Regulations say should be considered when assessing a DA?

The matters set out in the EP&A Regulations include:

(a) On the demolition of a building — AS 2601-1991 The Demolition of a Structures.

(b) On the change of use of a building — fire protection and structural capacity of the proposed use.

(c) On certain land and in certain local government areas - NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast.

7.3 How do the 'other approval' requirements impact on the consent process?

The consent authority will consider those reports and environmental assessments that are relevant to the type of development. For example, the comments of the EPA, any EIS lodged with the DA or even a species impact statement.

7.4 How long does a consent authority have to determine a DA ('deemed refusal')?

There is no statutory limitation on the length of time an authority can take to determine a DA. But an applicant cannot wait forever — and so the EP&A Act creates ‗deemed refusal' provisions. The EP&A Regulations provide that a DA is taken to have been refused if the consent authority has not determined it within:

(a) 40 days (except where 60 days is allowed);

(b) 60 days in the case of designated development, integrated development or development for which concurrence is required.

The Regulations dictate how that period is to be calculated. For example, the day on which the DA is lodged, and the day after, are not to be counted as part of the deemed refusal period.

Proposed Reforms to the Planning Process

As part of the planning reform process, it is proposed to amend the Regulations to extend the deemed refusal timeframes from the current 40 or 60 days to 50, 70 or 90 days depending on the class of development.

7.5 What happens if consent is granted?

If the consent authority decides to grant consent then it is likely that consent will be granted subject to conditions. The EP&A requires notice to be given to the applicant that consent has been granted and the conditions of the consent.

7.6 What type of conditions could be imposed?

Conditions of consent may be imposed to address a number of matters including:

(a) the matters the consent authority is required to take into account under the EP&A Act;

(b) conditions that will modify the development the subject of the DA;

(c) matters prescribed by the EP&A Regulations (including the Building Code of Australia).

The conditions of consent must reasonably relate to the development.

Proposed Reforms to the Planning Process

Importantly for Clubs, as part of the planning reform process it is proposed to amend the EP&A Act to enable Councils to impose reviewable conditions relating to extended hours of operation and the maximum number of persons permitted in a building.

7.7 Can a condition require the payment of money ('development contributions')?

The EP&A Act contains specific provisions which entitle a consent authority to require, as a condition of the consent, payment towards the provision or improvement of amenities or services. These are currently referred to as ‗section 94 contributions' as they are currently imposed under section 94 of the EP&A Act. Section 94 contributions can be required if a development will require the provision of, or increase in the demand for, public amenities and services in the area (for instance, a development may result in a greater demand for public car parking or public transport or increase the burden on local roads). The consent authority may require dedication of land, or payment of money, or both in satisfaction of section 94 and only in accordance with a ‗Contributions Plan'.

Alternatively, the Club and the consent authority can enter into a ‗planning agreement', under which the Club agrees to dedicate land free of cost, pay a monetary contribution and/or provide any other material public benefit. Such agreements are entered into at the DA stage of a development and can exclude Section 94 contributions in whole or in part.

Proposed Reforms to the Planning Process

As part of the reforms to the planning process, section 94 contributions will be replaced with a new system under which Councils may only levy contributions for 'key community infrastructure' and affordable housing. 'Key community infrastructure' includes:

- ***local roads;***
- ***local bus facilities;***
- ***local parks;***
- ***local sporting, recreational, cultural and social facilities;***
- ***local car parking facilities;***
- ***drainage and stormwater management works;***
- ***land for any community infrastructure; and***
- ***district infrastructure.***

7.8 Can the DA be used as an excuse for the authority to impose conditions on other aspects of an existing development?

As a general rule, a DA is not an opportunity for the authority to regulate other aspects of an existing development. The authority has other enforcement powers for that purpose. However a DA for the rebuilding, alteration, enlargement or extension of an existing building can give rise to circumstances for the consent authority to require the building to be upgraded if more than half the building is to be rebuilt or fire safety concerns arise. In these circumstances, the consent authority is entitled to consider whether the current DA is an appropriate opportunity to require the existing building to be brought into total or partial conformity with the Building Code of Australia.

7.9 **When does consent commence?**

Consent commences on the date that is endorsed on the notice advising of the grant of development consent. If an appeal is made against the grant of consent, either by the applicant for the DA in relation to a condition or an objector on designated development, the consent is in ‗limbo'. It will only become effective from the date on which the appeal is determined — unless of course the Court refuses consent (in which case it is taken never to have been granted). If consent is refused by the consent authority, but granted by the Court on appeal, then the consent is effective and operates from the date of the decision of the Court.

The consent authority may issue a ―deferred commencement consent" with conditions that are required to be satisfied before the consent may commence. The consent authority will notify the applicant once it is of the view that the conditions have been satisfied and the consent may be commenced.

Proposed Reforms to the Planning Process

Under the planning reforms proposed by the State Government, 'Planning Arbitrators' will be responsible for reviewing Council determinations for certain types of development applications. Proposed 'planning arbitrator matters' include development of commercial or retail premises which are under 9 metres in height or with a gross floor area of less than 2000 square metres and development which has an estimated value of less than $1 million. This review process must be undertaken before a party can appeal a determination to the Land and Environment Court. However, it now seems unlikely that this amendment will commence.

7.10 **When does consent lapse?**

A consent lapses 5 years after the date of its commencement, although that period can be varied by the consent authority (but generally not for a period shorter than 2 years). Consent for the erection of a building, the subdivision of land or the carrying out of work does not lapse if building, engineering or construction work is physically commenced on the land before the consent would otherwise lapse.

Under amendments to the EP&A Act (yet to commence), a consent will lapse if work is not substantially commenced within 2 years after it has physically commenced. If a consent authority issues a consent with a lapsing period of less than 5 years, an application can be made to extend the consent for a period of 1 year.

7.11 **What happens if a Club is unhappy with the conditions of consent or consent is refused?**

If an applicant is unhappy with the conditions of the consent or consent is refused (which refusal the consent authority will give notice of stating the reasons for that refusal), that applicant may:

(a) lodge a new development application;

(b) apply for a review by the Council;

(c) appeal to the Land & Environment Court.

TIPS!

- The conditions that can be imposed on a consent are such that a relatively simple and cost effective development can quickly become quite complicated. Clubs cannot simply ignore conditions of consent — a failure to observe a condition of consent is a breach of the law which can be prosecuted and the condition enforced by Council. Eventually, as part of the planning reform process, Councils will also be able to impose a condition requiring security for its costs of ensuring compliance with a development consent.
- Accordingly, a Club would be well advised to remain in close contact with the Council officer assessing the development. The Club should seek to negotiate the conditions of consent. Once again, by monitoring the development assessment process a Club will maximise its opportunity of obtaining a consent which is workable.
- A Club should also keep in mind that an appeal to the Land & Environment Court is available. Appeals would generally not be cost effective for minor development. However, in the case of significant development, or development which could provide a reasonable financial return to the Club, the opportunity cost of the litigation might be relatively insignificant compared to the ultimate return.
- On a deemed refusal of consent, an actual refusal of consent, or on conditions which are not acceptable, a Club should at least obtain advice about the cost of Land & Environment Court litigation and the prospects of success.
- One last point should be noted. Having obtained a suitable consent, a Club should preserve the operation of the consent by commencing the works which the consent allows within the appropriate time frame.

8. IMPLEMENTING THE DEVELOPMENT CONSENT & PART 4A CERTIFICATES

8.1 Can clubs immediately start the development once consent has been received?

No. As noted above, a development consent is usually issued subject to conditions. Those conditions must be considered to see whether the consent requires something to be done to make the consent ‗operative' before a club proceeds to obtain the necessary Part 4A certificates. Consider also whether a deferred commencement consent has been granted (conditions must be satisfied before the consent is operative) or whether a staged consent has been granted (allowing one part of the development now and another part on the grant of further consent).

8.2 What are Part 4A Certificates?

A development application will usually not contain the level of detail that will be required to actually carry out the development. It is therefore not possible to act upon a development consent without obtaining the necessary certificates required under the EP&A Act.

8.3 How do I get a Part 4A certificate?

The person with the benefit of the consent will need to appoint a principal certifying authority (**PCA**) who will be responsible for overseeing the issue of the required ‗Part 4A Certificates'.

8.4 What are the types of Part 4A certificates?

Part 4A certificates are of the following types:

(a) Compliance certificate — generally a certificate to the effect that building work, or a condition governing that building work, has been completed and complies with specified plans, specifications or relevant conditions.

(b) Construction certificate — a certificate to the effect that work completed in accordance with specified plans and specifications will comply with the EP&A Regulations.

(c) Occupation certificate — a certificate that authorises the occupation and use of a new building or a change of building use for an existing building.

(d) Subdivision certificate — a certificate that authorises the registration of a plan of subdivision under the *Conveyancing Act 1919 (NSW)*.

8.5 Who can be the Principal Certifying Authority?

Either the consent authority or an accredited certifier may be appointed as the PCA (although there are limitations on appointing an accredited certifier for subdivision work).

8.6 Are there any rules and regulations on the issue of Part 4A certificates?

Yes. The EP&A Regulations contain the controls on the issue of Part 4A certificates and any relevant technical or professional standard must be satisfied before the certificate can be issued.

8.7 Proposed reforms to the planning process

The proposed reforms to the EP&A Act introduce new requirements for design certificates for certain aspects of development to be issued by a person accredited under the Building Professionals Act 2005 prior to the release of a compliance, construction, occupation or subdivision certificate for the development under Part 4A of the EP&A Act.

8.8 Can the consent be amended through the certificate?

It is not possible to amend the development consent through the certification process — the certifier is obliged to ensure that the development that is carried out is consistent with the consent.

8.9 If a Club is not happy with the certifier's decision, what can it do?

There is a right to appeal to the Land & Environment Court from a decision not to issue a:

(a) Construction certificate;

(b) Final occupation certificate;

(c) Subdivision certificate.

If the PCA does not issue the certificate within a certain number of days after the application is made, then the application is taken to have been refused. Generally speaking, an application for a construction certificate is taken to have been refused if the application is not determined within 28 days after the application was lodged. In most other circumstances, the relevant period is 14 days.

8.10 Can a PCA be replaced?

An accredited certifier who has been appointed as the PCA must not be replaced by another certifier unless:

(a) the replacement PCA has been approved by the relevant accreditation body and the consent authority has been notified before the replacement occurs; and

(b) the current PCA, the replacement PCA and the person eligible to appoint the PCA for the development agree to the replacement.

TIPS!

- Part 4A Certificates effectively replaced building approvals. The procedure for obtaining the certificates under Part 4A allows someone other than the Council to oversee and authorise building works. However, private certifiers should not be seen as an ‗easy option'. Quite the contrary — there are quite significant penalties if certifiers fail to fulfil their statutory duties so they should enforce the law.
- In just the same way as it will benefit a Club to establish a relationship with the Council, it will benefit the Club to establish a relationship with any certifier appointed in connection with the development. This will ensure that lines of communication are maintained, the Club's expectations are made known to the certifier and the certifier's proposed approach to the matter will be known to the Club. This will help ensure that there is no failure of communication.

9. RESPONSE TO CHANGE — MODIFYING CONSENT AND EXISTING USE RIGHTS

9.1 Can I modify the consent?

A consent can be modified. There are 3 types of modification application:

(a) an application to modify consent to correct a minor error, misdescription or miscalculation;

(b) an application to modify a consent where:

(i) the modification will have minimal environmental impact; and

(ii) the development to which the application relates remains substantially the same as the development for which the consent was originally granted; and

(c) an application to modify a consent where the development to which the application relates remains substantially the same as the development for which the consent was originally granted.

The consent authority is to assess the modification application as if it were an application for development consent. An applicant who is dissatisfied with the determination of a modification application may apply for review to the Council or appeal to the Land & Environment Court.

9.2 What is an existing use right?

‗Existing use rights' (**EUR**) — also called non-conforming uses — is the term given to a use which was lawfully commenced and continuing at a time when a planning scheme changed so that such a use would be prohibited in the zone. The existing use can continue so long as it is not abandoned or surrendered. It is important to note that for an EUR to arise, the use must have been lawfully commenced. That is, if the use was not lawfully commenced, the change in planning law does not provide an opportunity to ‗regularise' what was unlawful.

9.3 Can the use be changed?

An existing use can be changed to a permissible use or another non-conforming use or uses. A DA must be lodged.

9.4 Can the use be developed further?

The EP&A Regulations provide that, subject to certain specified limitations, an existing use may:

(a) be enlarged, expanded or intensified,

(b) altered or extended, and rebuilt.

Consent is required for all developments noted above.

TIPS!

- Application to modify a consent is a legitimate method of dealing with change. However many Councils are aware that some developers use the modification provisions to, slowly but surely, construct a development that is different from that which was originally approved. It is always more prudent to seek consent for that which you intend to build. Modification applications should only be relied upon when they are absolutely necessary.
- In some cases it may be more appropriate, and provide less avenue for legal problems, if a fresh development application is lodged to amend an original development application, rather than lodge a modification application.
- A Council will usually seek to restrict, and prevent any redevelopment, of an existing use notwithstanding that these are both permissible under the legislation. Existing uses are seen as being inconsistent with, and undesirable for, the character of an area and Council would prefer to see them discontinued. If a Club has an existing use rights issue then it will probably need to be managed with the appropriate legal and planning professionals.

10. POWERS OF INVESTIGATION AND ENFORCEMENT

10.1 Are there powers of investigations and enforcement, and who can exercise these powers?

There are powers of investigation and enforcement under the EP&A Act. The authority to exercise those powers is granted by the EP&A Act to various persons, but they are usually exercised by Councils. The power to issue a Notice, and an Order, can also be exercised by the accredited certifier appointed as the PCA for the development with which they are involved.

10.2 What are the powers of entry into premises?

The EP&A Act permits a Council to authorise a person in writing to enter any premises so that a Council can exercise its functions. The power of entry allows the authorised person to inspect premises, take measurements, take samples and photographs and require any person on the premises to answer questions the subject of the investigation.

10.3 Must proof of authority be shown?

A person authorised in writing to exercise the power of entry must produce the authorisation if required to do so by the owner or occupier of the premises.

10.4 Must notice be given of intention to enter premises?

Before the power of entry is exercised, notice must be given to the owner or occupier of the premises and state the day on which that power will be exercised. Entry may only be made at any reasonable hour in the daytime or at any hour during which business is in progress or is usually carried out on the premises.

Notice need not be given by a Council if:

(a) the consent of the owner or occupier of the premises is given; or

(b) if entry is required because of a serious risk to health or safety; or

(c) entry is required urgently and the General Manager of the Council has authorised in writing that entry should be obtained without notice.

10.5 Is there a restriction on entry to residential premises?

Entry cannot be made to premises being used for residential purposes except in certain circumstances (which include permission being given by the occupier).

10.6 What are the powers given to enforce planning law?

Council has power to issue Orders commanding a person to undertake certain work or refrain from an activity. Orders may also be given by the principal certifying authority with respect to any development for which that authority is appointed.

10.7 What can be the subject of an Order?

There are a number of matters about which an Order can be issued, including:

(a) to demolish or remove a building;

(b) to repair or make structural alterations to a building; and

(c) to comply with a development consent.

10.8 Are there any requirements to give Notice before the issue of an Order?

Before an Order can be given the person who will give the Order must give Notice to the person to whom the Order is proposed. That Notice will outline the terms of the proposed Order and advise of the right to make representations as to why the Order should not be issued.

10.9 Is there a time limit by which an Order must be complied with?

If an Order is given a reasonable period must be allowed to comply with the Order. If the Order concerns a matter of serious risk to health or safety or it is an emergency the Order can require immediate compliance.

10.10 Are there appeal rights?

A person who receives an Order is entitled to appeal to the Land & Environment Court within 28 days after the service of the Order — but an appeal does not stay or delay the effect of the Order.

10.11 **Are there other ways to enforce planning legislation?**

In addition to the enforcement provisions noted above, the EP&A Act contains ‗open standing' provisions which entitle any person to bring proceedings to remedy or restrain a breach of the Act. This means that any person can bring proceedings in the Land & Environment Court for such matters as:

(a) a failure to obtain development consent prior to carrying out work; and

(b) a failure to observe the conditions of a development consent.

10.12 **Are there penalties for failing to observe planning legislation?**

The EP&A Act makes it an offence to contravene the Act or the Regulations and fines can apply. The penalties vary: maximum fines of $1.1 million (breach of the EP&A Act) to $110,000 (for a breach of the Regulation).

10.13 **Can a neighbour prosecute someone for a breach of planning law?**

A Council is in the best position to undertake enforcement action under the EP&A Act. Where enforcement action is brought by a third party it should be brought directly against the person who has failed to comply with the EP&A Act. In practice, it is often the case that a third party will make a complaint to the relevant local council which is likely to investigate the matter and, if appropriate, bring enforcement action.

TIPS!

A Council will usually seek to enter into discussion with a Club prior to taking any enforcement action under the Act. This will provide the Club with an opportunity to address Council's concern and, if the request is legitimate, taking the necessary action to remedy the problem and avoid the issue of an order.

If the Council proceeds to issue an Order then a Club should consider whether the Council has acted reasonably. If not, an appeal to the Land & Environment Court may be appropriate.

A Club should also be aware of the enforcement rights available under the planning legislation. This should have the effect of ensuring the Club is aware of its rights, and the rights of others, to ensure compliance with the law. When a Council seeks access to Club premises, the following protocol should be observed:

- The Council officer should produce any necessary notification.
- It should be confirmed that appropriate notice has been given (or alternatively the reasons why notice has not been given should be stated).
- The inspection by the Council officer should be confined to those matters which have been notified to the Club.
- A Club should not be obstructive and it should assist the Council officer but it should insist upon its rights which are provided under the legislation (eg ‗Please show me your authorisation. What is the issue or matter you are investigating?') Council Officers have other powers under other legislation (eg Protection of the Environment Operations Act 1997) which can be relied on (eg noise complaints).
- It should also be made clear to the Council officer that only nominated personnel have the authority to bind the Club by answers given to any questions.

11. REVIEW OF DECISIONS AND APPEALS TO THE LAND & ENVIRONMENT COURT

11.1 **If a club is not happy with Council's decision what can they I do about it?**

There are 3 avenues that can be taken if an applicant is not happy with a Council's decision:

(a) review of Council's decision on a DA;

(b) representations before the issue of an Order; and

(c) appeal to Land & Environment Court.

11.2 **What is a review of council's decision?**

The EP&A Act provides that a person who lodged a DA can request the Council to review its determination of that DA. The request for a review must be made within 28 days after the date on which the applicant received notice of Council's

decision. The fee must be paid at the time of the request for a review.

The decision on a review application must not be made by the person who made the original determination — unless the determination was made by the Council, in which case the Council can review its own decision.

An application for review can be made on the refusal of a development application, and also with respect to conditions imposed on a development consent.

11.3 What are representations before the issue of an Order?

A decision taken by a Council, or a PCA, to issue an Order requires Notice of an intention to issue an Order. When the Notice is received, the person to whom the Order is addressed may make representations. Those representations must be considered by the Council or PCA and may be sufficiently persuasive that an Order is not issued.

11.4 What appeals can be made to the Land & Environment Court?

The Land & Environment Court is given jurisdiction to hear nearly all litigation related to planning and environment matters including:

(a) a refusal to grant an application for the modification of a development consent.

(b) an appeal by an applicant against the refusal to grant development consent, or against the conditions of the consent.

(c) an appeal against a failure or refusal to issue a construction certificate, a final occupation certificate or a subdivision certificate.

(d) an appeal against an Order issued by a Council or a PCA.

(e) appeals with respect to building certificates, in particular Council‘s refusal to issue a building certificate.

11.5 Are there different types of appeal?

There are two types of appeal available to the Land and Environment Court:

(a) a merits appeal; and

(b) a legal review.

Appeals made to the Court are generally matters of merit and the Court stands in the shoes of the Council or the certifying authority. That is, the Court will make its own decision about whether, on the merits of the case, the consent should have been granted or the certificate issued. Merit appeals include appeals from the decision of Council not to grant consent or where the applicant believes the conditions of the consent are unreasonable.

Legal reviews are proceedings brought in the Land & Environment Court for a purely legal review of Council‘s exercise of its powers. That is, the Court will not be concerned with the merits of Council‘s decision (unless the Council has made such an unreasonable decision that no reasonable Council could have made that decision). The Court will instead be conducting a legal review — generally on the principles of administrative law — as to whether Council has properly exercised its powers. For instance, a legal review might arise where Council, in making its determination on the DA, has acted in bad faith or has taken matters into account which were not relevant to the determination or failed to take into account those matters that were.

Section 123 of the EP&A Act contains the ‗open standing provisions'. Proceedings brought by a member of the public seeking to enforce the provisions of the EP&A Act are civil enforcement proceedings. As such the proceedings will only consider the legality of Council‘s decision.

TIPS!

- An application to Council for a review of its decision is a relatively inexpensive and timely way to obtain a ‗second opinion‘ from Council. However it would be unusual for one Council officer to publicly disagree with another Council officer. Nevertheless application for review should be made if a Club is unhappy with a decision.
- Another effective alternative is an appeal to the Land & Environment Court. This manual does not summarise Land & Environment Court litigation, however, Land & Environment Court litigation is generally not bound by the rules of evidence, will be conducted on a relatively informal basis, and as such costs in the Land & Environment Court are usually cheaper than the equivalent jurisdiction — the Supreme Court.

This chapter applies only to Clubs in NSW. Planning requirements are likely to be different in the ACT. Clubs in the ACT are encouraged to seek specific advice on any planning issues.

PROPERTY DEVELOPMENT

1. PROPERTY DEVELOPMENT

1.1 Why might a club undertake a property development project?

Many golf clubs throughout Australia are finding that they are situated in what many in the property industry consider to be prime development locations. Given their prime locations and the potential economic benefits available to clubs through the development of their properties, a significant number of golf clubs are becoming involved in the property development field.

Clubs are also feeling the financial impact of the increase in gaming machine taxes and anti-smoking legislation. To offset those impacts, clubs are undertaking property development projects to reduce their dependence on gaming revenue by creating alternate sources of income.

1.2 What forms do property development projects usually take?

Property developments may take any number of forms, the most common being:

(a) the development of land owned by the club (other than the land upon which a club's premises is located) for retail, residential, commercial or leisure uses;

(b) the redevelopment of a club's existing premises for retail, commercial, residential and/or leisure projects. This may involve the refurbishment of those premises or their relocation within the completed development; or

(c) a combination of each of the above forms of development.

1.3 What preliminary advice should a club obtain before commencing a property development project?

The initial step that any club should take when considering a property development project, is to obtain appropriate advice on a wide range of legal, commercial, financial and construction issues connected with the project. The most significant matters for which appropriate professional advice should be sought include the following:

(a) The feasibility of the project (ie will the completed development result in a positive financial return to the club over time). This should include an investigation of various development options to determine the highest and best use for the club's land holdings.

(b) The cost and financing of the development. Preliminary advice should be obtained as to the estimated cost of the project. This advice will drive the financing of any potential project and its affordability. Once a preliminary cost estimate has been completed, a club should then explore the various financing options that are available. For instance, depending on the cost and structure of the development, consideration will need to be given as to whether:

   (i) the development is to be financed by borrowings (and whether or not the club is in a position to obtain that finance);

   (ii) the club will finance the development itself; or

   (iii) the development is to be financed by a joint venture partner.

(c) Determining the current zoning of the land on which the development project is to take place and the need for any re-zoning of that land.

(d) The taxation consequences of the development (including any stamp duty and capital gains tax implications of the development) and whether it may affect any sporting club tax exemption the club may have.

(e) The appropriate structure for the development. For instance, depending on the cost and type of development being undertaken, will:

   (i) the club be undertaking the development itself, in which case the club will simply engage a builder itself to construct the development. In this instance, the Club may lease and/or sell the completed development (or parts of the completed development) upon completion of the project or operate

the business being carried on from the completed project itself;

(ii) the club enter into a joint venture with a developer who will construct the development at the developer's cost and who will be entitled to a share of any future income or profit derived from the sale or leasing of the development;

(iii) the development take the form of a sale and lease back, where the club sells the relevant land to a developer for the developer to construct the development which the club leases back from the developer on the completion of the development; or

(iv) the developer be constructing the development and leasing the completed development from the club on completion of the development.

How the development is structured will determine the type of agreements that are necessary to properly document the project and how the risks involved with the project are to be allocated between the parties.

(f) The interest of possible anchor tenants for the completed project. This is particularly important for medium to large scale retail projects, where an anchor tenant (or the absence of one) can make or break a project. To this end, preliminary discussions should be held with possible anchor tenants to gauge their interest in the project.

1.4 What advice should a club obtain once it has been decided that the development is to take place?

Issues relevant to the later phases of a development for which appropriate advice should be obtained include:

(a) design management (to ensure that the development is constructed to an appropriate standard at an appropriate and affordable cost). To this end, the club should engage an architect and a quantity surveyor;

(b) project management (to ensure that the development is constructed on schedule and to budget). To this end, an appropriate qualified project manager should be retained by the club to manage the project on the club's behalf;

(c) risk management (to ensure that the development is completed if for any reason the developer or builder is unable to do so). This would also involve ensuring that the club enters into the appropriate agreements for the carrying out of project and that those agreements appropriately allocate the risk associated with the project; and

(d) reporting (to ensure that the club is kept adequately appraised of the status of the development during the construction phase). This would normally be carried out by the project manager appointed by the club.

Tips for Clubs

When assessing any proposed development, it is important for clubs to remember that they are at an inherent disadvantage when dealing with property developers, builders and the like, most of whom have many years of experience in the property industry, experience which most clubs lack.

Seeking expert advice at all stages of a property development project is critical to the integrity of the project. Doing so:

- enables the proper investigation of the full range of development options available to a club;
- enables a club to adequately explore the viability and affordability of those development options; and
- helps to ensure that the club obtains the maximum economic benefit from a particular project and to minimise the risks (both commercial and financial) involved in carrying out the project.

2. **LEGAL FACTORS TO BE CONSIDERED IN PROPERTY DEVELOPMENT**

2.1 **Are there any specific regulatory requirements clubs should be aware of when carrying out a property development project?**

Depending on the type of development being carried out, there are two critical regulatory requirements clubs should be aware of when carrying out a property development project, those requirements being contained in:

- section 41J of the *Registered Clubs Act 1976* (NSW); and
- section 37B of the *Gaming Machines Act 1976* (NSW).

2.2 **Why is section 41J of the Registered Clubs Act relevant to a property development project?**

If the proposed development project involves the sale, lease, licence or other disposal of any of the club‘s “core” property, then the process for such disposal provided for under section 41J will need to be complied with.

2.3 **What is "core" property?**

A club‘s “core” property is defined to include:

- the defined premises of the club;
- any facility provided by the club for the use of its members and their guests; or
- any other property declared, by a resolution passed by a majority of the members present at a general meeting of the ordinary members of the club, to be core property of the club.

In addition to the defined premises of the club, core property could include things like the club‘s car park and sporting facilities. Core property would not include any property or land that is not presently being utilised for any purpose or land that is owned by the club for investment purposes.

2.4 **What is the process for disposal of "core" property?**

To dispose of any “core” property, clubs must comply with the following procedure:

- the land being disposed of must be valued by a registered valuer;
- the disposal must be approved at a general meeting of the ordinary members of the club by a majority of those members approve of the disposal; and
- any sale is by way of public auction or open tender conducted by an independent real estate agent or auctioneer.

2.5 **Are there any exceptions to the requirements of section 41J?**

There are exceptions to the requirements of section 41J which are contained in clause 19 of the *Registered Clubs Regulation 2009* (NSW). If the disposal of “core” property falls within any one of the exceptions contained in the regulation, then the processes set out in section 41J will not need to be complied with. Those exceptions are as follows:

- the leasing or licensing of the core property is for a period not exceeding 10 years on terms that have been the subject of a valuation by a registered valuer;
- the disposal of the property to a wholly owned subsidiary of the club;
- the leasing or licensing of the core property to a telecommunications provider for the purposes of a telecommunications tower;
- the disposal involves the calling for expressions of interest and a subsequent selective tendering process, and the disposal and disposal process has been approved by a majority vote at a General Meeting of the ordinary members of the club;
- the property is being sold by private treaty, but only after it failed to sell at public auction or open tender;
- the terms and nature of the disposal are disclosed to the ordinary members of the club and the disposal is approved at a General Meeting of those ordinary members;
- the Director of Liquor and Gaming has, on application by the club, approved of the “core” property being disposed of other than in accordance with the requirements of section 41J;

- the disposal is to a government department, a statutory body, a state owned corporation or to a local council; and
- the disposal is by way of lease or licence and the lease or licence and:
  - is being granted to a person for the purpose of enabling the person to provide goods or services exclusively to members of the club and their guests and to other members of the public attending the club in accordance with a functions authority held by the club; or
  - is being granted to a person for the purpose of enabling the person to provide goods or services to members of the club and their guests and to other members of the public and the granting of the lease or licence has been approved at a General Meeting of the ordinary members of the club.

2.6 When is section 37B of the Gaming Machines Act 1976 (NSW) relevant to a property development project?

The matters contained in section 37B will only be relevant if the proposed development includes a “retail shopping centre”.

2.7 What is a “retail shopping centre” for the purposes of section 37B?

A “retail shopping centre” means “a cluster of premises promoted as, or generally regarded as constituting, a shopping centre, shopping mall or shopping arcade”.

2.8 Why is section 37B important?

Section 37B is critically important if a club proposes to carry out a development which includes a “retail shopping centre” and the development results in the removal of a club licence, or the extension of the premises of a club, to premises that are part of the “retail shopping centre”.

If an application is granted under the *Liquor Act 2007* (NSW) that results in the removal of a club licence, or the extension of the premises of a club, to premises that are part of a “retail shopping centre”, the gaming machine threshold for the club is to be set at zero.

In general terms, if a club‘s premises, upon completion of the development, forms part of the “retail shopping centre”, the club would not be able to operate poker machines from those premises.

2.9 Are there any ways to avoid the club’s gaming machine threshold being set at zero if the development includes a “retail shopping centre”?

A club‘s gaming machine threshold will not be reduced to zero if the development project meets the following requirements:

- The retail shopping centre must be comprised of less than 40 shops;
- There is no direct access to the club‘s premises from the retail shopping centre;
- Where the club‘s premises are being removed to other premises, the other premises are situated in the same suburb or town as the previous premises;
- Where the club‘s premises are being extended, the club‘s premises remain predominantly where they were before the extension;
- The gaming machine threshold for the club‘s premises is no more than the gaming machine threshold for the club‘s premises immediately before the club licence was removed or the premises were extended.

This chapter outlines the law applicable in NSW. Clubs in the ACT are encouraged to seek advice before proceeding with a property development to ensure that the legal situation in the ACT is fully taken into account.

ENVIRONMENTAL CONTROL

1. INTRODUCTION - SOURCES OF ENVIRONMENTAL PROTECTION

In New South Wales, the environment (natural and built) is protected by:

- Statutes (Acts of Parliament and the like); and
- the common law (rules developed by the Court when cases are decided).

Generally, public authorities — and particularly the EPA and local councils — are responsible for enforcing environmental law. These authorities can compel the owners of the land and buildings to conduct their activities in compliance with the relevant environment protection controls.

The major sources of environment protection controls in New South Wales are:

- Environmental legislation.
- Instruments under the legislation that control activities on a particular site, for example environment protection licences and development consents.
- General rules established at common law.

2. SOURCES OF ENVIRONMENTAL PROTECTION — THE LEGISLATION

In New South Wales the three major pieces of legislation controlling the protection of the environment are:

- *Protection of the Environment Operations Act 1997* (**POEO Act**)
- *Environmental Planning & Assessment Act 1979* (**EP&A Act**)
- *Contaminated Land Management Act 1997* (**CLM Act**)

2.1 Protection of the Environment Operations Act 1979

The objectives of the POEO Act are to:

- Protect, restore and enhance the quality of the environment having regard to maintaining ecological sustainable development.
- Increase opportunities for public involvement and participation in environment protection.
- Reduce risks to human health and prevent the degradation of the environment.

The POEO Act controls activities which affect the environment in the following ways:

- Requiring certain listed activities to be licensed under the regime detailed within the Act.
- If a particular activity is not required to be licensed then the Act provides general environment protection provisions which must be complied with, otherwise an offence will be committed. (Note activities which are licensed must also comply with the general environment protection provisions.)

Activities which require licensing are listed at Schedule 1 to the POEO Act. The Environment Protection Authority (**EPA**) is the relevant public authority which enforces compliance with environment protection licences.

Tip for Clubs

It is unlikely that golf clubs will undertake activities that require an environment protection licence. However, a club must comply with the general environment protection provisions (**offence provisions**) within the POEO Act. Either a council or the EPA will be responsible for enforcing the offence provisions.

(a) Offence provisions

There are a range of regulatory tools available to the EPA, and some of these are discussed at Section 4 of this part of the chapter. However it is the offence provisions that most usefully ‗summarise' the standards a golf club must meet to ensure its activities comply with the law.

The offence provisions in the POEO Act have been divided into three classifications: Tier 1, Tier 2 and Tier 3.

Tier 1 offences are considered to be significant and may include a penalty of imprisonment. They are characterised by the requirement that the person that committed the offence did it deliberately or was negligent when carrying out the activity. Tier 1 offences include:

- Disposing of waste in a manner which harms or is likely to harm the environment (s115).
- Wilfully or negligently allowing a substance to leak, spill or otherwise escape in a manner which harms or is likely to harm the environment (s116).
- Wilfully or negligently emitting ozone depleting substances (CFCs or HCFC5) into the atmosphere (s117).

Tier 2 offences carry a penalty of a fine only. They are offences of ‗strict liability': that is, there is no need to prove the corporation intended to commit the offence — even an honest accident can be subject to prosecution.

Tier 2 offences include:

- Pollution of water by any substance (s120).
- Pollution of air as a result of a failure to conduct operations in a proper and efficient manner (s124).
- The operation of plant or handling of material which causes an emission of noise where there was a failure to operate plant or handle materials in a proper and efficient manner (s139-140).
- Permitting land to be used as a waste facility (s144).

Tier 3 offences are generally Tier 2 offences which can be dealt with by a penalty notice.

Tip for Clubs

Prosecution is but one of the methods regulatory authorities use to enforce the environmental law. They are more likely to try and work with golf clubs to ensure a satisfactory level of environmental performance rather than institute a prosecution as a matter of course.

To this end, the regulatory authorities should be seen as a source of expertise and potential help for clubs to address environmental problems.

A club's attempts to improve its environmental performance by working with the EPA would be a matter mitigating against prosecution should an accident or an incident ever occur.

(b) **Directors/managers - liability**

A corporation can only act through its employees, managers and directors. A golf club is in the same position.

The POEO Act holds directors and managers personally liable in circumstances where the corporation breaches the POEO Act. These provisions are covered in more detail in paragraph 5.3.

(c) **Notification provisions**

The POEO Act imposes obligations on people carrying out activities to notify the authorities if a pollution incident occurs. It is only pollution incidents that cause or threaten material environmental harm that must be reported. The POEO Act defines material environmental harm as:

- actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial; or
- results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding $10,000.

That $10,000 amount includes any amounts that would be incurred taking measures to prevent, mitigate or make good the harm that has been caused.

If a pollution incident occurs, which threatens or causes material harm to the environment, then the person carrying out the activity must, as soon as practicable, notify the appropriate regulatory authority of the incident. The appropriate regulatory authority will be:

- for an activity that requires an EPA licence — the EPA;
- in most other circumstances — the Council.

The Act also imposes an obligation directly upon employees to notify their employers of the incident; and if the occupier of the land is not the owner, then the occupier must notify the appropriate regulatory authority.

There is a further requirement — an employer must take all reasonable steps to ensure that employees and agents are aware that if a pollution incident occurs they must notify their employer (or principal) of the incident and to provide all relevant information. The POEO Act prescribes the manner and form of notification and what information must be included. It is an offence not to notify of an incident that threatens or causes material environmental harm.

Tip for Clubs

Employees, and agents and contractors may carry out activities on club premises that could have an effect upon the environment if those activities are not managed correctly. This part of the POEO Act emphasises not only the need for care to be taken when carrying out those activities but also clearly illustrates the need for environmental training and awareness. How many clubs can say that their employees are aware of the requirement to notify the relevant regulatory authority? How many clubs have in place a reporting procedure from employees to Club management with respect to environmental incidents? These requirements highlight the need for clubs to take their environmental obligations seriously to ensure that they comply with the Act and risks of environmental harm are minimised.

2.2 Environmental Planning & Assessment Act 1979

The objectives of the EP&A Act are:

- The proper management, development and conservation of natural and artificial resources for the purpose of promoting the social and economic welfare of the community and a better environment.
- The promotion and coordination of the orderly and economic use and development of land.
- Ecological sustainable development.
- The protection of the environment including the protection and conservation of native animals and plants.

The requirements of planning law are considered in greater detail in the chapter on Planning Law.

However it is important to note here how the EP&A Act can require a golf club to ensure that its activities are undertaken in a way that protects the environment. The EP&A Act controls development, and protects the environment, through two principal measures.

- requiring a person to obtain the consent of Council to carry out development; and
- the use of orders to enforce non compliance with the EP&A Act (including the conditions of any consent).

Environmental planning instruments (**EPIs**), such as local environmental plans, prescribe whether or not an activity requires development consent. In most cases, any development or use of land will require a development consent. The development consent will be issued by the relevant authority — generally the local council.

Orders can be issued by (usually) a Council to a person to require works to be undertaken or an activity to cease. These statutory orders may include directions to:

- cease using a premises for a purpose that is prohibited;
- demolish or remove a building;
- repair or make structural alterations to a building;
- comply with a development consent.

Similar provisions enabling an authority to make the statutory orders are included within the *Local Government Act 1993*.

Tip for Clubs

Golf clubs should ensure they know what they are permitted to do with respect to the land. Copies of relevant consents can be obtained from Council.

A golf club should also seek to establish firm contacts with the relevant councillors and employees at the local council. This will allow discussions on the future of the golf club, and development of the golf course, to be conducted with a regulatory authority who should be generally sympathetic to the activities of the club and who should be willing to work with the club to ensure development can be carried out on appropriate conditions.

2.3 Contaminated Land Management Act 1997

The general objective of the CLM Act is to establish a process for investigating, and where appropriate, remediating land that the EPA considers to be significantly contaminated.

The particular objectives of the CLM Act are to:

- set out accountabilities for managing contamination;
- set out the role of the Environment Protection Authority (EPA); and
- ensure that contaminated land is managed with regard to principles of ecologically sustainable development.

The EPA, as the regulating authority under the CLM Act, is empowered to:

- declare land to be significantly contaminated land;
- examine and respond to information that it receives of actual or possible contamination of land
- order appropriate persons to investigate land for contamination or remediate contaminated land;
- agree to voluntary management proposals for the management of significantly contaminated land.

Tip for Clubs

The CLM Act should be a consideration when using or disposing of chemical substances or when a spillage or leakage occurs.

Further considerations will include land uses (including historical uses) of neighbouring land, as contamination may occur on a golf club site as a result of migration of contaminants into, onto or under the club or golf course from other land. That is, land owned/occupied by a golf club may be contaminated as a result of activities occurring on adjacent or neighbouring land.

2.4 Duty to report contamination

A duty to report contamination of land to the EPA is imposed upon

- a person or organisation whose activities have contaminated the land; or
- an owner of land that has been contaminated (whether before or during the owner‘s ownership).

Those persons are required to notify the EPA of contamination in any of the following circumstances:

- when the contamination meets a criterion prescribed by the regulations;
- when the contaminant has entered or will foreseeably enter neighbouring land, the atmosphere, groundwater or surface water and the contamination exceeds, or will foreseeably exceed, a level of contamination set out in the ‗Guidelines on the Duty to Report Contamination under the CLM Act' (Guidelines) and will foreseeably continue to remain above that level; or
- when the level of the contaminant in, or on, soil exceeds a level of contamination set out in the Guidelines and people have been, or foreseeably will be, exposed to the contaminant.

Notification of the contamination must occur as soon as practicable after the person becomes aware of the contamination. And a person is taken to be aware of contamination if the person ought reasonably to have been aware of the contamination. In other words, in certain circumstances, a person (or corporation) is taken to be aware of contamination even if they do not in fact know about the contamination. Whether or not a person is aware of contamination depends on:

- their ability, experience, qualifications and training;
- whether the person could have reasonably sought advice that would have made them aware of the contamination; and
- the circumstances of the contamination.

When the EPA receives a report of contamination it will assess the information to determine whether or not the contamination is significant enough to declare the land to be significantly contaminated. If the EPA is satisfied that the land is significantly contaminated it may take a number of actions, including:

- declaring the land to be significantly contaminated;
- approving voluntary management proposals for the land;
- issuing management orders to require site assessment, remediation and/or monitoring of the land;

(Note that there is a concurrent obligation to report pollution under section 148 of the PEO Act.)

Tip for Clubs

Discovery of contamination does not in itself give rise to a duty to report the contamination. If contamination is discovered and the golf club is not the polluter or owner of the land, there is no duty to report. A duty to report will only arise where the club has caused the contamination (i.e. the club is the polluter) or if it is the owner of the land.

Golf clubs do not generally engage in activities that are likely to cause contamination to land. Contamination of land owned or occupied by a golf club is more likely to result from previous uses of the land or the migration of contamination as result of previous or current land uses on neighbouring land.

Whether responsible for the pollution or not, the club should have consideration to the impact that any potential investigation or remediation order will have on the operations of the club and the potential inconvenience to its members and visitors. In doing this, the club may consider it preferable to negotiate directly with the EPA to develop a voluntary management proposal, giving the club more control over the process and the disruption to club activities/operations.

2.5 Responsible person

If the EPA makes a management order in respect of significantly contaminated land, the order must specify the appropriate person as the subject of the order. The appropriate person is determined according to the following hierarchy:

- the polluter;
- the owner of the land (whether or not that person is responsible for the contamination of the land); or

- the notional owner of the land (whether or not that person is responsible for the contamination of the land).

Tip for Clubs

Again, unless the golf club is the polluter or the owner, the club will not be under any obligation to undertake any investigation or remediation of the land that is required under the terms of any order issued by the EPA.

Note that in negotiating the terms of any lease documentation or property sale contract, the allocation of liability for contamination (historical or future) and remediation should be made clear. Legal advice should be sought directly on this issue.

2.6 Offence provisions

Offence provisions are generally prescribed for failing to comply with a requirement under the CLM Act, including:

- failure of the owner or polluter to comply with a management order without reasonable excuse (section14(6));
- failure of the owner or occupier of land to comply with an ongoing maintenance order (section 28(4)); and
- where a person wilfully delays or obstructs a person who is carrying out any action in compliance with a notice or order under the CLM Act. A defence is available where the person is present on the land without the permission of the occupier.

Tip for Clubs

Unless there is blatant disregard for any obligation under the CLM Act by a club, the EPA is likely to work with clubs to ensure compliance with any orders, rather than prosecute in the first instance. However, clubs should ensure that they are aware of their responsibilities under the Act and what is required to ensure compliance with any orders or notices issued by the EPA.

2.7 Directors and managers

Where a company is wound up or transfers contaminated land, provisions within the Act may hold directors or managers personally liable where the company has failed to comply with an order. This is covered in more detail at paragraph 5.3.

3. SOURCES OF ENVIRONMENT PROTECTION — THE COMMON LAW

Both the POEO Act and the EP&A Act contain provisions which directly regulate the activities of corporations in order to protect the environment. The operation of a golf club, and its facilities — including the course — are regulated by at least:

- making certain conduct a criminal offence;
- requiring consent to be obtained before any development is undertaken.

These statutes give regulatory authorities — Councils and the EPA — the opportunity to regulate the conduct of a golf club. In addition to the regulation by statute, the common law provides an opportunity for those who suffer damage as a result of the golf club‘s operation to bring legal proceedings.

However, these common law remedies historically developed as a result of litigation brought by one party against another. This type of common law litigation is not well suited to achieve the broad objective of environmental protection. Therefore if an adjoining neighbour commences an action to protect their rights with respect to their property, they would have a much greater chance of succeeding than commencing an action to protect the integrity of a water course at the local park.

Nonetheless an action in common law may be used in appropriate circumstances to protect the environment. It will have two particular advantages for the plaintiff:

- compensation may be sought by the individual for damages;
- the actions need only be proven to the ‗balance of probabilities‘ standard and not the more demanding criminal standard of proof ‗beyond a reasonable doubt‘.

The relevant actions in common law are the torts of:

- Private nuisance;
- Public nuisance;
- Trespass; and
- Negligence.

3.1 Private nuisance

An action for private nuisance by an individual will be successful where the following is satisfied:

- The nuisance constitutes a substantial interference with the enjoyment of the land.
- The nuisance must be unreasonable — that is, having regard to the ‗ordinary' (or predominant) use of land in the area, is the conduct of the defendant such that the Court should intervene in terms of competing uses of adjoining landowners.

A successful action may provide the individual with compensation or an injunction restraining the wrongful conduct.

Tip for Clubs

One of the classic examples given to illustrate private nuisance is the escape of golf balls from a golf course. It is the most likely common law action to be brought by residents if they suffer golf balls escaping from the course. See the chapter on Liability for Golf Balls Out of Bounds.

3.2 Public nuisance

A public nuisance is a nuisance that is so widespread that it would not be reasonable to expect one person to bring proceedings to put a stop to it. Accordingly the law has developed the principle of allowing the Attorney General to take action to restrain a public nuisance — a sort of class action on behalf of those affected. Public nuisance has its roots in English common law and the intention of the common law has been overtaken by modern statute.

Tip for Clubs

The action is noted here — but it is unlikely that a golf club would ever be a party to an action in public nuisance.

3.3 Trespass

Trespass is the unauthorised direct physical interference with the owner‘s exclusive possession of land. Trespass is usually committed when a person enters the land of another without permission; or places something on the land of another without permission. An action for trespass may be brought without proof of actual damage. However bringing an action for trespass is limited in two ways:

- An action may only be brought by those people who have exclusive possession of the land — not necessarily ownership.
- Only voluntary immediate (or direct) acts can be subject to an action for trespass.

Tip for Clubs

A golf club should be aware of actions in trespass so that it can control its activities to avoid interference with the property of others. We noted earlier the possibility of action in private nuisance for the escape of golf balls — a homeowner could also bring an action in trespass.

The common law is much broader than simply covering entry onto another‘s land without his or her consent. For example it is trespass to break your neighbour's fence; to allow a creeper to grow — or a ladder to be placed — against a neighbour's wall; or to place things on the land of another.

Furthermore, it is trespass to cause any object or substance — for example water – to go onto your neighbours‘ land and the trespass continues until the offending item is removed. Obviously the consequences of interference with the neighbours‘ land are not limited to environmental damage.

The Rule in Rylands v Fletcher

The rule in *Rylands v Fletcher* states that when a person brings onto his or her land anything that by its very nature is dangerous, he or she will be answerable for any damage which occurs should the substance escape. The High Court has held that this Rule should be incorporated into the general law of negligence — and further comment is made on this immediately below.

3.4 Negligence

Negligence is the predominant ground on which individuals commence actions for compensation for injury or loss. Litigation alleging negligence on the part of a person is most often used as an action to recover compensation for personal injury. Where loss arises as a result of damage to the environment, an action in negligence can be an effective way of compensating for the damage.

To establish a successful action in negligence the following elements must be satisfied:

- The individual was owed a duty of care (that is, a polluter ought to have reasonably foreseen that damage may result from acts or emissions).
- The duty of care was breached.
- The individual suffered damage or loss as a result of the breach.

The responsibility to carry out activities with proper care increases dependent upon the danger associated with the activity. The rule in *Rylands v Fletcher* is the basis for that statement. The High Court has stated that while *Rylands v Fletcher* is no longer a proposition for a cause of action in its own right, it is the case that a person‘s duty of care increases as the inherent danger in the activity increases.

The greater the consequences should an accident occur, then the greater the precautions that must be taken while carrying out the activity.

Tip for Clubs

Golf clubs should manage all their operations with regard to a duty of care for all persons on club premises, as well as with respect to neighbours and adjoining landowners. If a club does not conduct its operations to minimise environmental harm it could face regulatory action from the authorities and litigation from affected landowners who suffer damage as a result of the club‘s negligence. Consider the consequences if chemicals not properly stored on club premises escape and pollute a water course, causing damage to a neighbour. Consider also where maintenance of the golf course or its reconstruction is carried out negligently and damage is caused to a neighbour — for example through the escape of water, or through piles of sand or topsoil that shift onto a neighbour‘s land and cause damage.

A club should ensure that any activities are carried out by properly trained individuals with proper respect for the duty of care. If the activity requires special expertise then consultants should be retained. In all cases, the environmental consequences of the activity should be considered so if an accident occurs precautions have been taken to minimise the environmental impact and minimise the opportunity for regulatory authorities to become involved.

4. SPECIFIC PROVISIONS OF LEGISLATION RELEVANT TO ENVIRONMENTAL CONTROL

We noted earlier the general statutory controls that regulate activities that are likely to impact on the environment. There are other provisions of the legislation that relate to environment protection at golf courses in addition to the offence provisions within the POEO Act and the statutory orders within the EP&A Act. These specific provisions are discussed below.

4.1 Environment protection notices

The POEO Act contains provisions that allow the EPA, local council or other appropriate regulatory authority to issue notices for environment protection.

The notices most relevant to golf courses that may be issued under the POEO Act are:

- clean up notices;
- prevention notices; and
- noise control notices (and other noise control action).

4.2 **Clean up notices (Section 91)**

A clean up notice is a ‗quick response' to a pollution incident. The EPA or Council can issue a notice to the occupier of premises reasonably suspected to be the source of a pollution incident (eg. a leak, spill or escape of a substance or the unlawful disposal of waste resulting in pollution). Clean up notices may not be issued for any incidents or circumstances involving noise. A clean up notice will specify the action required and may require immediate action. There is no right of appeal against a clean up notice.

Tip for Clubs

Should an accident occur and a pollution incident follow, then a club should already have in place appropriate procedures to control the spill. The obligation to notify the EPA (in certain circumstances) of a pollution incident was noted earlier. By taking immediate action, the club will minimise the opportunity for the EPA to take further regulatory action. Furthermore, in the event of prosecution, immediate action to mitigate harm to the environment will be counted in the club's favour when it comes to sentencing.

4.3 **Prevention notices (Section 96)**

These notices are used where an activity is being carried out in such a way that environmental harm is likely to result. A prevention notice may be issued when it is reasonable to suspect that an activity has been, or is being, carried out in a manner which is environmentally unsatisfactory', that is:

- it is carried out in such a way that it will lead to the contravention of the legislation;
- it is likely to cause a pollution incident;
- it is not carried out in such a way as to minimise pollution, the emission of noise or the generation of waste;
- is not carried on in accordance with good environmental practice.

The prevention notice may be issued to the occupier of the premises or the person who is carrying out the activity. The prevention notice must specify:

- the action to be undertaken; and
- the period in which the action is to be undertaken.

A person who receives the prevention notice must comply with the notice within the time specified in the notice or may appeal to the Land &

Tip for Clubs

Because the definition of ‗environmentally unsatisfactory' is so broad, a prevention notice can be used in all sorts of circumstances to control a club's activities. For example the kitchen might be operated in such a way that too much odour is being emitted or the storage and disposal of old cooking oil is unsatisfactory.

Furthermore, the notice can direct the club to undertake action to ensure that the facts and circumstances that give rise to the notice do not happen again. So the club could be required to engage the services of an external consultant to prepare a plan of action to control or minimise the pollution of waste or install plant and equipment to control cooking odour.

4.4 **Noise control notices (Section 264) (and abatement directions and abatement orders)**

A noise control notice may be issued to prohibit the carrying out of any activity, or the use of any article, that emits noise above a certain level as specified in the notice. A noise control notice can be issued to an occupier of premises or the person carrying out the activity. There is no requirement that the noise must be ‗offensive'.

A person given a noise control notice may appeal to the Land & Environment Court within 21 days.

A police officer or a council officer can issue a noise abatement direction to the occupier of premises, or the person making noise, to cease the emission of offensive noise. That direction can be given either on the spot or within 7 days of the noise being emitted. Once the direction is given, the emission of the noise must cease promptly and not be repeated within the next 28 days.

The occupier of any premises can bring proceedings in the Local Court seeking a noise abatement order. The person must show that his or her occupation of the premises has been affected by offensive noise. If the Court is satisfied, on the balance of probabilities, that the alleged offensive noise exists the Court can make an order directing the defendant to abate the offensive noise within the time specified and direct the defendant to prevent a recurrence of the offensive noise.

It is an offence to contravene a noise control notice, noise abatement direction and noise abatement order.

Note: This is different to disturbance complaints made under the *Liquor Act 2007* (see the chapter on Introduction to the Liquor Act and Liquor Regulation).

Tip for Clubs

The noise control provisions under the POEO Act allow directions to be given on the spot or can require a more formal measurement of noise with an appropriate reduction strategy to follow thereafter. Golf clubs should be aware of these provisions so that all activities, but particularly entertainment, on club premises can be conducted in such a way as to not give rise to noise complaints — and if complaints do arise, then to ensure that the appropriate noise control strategy is taken.

4.5 Pesticide Act 1999

The *Pesticide Act 1999* creates a regime for the management of pesticides in NSW. It is one of the objects of the Act to promote the protection of human health, the environment and property in relation to the use of pesticides. The environmental objectives of the legislation are consistent with other environment protection legislation in NSW. There are a number of different regulatory provisions, some of which are summarised here:

- A person must not wilfully or negligently use a pesticide in a manner that damages any property of another person or harms a non target plant or animal.
- A person must not possess or use an unregistered pesticide unless the person is authorised to do so by a permit and complies with the permit.
- A person must not use a registered pesticide in contravention of any instruction on an approved label for the pesticide unless the person is authorised to do so by a permit and the person complies with the permit.
- A person must not, without reasonable excuse, keep a registered pesticide in a container that does not have an approved label attached to the container.
- A person must not possess or use a restricted pesticide unless authorised to do so by a certificate of competency or a pesticide control order.

Tip for Clubs

The use of pesticides is a lawful and widespread practice amongst golf clubs. The Pesticides Act is part of a national scheme to control the use of agricultural and veterinary chemicals — for example the *Agricultural and Veterinary Chemicals (NSW) Act 1994* adopts the Commonwealth Agvet Code in NSW so as to control the manufacture and supply of agricultural and veterinary chemical products. The Pesticides Act provides the basis for the control of the use of pesticides (an Agvet chemical) within New South Wales.

All golf clubs should ensure that the use of pesticides on their premises complies with the legislation not only to ensure environment protection but to ensure that there is no inadvertent contravention of the legislation.

5. EMPLOYEE AND DIRECTOR/MANAGER LIABILITY

It goes without saying that a golf club can only act through its employees, managers and directors. The golf club, as a corporation, will generally be held responsible for the activities of its employees, managers and directors and in certain circumstances will be held responsible for the actions of independent contractors. Furthermore the legislation can make the individuals personally responsible for pollution incidents.

5.1 **Employee liability**

Generally a corporation is held liable for an offence if the circumstances giving rise to the offence were created by an employee acting in the normal course of his or her duties — including accidents that arise as a result of those duties.

If an offence occurs because the employee has embarked on a venture of their own making and volition, outside the scope of their employment, proceedings may be instituted against the employee and perhaps not against the club.

An employee should comply with the general offence provisions of the POEO Act irrespective of their employer‘s attitudes or directions. Whether to charge an employee depends on the degree of culpability involved. Factors relevant to assessing the degree of culpability include:

- Whether the employee knew or should have known the activity in question was illegal.
- The seniority of the employee and the scope of the employee‘s employment duties.
- Whether the employee had taken reasonable steps to draw to the attention of the employer or any other relevant person the impropriety of the activity.

Tip for Clubs

The good name of the golf club is dependent on the conduct of employees, directors and managers. Furthermore the club can find itself with a criminal record if employees act in a way that causes environmental harm and prosecution follows.

For these reasons (and for many more) it is fundamental to ensure that the club provides adequate training to its employees so that they can perform their duties properly and that they receive the appropriate resources to ensure that their tasks are carried out in a professional manner and the risks for environmental harm are minimised.

Where employees choose to act outside the scope of their duties, and environmental harm results, the club should still deal promptly and professionally with the regulatory authority.

5.2 **Employee obligation**

The POEO Act also imposes duties upon employees. For example:

- An employee must notify his or her employer if a pollution incident occurs which has the potential to cause material harm to the environment, or results in property damage of an amount exceeding $10,000, so the employer can notify either the Council or the EPA.
- An employee‘s intention with respect to a certain incident — that may or may not give rise to pollution — is evidence that the corporation also had that intention (s.169).
- When considering the penalty to be imposed for an offence against the Act, the Court is to take into account whether, in committing the offence, the person was complying with orders from an employer or supervising employee — thus stressing the importance for employees to exercise their own judgement and discretion to avoid environmental harm.

Tip for Clubs

In addition to providing adequate training to employees to allow them to carry out their role in a professional fashion, consideration should also be given to providing employees with a brief outline of their obligations under the law so that their role in the scheme of environmental regulation is understood and they can act in a way that complies with the relevant legislation. Training in both proper procedures and environmental law would be components of a due diligence program — which is particularly relevant to potential liability for directors and managers — and is further commented upon at the conclusion of this part of the chapter.

5.3 Director/manager liability

The POEO Act and CLM Act hold directors and managers personally responsible for the criminal activities of their corporations. If a club contravenes the POEO Act, then each person who is a director or is concerned with the management of the corporation is deemed to have contravened the same provision.

If a club fails to comply with an order or requirement under the CLM Act, the directors or managers may be held personally liable where the club was wound up or property transferred as part of a scheme to avoid compliance with an investigation or remediation order.

To avoid liability, the director or manager must show that:

- The person was not in a position to influence the conduct of the club which led to the offence.
- The person, if they were in a position to influence the club‘s conduct, used all due diligence to prevent the contravention.

The defences available to directors and managers are generally self explanatory — except for due diligence. Acting with ―due diligence” with respect to environmental law has been taken to mean that it is not sufficient to take general precautions about environmental protection. Rather the corporation, and its directors and managers, must concentrate on the likely risks that arise from the activities of the corporation and address those risks.

Tip for Clubs

The management of the club should provide the necessary leadership and direction for all staff. This is one reason why the legislation holds directors and managers personally liable for the activities of the corporations with which they are involved.

Directors and managers will be protecting themselves, and providing leadership to the club, if they institute management programs that demonstrate due diligence.

This matter is further commented upon at the very end of this part of the chapter.

6. PRACTICAL ADVICE ON ENVIRONMENTAL MANAGEMENT

There are practical measures that can be undertaken by a golf club and its employees to mitigate risk and possibly avoid breaches of environment protection law. These measures do not require compliance audits or consultant advice but require the management of the club and its employees to be aware of environmental issues and take appropriate action to avoid pollution incidents during day to day activities. These measures are discussed below. They are not exhaustive, but are a starting point for reviewing the operation of the club and its potential impact on the environment.

6.1 Course operations

(a) **Drainage**

The drainage of stormwater should be controlled so that it is contained on site, drained to appropriate discharge points and not drained to adjoining properties. An additional precaution would be to install pollution control traps at paved areas — such as car parks and pedestrian access areas — so that rubbish left on paved areas is not discharged to the stormwater creating a pollution incident,

(b) **Noise**

The operation of machinery should be undertaken at a time which does not affect

the quiet use and enjoyment of neighbouring properties. Alternatively the machinery should be fitted with appropriate noise control devices or directed away from residential areas.

Any entertainment offered on club premises can be a source of neighbourhood disturbance, generate ill feeling between the club and surrounding residents, and be the subject of regulatory control. Ideally, entertainment should only be offered in areas that are purpose built to minimise the emission of noise. Otherwise activities should be limited in terms of potential noise generated, or hours of operation, to minimise disruption to the neighbourhood and the possibility of regulatory action arising.

(c) **Flight path of golf balls**

Employees should note whether golf balls are consistently being misdirected out of bounds and whether this poses a risk to public safety. Injury to persons or property will almost certainly be actionable against the club. In recent times premiums for injury to third parties have increased dramatically and the golf club could expect a significant excess in the event of a claim being made. In this case prevention really is better than cure.

We have also noted the potential for action in nuisance or trespass for golf balls interfering with adjoining landowners. The escape of golf balls is, in itself, sufficient to provide a reason for litigation. The course should be designed in such a way as to minimise the opportunity for the escape of golf balls.

6.2 **Storage**

(a) **Chemicals for course maintenance**

The chemicals used for the maintenance and upkeep of the golf course should be stored in a secure and covered storage facility. The storage facility should have a hard paved floor and a bund sufficient to contain the volume of chemicals stored. Alternatively a floor drain to a purpose built tank to contain chemicals discharged in the event of an accident would also protect the environment.

The golf club should ensure that any necessary authorities or certificates for the storage of these chemicals are obtained and relevant fire safety standards are achieved. In particular, pesticides and other dangerous goods should be stored and used pursuant to manufacturer's instructions and the law otherwise there may be a breach of the *Pesticides Act 1999* and/or the *Dangerous Goods Act 1975*.

(b) **Kitchen**

Food items should be stored in a secure and covered storage facility. Any spills or leaks should be appropriately managed so that the substance does not directly enter sewer or stormwater.

Any permit for discharge to the sewer is likely to contain conditions limiting what can be discharged. It is an offence to breach such a condition on a sewer discharge permit. It would be prudent to carry out occasional monitoring — and certainly sensible to advise employees of what can and cannot be discharged to the sewer.

(c) **Cleaning products**

Chemicals and other tools used for cleaning should be stored in a secure and covered storage facility. The club should ensure that appropriate authorities or certificates (if required) are obtained for the storage of chemicals and relevant fire safety standards are achieved.

6.3 **Disposal of waste**

Clubs should identify what wastes are being generated from all aspects of operations and how this waste is being deposited or removed from the premises.

This inquiry is necessary to ensure that wastes are being disposed of to the appropriately licensed facility and carried by responsible licensed contractors. For example if waste is being disposed to the sewer, a trade waste agreement may be required with the relevant water authority.

If the club is storing waste and having it removed by a disposal company the club should ensure that:

- Relevant authorities are obtained (if required) for the storage of the waste.

- Ownership of the waste passes to the carrier, and responsibility for its disposal rests with the carrier, when the waste is removed from the golf course premises by the disposal company.

It will be necessary to check the contract between the club and the disposal company to ensure that the ownership of the waste is transferred to the disposal company. The reason is quite simple: the owner of waste can be guilty of an offence if waste is taken to a place not licensed to receive that waste, even if the owner was unaware of the facts giving rise to the offence.

6.4 Discharges to air

The club should ensure that its operations, and in particular kitchen operations which discharge fumes, have appropriate filters, flues and extractors which mitigate harmful air emissions into the environment. The filters, flues and extractors should be subject to regular cleaning and maintenance and records kept of that cleaning and maintenance. External vents or fans may also be required where air circulation is minimal.

6.5 Spill control response

The club should develop a protocol which details what should be done by management and employees when a leak or spill of a substance occurs which may be harmful to the environment. The club may need external advice to confirm that the protocol is adequate. The club‘s employees should be made aware that the protocol exists and appropriately trained. The protocol should include at least the following:

- Appropriate ‗mop up‘ and containment equipment to control the spill.
- An obligation on a manager to make an assessment of the extent of the damage.
- Based upon the assessment, a decision should be made as to whether the EPA needs to be contacted about the incident.

6.6 Underground storage tank management

If the club uses underground storage tanks, or they are located on the club‘s premises, the club should ensure that, if required, relevant licences for the use of underground storage tanks are obtained. The club should also review whether the tanks have not been used for an extended period of time: if so, they may require removal. The integrity of the tanks should be regularly assessed. This will assist in minimising the opportunity for substances to escape, causing direct environmental harm and potentially contaminating the groundwater. Integrity testing is relatively cheap compared to the costs associated with remediating land should an escape from an underground storage tank occur.

6.7 Register of complaints

The club should create a register to record any complaints in regards to environmental matters which it receives from employees or the public. The register will assist the association in identifying whether there are consistent environmental problems which may need to be addressed. It will be evidence of an attempt by the club to manage environmental matters and ensure that its operations respect the environment.

6.8 The Board should address environmental matters

We have already noted that directors and managers can be held responsible for the conduct of the corporations with which they are involved. We have noted certain defences which are available to directors and managers and these include the person used all due diligence to prevent the contravention by the corporation.

The due diligence defence is also relevant where waste is disposed of unlawfully — the owner of the waste can claim that he or she exercised due diligence to prevent the commission of the offence; and it is a general defence to Tier 1 offences (which carry jail terms).

This chapter cannot provide exhaustive advice on how a club and its directors and managers can act with due diligence. However what is fundamental is that directors and managers must exhibit a concern for the environment and actively manage the club‘s activities insofar as they may have an affect upon the environment.

Environmental compliance should be a regular item on the agenda of the club‘s Board or a Board committee so that it can be demonstrated that matters of environmental importance were brought to the committee‘s attention and action was taken.

Staff should be advised of the requirements of environmental law. Staff should also be trained to identify where there are risks to the environment arising from the club‘s operations. Remember the obligation on employers to ensure employees are aware of their obligation to notify pollution incidents! This should be sufficient incentive to ensure training is implemented to address the risks for the club. It will allow the directors and managers to demonstrate due diligence. The matters raised in this chapter provide general examples of the matters that should be of interest to directors and managers.

The above suggestions are merely the beginning of proper due diligence. The increase in statutory control, the powers given to regulatory authorities and the level of concern in the community are all evidence of the importance of environmental law. Compliance should be taken seriously and advice taken on how compliance can be achieved.

This chapter covers Clubs in NSW. Clubs in the Act are likely to be subject to specific local requirements. Clubs in the ACT are encouraged to obtain advice on local laws and requirements.