

GL4016

Guidelines for registered clubs amalgamations

These guidelines apply to all registered clubs in NSW and are useful in understanding the club amalgamation and de-amalgamation framework.

They incorporate the reforms introduced through the *Registered Clubs Amendment (Accountability and Amalgamations) Act 2018*, which came into effect on 15 June 2018.

Overview

The NSW registered clubs laws provide a framework for registered clubs to amalgamate (merge) and de-amalgamate (de-merge). These laws include the *Registered Clubs Act 1976* (the Act), the *Registered Clubs Regulation 2015* (the Regulation), the *Liquor Act 2007*, the *Gaming Machines Act 2001* as well as the *Corporations Act 2001 (Cth)*.

The recent reforms increase clubs' flexibility to merge and de-merge, and enhance protection for clubs and club members.

More flexibility to merge

From 15 June 2018, clubs may choose potential merger partners across the state, rather than being restricted to an area within a 50km radius of the 'parent club'.

Note:

Clubs are still required to call for public expressions of interest from clubs within a radius of 50km, to ensure that clubs in the vicinity are aware of the potential for merger.

Additionally, clubs can merge with up to 10 other clubs at any one time. For example, a club that has merged with 9 clubs, and then de-merged with 2, is able to merge with up to 3 other clubs.

Previously a club could only merge with up to 10 other clubs over any period of time.

Longer enforceable period for maintaining assets

Clubs can negotiate to keep intact the major assets of the dissolving club/s for longer than the minimum three year period. Any such agreement will be enforceable, and must be included in the memorandum of understanding (MoU) underpinning the merger. A sale of any major asset/s during the period agreed on in the MoU will need to be approved by the club members and the Independent Liquor & Gaming Authority (the Authority).

Merger process

Important Information

An MoU entered into by clubs (i.e. signed by the clubs) on or after 15 June 2018 must comply with the new requirements under the *Registered Clubs Amendment (Accountability and Amalgamations) Act 2018*.

The requirements of the merger process, applicable from 15 June 2018, are detailed below.

Preliminary discussions

Clubs may enter into preliminary discussions with other clubs about potential mergers before calling for public expressions of interest.

This will allow clubs to proactively explore potential merger opportunities and take investigatory steps to consider their future viability.

Calling for Expressions of Interest

Under clause 4 of the Regulation, a club seeking to merge is required to call for public expressions of interest from other clubs within a radius of 50 kilometres. This enables other clubs in the vicinity to be aware of the potential for merger and provides the opportunity to consider lodging an expression of interest.

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Unsolicited offers

Clubs may make unsolicited expressions of interest to other clubs at any time.

This will allow clubs to take proactive steps in enhancing their financial viability and/or expanding their services and amenities to their members and community.

Disclosure requirements

Clubs must ensure their members are informed about their intention to merge and any merger offers and/or expressions of interest received. Section 17AE of the Act and clauses 4 and 5 of the Regulation set out these disclosure requirements.

Disclosure of intent to merge

Clubs proposing to merge are required to notify their members of a proposed merger by displaying a notice on a notice board on the club's premises and the club's website (if any).

Annual disclosure of offers received

At each annual meeting, clubs are required to give notice of each expression of interest and unsolicited merger offer received within the previous 12 months.

Disclosure before considering an MoU

Before a club can proceed with a proposed merger, it must notify its members of any other expressions of interest and unsolicited offers received in the previous 12 months. This must occur before entering into an MoU.

As such a club may, in its notice of intent to merge, include notice of other merger offers and expressions of interest it received. Alternatively, a club may notify its members of its intent to merge, and of any other offers received, in separate notices.

As part of the notification of other offers, clubs can promote transparency to their members by providing the following information:

- ▲ The name of the club/s;
- ▲ Outline of how the proposed management of the dissolved club will proceed;
- ▲ Intentions about future direction of the merged club; and
- ▲ Intentions about the future of major assets and the proposed timeframe for keeping those assets intact.

Memorandum of Understanding

Clubs proposing to merge must enter into an MoU. Clause 7 of the Regulation sets out the requirements that the MoU must address, which includes:

- ▲ The management of the dissolved club including its premises, facilities and the level of autonomy of that management;
- ▲ The traditions, amenities and community support which the merged club will continue;
- ▲ Intentions about the merged club's future direction;
- ▲ Extent of protection for the merged club's employees;
- ▲ Intentions about the major assets of the dissolved club, including any core property, cash or investments, or gaming machine entitlements;
- ▲ Risks of not meeting such intentions about these assets and how these risks will be addressed;
- ▲ Any agreement about the timeframe to keep intact the major assets (i.e. if longer than the 3 years); and
- ▲ Circumstances and the agreed timeframe in which the merged club may stop trading on the dissolved club's premises or substantially change the objects of the dissolved club.

Disclosure of MoU

Once the MoU is finalised, clubs are required to make it available to the members of each club party to the proposed amalgamation, at least 21 days before any meeting to vote on the amalgamation, including by way of inspection on each club's premises and on their websites (if any).

In-principle approval by members of the MoU

Each club proposing to merge must have the in-principle approval of their members for the amalgamation at separate extraordinary general meetings.

As noted above, the MoU underpinning the amalgamation should be made available to members at least 21 days before the meeting.

Separate class of members

The 'parent club' must establish the members of the dissolved club/s as a separate class of members under its rules before the amalgamation is completed.

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Authority approval

Clubs must apply to the Authority for the transfer of club licences from the dissolved club/s to the continuing/new 'parent club' as the final step in the merger process under section 60 of the *Liquor Act 2007*.

However, under section 17AEB of the Registered Clubs Act, the Authority must be satisfied of the following before it can approve the transfer:

- ▲ the parent club constitutes a registered club i.e. it will meet the requirements set out in section 10(1) of the Act;
- ▲ the parent club will be financially viable;
- ▲ the proposed merger is in the interests of members of each of the clubs; and
- ▲ the members of each club have approved in-principle the proposed merger at separate extraordinary general meetings.

Clubs need to provide supporting documents to demonstrate this, along with the licence transfer application. This may include:

- ▲ the copy of the expression of interest;
- ▲ the MoU;
- ▲ annual reports and financial statements of the parent club;
- ▲ the notice of proposed merger that was displayed on the premises and websites (if any) of each club;
- ▲ the notice of the extraordinary general meetings of each club (noting that this may be combined with the notice of intent to amalgamate);

- ▲ the minutes of the extraordinary general meetings of each club;
- ▲ the parent club's constitution;
- ▲ current ASIC Company extract of each club;
- ▲ clubs' licence documents/details;
- ▲ accountability disclosures register for each club;
- ▲ legislative checklist (as below).

This is not an exhaustive list and other supportive documentation may be requested.

The Authority will take into consideration any submission received about the merger and/or licence transfer. Submissions can be made by any person, and must be made in writing and within 30 days from the date of the licence transfer application. The Authority may extend this 30 day period if it thinks fit.

Legislative checklist

The legislative checklist that follows is intended to help clubs identify the legislative obligations they need to meet in order for the Authority to approve the club licence transfer. Along with a statement of compliance of this checklist, clubs are encouraged to provide all relevant supporting documentation with their application to reduce any delays.

For further information

To find out more about the club accountability requirements, contact L&GNSW:

 liquorandgaming.nsw.gov.au

 contact.us@liquorandgaming.nsw.gov.au

 1300 024 720

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Legislative checklist - Registered Clubs Act 1976 & Registered Clubs Regulation 2015

Note that both clubs involved in the merger are responsible for ensuring that these requirements are met.

Section or Clause	Description	
s. 10(1)(a) of Act	The club is conducted in good faith as a club.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.10(1)(b) of Act	The club is a company under the <i>Corporations Act 2001</i> , or a co-operative under the <i>Co-operatives Act 1992</i> or a corporation constituted by another Act.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.10(1)(d) of Act	The membership of the club has the minimum number of ordinary members, as prescribed in s.12 of the Act.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.10(1)(e) of Act	The club is for social, literary, political, sporting or athletic purposes or any other lawful purposes; and for providing accommodation for members/guests.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.10(1)(f) of Act	The club has premises of which it is the bona fide occupier.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.10(1)(g) of Act	The club premises have accommodation appropriate for the purposes of the club.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.10(1)(h) of Act	The club premises have a properly constructed bar and does not have a takeaway liquor service which can be accessed separately from the rest of the club premises.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.10(1)(i) of Act	The members do not derive any profit, benefit or advantage from the club that is not offered equally to every full member.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.10(1)(j) of Act	Only the club and its members are entitled to derive profit, benefit or advantage from the ownership or occupation of the club premises.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.10(1)(k) of Act	The club secretary, manager, any employee or governing body member are not entitled to any payments based on liquor sales or the operation of gaming machines.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.10(1)(k1) of Act	The membership of the governing body of the club must not exceed 9 persons.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.10(1)(l) of Act	The club complies with the reporting requirements prescribed in s.38 of the Act.	<input type="checkbox"/> Yes <input type="checkbox"/> No
S.10(1)(m) of Act	The club complies with the accountability requirements prescribed under Part 4A of the Act, including under the Registered Clubs Accountability Code (detailed below).	<input type="checkbox"/> Yes <input type="checkbox"/> No

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Section or Clause	Description	
s.10(1)(n) of Act	Business conducted on club premises must not be managed or controlled by any person/body other than the governing body of the club, club secretary or manager, a person/body under a management contract with the club, or appointed as administrator by the Authority/ Supreme Court.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.17AC(2) of Act	The parent club has established members of the dissolved club as a separate class of members prior to amalgamation.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.17AE(2) of Act & cl.5 of Regulation	Each club has notified its members of the proposed amalgamation.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.17AEB(b) of Act	The parent club will be financially viable following amalgamation.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.17AEB(c) of Act	The proposed amalgamation is in the interests of the members of each club.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.17AEB(d) of Act	The proposed amalgamation has been approved in principle at separate extraordinary general meetings of the ordinary members of each club.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.17AF of Act	The club will be amalgamated with no more than 10 other clubs at any one time.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.17AI of Act	The parent club will not dispose the major assets of dissolved club within three years (or longer as agreed) following amalgamation without the approval of the Authority.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.4 of Regulation	The club has called for expressions of interest from clubs within a radius of 50kms.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.7(1) and (2) of Regulation	A Memorandum of Understanding detailing matters at cl. 7(2) has been entered into by the amalgamating clubs.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.7(3) of Regulation	The Memorandum of Understanding has been provided to members 21 days before any vote to amalgamate.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.7(3)(b) of Regulation	The Memorandum of Understanding has been made available for viewing at the club premises.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.3 of Accountability Code	Contracts of employment of top executive have been reviewed by an independent and qualified adviser before being approved by the club board.	<input type="checkbox"/> Yes <input type="checkbox"/> No

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Legislative checklist - Registered Clubs Act 1976 & Registered Clubs Regulation 2015

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Section or Clause	Description	
cl.4(1) of Accountability Code	The club must not enter into a contract with a director or top executive, or a company where they have a pecuniary interest, unless approved by the club board. An employment contract is exempt.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.4(2) and (3) of Accountability Code	The club must not enter into a contract with club secretary or manager, or with a close relative of the club secretary or manager, or with a company in which any of these persons have a controlling interest. An employment contract or a contract resulting from an open tender process is exempt.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.6(1) of Accountability Code	The club must not lend money to a director.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.6(2) of Accountability Code	The club must not lend money to an employee (excepting any amount lent in line with terms of employee's contract of employment), unless the proposed loan is \$10,000 or less and has been approved by the club board.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.7 of Accountability Code	The club must make all reasonable inquiries about employing close relatives of a club director or top executive, and the employment must be approved by the club board where the relevant director does not taking part in that decision.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.8(1)(a) of Accountability Code	The directors must declare any material personal interests relating to the affairs of the club.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.8(1)(b) of Accountability Code	The directors and top executives must declare any personal or financial interests in contracts about procurement of goods/services or major capital works of the club.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.8(1)(c) of Accountability Code	The directors and top executives must declare their financial interest in a hotel within 40 km radius of the club's premises.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.8(1)(d) of Accountability Code	The directors, top executives and employees must declare gifts or remuneration valued at or more than \$1,000 received from an affiliated body or from a person/body that has entered into a contract with the club.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.8(2) of Accountability Code	The club has procedures in place to ensure that the matters detailed under cl. 8(1) are disclosed within 21 days of the person becoming aware of them and are managed appropriately.	<input type="checkbox"/> Yes <input type="checkbox"/> No

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Legislative checklist - *Registered Clubs Act 1976 & Registered Clubs Regulation 2015*

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Section or Clause	Description	
cl.8(3) of Accountability Code	The club keeps a register in the form approved by the Secretary.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.9 of Accountability Code	The club makes available to its members, within 4 months after the end of the reporting period, all information as set out in cl.9(2), and displays a notice on its premises and on its website (if any) advising how members can access this information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
cl.10 of Accountability Code	The club makes financial statements available to members within 7 days of being adopted by the club board, and displays a notice on its premises and its website (if any) advising how members can access these statements.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.20 of Liquor Act	The club must not hold a hotel licence or acquire any financial interest in a hotel.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.66 of Liquor Act	An Authority-approved manager is appointed for club premises.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.94 of Liquor Act	The boundaries of the premises have been approved by the Authority.	<input type="checkbox"/> Yes <input type="checkbox"/> No
s.95 of Liquor Act	The licensed premises will maintain a sign specifying its name, type of licence and any other particulars prescribed by the regulations on the front of the premises.	<input type="checkbox"/> Yes <input type="checkbox"/> No