NSW GOVERNMENT Department of Industry

Liquor & Gaming

Report on the Review of the 'accountability provisions' of the *Registered Clubs Act 1976*

Contents

1. Executive summary

Liquor & Gaming NSW has undertaken a review of the 'accountability provisions' of the *Registered Clubs Act 1976* ('the Act') and Registered Clubs Regulation 2015 ('the Regulation'). These provisions exist to promote transparency and accountability in the operation of registered clubs by imposing a range of controls and reporting obligations on the members of club governing bodies and top executives.

The aim of the review was to ensure the accountability provisions remain an effective means of protecting members' interests and the community, not-for profit nature of clubs. It also sought to identify opportunities to promote a more contemporary approach to governance, transparency and compliance to underpin accountability within clubs.

The review has been informed by the release of a discussion paper to peak industry bodies. The three peak industry bodies that responded to the discussion paper indicated that the broad aims of most of the accountability provisions continue to be relevant and supported by industry. They also put forward a number of proposed changes to the provisions intended to reduce red tape, provide greater flexibility and lower compliance costs. A significant proposal by ClubsNSW included the transfer of a number of accountability-related requirements to its Code of Practice, as part of a shift towards greater industry self-regulation.

Lessons learned from the outcome of relevant disciplinary complaints were also considered as part of the review process, including those relating to the Parramatta Leagues Club, Paddington Bowling Club, and Riverwood Legion and Community Club. These matters highlighted notable failures in club governance, transparency and compliance, including various breaches of the accountability provisions that indicate the club industry still faces governance and accountability challenges.

In handing down its decisions in the above complaint matters, the Independent Liquor & Gaming Authority ("the Authority") noted a number of failures were driven by issues associated with the knowledge, skill and diligence of club secretaries and directors. The Authority also identified in most cases that it has limited powers to hold individuals to account under the Act compared to the powers available to it under the *Liquor Act 2007*.

In this context, five key themes and related recommendations emerged from the review, including:

1. Retaining accountability provisions to promote best practice and good governance

In recognition of the identified need to continue to promote best practice and ensure good governance and accountability, a number of existing accountability provisions should be retained for the time being without amendment.

This approach will help reaffirm that a club conducted in good faith must be underpinned by transparent decision making in the best interests of a club and its members. While the retention of the provisions will continue to impose some costs on clubs, they provide increased certainty to members and local communities that those in charge of running their clubs are expected and required to act transparently and are held to account when doing so.

However, future arrangements for the protection of club interests through accountability requirements will be dependent on the co-regulatory approach proposed in this report. This will provide an opportunity to consider whether some or all of these provisions which are being retained for the time being can be replaced by alternative measures.

2. Refining the accountability provisions to promote a more balanced approach

A more balanced approach to some of the accountability requirements will reduce red tape, provide greater flexibility and lower the costs of complying with the provisions for clubs, while ensuring their policy objectives continue to be met.

For instance, the financial thresholds for executive remuneration and gifts should be increased to a level that will reduce the costs for clubs in disclosing related information and to reflect inflation, while protecting the integrity of club funding and commercial decisions. An alternative means for promoting impartiality in the hiring of close relatives should be introduced so that current disclosure requirements do not continue to inadvertently shame or embarrass future employees. Clubs could also be afforded more time to make certain financial statements available to their members.

As noted above, the co-regulatory approach proposed in this report will provide an opportunity to consider whether these refined provisions can ultimately be replaced by alternative measures.

3. Strengthening complaint and disciplinary action against individuals

The disciplinary provisions of the Act should be strengthened, so that disciplinary complaints may be raised against a club secretary and individual members of the governing body of a club where they are at fault. Currently, these complaints may only be brought against clubs themselves.

Disciplinary action against individuals should also be strengthened. This will provide a stronger deterrent against breaches of accountability requirements, and ensure that individuals can be held to account, particularly where they have acted alone and outside what a club can reasonably be expected to control or influence.

4. Introducing a co-regulatory approach to accountability in the clubs industry

The government should work closely with the clubs industry to introduce a co-regulatory approach for accountability for clubs, whereby peak industry bodies would develop certain regulatory arrangements for the industry in consultation with government.

This would require the support and active participation of ClubsNSW, as it would initially build upon established self-regulatory arrangements including its Code of Practice and Code Authority. While it is recognised that there are risks involved, it is considered that the right conditions for success exist and appropriate treatments can be put in place to manage those risks. A co-regulatory approach offers significant benefit to industry and government, including greater flexibility and adaptability, lower compliance and administrative costs for government and industry, an ability for industry and member-specific issues to be addressed more directly, greater industry ownership of accountability principles, and quick and low cost complaints handling and dispute resolution mechanisms. It could result in many of the existing accountability provisions referred to in themes 1 and 2 of this report being replaced with alternative arrangements which reduce costs for industry and the government.

5. Ensuring appropriate industry awareness of accountability provisions

The planned review of the club industry training framework in 2016 should verify that the club director and manager training component adequately promotes awareness of obligations relating to accountability and the potential ramifications of improper behaviour. This should ensure that the training provides an effective tool to address the issues in the industry around knowledge, skill and diligence of members of governing bodies of clubs and club secretaries, as identified in recent determinations made by the Authority and NSW courts. Any deficiencies identified should be addressed as an outcome of that review.

The five key themes and outcomes detailed above recognise the important role of modern, effective accountability requirements in protecting the interests of clubs and their members.

Recommended amendments to existing accountability provisions can be undertaken quickly, within a six month period, to put in place a more balanced approach to accountability for clubs under the current regulatory arrangements. The subsequent implementation of a co-regulatory system as identified in this report would need to consider these amended laws and opportunities for transition of regulatory requirements across to industry led processes such as the ClubsNSW Code of Practice.

The recommended move to a co-regulatory approach requires greater partnership between government and industry, and relies on industry's support and active participation to jointly consider the opportunities, risks and reach agreement on the co-regulatory arrangements. It is anticipated that a 12 month timeframe would be required for the necessary consultation on the proposed co-regulatory framework, including confirmation of industry support and the suitability of regulatory arrangements proposed by industry, and to progress necessary legislative amendments.

While the proposal for a co-regulatory approach requires intensive upfront effort and investment, it also offers significant benefits to industry and government. It can deliver a more contemporary approach to governance, transparency and compliance to underpin accountability in the registered clubs industry.

2. Recommendations

SUMMARY OF RECOMMENDATIONS AND IMPLEMENTATION TIMEFRAMES	
Theme 1: Retaining accountability provisions to promote best practice and good governance	
Recommendation 1 Sections 41C, 41J to 41V of the Act, and clauses 20, 23 to 25 of the Regulation should be retained in their present form for the time being (subject to the advancement of other recommendations made in this report).	**Not applicable**
Theme 2: Refining the accountability provisions to promote a more balanced approach	
Recommendation 2 Section 41D of the Act should be amended to provide that the disclosure of an interest in a hotel by a director or top executive is only required where the hotel is situated within 40km from a club's premises.	**6 months**
Recommendation 3 Section 41E of the Act should be amended to increase the $500 threshold applying to the value of gifts and remuneration from an affiliated body to $1,000.	**6 months**
Recommendation 4 Clause 18 of the Regulation should be amended to provide that the threshold applying to the remuneration of top executives is aligned to the high income threshold set by the Fair Work Commission in accordance with the *Fair Work Act 2009 (Cth)*.	**6 months**
Recommendation 5 Clause 19 of the Regulation should be amended to increase the $500 threshold applying to the value of gifts from a person or organisation that is party to a contract with a club, to a new threshold amount of $1,000, and clarify that this threshold also applies to remuneration.	**6 months**
Recommendation 6 Clause 21 of the Regulation should be amended to extend the period for quarterly financial statements to be made available to club members after being adopted by the board from 48 hours to seven working days.	**6 months**
Recommendation 7 Clause 22 of the Regulation should be amended to remove the requirement for a club to record details of any employee (including their salary) who is a close relative of a member of the governing body or top executive.	**6 months**

SUMMARY OF RECOMMENDATIONS AND IMPLEMENTATION TIMEFRAMES	
Recommendation 8 Clause 22 of the Regulation should be amended so that a club is required to ensure the employment of a close relative of a top executive or club director is first approved by the club's governing body.	**6 months**
Recommendation 9 Clause 22 of the Regulation should be amended so that the governing body of a club must ensure that a member of the governing body, who is the close relative of a prospective employee, does not participate in any decision to employ that person.	**6 months**
Recommendation 10 Clause 22 of the Regulation should be amended so that clubs are not required to record top executive remuneration contracts and details of the number of top executives by salary band, and make this information available to members.	**6 months**
Theme 3: Strengthening complaint and disciplinary action against individuals	
Recommendation 11 Sections 57F(1) and 57F(3) of the Act should be amended to enable discrete complaint and disciplinary action to be taken individually against a club's secretary or a member of the club's governing body.	**6 months**
Recommendation 12 Section 57H of the Act should be amended to strengthen available disciplinary powers to enable the Independent Liquor & Gaming Authority to: a) reprimand a club's secretary or a member of the club's governing body b) order a club's secretary or a member of the club's governing body to pay a monetary penalty that does not exceed $11,000 within a specified period of time c) declare that a club's secretary or a member of the club's governing body is ineligible from holding a position in the office of a club for a period of time that the Authority thinks fit.	**6 months**
Theme 4: Introducing a co-regulatory approach for accountability in the clubs industry	
Recommendation 13 The government should consult with peak industry bodies on a proposed co-regulatory approach and associated implementation plan to deliver a contemporary, effective and efficient accountability framework within the club sector. In particular, it should confirm industry support and seek feedback on the specific workings of the approach to ensure this outcome is achieved.	**3 months**

SUMMARY OF RECOMMENDATIONS AND IMPLEMENTATION TIMEFRAMES	
Recommendation 14 Subject to confirming industry support and obtaining feedback (as part of recommendation 13), the co-regulatory approach should be implemented so that it provides an alternative to existing accountability requirements in the Act. The approach would be subject to a review two years after its implementation to allow Government to consider the ongoing viability of the co-regulatory arrangements.	**12 months**
Theme 5: Ensuring appropriate industry awareness of accountability provisions	
Recommendation 15 The review of the club industry training framework, to be undertaken in the second half of 2016, should consider whether the club director and manager training courses: a) adequately cover all obligations on club directors and managers that relate to accountability and the potential ramifications of improper behaviour; and b) are structured and delivered appropriately to ensure training is meeting the needs of club directors and managers in regards to accountability.	**In line with agreed review timeframes**
Recommendation 16 The review of the club industry training framework should include consideration of whether enforcement and penalty options are necessary to support the operation of, and compliance with, the framework.	**In line with agreed review timeframes**

3. Introduction

The *Registered Clubs Act 1976* and the Registered Clubs Regulation 2015 provide a broad regulatory framework for the operation of registered clubs, and the conduct of members of a club's governing body and club employees. Within this framework, there are provisions that promote accountability in the operation of clubs by imposing a range of controls and reporting obligations on the members of club governing bodies and employees. These are collectively referred to as the "accountability provisions". All clubs must comply with these provisions.

Clubs in NSW operate for a diverse range of purposes in a not-for-profit sector. As membership organisations, they are primarily oriented towards serving the interests of their members and are run for the benefit of members. Clubs also provide vital social and economic infrastructure and help to fund a range of community programs, projects and services, including with the support of government tax rebates on gaming machine tax profits via the ClubGRANTS Scheme. They often enter into significant commercial undertakings which can include large scale commercial contracts.

Within this context, clubs face demands for accountability across a range of interrelated areas including club finances, governance, performance and delivery against their objectives. Failures in managing any of these areas can significantly impact on a club's viability and disadvantage members. To reduce the risk of such failures, the accountability provisions seek to ensure senior decision makers in registered clubs operate in a transparent manner that is in the best interests of club members, and that they can be held responsible for their actions. These laws are complemented by the Commonwealth's *Corporations Act 2001*, which provides a regulatory framework for the operation of all Australian companies, including the majority of clubs.

The purpose of this report is to present the key findings and recommendations from a review of the accountability provisions. The report provides an overview of the scope and aim of the review. It outlines the supporting review process that was undertaken, including submissions received from industry stakeholders and the departmental response. This underpins the identification and discussion of key themes and recommendations arising from the review process.

4. Scope and aim of the review

The review primarily focused on the 'accountability provisions' contained in Part 4A of the Act and Part 5 of the Regulation. These provisions establish requirements for the disclosure and register of interests of the governing body, submission of returns, disposal of property, establishment and termination of certain contracts, and entry into certain loan arrangements. A description of each of the accountability provisions is provided at Appendix A.

The review also considered other components of the Act that support the effective operation of the accountability provisions, including the:

- disciplinary provisions contained in Part 6A of the Act, which provide a deterrent effect to promote compliance with the accountability provisions and other requirements of the Act, and
- industry training framework prescribed under Part 6 of the Regulation, which provides for the staged introduction of mandatory club director and manager training over five years between 1 July 2013 and 1 July 2018, with some limited exceptions.

The accountability provisions and these sections of the Act reinforce the community, not-for-profit nature of clubs. The review aimed to ensure that they continue to do so effectively, while also identifying opportunities to promote a more contemporary approach to governance, transparency and compliance, as required to support accountability within clubs.

The review leveraged industry feedback as to how a more contemporary approach might be adopted. It also considered recent lessons learned on notable failures of club governance, including those at the Parramatta Leagues Club, Paddington Bowling Club, and Riverwood Legion and Community Club.

5. The review process

A discussion paper – *Review of the 'accountability' provisions of the Registered Clubs Act 1976* – was finalised in December 2014. This provided details on the operation and policy objectives of the accountability provisions. The purpose of the paper was to seek industry feedback to inform the review of the accountability provisions in Part 4A of the Act and Part 4 of the Regulation.

The paper was circulated to key industry stakeholders in January 2015, with written submissions invited from the following peak industry bodies:

- ClubsNSW,
- Leagues Clubs Australia,
- RSL & Services Clubs Association,
- NSW Golf Association,
- Royal NSW Bowling Association, and
- Club Managers' Association of Australia.

In the meantime, the Registered Clubs Regulation was remade consistent with the requirements of the *Subordinate Legislation Act 1989*. The new Regulation commenced on 1 September 2015. It did not include any substantive changes to accountability provisions, as this review was underway at the time of remake. However, the provisions were renumbered as part of the remake process and Part 4 of the earlier Regulation is now referred to as Part 5. The numbering listed in this report is consistent with the new Regulation.

5.1. Overview of stakeholder submissions

Three submissions were received in response to the discussion paper. In their submissions, Leagues Clubs Australia and the RSL & Services Clubs Association endorsed the accountability provisions and current regulatory framework, and broadly indicated that the provisions were important to ensure open, transparent and accountable management of clubs.

ClubsNSW reaffirmed its strong support for club accountability but proposed that a number of the provisions be repealed and transferred across to its Code of Practice as "best practice rules". The Code was introduced by ClubsNSW in 2005 to promote high standards of professionalism across the industry, and is a form of industry self-regulation that is mandatory for ClubsNSW member clubs. ClubsNSW also sought a review of a number of specific accountability provisions to reduce what it considered to be an associated red tape and regulatory burden.

Issues raised in each of the submissions are discussed further below.

5.1.1. Leagues Clubs Australia

While noting there were costs incurred by clubs in complying with the accountability provisions, Leagues Clubs Australia acknowledged that these costs were worthwhile to ensure transparency and accountability to club members. It considered that the policy objectives of the accountability provisions remain valid and did not seek any reforms. Leagues Clubs Australia noted, in particular, that it believed the $500 threshold for the disclosure of gifts or remuneration to be appropriate.

5.1.2. RSL & Services Clubs Association

The RSL & Services Clubs Association indicated in its submission that it firmly believed the current provisions in an overall sense are important, relevant and required to ensure open, transparent and reasonable management of clubs. The Association also proposed some minor amendments to two of the provisions to:

a) limit the requirement for an interest in a hotel to be disclosed by a top executive or club director under section 41D to where the interest relates to a hotel that is situated within a 40km radius of a club (or related clubs if the club is amalgamated), noting that clubs do not compete with hotels located beyond that distance,
b) exempt club directors from the requirement to disclose gifts and remuneration under section 41F if the gift or remuneration is received in their capacity as a director of an industry association.

5.1.3. ClubsNSW

ClubsNSW considered that clubs have proven to be strong corporate citizens. It noted that a range of ClubsNSW initiatives, such as the introduction of an industry-wide Code of Practice and increased focus on corporate governance through the Club Director Institute program, had achieved sound outcomes for the culture of the industry over the last decade. ClubsNSW also noted that clubs are answerable to members via a democratically elected board that is subject to, among other things, the requirements of corporations law and the club's constitution.

While stressing the not-for-profit status of clubs, ClubsNSW pointed out that clubs are also companies that must meet strict requirements under corporations law and that, unlike publicly traded companies, club boards have to balance a complex and often conflicting array of social, community and economic interests. In this regard, ClubsNSW considered that it is unnecessary for clubs, many of which it noted are small, volunteer-run operations, to be subject to greater scrutiny and reporting requirements than major companies.

ClubsNSW noted that club directors are volunteers that have limited time available for club-related duties, and that the imposition of onerous and complex governance requirements, liabilities and up-skilling is a significant burden which tends to discourage potential directors from donating their time and efforts. To support this point, ClubsNSW noted that directors have significant legislative obligations, including under taxation, corporations, trade practices, employment, and work health and safety laws, whilst also dealing with the three levels of government and meeting club members' needs and expectations.

ClubsNSW was of the view that an increasingly high level of regulation surrounding club operations imposed a significant administrative burden, which impeded competition, innovation and productivity, and as a result of compliance costs, impacted upon industry sustainability. ClubsNSW also submitted that wherever duplication exists between State and Commonwealth legislation, that Commonwealth requirements should prevail, which it considered would help remove unnecessary red tape and duplication and help clubs, particularly small clubs, to direct their resources for the community's benefit.

Proposal for an alternative framework for accountability

In this context, ClubsNSW proposed the development of an alternative framework to government regulation in the form of an enhanced ClubsNSW Code of Practice as a viable and cost-effective means for maintaining transparency in clubs' dealings and reporting, while at the same time reducing red tape. ClubsNSW submitted that the historical objectives of

some accountability provisions have been met and the issues they seek to address have diminished, but that there is merit in retaining some measures as 'best practice' rules, allowing for industry best practice compliance without the need for legislative sanctions and associated enforcement costs.

ClubsNSW noted that the Code of Practice was introduced in 2005 to promote high standards of professionalism across the industry in response to the increasing corporate governance demands placed on club directors and management, and that complying with the Code of Practice is a condition of membership of ClubsNSW. It explained that the Code of Practice is a self-regulatory mechanism for clubs that introduces minimum standards and best practice guidance to help clubs meet the high expectations that the community holds. It considered that the Code and accompanying Best Practice Guidelines provide a framework for successful club operations, with checklists to help monitor performance, avoid potential financial or legal problems and ensure long-term club viability.

ClubsNSW also noted that the Code of Practice is monitored by the Code Authority, which is an independent panel of club industry experts, with significant experience in law, policy and governance. It advised that the Code Authority operates at arm's length from ClubsNSW to ensure objectivity and that member clubs are required to comply with Code Authority decisions. In recognition of these factors, ClubsNSW sought to explore how the Code of Practice could be strengthened to incorporate certain accountability provisions as 'best practice' rules.

Principal issues with accountability provisions

ClubsNSW identified a number of accountability provisions that it considered should be reviewed with the intention of reducing red tape in order to improve productivity and liberate club resources, to allow clubs to focus on the core activity of delivering quality infrastructure and services to local communities. These included:

a. *Disclosure of interests in contracts and of financial interests in hotels (sections 41C and 41D)*

   Sections 41C and 41D of the Act require directors to disclose their interest in any commercial matters relating to the affairs of their club and any financial interest in a hotel (also applies to a top executive). ClubsNSW proposed that they be removed and instead transferred to the Code of Practice as a best practice rule. This was proposed on the basis that the majority of club constitutions and sections 191-195 of the *Corporations Act 2001 (Cth)* already impose similar disclosure requirements. ClubsNSW considered that there is insufficient evidence to justify additional measures for clubs.

   ClubsNSW was also of the view that sections 182-183 of the Corporations Act provide adequate safeguards against conflicts of interest by club secretaries, directors or employees. These provisions provide that a director, secretary or employee of a club must not improperly use their position to gain, or to obtain information to gain, an advantage for themselves or someone else or cause detriment to the club.

   Additionally, ClubsNSW held a similar view to the RSL & Services Clubs Association in that it considered the disclosure of financial interests in hotels should be limited to hotels that operate in proximity to and compete with the club rather than any hotel.

b. Disclosure of gifts and remuneration from affiliated bodies and from persons or organisations with contracts with clubs (sections 41E and 41F)

ClubsNSW submitted that the requirement to disclose gifts and remuneration over $500 imposed a significant administrative burden on club directors and staff, and that it is extremely unlikely that club funding and commercial decisions are influenced by $500. As a result, ClubsNSW recommended the $500 threshold be increased to $1,000 to strike a better balance between protecting the integrity of club funding and commercial decisions, and the compliance costs associated with disclosing details of remuneration and gifts, particularly where the value of the gift is unknown.

c. Definition of top executive (clause 18)

ClubsNSW submitted that the existing $100,000 threshold for determining a top executive is too low when increases in the consumer price index (CPI) and sector wage growth since 2003 are taken into consideration. As a result, ClubsNSW recommended that the $100,000 threshold amount be increased to $135,000, noting that the increase would be consistent with CPI and a similar increase set by the Fair Work Commission, which helps define high income employees for the purpose of applying the Commonwealth *Fair Work Act 2009*. ClubsNSW also recommended that the increased threshold amount be indexed to CPI to counter potential top executive "bracket creep".

d. Register of disclosures, declarations and returns (clause 20)

ClubsNSW submitted that while the need to maintain a consolidated register in line with this requirement is preferable to separate registers, its maintenance constituted a significant red tape burden for clubs. It noted that corporations law does not require other entities to maintain similar registers.

ClubsNSW also questioned the necessity of the requirement to maintain a register, noting many clubs advised that they have never been asked to produce the register for a member. As a result, ClubsNSW submitted that the requirement should be considered a best practice measure rather than a statutory requirement and recommended it be transferred to the Code of Practice.

e. Reporting – financial statements (clause 21)

Noting that the information contained in quarterly financial statements is also required as part of annual reporting requirements under corporations law, ClubsNSW considered there is not a sufficient need for a club to prepare and make available quarterly statements. It noted that a number of clubs had advised that they have never been asked to produce quarterly reports for a member. As a result, ClubsNSW recommended that the requirement be removed and transferred to the Code of Practice as a best practice rule. ClubsNSW also considered that the requirement to make the statements available to members within 48 hours was unreasonable, proposing that it should be extended to seven working days should the measure be retained.

f. Reporting – provision of information to members (clause 22)

ClubsNSW considered the requirement to report on the remuneration contracts of top executives should be removed, as a similar reporting requirement exists under the Corporations Act, where the information must be disclosed in a club's annual report.

ClubsNSW also considered that the requirement to report on the name of any employee who is a close relative of a member of the governing body or top executive should be removed as it appeared unnecessary, resulted in embarrassment for the employee, and also acted as a deterrent for close relatives to work in the industry. Instead, ClubsNSW recommended the inclusion of a requirement under the Code of Practice for the employment of close relatives to be approved by a club's board, with the relevant director declaring their conflict of interest and not participating in the decision.

ClubsNSW questioned the necessity of the requirement to report details of overseas travel. However, it proposed that a minimum reporting threshold of $5,000 per person per reporting period be specified should the measure be retained. ClubsNSW considered that overseas travel is conducted for a variety of legitimate reasons and that clubs should be provided with some flexibility while ensuring the objective of the requirement is preserved.

Finally, ClubsNSW proposed that the requirement to report on gaming machine profits and funding allocated to community development and support under the ClubGRANTS Scheme be removed from the regulation and transferred to the Code of Practice, noting that the information is already reported in a club's annual report and disaggregated financial statements, as well as in accordance with the ClubGRANTS guidelines on a publically-accessible website.

5.2. Departmental response to stakeholder submissions

Overall, the peak industry bodies support a robust club accountability framework and the broad aims of the majority of the accountability provisions. The submissions from Leagues Clubs Australia and the RSL & Services Clubs Association indicated that the provisions operate effectively to promote increased certainty that decision making within clubs is conducted in a transparent, honest and fair manner.

While it is recognised that there are compliance costs for the club industry arising from the associated statutory reporting and disclosure arrangements, it is also recognised that the provisions operate to promote best practice and high standards of governance and accountability in clubs. The standards provided for by the provisions ensure that accountability continues to be promoted in the non-for-profit, club industry context. In particular, the standards:

- facilitate transparency to enable internal scrutiny by club members and external regulatory oversight,
- act as a general deterrent to improper conduct, to reduce the likelihood of key decision makers entering into decisions that are not in the best interests of clubs and their members, and
- enable government intervention, including enforcement and disciplinary action where necessary, to help minimise the risk of a club's long-term viability being compromised.

The accountability provisions are uniquely targeted towards the regulation and oversight of accountability in the not-for-profit, club industry context. This targeted regulatory approach reflects the significance of the industry for NSW, in terms of its economic and social contribution. It is also consistent with the NSW Government's commitment to support the preservation and prosperity of clubs.

The accountability provisions and related oversight are directed towards matters that are most relevant to clubs, in recognition that clubs can have vastly different drivers for accountability than commercial entities. Unlike the commercial sector, these are not aimed towards a core motive of profit maximisation for shareholders. Therefore, while the majority of clubs also operate under the Corporations Act, it is also appropriate that this is complemented by the Registered Clubs Act so that accountability-related issues specific to the industry can be appropriately addressed.

A number of changes to disclosure and reporting requirements were put forward within industry submissions. While these changes could reduce compliance costs for clubs, it is considered that some would significantly limit transparency, as required to ensure key decision makers in clubs can be held accountable. Transparent decision making is supported by disclosure and reporting on key decisions made throughout the course of a club's operations, and enables club members to intervene to protect their interests where necessary. It should continue to be a key focus in the accountability standards set for industry.

It is acknowledged that the club industry has undertaken significant steps to improve accountability and club governance since the accountability provisions were first introduced. There is anecdotal evidence (see key statistics at Appendix B) to suggest that the initiatives from clubs, supported by the provisions, have driven improvements in club administration practices leading to greater adherence with the provisions. The number of breaches of the accountability provisions identified has significantly reduced over time, from a peak in 2010 to much lower numbers in recent years. For instance, there were over 300 fewer breaches identified in 2015 as compared to 2010. The vast majority of breaches detected have been dealt with by way of compliance (warning) notice. Public complaints about the conduct of clubs have also significantly reduced, and have halved from their peak of 187 complaints in 2009.

While these trends are positive, recent failures in corporate governance within NSW clubs, for example at Parramatta Leagues Club, Paddington Bowling Club and Riverwood Legion and Community Club, also suggest that major problems remain for certain clubs. Any significant reduction in measures that promote transparency and accountability is likely to increase the risk of significant failures arising in future, and may threaten the good progress made to date. While the majority of the provisions should be retained on this basis, as further explained in chapter 6 of this report, it is accepted that there is scope for reform where this will not compromise policy objectives while offering red tape reductions, increased flexibility and/or reduced compliance costs for clubs.

In particular, following the consideration of industry submissions, it is recommended that amendments be developed in the near term to:

- limit the requirement for the disclosure of financial interests in hotels by directors to hotels within a specified proximity (to be determined in consultation with clubs) of a club premises,
- raise certain financial thresholds before disclosure and reporting of certain information is required,
- increase the time allowed for clubs to make quarterly financial statements available to club members, and

- remove the need for the employment of close relatives to be reported to all members, and introduce a new requirement for a club board to first approve of the employment.

The ClubsNSW proposal for a number of the provisions to be transferred to its Code of Practice and retained as best practice measures is noted. While there is significant merit in taking this type of industry-led approach, there remain challenges relating to accountability and corporate governance for certain clubs that suggest there is a continuing need for some form of regulatory oversight (as evidenced by the recent failures of club governance).

Given these circumstances, consideration of an alternative co-regulatory approach is warranted for promoting accountability and good governance in clubs, which would involve a closer partnership between industry and government to deliver significant benefits for all. In particular, the ClubsNSW Code of Practice and Code Authority would be central to any co-regulatory arrangements for industry, with the government maintaining oversight where appropriate. The related benefits, optimal conditions for success, and a proposed co-regulatory approach and implementation plan have been further considered as part of the review and are discussed at chapter 8 of this report.

5.3. Lessons learned from failures of club governance

During 2015, several key decisions were made in respect to disciplinary complaints against registered clubs. Of particular note were decisions relating to Parramatta Leagues Club, Paddington Bowling Club and the Riverwood Legion and Community Club.

These key decisions identified significant failures in club governance, particularly in terms of transparency and accountability. The lessons learned from these decisions have been factored into the review process. Further details on these failures of club governance and related decisions are outlined below.

5.3.1. Parramatta Leagues Club

An investigation was undertaken in response to allegations of misconduct by certain officers at the club. As a result of this investigation, a disciplinary complaint was lodged with the Authority under Part 6A of the *Registered Clubs Act 1976* in September 2014.
The complaint identified 16 separate grounds of complaint against the club and five former office holders, including the former Secretary, for breaches of the club, liquor and gaming machine laws. The complaint alleged the former office holders had failed to exercise their duties with a requisite degree of knowledge, ability, care and diligence.

As a result, the imposition of a fine on the club was sought along with disciplinary action against the former office holders. This included that they be declared ineligible to stand for election or be appointed to hold office as a secretary or member of a governing body of a club for up to three years.

On 12 August 2015, the Authority determined that the club's former secretary and four former directors were not fit and proper persons to act as such. This was primarily on the basis that they failed to demonstrate the degree of knowledge and skill that the Authority would expect from a reasonably competent officer of a club of Parramatta Leagues Club's scale.

In particular, the Authority's decision in relation to the club's former secretary reflected the cumulative effect of the Authority's findings and the additional degree of operational responsibility for non-compliance issues that arose by virtue of his role as Secretary and Chief Executive Officer of the club.

The Authority's decision on the four former directors was made largely on technical failings, particularly in relation to non-compliance with accountability provisions under Part 4A of the Act. This included a failure to gain board approval before entering into a contract for remuneration of a senior executive, a failure to provide notification to the top executive on appointment, and failing to ensure prior board approval before entering into a commercial arrangement in which a board member has an interest.

The club's former secretary was disqualified from holding the position of secretary or member of a governing body of the club, or any other club in NSW, for 12 months. As part of the determination, this period of disqualification sent a signal to industry that even procedural failings will, in an appropriate case, have regulatory consequences.

One purpose of the complaint decision was to bolster standards at the club and in the industry generally by signalling that minimum legislative requirements will be enforced. It would also allow the individual concerned to further develop their knowledge and understanding of responsibilities of a secretary before possibly again seeking such a position.

The Authority noted in its determination that there were limitations on its ability to take action directly against individuals that have breached the provisions, including that its disciplinary powers under the Act in this regard are more limited than those prescribed under the *Liquor Act 2007*. As such the Authority in this case did not propose to issue a formal, separate letter of censure against the club's former directors.

Overall, the Authority also recognised that the club industry generally is still confronted by issues affecting club governance. It observed that:

> *"on the basis of its experience with disciplinary complaints involving registered clubs, that knowledge, skill and diligence at Board level is an issue that confronts the industry generally, not simply this Club (i.e. Parramatta Leagues Club)"*.

5.3.2. Paddington Bowling Club

In February 2015, an investigation commenced into the affairs of the Paddington Bowling Club, including allegations of non-compliance with the registered club, liquor and gaming machine laws. As a result of that investigation, which included a review of the club's financial records, interviews with members of the governing body, and professional auditing advice, a disciplinary complaint was lodged with the Authority under Part 6A of the Act on 3 December 2014.

The complaint identified 33 separate grounds of complaint against the club and nine current and former office holders for breaches of liquor, gaming and registered club laws. The complaint alleged that the club had not been conducted in good faith, had not been operating in accordance with its objects or the requirements set out in the law, and that nine named office holders had failed to exercise their duties with a requisite degree of knowledge, ability, care and diligence.

The complaint sought the imposition of a fine on the club, the cancellation of the club's liquor licence, and for the nine current and former office holders to be declared ineligible to stand for election or be appointed to hold office as a secretary or member of a governing body of a club for the maximum period of three years.

On 13 November 2015, the Authority handed down its decision, finding that eight of the nine named office holders had failed to exercise their duties with a requisite degree of knowledge, ability, care and diligence, and that they were deemed not to be fit and proper persons to be a member of the governing body of a club.

In forming this decision the Authority noted that the club had failed to comply with the accountability requirements under Part 4A of the Act. This included a failure to comply with reporting requirements, a failure to maintain a register of disclosures, a failure to gain board approval before remuneration of a "top executive", failure to give notice as soon as practical of the appointment of a top executive, and entering into a contract with a company in which the club secretary had a controlling interest. A final decision on disciplinary action against the club had not been handed down at the time of writing this report.

In separate court action in August 2015, the club was convicted on 40 gaming, liquor and registered clubs offence matters. Fines and costs of over $60,000 were imposed on the club. In relation to this adjudication, her Honour stated that the club should be community focussed providing benefits for members and not operated as a corporate bare foot bowling business. Her Honour's comments provided relevant considerations in the disciplinary complaint before the Authority, and for this review.

5.3.3. Riverwood Legion and Community Club

In March 2015, a disciplinary complaint was lodged with the Authority under Part 6A of the Act. The complaint alleged that the Riverwood Legion and Community Club's former secretary failed to exercise his duties as the secretary of the club with a degree of knowledge, ability, care and diligence by reason that he misappropriated a large amount of the club's funds without proper authorisation.

On 18 November 2015, the Authority determined that the former secretary had misled the club, including the club's Board and fellow colleagues, and demonstrated a lack of honesty, knowledge and ability with regard to his duties as the secretary and a chief executive officer of a club. The Authority found the fraudulent transaction involved the transfer of $800,000 of the club's funds to a third party without contractual or other authority from the club to do so.

In noting the extent of dishonesty displayed by the former secretary, the Authority determined that the only appropriate order was to disqualify the former secretary from participation in the clubs industry for the maximum three year period available under the Act.

However, as with its decision in relation to Parramatta Leagues Club, the Authority again highlighted that its disciplinary powers under the Act were more limited than those prescribed under the Liquor Act.

5.3.4. Implications for the accountability provisions and disciplinary powers

Each of the cases outlined above provide support for retaining an accountability framework relating to disclosure and reporting, to promote transparency and accountability of club secretaries, managers and members of governing bodies to club members.

The Authority's findings underscore the importance of accountability requirements that facilitate ongoing transparency of key decisions made by club executives and directors, providing opportunity for members to gain knowledge of the circumstances surrounding

decisions, and enabling action where necessary to ensure that clubs are being operated in good faith and for the benefit of members.

It is not unreasonable to consider, given the breaches of a number of the accountability provisions, that a lack of knowledge, skill and experience extends to awareness of obligations conferred by the accountability provisions. The case also emphasises the need for transparency in the clubs sector, so that members can act in a timely manner to protect their interests where information that is required to be disclosed reveals failings on the part of club governing bodies.

Given the Authority's findings and the extent of failures in club governance and instances of wilful misconduct, there is opportunity to enhance the operation of the disciplinary provisions of the Act to enable discrete action to be taken against individual officers. This is currently not permitted under the Act, as section 57F(1) only allows action to be brought against a club, at a cost to that club.

Any move to hold individuals decision makers within clubs to greater account may provide an increased deterrent effect and help promote greater compliance by individuals acting of their own accord. At the same time, ongoing action is needed to improve knowledge, skill and diligence of members of governing bodies across the industry, which was identified as a significant problem by the Authority.

6. Retaining accountability provisions to promote best practice and good governance (Theme 1)

This section outlines the accountability provisions that should be retained in their present form without amendment for the time being. This recognises there is still a need to promote best practice and ensure good governance and accountability in clubs, particularly in light of the outcome of recent disciplinary complaints determined by the Independent Liquor and Gaming Authority, which indicates the club industry faces governance and accountability challenges.

The retention of these provisions in the present form recognises the community, non-profit nature of clubs and the need for them to be conducted in good faith, underpinned by transparent and accountable decision making by top executives and governing bodies of clubs. Many of the provisions to be retained relate to the significant commercial undertakings and large scale commercial contracts clubs can enter into. It continues to be important that the NSW registered clubs laws continue to promote transparency of related decision-making so that they are made in the best interests of the club and its members.

Further consideration of the future of these provisions will occur in the development of the proposed co-regulatory approach outlined in Theme 4 of this report.

6.1. Disclosure of interests in contracts (Section 41C)

Section 41C of the Act requires club directors to declare, as soon as possible, their interest in any commercial matter relating to the affairs of the club at a meeting of the club's board. The requirement is designed to minimise any potential conflicts of interest that a club director may have in contracts and other commercial decisions made by a club.

In its submission, ClubsNSW sought the transfer of this provision to its Code of Practice as a best practice rule, noting that the majority of club constitutions and sections 191-195 of the *Corporations Act 2001 (Cth)* already impose similar disclosure requirements. ClubsNSW also considered that adequate safeguards against conflicts of interest by club directors are also contained under Corporations law.

However, while similar requirements exist under corporations law and through some club constitutions, complying with this provision should not create any additional burden for club directors. The retention of the provision under the Act will help provide increased certainty for members by ensuring regulatory oversight can be maintained within the jurisdiction of NSW.

6.2. Disposal by club of real property (Section 41J and clause 23)

Section 41J of the Act provides that a club must not to dispose of its core property unless:

- the property has been valued by a qualified valuer,
- a majority of members have approved the disposal of the property at a general meeting, and
- the sale is conducted by a public auction or open tender by a real estate agent or auctioneer.

Exceptions to this requirement apply under clause 23(1) of the Regulation, where:

- the property is being leased or licensed for no more than 10 years on terms that have been valued by a qualified valuer,
- the property is being leased or licensed to a telecommunications provider for a telecommunications tower,

- the property is being disposed of to a wholly owned subsidiary of the club,
- the property is being sold by private treaty after it failed to sell at a public auction or open tender,
- the terms and nature of the disposal are disclosed to the club's members and the disposal is approved at a general meeting of members,
- the disposal involves calling for expressions of interest and a subsequent tendering process which has been approved by a majority of members at a general meeting, and
- the Secretary, Department of Justice has approved of the disposal.

Section 41J also requires a club to specify its core and non-core property, as at the end of the financial year, in the club's annual report.

These core property provisions represent a form of best practice given the significance of core property to the future viability of a club and to ensuring a club can continue to meet the needs of its members. The retention of these provisions recognises that the disposal of property owned by clubs, which is often a club's major asset, is a significant commercial decision that needs to be made in the best interests of a club's members.

6.3. Contracts in which member of governing body or top executive has interest (Section 41K and clause 25)

Section 41K of the Act provides that a club must not enter into a contract with a director or a top executive, or with a company or other body in which a director or top executive has a pecuniary interest, unless it is first approved by the club's board. Clause 25 of the Regulation defines a pecuniary interest as a shareholding of more than 5 per cent in a company, or any shareholding interest in a company that supplies liquor or gaming machines to the club.

These provisions impose an obligation on governing boards of clubs to be aware of and approve circumstances where directors and/or top executives of the club have a pecuniary interest in a contract that the club is about to enter. They should be retained as they recognise the need to promote transparency of commercial decision making of clubs and ensure clubs can make informed decisions about whether conflict of interests, or potential conflict of interests, exist before entering into contracts.

6.4. Contracts with secretary, manager, close relative and others (Section 41L and clause 24)

Section 41L of the Act prohibits a club from entering into a contract with the secretary, approved manager, or a close relative of such persons, or a company or other body in which a secretary, approved manager or close relative has a controlling interest. A person is deemed to have a "controlling interest" in a company or body if they have the capacity to determine the outcome of decisions in relation to its financial and operating policies.

An exemption applies under clause 24 of the Regulation where a club is situated outside the metropolitan area (i.e. outside of local government areas in Sydney, the Central Coast, Newcastle and Wollongong), and the contract has been entered into as a result of an open tender process conducted by the club. This recognises that for clubs located outside of metropolitan areas, the number of suppliers of goods and services is often limited, and that it may be appropriate and necessary to enter into a contract with an entity where the club's secretary, approved manager or their close relative has a controlling interest.

These provisions impose an obligation on clubs to take reasonable steps to ensure that a contract is not entered into with its secretary, manager, and their close relatives (and companies in which these persons have a controlling interest). Clubs are able under the law to rely upon statutory declarations from the persons concerned in satisfying the requirements of these provisions.

The provisions should be retained as they recognise the need to promote transparency of commercial decision making of clubs and ensure clubs can make informed decisions about whether conflict of interests, or potential conflict of interests, exist before entering contracts.

6.5. Remuneration of top executives (Section 41M)

Section 41M of the Act prohibits a club from entering into a remuneration contract with a top executive unless the proposed contract has first been approved by the club's governing body. This provision allows for transparency of, and direct involvement in, major decisions on executive remuneration for all members of a club's governing body to ensure they are in the interests of the club. This ensures a consistent and robust decision-making process across clubs in relation to top executive remuneration.

With the proposed increase in the threshold for determining a top executive to $136,700 (Rec 4), remuneration contracts for top executives involve large sums of club money and should be treated as a significant undertaking. These contracts also involve the appointment of top executives with authority and responsibility for planning, directing and controlling the activities of a club. It remains appropriate that they are considered and approved by a club's governing body and not in an ad hoc manner.

A proposed reduction in reporting requirements on top executive remuneration (Rec 10) recognises, in part, that top executive remuneration for clubs should remain primarily a matter for a club's governing body to consider.

The provision should therefore be retained.

6.6. Loans to members of governing body and employees (Section 41N)

Section 41N of the Act prohibits a club from lending money to a club director. It also prohibits money being lent to an employee, except where the loan does not exceed $10,000 and has been approved by the club's governing body.

This provision remains relevant as it recognises that it is inappropriate for club directors to be loaned any money by their club, as it can create potential conflicts of interest for both the club and its governing body that may improperly influence their decision-making. It also recognises that, except in limited circumstances, it is inappropriate for a club to loan money to its employees as it may also create potential conflicts of interest particularly where the loan is of a high value. It also reflects that clubs are not money lending institutions, and the property of the club (which is owned by the members) should not be put at risk through the provision of credit that benefits individuals, potentially at the expense of members.

The provision should therefore be retained.

6.7. Requirements relating to loan contracts and contracts involving the management of clubs by private businesses (Section 41O)

Section 41O of the Act requires a club that proposes to enter into a prescribed loan or management contract to notify its members of the proposed contract and provide the Secretary, Department of Justice, with a report one month before entering into the contract.

If the Secretary considers that a proposed contract does not comply with the Act, or is not in the interests of the club and its members, the Secretary can direct the club to:

- not enter into the contract,
- amend the contract (either before or after entering into it), or
- terminate the contract (if it has already been entered into).

Any costs incurred by the Secretary in reviewing a report submitted by a club can be recouped from the club.

Loan contracts captured by section 41O are those where the club's core property is used as security, but do not include money lent by an authorised deposit-taking institution such as a bank, building society or credit union.

Management contracts captured by section 41O are those that enable a person who is not a member of the club's governing body or its secretary, or a manager or employee of the club, to exercise management functions at the club.

Under section 41S(1) of the Act, the termination of a contract by the Secretary under section 41O(8) of the Act does not:

- affect a right acquired, or a liability incurred, before that termination by a person who was a party to the contract,
- incur any liability for a breach of contract by a person was a party to the contract, and
- impose any liability on the Crown or the Secretary.

Sections 41S and 41T of the Act complement section 41O by clarifying the effect of terminating or amending a contract that has been entered into by a registered club under section 41O, and terminated pursuant to section 41O(8), so that any rights or liabilities existing prior to these changes are not affected.

These loan and management provisions commenced in late 2011. They provide statutory safeguards to minimise the potential for clubs to lose control or ownership of their major asset – their core property – by requiring members to be notified of a proposed contract and enabling the Secretary, Department of Justice, to vary or amend a contract where it is considered not to be in the best interests of the club or its members.

Since the commencement of section 41O, there have been 20 reports on proposed contracts considered by club industry regulators. In two of those cases (one loan and one management contract), a direction was issued to the club not to enter into the contract as it was not regarded as being best interests of the club. There was little evidence in any of the notifications for loan contracts that the proposed lender had any demonstrable strategy or desire to take over the club or its assets, except in the one possible instance where intervention was required.

It is noted that the investigation of each of these contracts involves a degree of red tape for clubs and requires the application of regulatory resources. However, at this time, it is considered that the benefits of the club member protections afforded by the provision outweigh these costs, and that these safeguards should continue to available to protect the interests of members.

6.8. General provisions (Section 41P)

Section 41P of the Act provides that, except for contracts for remuneration of top executives under section 41M of the Act, sections 41J-41P do not apply to:

- a remuneration contract for a member of the governing body,
- an employment contract between a club and its employee, and
- honorariums paid to a club's employees or members of its governing body.

This provision should be retained as it provides clarity that, except in certain circumstances, the registered club laws do not intend to regulate specific employment arrangements between a club and its staff. It also recognises that there are other laws that promote good governance by clubs in this regard. For example, any remuneration or honorarium paid to a

member of a club's governing body is required to be approved at a club's annual general meeting under section 10(6)(b) of the Act.

This provision also provides clarity that nothing in sections 41J-41P renders a contract, except those captured by section 41O, void or illegal.

6.9. Secretary may apply for orders in relation to the disposal of core property (Section 41Q)

Section 41Q of the Act provides that where property has been disposed of contrary to section 41J of the Act, the Secretary, Department of Justice, can seek an order from the Supreme Court. Where the Supreme Court considers that the disposal of the property has not been generally to the benefit of a club's members, an order can be made to:

- declare the contract for the disposal of property void,
- direct the property be transferred back to the club,
- direct the payment of an amount in relation to the disposal of the property from persons whom the club disposed of the property or benefited from the disposal, and
- any other orders the court considers necessary or appropriate.

However, section 41Q prohibits an order being made that would unfairly and materially prejudice an interest or right of a person who acted in good faith, or would result in an interest in a property being voided without proper compensation being made to that person.

This provision recognises that in appropriate circumstances, it may be necessary for the Secretary, Department of Justice, to seek an order from the Supreme Court to void the disposal of a club's core property where the Secretary has formed an opinion that the disposal was not in the interests of the club's members.

This provision supports (and therefore dependent upon) the operation of section 41J. It should be retained while that provision exists so the interests of club members can continue to be protected in extreme cases where a club had disregarded the requirements for disposal of property under the registered club laws and this has disadvantaged its members.

6.10. Termination of certain contracts (Section 41R)

Section 41R provides that where the Secretary, Department of Justice considers that a contract (other than a contract for the disposal of core property) contravenes the Act or a term or condition of the contract has not been complied with, a show cause notice can be issued to each party to the contract seeking submissions as to why the contract should not be terminated. However a notice cannot be issued where the Secretary considers that the club may be adversely affected by terminating the contract.

This provision supports (and therefore dependent upon) the operation of other accountability provisions in Part 4A of the Act. It should be retained while those provisions exist, as it enables the Secretary to seek relevant information from involved parties and take appropriate action in regard to club contracts to facilitate compliance by the club with the governance and accountability requirements established by the Act.

6.11. Effect of termination or amendment of contract (Section 41S and 41T)

Section 41S of the Act provides that the termination of a contract by the Secretary, Department of Justice under section 41O(8) of the Act does not:

- affect a right acquired, or a liability incurred, before that termination by a person who was a party to the contract,

- incur any liability for a breach of contract by a person was a party to the contract, and
- impose any liability on the Crown or the Secretary.

Section 41T provides that a party to a contract terminated by the Secretary must not give any further effect to any part of the contract.

Sections 41S and 41T of the Act complement section 41O by clarifying the effect of terminating or amending a contract that has been entered into by a registered club under section 41O, and terminated pursuant to section 41O(8) so that any rights or liabilities existing prior to these changes are not affected.

These are largely machinery and consequential/supporting provisions to ensure clarity of outcomes where contracts are terminated under the accountability provisions of the Act. They remain relevant and should be retained while section 41O exists.

6.12. Notification to top executives (Sections 41U and 41V)

Section 41U of the Act provides that where a person becomes a "top executive" of a club, the club must, as soon as practicable, give written notice of that person being a top executive and of the associated regulatory responsibilities. It also provides a defence to a prosecution for an offence under sections 41D and 41E(1) of the Act, if the person establishes they did not receive the notice from the club that they are a top executive, and in the absence of that notice, they could not be expected to know that they are a top executive.

Section 41V of the Act provides that a club's secretary, members of its governing body or a close associate of the club, (within the meaning established by the *Gaming and Liquor Administration Act 2007*) who contravenes section 41U, by act or omission, commits an offence unless:

- the club contravened section 41U without that person's knowledge,
- that person was not in a position to influence the club's conduct, and
- that person used all due diligence to prevent contravention.

This provision supports the operation of other accountability provisions in Par 4A. It remains relevant as it requires clubs to be proactive in notifying top executives of their regulatory responsibilities. It is also consistent with natural justice principles in that a club's secretary, a member of a club's governing body or a close associate, can demonstrate that they were not liable in a club not providing notification under section 41U to a person that they are a top executive. It should therefore be retained.

6.13. Ancillary provisions (Section 41ZB and 41ZC)

Section 41ZB of the Act provides regulation making powers relating to:

- the period in which a return under section 41F relates and the form and manner of making such a return,
- the method of determining the value of a gift or the amount of remuneration under Division 2 of the Act,
- the keeping of a register regarding disclosures, declarations and returns, and
- exemptions from the accountability provisions under Part 4A of the Act.

Section 41ZC of the Act provides a regulation making power to prescribe guidelines concerning what constitutes an interest to be declared under section 41C(1), a gift to be disclosed under section 41F(1), or a pecuniary interest under section 41K(1).

The Minister is required to consult with the club industry regarding any proposed guidelines.

While guidelines have not been prescribed in relation to interests that must be declared under section 41C(1), the regulation making powers have been used to prescribe guidelines under clauses 19 (for the purpose of section 41F(1)) and clause 21 (for the purpose of section 41K(1)). These powers remain relevant and should be retained.

6.14. Register of disclosures, declarations and returns (Clause 20)

Clause 20 of the Regulation requires the secretary of a club to maintain a register, in the form and manner approved by the Secretary, Department of Justice, of all disclosures, declarations and returns made under Division 2 of Part 4A of the Act (sections 41C-F).

In its submission, ClubsNSW sought the transfer of this clause to the Code of Practice as a best practice rule, noting that many clubs have advised that they have never been asked to produce the register by a member. However, while ClubsNSW did not dispute the practicality of a consolidated register, it submitted that the maintenance of the register constituted a significant red tape burden for clubs.

The retention of this provision recognises that there continues to be a need to facilitate easy and transparent access to this information, even if required on an infrequent basis. The keeping of the register ensures it can be relied upon by regulators when conducting audits, and that members can readily request information on what has been disclosed, declared and returned. It is also consistent with good record keeping practice.

Recommendation 1:

Sections 41C, 41J to 41V of the Act, and clauses 20, 23 to 25 of the Regulation should be retained in their present form for the time being (subject to the advancement of other recommendations made in this report).

7. Refining the accountability provisions to promote a more balanced approach (Theme 2)

This section outlines proposed amendments to the accountability provisions which would promote a more balanced approach that accounts for issues raised in industry submissions while ensuring the policy objectives of the provisions are maintained. These changes have been developed to reduce red tape, provide greater flexibility and lower compliance costs for clubs.

7.1. Declaration of financial interest in hotels (Section 41D)

Section 41D of the Act requires a director or top executive of a club who has, or acquires, a financial interest in a hotel, to declare that interest to the club secretary within 14 days after becoming a director or top executive, or after acquiring the interest in a hotel.

Both ClubsNSW and the RSL & Services Clubs Association considered that the disclosure of financial interests in hotels should be limited to instances where the hotels are situated within a certain proximity to the club, where there may directly compete with each other and conflicts of interest may arise. In its submission, the RSL & Services Clubs Association specifically proposed that the requirement to disclose is limited to where a director or top executive has an interest in a hotel situated within a 40km radius of a club (or related clubs if the club is amalgamated). ClubsNSW did not indicate what it considers to be an appropriate distance.

The objective of the requirement is to provide greater transparency in commercial decisions made by clubs where a director or top executive has a financial interest in a hotel that may operate in competition with the club. While this remains a valid objective, it is appropriate the provision be amended to better reflect its intended purpose. Limiting the distance of the hotel to within 40km as suggested by the RSL & Services Clubs Association appears to be a reasonable starting point. This requirement could be placed in subordinate legislation so that the distance can be further considered and amended, if necessary.

Recommendation 2:

Section 41D of the Act should be amended to provide that the disclosure of an interest in a hotel by a director or top executive is only required where the hotel is situated within 40km from a club's premises.

7.2. Disclosure of gifts and remuneration from affiliated bodies (Section 41E)

Section 41E of the Act provides that a member of a governing body or top executive who receives a gift or remuneration from an affiliated body, which exceeds $500 in value, must declare that gift or remuneration. For the purpose of this section, an affiliated body refers to a body corporate within the meaning of the Corporations Act of the Commonwealth, or any other body, that received a grant or a subsidy from the club within 12 months of the member or top executive receiving a gift or remuneration.

A declaration must be submitted to the secretary of the club within 14 days. A defence is available where it is established that the person did not know, and could not reasonably be expected to know, that the gift or remuneration was from an affiliated body.

Leagues Clubs Australia considered the existing $500 threshold to be appropriate, while ClubsNSW recommended increasing the threshold to $1,000.

Increases in the consumer price index since the commencement of the provision in 2003 represent an increase of 34.4 per cent. The $500 threshold limit would equate to $672 in today's terms. It is not expected that increasing the threshold to $1,000 would result in any significant reduction in the deterrence value of the provision, as gifts valued under this amount are not expected to compromise the integrity of club funding and commercial decisions. This change should reduce compliance costs for industry.

Recommendation 3:

Section 41E of the Act should be amended to increase the $500 threshold applying to the value of gifts and remuneration from an affiliated body to a new threshold amount of $1,000.

7.3. Definition of "top executive" (clause 18)

Clause 18 of the Regulation defines a "top executive" to include, in addition to the secretary or approved manager, a person who is one of the five highest paid employees and any person nominated by the club as a top executive. However, there is an exception so that this does not apply where a person's total remuneration does not exceed $100,000 per year, or they are not involved in the administration of the club or with its liquor and gaming business.

ClubsNSW proposed increasing the existing remuneration threshold for top executives from $100,000 to $135,000, and indexing the threshold amount to the consumer price index (CPI) to account for future wage growth.

The $100,000 threshold for determining top executives has existed since 2002, when the requirement for clubs to include details of top executives in the annual report was first introduced under section 10(1) of the Act. The effect of the existing $100,000 threshold remaining static for such a period of time may have resulted in some club employees who would not ordinarily be considered top executives (e.g. such as those in middle management roles), being captured due to the effect of inflation on wage growth.

As noted by ClubsNSW, its proposed increase in the threshold amount of $35,000 will take into account the 34.4 per cent rise in inflation since 2003, and will be consistent with a similar high income threshold set by the Fair Work Commission of $136,700, which helps to define high income employees for the purpose of applying the Commonwealth *Fair Work Act 2009*.

While it is appropriate to increase the threshold amount to take account of past and future rises in inflation, an alignment with the high income threshold set by the Fair Work Commission would provide greater consistency and reduce the ongoing administrative burden associated with calculating and publishing thresholds under the Act.

The high income threshold is adjusted annually on 1 July and published on the Fair Work Commission's website at www.fwc.gov.au.

Recommendation 4:

Clause 18 of the Regulation should be amended to provide that the threshold applying to the remuneration of top executives is aligned to the high income threshold set by the Fair Work Commission in accordance with the *Fair Work Act 2009 (Cth)*.

7.4. Disclosure of gifts and remuneration from persons or organisations with contracts with registered clubs (Section 41F and clause 19)

Section 41F of the Act provides that a member of a governing body or an employee of a club who receives a gift or remuneration from a person or organisation that is a party to a contract with a club must submit a written return declaring that gift or remuneration.

Clause 19 of the Regulation requires a return to be submitted within 21 days of the end of a club's financial year. It also prescribes guidelines, made under section 41ZC, where gifts over $500 must be disclosed. Gifts that must be disclosed include where the value of a gift, or multiple gifts received from the same donor in a financial year exceeds $500. Where the value of the gift is unable to be determined, the gift must be disclosed.

Clause 19 does not explicitly state that the disclosure threshold applies to remuneration, however based on submissions from clubs it appears that there is an understanding that the threshold applies to both gifts and remuneration. Applying a similar threshold for remuneration would maintain consistency with the approach for the disclosure of gifts and remuneration from affiliated bodies under section 41E of the Act.

An increase proposed by ClubsNSW to the threshold to raise it to $1,000 for both gifts and remuneration would partially take into account the 34.4 per cent rise in inflation since 2003. It is not expected that increasing the threshold to $1,000 would result in any significant reduction in the deterrence value of the provision, as gifts or remuneration valued under this amount are not expected to compromise the integrity of club funding and commercial decisions. This should reduce compliance costs for industry.

Club directors should not be exempt from the requirement to disclose gifts and remuneration if the gift or remuneration is received in their capacity as a director of an industry association, as proposed by the RSL & Services Clubs Association. Gifts or remuneration received in their capacity as a director of an industry association may still influence their decision-making as a club director if the person or organisation providing the gift has contracts with that club. It is therefore appropriate that the disclosure requirement continues to apply in this circumstance.

Recommendation 5:

Clause 19 of the Regulation should be amended to increase the $500 threshold applying to the value of gifts from a person or organisation that is party to a contract with a club, to a new threshold amount of $1,000, and clarify that this threshold also applies to remuneration.

7.5. Reporting – financial statements (clause 21)

Clause 21 of the Regulation requires a club to prepare quarterly financial statements that incorporate the club's profit and loss accounts, trading account and balance sheet. The financial statement must be provided to the governing body of the club and be made available to members within 48 hours of the statements being adopted by the governing body. Clubs must display a notice on the club's premises and on its website (if any) to advise members how they can access the financial statement. Clubs must also provide a copy of the financial statement to a member or the Secretary, Department of Justice, upon request.

ClubsNSW suggested that the requirement to produce quarterly financial statements is unnecessary, as information contained in quarterly financial statements is also conveyed in annual reports required under corporations law. ClubsNSW also noted that a number of clubs had advised they have never been asked to produce quarterly reports for a member.

However, it is considered that the requirement should be retained, as it promotes more regular transparency of financial information. It enables the board and club members to maintain ongoing awareness of the club's financial position throughout the course of a financial year, allowing them to raise concerns where they consider that position is threatened, without having to wait for the release of the annual report.

An alternative proposal by ClubsNSW to extend the period in which a club must make financial statements available to members from within 48 hours to within seven working days is supported. The extension of time will provide clubs with some additional flexibility to make financial reports available, while still requiring them to produce quarterly reports. It is not considered that the additional time will compromise the policy objective of the provision and the transparency it promotes. Members will still be able to request and make use of the financial information as they see fit on a regular quarterly basis. Information provided within seven working days will be sufficiently recent to inform members on the financial status of their clubs.

Recommendation 6:

Clause 21 of the Regulation should be amended to extend the period for quarterly financial statements to be made available to club members after being adopted by the board from 48 hours to seven working days.

7.6. Reporting – provision of information to members (clause 22)

Clause 22 of the Regulation requires clubs to record particular information and make it available to members within four months following the end of the reporting period to which the information relates. A copy of the information must be provided to members and to the Secretary, Department of Justice, upon written request.

The information required to be recorded includes:

- the number of top executives (if any) whose total remuneration falls within each successive $10,000 band commencing at $100,000
- details of overseas travel by a member of the governing body or employee,
- loans to an employee which are over $1,000
- contracts of remuneration approved under section 41M of the Act
- the name of any employee who is a close relative of a member of the governing body or top executive
- details of any consultant paid in excess of $30,000
- details of any legal settlement paid to a member of the governing body or an employee, and associated legal fees paid by the club
- the total amount of gaming machine profits
- the amount allocated to community development and support by clubs under the ClubGRANTS Scheme.

A proposal by ClubsNSW to remove the requirement to report on the employment of close relatives of top executives and club directors is supported. While the requirement only applies where the person is employed in an industrial award based position and is paid an above award wage, it is accepted that the requirement could cause embarrassment under some circumstances and deter a person from legitimate work in the industry, particularly in regional areas. This may occur because all members would be aware that the staff member in question is a close relative of a top executive, and there may be an unfair perception amongst club members and staff that they have received preferential treatment in the hiring process. In extreme cases, this could also lead to harassment and bullying.

An alternative proposal by ClubsNSW, to require a club's board to approve the employment of a close relative of members of the governing body or top executives, is supported. Under this approach, a relevant director would declare a conflict of interest if closely related to a candidate and exclude themselves from the decision making process regarding the employment. This ensures that there is still an appropriate mechanism to promote adequate transparency and limit nepotism in the recruitment process, while affording a greater degree of anonymity for candidates that may be related to club directors or top executives.

A proposal by ClubsNSW to remove the requirement to report on top executive remuneration contracts and number of top executives with salaries over $100,000 is supported. This would recognise the majority of clubs are subject to similar requirements under section 300A of the Corporations Act to report overall remuneration of key management personnel as part of their annual director's report for a financial year.

Key management personnel include those people with authority and responsibility for planning, directing, and controlling the activities of a club, either directly or indirectly. This would typically include "top executives" as defined in the Regulation. To avoid duplicating disclosure requirements and reduce red tape, the "top executive" remuneration reporting requirements within clause 22 should be removed. It is not considered necessary to retain distinct and additional remuneration disclosure requirements. In line with section 41M of the Act, top executive remuneration for clubs remains a matter for club governing bodies.

A further change proposed by ClubsNSW to remove the requirement to report on overseas travel or introduce a $5,000 threshold for each individual director or club employee before having to report overseas travel is not supported. While it is not disputed that overseas travel can be undertaken for a variety of legitimate reasons, it can be a large commercial expense and it remains appropriate members are able to gain access to details of overseas travel to have visibility of whether it is being undertaken in their interests. While the introduction of a threshold of $5,000 per person was considered, clubs would still need to maintain records of all overseas travel to confirm whether thresholds have been met for each individual. Therefore, a threshold is unlikely to offer significant red tape reduction benefits. It could also increase complexity of record-keeping and in determining compliance.

Another proposal from industry to remove the requirements to report on gaming machine profits and the amount of funding allocated to community development and support under the ClubGRANTS Scheme is not supported. The ClubGRANTS Guidelines require clubs to publicise on a publicly-accessible website the programs, projects or services for which funding has been provided. There is evidence to suggest there is a high degree of non-compliance with this requirement.

In 2013, the Audit Office conducted a Performance Audit into the *Management of the ClubGRANTS Scheme*. It was identified in the Auditor-General's report that public reporting on funded projects by clubs was minimal and varied. The Auditor-General recommended that the government work with clubs and benefiting organisations to ensure they publicly report on funding provided. This work has been completed but it is evident that many clubs may still fail to report as required. Members of these clubs may only have access to this information in the reports that clubs are required to provide to members. Accordingly, it is not proposed to remove the requirement from the regulation.

The requirement to report on gaming machine profits is linked to the requirement to disclose the amount of funding allocated to community development support. It remains useful for this information to be disclosed together in the same report at this time.

Other requirements in clause 22 requiring the recording and reporting of information relating to:

- loans to an employee which are over $1,000
- contracts of remuneration approved under section 41M of the Act
- details of any consultant paid in excess of $30,000, and
- details of any legal settlement paid to a member of the governing body or an employee, and associated legal fees paid by the club

are considered to be appropriate in ensuring club members are aware of important accountability-related decisions of the club's board and management, and in supporting the operation of related accountability requirements. They should therefore be retained at this time.

The requirements of clause 22 are supported by forms and notices approved by the Secretary, Department of Justice. The current approved form provides a consistent and compliant means for clubs to keep this information, and includes various examples to assist clubs to maintain records. It also helps to ensure members are made aware of their rights to access this information.

Recommendation 7

Clause 22 of the Regulation should be amended to remove the requirement for a club to record details of any employee (including their salary) who is a close relative of a member of the governing body or top executive.

Recommendation 8:

Clause 22 of the Regulation should be amended so that a club is required to ensure the employment of a close relative of a top executive or club director is first approved by the club's governing body.

Recommendation 9:

Clause 22 of the Regulation should be amended so that the governing body of a club must ensure that a member of the governing body, who is the close relative of a prospective employee, does not participate in any decision to employ that person.

Recommendation 10:

Clause 22 of the Regulation should be amended so that clubs are not required to record top executive remuneration contracts and details of the number of top executives by salary band, and make this information available to members.

8. Strengthening complaint and disciplinary action against individuals (Theme 3)

The complaint and disciplinary provisions support the Act's accountability provisions by providing a deterrent to inappropriate behaviour and misconduct. They facilitate appropriate action by regulators where serious breaches or significant failings in club governance are detected. Recent examples of failings include those found at Parramatta Leagues Club, Paddington Bowling Club and Riverwood Legion and Community Club.

Disciplinary action that arises from a complaint made to the Independent Liquor and Gaming Authority under the Act may typically involve the imposition of a fine or monetary penalty (such as costs) against a club or a period of disqualification ordered against a club's secretary or member of its board. While disciplinary powers are available to the Authority to enable them to suspend or cancel a club's liquor licence, these powers have never been used.

The penalties and sanctions imposed by the Authority are generally intended to target those who are ultimately at fault and/or responsible for the day to day operation of a club, rather than the club itself – to the detriment of club members. Members often have limited control or input on how their club is operated. The Authority has also used penalties and sanctions to signal to industry that inappropriate behaviour and misconduct in the club industry can have significant regulatory consequences, for both a club and its personnel.

While the complaint and disciplinary provisions under the Registered Clubs Act are similar to those that are available under the Liquor Act, there are subtle differences between the two and this has been highlighted by the Authority in recent times. In particular, under the Registered Clubs Act, the Authority's ability to impose certain penalties and sanctions is more limited. Disciplinary complaints can only be raised against the club, rather than solely against individuals, including in circumstances where individuals are largely at fault and should be held accountable for their actions.

These differences appear to have restricted the Authority's ability to impose certain penalties and sanctions which it considers would otherwise be warranted when determining certain matters. They also prevent regulators from taking action against individuals, rather than the club itself, where that may be warranted.

This section of the report focuses on how the Registered Clubs Act's complaint and disciplinary provisions can be more aligned with those available under the Liquor Act, and to provide regulators with the ability to take action against individuals where they have acted alone and outside a club's influence.

8.1. Grounds for making a complaint (section 57F)

Section 57F of the Act specifies the grounds on which the Secretary of NSW Justice or the Commissioner of Police can make a complaint to the Independent Liquor & Gaming Authority in relation to a club.

It provides that the complaint must be made in writing and must specify any one or more of the following grounds in which the Authority may take disciplinary action against the club:

a) that the requirements of section 10(1) of the Act are not being met, or have not been met, by or in relation to the club
b) that the supply of liquor to the club, or on the club premises, has not been under the control of the club's board

c) that the club or its secretary has breached a condition applying to the following authorisations:
   i) a non-restricted area authorisation
   ii) a junior members authorisation
   iii) a club functions authorisation.
d) that the club has breached the Act, whether or not it has been convicted of an offence in respect of that breach
e) that any of the rules of the club specified under section 30(1) of the Act have been broken or any other rule of the club has been habitually broken
f) that the club has been conducted, or the club premises have been habitually used, for an unlawful purpose
g) that the club secretary or any director is not a fit and proper person to act as such
h) that a requirement of the Secretary of NSW Justice in relation to the investigation of the secretary or any director has not been complied with
i) that the club has ceased to exist
j) any other ground that the complainant considers appropriate for the taking of disciplinary action against the club.

Section 35A(1)(a) enables the Secretary of NSW Justice to conduct investigations and inquiries to help determine whether a disciplinary complaint should be made on the above grounds in relation to a club secretary or a member of the club's governing body. However, sections 57F(1) and (3) provide that complaint and disciplinary action may only be taken in relation to the club.

The operation of sections 57F(1) and (3) can impose an unreasonable burden on a club that is not culpable for the unlawful conduct of an individual officer(s) who acts alone and outside of the club's control or influence. It may also act as a disincentive for a club to report on maladministration or unlawful conduct by an individual for fear that action may be taken against the club.

This is due to the fact that for disciplinary action to be taken against an individual, the complaint must be made against the club itself, and this can result in, amongst other disciplinary action, costs being imposed on the club (e.g. costs incurred by the Secretary of NSW Justice or the Authority in dealing with the complaint).

A specific example of this scenario includes complaint action taken against Cabra-Vale Ex-Active Servicemen's Club Limited (Cabra-Vale Diggers) in 2013. In this circumstance, a complaint was made against the club to enable action to be taken against the club's former secretary. The secretary sent offensive text messages to other club employees on a mobile phone provided by the club, some of which resulted in a criminal conviction.

The Authority found that the club's former secretary was not a fit and proper person to act as a club secretary, and subsequently disqualified that person from holding office as a secretary or club director for the maximum period of three years. However, the club was ordered to pay the significant costs incurred by the department in carrying out the investigation. Given that the club was not found culpable for the former secretary's behaviour, it would have been more appropriate for action to only be taken against that person individually, instead of imposing the penalty on the club and its members.

A further example includes the Authority's decision in relation to the Riverwood Legion and Community Club, whereby the former club secretary misappropriated $800,000 of the club's money for personal benefit. In this case, the Authority ordered the club to pay the costs incurred by the department in carrying out the investigation. While it is noted that the club did

not object to this order, it would have been more appropriate for action to have been taken solely against the former club secretary, who acted alone and outside the club's influence.

It is appropriate that the above anomaly be addressed so that regulators can take discrete complaint action against a club secretary or a member of the club's governing body, without taking action against the club itself.

Recommendation 11:

Sections 57F(1) and 57F(3) of the Act should be amended to enable discrete complaint and disciplinary action to be taken individually against a club's secretary or a member of the club's governing body.

8.2. Disciplinary powers of Authority (section 57H)

Section 57H of the Act specifies how the Independent Liquor & Gaming Authority is able to deal with and determine a disciplinary complaint made against a club by the Secretary of NSW Justice or the Commissioner of Police under section 57F of the Act.

It provides that the Authority, if it is satisfied that any of the grounds of the complaint apply to the club, its secretary or member of the club's governing body, may decide not to take any action or may decide to do any of the following things:

a) order the club to pay up to a maximum penalty of $275,000 within a certain timeframe
b) suspend the club's licence for a period of time that the Authority thinks fit
c) cancel the club's licence
d) suspend or cancel any authorisation held by the club
e) impose a licence condition on the club's licence or any authorisation held by the club
f) remove the secretary or any club director from office
g) declare a person ineligible to stand for election or hold office as a secretary or director of a club
h) appoint a person to administer the affairs of the club
i) order the club to pay any of the costs incurred by:
    i) the Secretary of NSW Justice in carrying an investigation or inquiry under section 35A of the Act, or
    ii) the Authority in connection with taking disciplinary action against the club, its secretary or any other person under this section.

The disciplinary powers of the Authority under section 57H of the Registered Clubs Act are currently limited when compared to the Authority's disciplinary powers under section 141 of the *Liquor Act 2007*. This issue was noted by the Authority in its final decision relating to a complaint against Parramatta Leagues Club, where it identified its inability to reprimand several former club directors. Unlike the disciplinary powers under the Liquor Act, which enable the Authority to reprimand a licensee, manager or close associate, the same power does not exist under the Registered Clubs Act to enable the Authority to reprimand a club's senior management.

The Liquor Act contains a broader set of powers that enable the Authority to order a licensee, manager or close associate to pay a monetary penalty within a specified period of time. Those penalties can include fines of up to $55,000 for a licensee that is a corporation or up to $22,000 for an individual. Where circumstances of aggravation exist in relation to a complaint, those penalties can double – up to $110,000 and $44,000 respectively.

Further, under the Liquor Act, the Authority is able to disqualify a licensee (including a registered club), manager (including a club manager) or close associate from being in any of those positions for a period of time that the Authority thinks fit. However, under the Registered Clubs Act, the Authority is only able to declare that a club secretary or member of the club's governing body is ineligible from holding those positions in office for a maximum period of three years.

It is therefore proposed to more closely align the disciplinary powers of the Authority under section 57H of the Registered Clubs Act with the broader powers that are available to the Authority under section 141 of the Liquor Act. This proposed amendment will operate to provide a greater deterrent to unlawful conduct by club secretaries, managers and directors, and provide the Authority the ability to order individuals to pay monetary penalties. This will seek to prevent the club and its members from being penalised, particularly where an individual has acted alone outside the club's control or influence.

Recommendation 12:

Section 57H of the Act should be amended to strengthen available disciplinary powers to enable the Authority to:

a) reprimand a club's secretary or a member of the club's governing body
b) order a club's secretary or a member of the club's governing body to pay a monetary penalty that does not exceed $11,000 within a specified period of time
c) declare that a club's secretary or a member of the club's governing body is ineligible from holding a position in the office of a club for a period of time that the Authority thinks fit.

9. Introducing a co-regulatory approach for accountability in the clubs industry (Theme 4)

A key aim of the review process was to identify opportunities to promote a more contemporary approach to governance, transparency and compliance, as needed to underpin accountability within clubs. In this context, ClubsNSW recognised in its submission the potential for an alternative, non-regulatory approach to accountability, where certain provisions would be retained as best practice rules in its Code of Practice.

ClubsNSW expected that this would allow for industry best practice compliance, without the need for legislative sanctions and associated enforcement costs. This would signify a shift towards greater industry self-regulation.

The NSW Guide to Better Regulation recognises that if there is need for government action (which would in this instance represent a continuing need for some level of regulatory oversight of club accountability-related matters), priority should be given to first examining approaches[1] such as self-regulation and co-regulation. This review has provided an opportunity to consider whether a shift from the current approach to regulating club accountability-related matters is warranted, and whether accountability outcomes can be achieved through alternative approaches.

Several factors indicate that there is growing potential for a self-regulatory or co-regulatory approach, to be adopted. These factors include changes in the clubs industry since the accountability provisions were introduced that have focussed on improving club governance, including through the club industry training framework and the Club Director Institute Program, and the increasingly mature self-regulatory approach adopted by ClubsNSW. There is also an overall trend towards improved practices in the industry (demonstrated by the reduced number of complaints over time at **Appendix B**).

Notwithstanding these factors, there have been significant failures in club governance in recent times which have required direct government intervention and oversight to protect the interests of club members, including those at Parramatta Leagues Club, Paddington Bowling Club and Riverwood Legion and Community Club.

While these cases have been limited, they include breaches of the accountability provisions symptomatic of deeper, more serious club governance issues. They suggest that there is a continuing need for some level of regulatory oversight to be maintained by government, in particular, for matters where stronger enforcement action is necessary to take action against clubs or individuals to protect member's interests in club assets.

Therefore, a move towards outright industry self-regulation for club accountability-related matters, where industry is solely responsible for compliance and enforcement, is not supported at this time. Any such move would mean that industry compliance with an accountability framework could not be legally enforced, which would result in weaker sanctions being available for individuals that act dishonestly or without the necessary diligence in operating a club.

A move towards outright industry self-regulation could also potentially lead to a narrowness of the interpretation of accountability provisions and reduced motivation to comply with them, particularly due to the reduced threat of stronger sanctions. This would likely contribute to a

[1] In the NSW Guide to Better Regulation, non-regulatory approaches are considered to be (a) provision of information; (b) self-regulation; (c) quasi-regulation; or (d) co-regulation.

growing lack of community confidence in the operation and management of clubs throughout the state.

However, the alternative of adopting a co-regulatory approach for club accountability-related matters remains a viable option, as the government would maintain some regulatory oversight. A co-regulatory approach would involve a combination of non-government (industry) regulation and government regulation, where the peak bodies within the club industry develop regulatory arrangements in consultation with government[2].

While the industry would administer its own arrangements (e.g. an industry code of practice developed and approved in consultation with government), there can be legislative backing provided to enable the arrangements to be enforced, including by government where necessary[3]. In these circumstances, the industry code of practice (such as the ClubsNSW Code of Practice) becomes a strong, core component of the co-regulatory arrangements.

This section further explores this alternative of co-regulation, as a more modern and adaptable regulatory framework for club accountability-related matters that could offer significant benefit to industry and government.

9.1. The business case for a co-regulatory approach for accountability

The NSW Guide to Better Regulation recognises co-regulation as an effective non-regulatory instrument to address policy problems, while also noting that it often results in lower costs and less impact on markets than other regulatory options. A co-regulatory approach has potential to offer significant benefits over direct government regulation under the right circumstances[4], including:

Benefits	Applicability to Registered Clubs Industry
Greater flexibility and adaptability	For clubs, greater flexibility and adaptability would be achieved as the club industry itself, through its peak industry bodies, is arguably well positioned to promote and improve accountability in clubs (e.g. through industry codes), given its immediate understanding of the issues clubs face on the ground. Peak industry bodies have an intimate understanding of the technical systems and business models of clubs. Therefore, they can more readily respond to issues of concern by deploying mechanisms and procedures to promote compliance with accountability standards that are compatible with these systems and models. They are also well-positioned to deploy necessary education and training where particular issues arise through the established industry training they deliver. Greater flexibility and adaptability may be introduced into a Code of Practice than is achievable through direct government intervention, which should benefit clubs as response can be more flexible and adaptable.

[2] See the definition of co-regulation contained in *Study on Co-Regulation Measures in the Media Sector* (2006), a study for the European Commission by the Hans-Bredow-Institut, p. 35.

[3] Co-regulation explained in the NSW Guide to Better Regulation (November 2009), p 33.

[4] Alternatives to traditional regulation, p 6. http://www.oecd.org/gov/regulatory-policy/42245468.pdf

An ability to address industry-specific and member issues directly	Peak industry bodies can leverage their first-hand knowledge and expertise of the clubs industry and their member organisations to allow them to directly develop regulatory arrangements (via codes of practice and supporting mechanisms). In particular, this allows them to address industry-specific accountability issues they are aware of with their member clubs. Limited government involvement is required, other to confirm the suitability of those arrangements once developed.
Quick and low-cost complaints handling and dispute resolution mechanisms	Co-regulation can also provide for faster, lower-cost and more effective complaints handling and dispute resolution that is advantageous for both industry and government. The timely resolution of concerns raised by club members ensures that more immediate action is taken to address potential accountability-related issues, reducing the likelihood of failures in governance and potential consequences and costs for clubs. Complaint data held by regulators, as outlined at Appendix B, suggests that there could be significant benefit for government. Regulators currently receive many complaints associated with accountability provisions that relate to minor breaches and internal matters around club administration, rather than serious breaches of accountability requirements. The complaint data indicates that of the 825 complaints received between 1 January 2007 and 31 December 2015, 86 per cent related to club administration matters. There was insufficient evidence to substantiate more than half of the complaints. Further, the majority of the 720 breaches of accountability provisions identified over the same period were dealt with by way of a compliance notice. Only 31 of the breaches were dealt with by way of a penalty notice, in addition to one that resulted in prosecution action against a club. It is expected that many of these complaints can be more appropriately handled by the club industry itself, using an industry-driven approach that is more flexible and adaptable (and therefore responsive to clubs' needs). ClubsNSW, as the peak industry body for clubs in NSW, has indicated previously that it would like to explore the possibility of establishing an agreement with government for certain low level complaints to be referred to its Code Authority. Government costs may be significantly reduced under a co-regulatory approach, as the industry investigates and resolves breaches of accountability standards and internal club matters around club administration as far as appropriate. There is considerable merit in exploring a co-regulatory approach, to increase government efficiency and help reduce unnecessary regulatory costs associated with club governance and complaints handling.
Lower compliance and administrative costs	Under a co-regulatory approach, compliance and enforcement against the code of practice would be undertaken by the club industry itself where appropriate, except in certain circumstances (for example, for more serious offences relating to accountability or where the government establishes an appeal mechanism). The costs to clubs in taking action may be reduced, where complaints can be dealt with in a

more flexible and adaptable manner. Government compliance and administrative costs are also reduced, and compliance and enforcement resources are freed up to focus on the higher priority areas and the most serious failures of club governance where accountability standards have not been met.

9.2. Optimal conditions for an effective co-regulatory approach

While substantial benefits could be derived from a co-regulatory approach, there are also risks involved and it is recognised that co-regulation may not be suitable in all circumstances. The Australian Communications and Media Authority (ACMA) has identified a number of high-level factors that underpin the effective operation of co-regulatory approaches, based on an analysis of key government and academic literature[5]. It is necessary to consider whether these critical factors are in place or can be established to ensure co-regulation would be an appropriate form of intervention to promote accountability in clubs, otherwise new problems and costs may emerge.

The ACMA suggests that having the right environmental conditions can help form a successful co-regulatory approach that works for both industry and community stakeholders. For the club industry, this would mean that having the right incentives and ensuring peak industry bodies (particularly ClubsNSW) can work with government effectively to address accountability-related and other club administration issues in the industry. There are a number of environmental conditions in the club industry that suggest such an outcome can be achieved, including:

- **Common industry interest, aligned with wider public interests** – for clubs, there is common industry interest which is evidenced through the existence of an industry peak body (ClubsNSW) that substantially represents the industry and gives non-members incentives to join. There is also a degree of coincidence between the self-interest of the industry and wider public interest. This exists in the club industry as its future viability depends on its relationships with the public (who are members and patrons of clubs) and the broader community. There is therefore a common industry interest in holding members of governing bodies and other staff to account where they have acted outside the interests of members (who are the owners of the club) and the broader community, and in promoting good governance and administration practices in clubs.
- **Committed regulatory partners** – ClubsNSW, as the predominant peak industry body, would become a co-regulatory partner with government. The ClubsNSW submission into the review suggested that it would be important to retain certain accountability provisions as best practice rules. It also proposed working with the government to strengthen its Code of Practice and supporting mechanisms. These outcomes could be achieved as part of implementing a co-regulatory approach.
- **Homogeneity of products/services** – clubs operate in a similar environment and face consistent demands for accountability across a range of interrelated areas including club finances, governance, performance and delivery against the objective of serving the interests of their members. This commonality allows effective co-regulation, as the co-regulatory arrangements can be targeted towards a common set of issues relating to accountability that the industry faces.

[5] Australian Communications and Media Authority, "Optimal Conditions for Effective Co-Regulatory Arrangements: Occasional Paper", (Australian Government, 2010), pp 12-15

- **Incentives for industry to participate and comply** – there is already direct government regulation that provides a framework for promoting accountability in clubs. The implementation of a co-regulatory approach would shift some of the provisions under that framework to an industry code of practice as industry standards. However, there would continue to be a distinct and credible threat of direct government intervention should this co-regulation be ineffective or co-regulatory partners fail to meet their obligations in holding clubs to account against those standards. Powers would be retained within the Act so that disciplinary action can be taken where there is a failure of standards, and the current framework for accountability in clubs could be re-applied, in this scenario.

The features of the regulatory approach, along with the aspects of its operation and enforcement, are also important to ensure there is industry buy-in and support. For the club industry, the following features are likely to be important to the success of any co-regulatory approach:

- **Clearly defined policy objectives** – government and peak bodies should be able to set clear objectives, outcomes, and behavioural changes to form the basis for a co-regulatory approach, as there is common interest to promote accountability, good governance and administrative practices within clubs. Having a well-defined mission for government and regulatory partners provides a strong foundation that supports the successful implementation of co-regulatory approaches.
- **Existence and operation of transparency and accountability mechanisms** – government needs to maintain a close watch over the actions of regulatory partners to ensure the policy objectives are being achieved. For clubs, investigatory powers and government sanctions to enforce compliance and penalise non-compliance should remain available to government (and recommendations 8 and 9 of this review recommends that they are strengthened). These would be complemented by sanctions that can be determined by the authority that oversees the Code of Practice for ClubsNSW member clubs ("the Code Authority"). Co-regulatory partners will be directed and constrained by this broader framework of co-regulation.
- **Stakeholder participation in the development of the co-regulatory arrangements** – the effective operation of the co-regulatory approach would rely on industry organisations, including peak industry bodies and clubs, having a shared understanding of its objectives and deliverables. Appropriate consultation with the industry will be needed throughout the development of the co-regulatory arrangements to ensure that this occurs and that there are genuine benefits for the parties involved that can underpin their buy-in and support.

Where the above conditions are not provided for, the principal risk of a co-regulatory approach may be realised. This includes a lapse in proper oversight of club operations and serious issues being undetected that may threaten the ongoing long-term viability of clubs and their members' interests. Such an outcome can be driven by factors such as regulatory capture, where regulatory partners advance their commercial or political concerns of the groups that dominate the industry or sector they would be charged with regulating. However, it is anticipated that there would be strong incentive for peak industry bodies to prevent this outcome. It is ultimately in the industry's best interest to set regulatory objectives and promote accountability and good governance in clubs to preserve their viability and the wider industry as a whole.

There may be concerns that ClubsNSW, as a larger industry stakeholder, will have an unfair opportunity to enact and shape co-regulatory approaches, given its access to greater resources and its established self-regulatory approach would be leveraged. Any smaller players, particularly any clubs that are not affiliated with ClubsNSW, may feel that they lack

capacity to act in this space[6]. As such, the co-regulatory approach may present equity concerns within the industry. To reduce this risk, the government will need to provide for appropriate compliance and enforcement arrangements within the co-regulatory approach for clubs not affiliated with ClubsNSW, and ensure there are appropriate opportunities for consultation with smaller industry players during the development of regulatory arrangements.

There is also risk that the capacity of co-regulatory partners (in this case, ClubsNSW) will fluctuate over time, dependent on the viability of the industry and the level of resources available[7]. There is also the possibility that the community may view any co-regulatory approach as an unnecessary form of deregulation and, moreover, perceive such an approach as the Government granting concessions to industry groups exercising their power.[8] To mitigate these risks, there would be a requirement for government to routinely assess the capacity of ClubsNSW in the co-regulatory approach, to ensure it is adequately equipped and has been diligent in carrying out its assigned functions. Government would need to receive regular and accurate information about the activities of ClubsNSW and the Code Authority under the co-regulatory framework, and retain sufficient expertise and capacity to assess performance.

9.3. A proposed co-regulatory approach

On balance, it is considered that the potential benefits of a co-regulatory approach significantly outweigh the associated risks.

The preceding discussion has provided a number of relevant considerations for the development of a co-regulatory approach to promote accountability, good governance and administration in the club industry. A proposed co-regulatory approach has been determined that will include appropriate risk treatments and establish the right conditions for success to allow for such an approach to be implemented. It takes into account the factors highlighted earlier in this report. A high-level overview of the key features of this approach is included in Figure 1 below.

The proposed approach reflects that the co-regulatory arrangements would leverage a strengthened ClubsNSW Code of Practice. In its submission to the review, ClubsNSW recognised the potential for an alternative regulatory framework that would build on its established Code of Practice to provide a viable and cost-effective means for maintaining transparency and accountability, while also reducing red tape.

The Code of Practice currently provides a statement and sets common standards of conduct for all clubs that are members of ClubsNSW. Its objectives are to:

- promote consistently high standards of practice across the club industry;
- bolster pride and confidence amongst club directors, managers, suppliers and volunteers;
- increase community trust in the effectiveness, accountability and transparency of club administration; and
- guide and support clubs in fulfilling their mission and their obligations to stakeholders.

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[6] Caswell, pp134-135

[7] Edward Balleisen and Marc Eisner, “The Promise and Pitfalls of Co-Regulation: How Governments Can Draw on Private Governance for Public Purpose,” in New Perspectives on Regulation, David Moss and John Cisternino, eds., New Perspectives on Regulation (Cambridge University Press, Cambridge, UK, 2009) pp 135

[8] Julie Caswell. "Co-regulation as a Possible Model for Food Safety Governance: Opportunities for Public-Private Partnerships" *Food Policy* 32.3 (2007), pp312

These objectives are in-line with those of the accountability provisions, which specifically focus on promoting accountability and transparency in the operation of clubs by imposing obligations which represent minimum mandatory standards for members of club governing bodies and employees to meet. An IPART review into the registered clubs industry in NSW in 2008 found that the Code provided a useful and practical framework for clubs, alongside the requirements under the *Registered Clubs Act 1976*.

There appear to be features within the existing self-regulatory framework for the Code that can be built on to provide a strong foundation for a shift towards a co-regulatory approach, as outlined in the proposed approach at Figure 1. These include established compliance and enforcement arrangements. Compliance with the Code is overseen by a Code Authority that includes a three member panel of industry experts. ClubsNSW has indicated that these experts are selected on their ability to exercise sound and fair judgement, experience in handling disputes, and expertise in administration of self-regulatory schemes.

ClubsNSW has advised that the Code Authority operates at arm's length to ensure objectivity, and that ClubsNSW member clubs are required to comply with Code Authority decisions. These decisions can amount to the imposition of various sanctions on a club found to have breached the Code, such as requiring it to provide financial compensation, offer of an apology, or take remedial action within a specified timeframe. Where a club does not comply with a decision, the Code Authority can recommend to the Board of ClubsNSW that the club's membership of ClubsNSW be cancelled. It may also refer the matter to the Minister for Racing for further consideration and appropriate action where necessary.

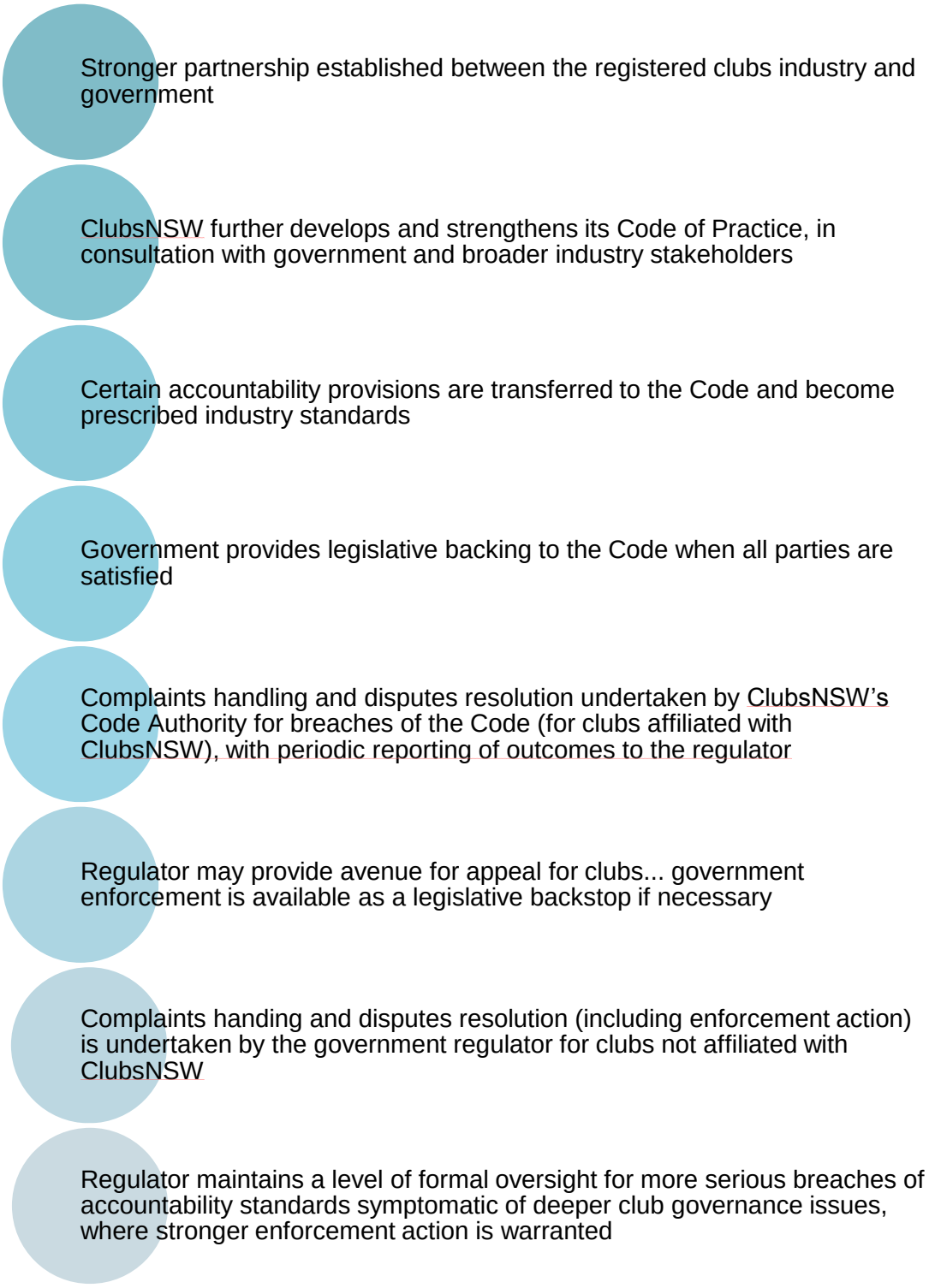

Figure 1: Key features of the proposed co-regulatory approach

9.4. The implementation plan

A number of more detailed work packages would need to be completed to produce the deliverables needed to implement the proposed co-regulatory approach. Prior to these being

progressed, Liquor & Gaming NSW would need to consult with industry stakeholders, including ClubsNSW in particular, to confirm industry support and commitment to progress the co-regulatory approach based on the key features of the proposed approach and the work packages required to implement it.

The NSW Guide to Better Regulation recognises that this consultation needs to occur upfront to determine whether a non-regulatory approach, including co-regulation, might be appropriate. In this case, the successful implementation of such an approach would rely on close consultation, support and active participation of ClubsNSW, as any approach would initially build upon arrangements established under its self-regulatory approach including its Code of Practice and Code Authority.

Should the industry prefer to retain current arrangements, then implementation could not proceed given industry support will be critical to success. There may also be a need to adjust the implementation plan (including specific details of work packages) based on feedback from ClubsNSW and other industry stakeholders through the consultation process. An initial scoping exercise with industry would be undertaken to consider which accountability provisions should be transferred across to the Code of Practice to become industry standards.

Recommendation 13:

The government should consult with peak industry bodies on a proposed co-regulatory approach and associated implementation plan to deliver a contemporary, effective and efficient accountability framework within the club sector. In particular, it should confirm industry support and seek feedback on the specific workings of the approach to ensure this outcome is achieved.

The following deliverables and work packages have been developed with a view to ensuring that optimal conditions for a co-regulatory approach and appropriate treatments for risks outliner earlier would be established. They include:

Deliverable 1: Strengthening the ClubsNSW Code of Practice and verifying the adequacy of supporting arrangements

- *Work Package 1:* Engage with peak industry bodies to mutually agree clearly defined policy objectives for the co-regulatory approach, with the regulator to provide guidance to industry around its expectations in regards to club accountability.

  Work together to strengthen the ClubsNSW Code of Practice and to ensure standards within the Code are binding, relevant and enforceable for all clubs that are subject to the Code. Identify which of the accountability provisions can be transferred across to the Code of Practice as mandatory industry standards. Standards to be integrated and adopted under the Code would need to be strongly focused towards improving problem behaviours in the industry as they relate to accountability.

  Work Package 2: Assess the capacity of ClubsNSW to carry out compliance and enforcement aspects for affiliated clubs, including for the new standards included in the Code, along with the appropriateness of penalty provisions available to the ClubsNSW Code Authority. Validate the independence of the Code Authority and consider the appropriateness of procedures for appointment to the Code Authority.

This work will recognise that compliance and enforcement for certain matters can be effectively undertaken by the industry itself, given it has relevant experience, intimate knowledge of issues experienced by clubs, and is generally well positioned to provide related education and training. Government intervention should continue to play a key role for more serious accountability-related matters where there are deep and significant club governance issues to be resolved.

Deliverable 2: Establishing lower-cost, more efficient and effective complaints handling and dispute resolution mechanisms

- *Work Package 3:* Draft a memorandum of understanding or other formal agreement with ClubsNSW to convey and agree to complaints handling and dispute resolution mechanisms. This must provide an appropriate level of certainty to industry and the community to set clear expectations as to where complaints made against clubs will be initially referred, either to the Code Authority for investigation and determination or to the government regulator. To provide for industry and community buy-in and support, this must set out clear avenues for complaints to be raised and provide clarity over the roles and responsibilities between the industry and the government

  The proposed approach would see complaints relating to breaches of accountability standards and other club administration matters first being directed to the ClubsNSW Code Authority for clubs affiliated with ClubsNSW. These complaints should only be escalated for government enforcement where there are serious breaches of accountability or other standards symptomatic of deep and significant club governance issues. In these circumstances, more detailed investigation by government regulators may be required and enforcement action through the Authority may be warranted. Provisions will be retained in the Act and Regulation so that the Authority can refer to the standards in the Code of Practice in making related determinations. These mechanisms could also provide an avenue for clubs to appeal a decision by the Code Authority, where they believe the result is unsatisfactory.

  To limit any equity concerns amongst non-affiliated clubs, complaints from non-affiliated clubs should be referred to the regulator for consideration, and investigation against established legislative requirements, where appropriate.

Deliverable 3: Establishing ongoing reporting and consultation processes

- *Work Package 4:* Agree and establish an ongoing reporting mechanism between the Code Authority on its decisions and the government regulator – for example, determinations made by the Code Authority could be periodically reported to the regulator to maintain ongoing oversight to ensure the arrangements are effective and are meeting the needs of clubs and their members.
- *Work Package 5:* Ensure effective and transparent ongoing consultation processes are in place between ClubsNSW and government for developing and reviewing the industry standards under the Code of Practice and supporting regulatory arrangements.

Deliverable 4: Providing legislative backing to the Code of Practice and embedding supporting arrangements

- *Work Package 6:* Subject to the successful development of deliverables 1 to 3, undertake the required regulatory changes. This will include amending the current regulatory arrangements in the Act and Regulation to ensure the strengthened Code of Practice applies to all industry members under the regulatory framework. Other regulatory changes will include amendments to the accountability provisions to reflect that they will have moved over to the prescribed Code of Practice as mandatory industry standards.

  The regulatory amendments would provide for changes to the Code of Practice proposed by ClubsNSW only to be made following government consultation and consent. This will be necessary to ensure that the nature of the regulation will not be unduly influenced by those that it is meant to regulate (i.e. where regulatory partners make favourable changes for clubs in the absence of government involvement, which may or may not be in the community's interests).

  Regulations and reserve powers will also be retained for matters where government does not believe the Code is sufficient. Powers will be retained to allow government intervention (compliance and enforcement action) where the co-regulatory approach has not adequately addressed issues of concern to clubs affiliated with ClubsNSW, their members or the broader community, and for clubs not affiliated with ClubsNSW.

- *Work Package 7:* Finalise the necessary administrative arrangements in conjunction with ClubsNSW, the supporting business processes, and release related communications, to allow for commencement of the new co-regulatory arrangements. Finalise the memorandum of understanding or formal agreement setting out the complaints handling and dispute resolution process.

It is expected that the implementation of a future co-regulatory approach through the above work would take approximately 12 months to complete. Once implemented, the approach should be subject to review after 24 months to ensure it is effectively meeting its policy objectives, is delivering benefits for the club industry and government, and has provided an effective alternative to direct government intervention. This review should consider whether the optimal conditions for success of such an approach continue to exist. It would be undertaken in close consultation with the club industry. The review findings would be reported to Government for consideration and determination of whether the co-regulatory arrangements should continue or be further refined.

Recommendation 14:

Subject to confirming industry support and obtaining feedback (as part of recommendation 13), the co-regulatory approach should be implemented so that it provides an alternative to existing accountability requirements in the Act. The approach would be subject to a review two years after its implementation to allow Government to consider the ongoing viability of the co-regulatory arrangements.

10. Ensuring appropriate industry awareness of accountability provisions (Theme 5)

An industry training framework for club directors and managers was introduced on 1 July 2013. A key objective of the framework is to ensure club directors and managers develop the appropriate governance skills to make significant business decisions, while understanding their responsibilities in managing community-owned assets, including obligations relating to transparency and accountability under the Act.

The framework, prescribed under Part 6 (clauses 26 to 28) of the Registered Clubs Regulation 2015, provides for the staged introduction of mandatory club director and manager training over five years between 1 July 2013 and 1 July 2018. This training is mandatory for club directors and managers, with some limited exceptions.

Club directors can complete two courses conducted by or on behalf of ClubsNSW – "Director Foundation and Management Collaboration" and "Finance for Club Boards". Alternatively, directors can undertake training aligned to the units of competency "Implement Board member responsibilities", "Work within organisational structure" and "Analyse finance reports and budgets" conducted by a registered training organisation.

Club managers are required to complete the course entitled “Board Governance, the Company Secretary and the General Manager” conducted by or on behalf of the Club Managers’ Association of Australia. Alternately, they can complete a course relating to club governance approved by the Secretary, Department of Justice. There are currently no other courses approved by the Secretary.

The Club Director and Manager Training Exemption Guidelines provide an exemption from the training requirements for club directors and managers with specified skills, qualifications and experience.

The following completion timeframes have been specified:

Directors:

- appointed before 1 July 2013 must be trained by 30 June 2016.
- appointed after 1 July 2013 must be trained within 12 months of appointment.

Special arrangements for directors for small and large clubs[9]

- small clubs must have two directors trained by 30 July 2016.
- large clubs must have more than 50 per cent of directors appointed before 30 July 2013 trained by 30 June 2016. The remaining directors of large clubs appointed before 1 July 2013 must be trained by 30 July 2018.

Club managers:

- appointed before 1 July 2013 trained by 30 June 2015.
- appointed after 1 July 2013 trained within two years of appointment.

It is noted that due to the phased introduction of the training, not all club directors have completed this training at the time of this review. However, it is anticipated that the training should go some way to ensuring that, amongst other things, club directors and managers have a sound understanding of their obligations as they relate to accountability.

[9] Small clubs for this purpose are defined as those with annual gaming machine profits of $1 million or less. Large clubs are defined as having annual gaming machine profits of more than $1 million dollars.

10.1. Relevant considerations for the upcoming review of club industry training

In June 2013, the government determined that a review of the club industry training framework would be undertaken after the first major implementation stage in 2016, to consider its effectiveness in improving the club industry's governance standards. This review is scheduled to commence in the second half of 2016 following the completion of the first stage of mandatory training requirements for clubs on 1 July 2016.

As part of the review, the Liquor & Gaming NSW will be seeking feedback from peak industry bodies to determine whether there are any issues impacting on clubs, particularly in relation to access to training and its impact on the industry.

Noting the recent failures in club governance identified by the Authority and its finding in the Parramatta Leagues Club decision that the club industry is still generally confronted by issues affecting club governance, particularly in regards to knowledge, skill, and diligence of club secretaries and directors, a review of industry training in 2016 is timely.

While the accountability provisions are addressed in industry training to a certain extent, it would be appropriate to examine, in consultation with ClubsNSW and the Club Managers' Association Australia and other industry bodies, whether improvements are needed to adequately convey accountability obligations of club directors and managers.

At the same time, it would also be appropriate to examine whether the courses are structured and delivered in a manner that is meeting the needs of club directors and managers, as this can contribute to lack of knowledge and skill being acquired by course participants, resulting in minimal performance improvement (if any) back on the job.

Recommendation 15:

That the review of the club industry training framework, to be undertaken in the second half of 2016, considers whether approved club director and manager training courses:

a) adequately cover all obligations on club directors and managers that relate to accountability and the potential ramifications of improper behaviour, and
b) are structured and delivered appropriately to ensure training is meeting the needs of club directors and managers in regards to accountability.

Currently, there is no specific enforcement or penalty implication for clubs that do not comply with the specified club director and manager training requirements, including compliance with deadlines to complete the relevant courses identified in the Regulation. Therefore, it is proposed to examine whether the industry training framework needs to be supported by specific enforcement and penalty provisions where clubs fail to comply with the training requirements.

It had been intended that failure to comply with a direction may have resulted in a club being liable for a $220 penalty notice or a maximum $550 court penalty. However, advice received from the Parliamentary Counsel at the time the Regulation was made indicated that there was insufficient regulation making powers in the Act to enable this to be done. Therefore, these discretionary powers were not introduced to support the operation of the club industry training framework at the time. These would require amendments to be made to the Act itself.

It is therefore recommended that the review of the club industry training framework consider the introduction of specific enforcement and penalty provisions to support the operation of, and compliance with, the prescribed training requirements. This would be an appropriate time to consider whether there is merit in applying a penalty, after considering the value and

appropriateness of the training and the extent to which it covers obligations that relate to accountability, including those conferred by the accountability provisions.

Recommendation 16:

The review of the club industry training framework should include consideration of whether enforcement and penalty options are necessary to support the operation of, and compliance with, the framework.

11. Appendix A: Table of legislative provisions

Table 1: Accountability Provisions under Part 4A Registered Clubs Act 1976

Section	Description
41B Definitions	Defines a number of terms under the accountability provisions.
41C Disclosure of interests in contracts	Directors with an interest in a matter that relates to the affairs of a club must declare the nature of the interest at a meeting of the governing body.
41D Declaration of financial interests in hotels	Directors and top executives who acquires a financial interest in a hotel must declare the interest in writing to the club's secretary within 14 days after acquiring the interest.
41E Disclosure of gifts and remuneration from affiliated bodies	Directors and top executives must declare to the club's secretary any gift or remuneration from an affiliated body exceeding $500.
41F Disclosure of gifts and remuneration from persons or organisations with contracts with registered clubs	Directors and employees of a club must submit a written return to the club declaring any gift or remuneration from a person or organisation that is a party to a contract with the club.
41J Disposal by club of real property	Defines core and non-core property and requirements for disposing of core property.
41K Contracts in which member of governing body or top executive has interest	Prohibits a club from entering into a contract with a director or top executive, or with a company or other body in which these persons have a pecuniary interest, unless the contract is first approved by the governing body.
41L Contracts with secretary, manager, close relatives and others	A club must not enter into a contract with a secretary, an approved manager, or a close relative of these persons or a company or other body in which these persons have a controlling interest.
41M Remuneration of top executives	Before a club enters into a remuneration contract with a top executive, it must first be approved by the club's governing body.
41N Loans to members of governing body and employees	Prohibits a club lending money to its directors and limits loans to employees of $10,000 or less, provided it has first been approved by the club's governing body.
41O Requirements relating to loan contracts and contracts involving the management of clubs by private businesses	Requires certain proposed loan and management contracts to be submitted to the Secretary, NSW Trade & Investment, at least one month before the contract is entered into.

Section	Description
41P General provisions	Except for section 41M, exempts sections 41J - 41P from the operation of Division 4 of the Act.
41Q Secretary may apply for orders in relation to disposal of real property owned by registered clubs	Provides that if real property is disposed of contrary to section 41J, the Secretary, NSW Trade & Investment, can apply to the Supreme Court for an order to be made relating to the disposal of the property.
41R Termination of certain contracts	Provides that the Secretary, NSW Trade & Investment, can terminate a contract entered into that contravenes a provision of Division 4 of the Act.
41S Effect of termination of certain contracts	Specifies the rights and liabilities of parties to a contract terminated or amended by the Secretary, NSW Trade & Investment, under section 41O(8).
41T Offence of giving effect to terminated contract	Provides an offence for giving effect to a contract terminated under section 41O(8).
41U Notification to top executives and defence	Requires a club to given written notice to a person who becomes a top executive of their responsibilities as a top executive.
41V Offences by secretary and members of governing body of registered club in relation to contracts	Provides that where a club contravenes any provision of Division 4 of the Act or section 41U(1), the club is not guilty of an offence, but each person who is the secretary, a director or a close associate is guilty of an offence, unless the court is satisfied that certain elements occurred.
41ZB Regulations for purposes of Part 4A	Provides certain regulation making powers, including an exemption from any provision of Part 4A of the Act.
41ZC Guidelines	Provides regulation making powers to prescribe guidelines for determining what constitutes an interest declared under section 41C(1), a gift under section 41F(1) or a pecuniary interest under section 41K(1).

Table 2: Accountability Provisions under Part 5 Registered Clubs Regulation 2015

Clause	Description
18 Definition of “top executive”	Defines a top executive to also include a person who is one of the five highest paid employees of the club or a person nominated by the club as a top executive, subject to certain limits.
19 Returns declaring gifts and remuneration	Prescribes requirements for submitting a return under section 41F and guidelines under section 41ZC when a gift must be disclosed.

20 Register of disclosures, declarations and returns	Requires a register to be kept by the club's secretary of all disclosures, declarations and returns that are captured by Division 2 of Part 4A of the Act.
21 Reporting – financial statements	Prescribes the financial reporting requirements of clubs.
22 Reporting – provision of information to members	Prescribes requirements for other information that is to be reported by clubs to members.
23 Exceptions relating to disposal of core property	Provides exceptions to the disposal of core property under section 41J(3) of the Act.
24 Exemptions from section 41L of Act	Provides that a club located outside the prescribed metropolitan area, or where a contract has been entered into via open tender, is exempt from section 41L.
25 Pecuniary interests in companies	Prescribes guidelines for determining whether a director or top executive has a pecuniary interest under section 41K(1).

12. Appendix B: Key statistics – January 2007 to 31 December 2015

This section of the report provides an overview of key statistics between 1 January 2007 and 31 December 2015 relating to:

a) the number and type of public complaints made in relation to clubs
b) the outcome of public complaints made in relation to clubs
c) the number of breaches of the accountability provisions detected by Liquor & Gaming NSW (formerly the Office of Liquor, Gaming and Racing).

Statistics prior to 2007 were not published due to the unreliability of the data. Additionally, the data does not include breaches of accountability provisions that were confirmed by the Independent Liquor & Gaming Authority as part of its determination of disciplinary complaints.

With respect to public complaints that made in relation to clubs, the key observations are:

- a total of 825 complaints were received between 1 January 2007 and 31 December 2015
- the number of complaints peaked in 2009 with a total of 187 received during the calendar year
- however, none of the 187 complaints received in 2009 resulted in any breaches being detected
- a significant proportion of the 825 complaints related to the administration of a club – n=707 (85.7%)
- for more than half of the 825 complaints, there was insufficient evidence to substantiate the complaint – n=465 (56.4%).

With respect to breaches of the accountability provisions in the Act and regulations, the key observations are:

- a total of 720 breaches were detected, of which:
  - 688 were dealt with by way of compliance notice
  - 31 were dealt with by way of penalty notice
  - one resulted in prosecution action against a club.
- the most significant number of breaches detected included:
  - 260 breaches relating to a club's failure to specify core and non-core property in its annual report
  - 131 breaches relating to a club's failure to prepare quarterly financial statements that incorporated the club's profit and loss accounts and trading accounts for the quarter
  - 88 breaches relating to a secretary's failure to keep an approved register of all disclosures, declarations and returns made under Division 2 of Part 4A of the Act
  - 84 breaches relating to a club's failure to record any disclosure, declaration or return received under Division 2 of Part 4A of the Act.

Table 4: Complaints made in respect to registered clubs by topic

	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
Administration	8	10	181	142	98	69	69	70	60	**707**
Juvenile related			2	1	4	4	2	2		**15**
Other			2	5	11	7	22	25	15	**87**
Signage and advertising			2	3	2	2	1	1	5	**16**
Total	**8**	**10**	**187**	**151**	**115**	**82**	**94**	**98**	**80**	**825**

Table 5: Complaints made in respect to registered clubs by outcome

	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
Agreement reached between parties.					2		1			3
Applicant will escalate the matter to a S.79 complaint.								1		1
Breach/es detected and compliance and penalty notices to be issued.				2	1	6	3	4	2	18
Breach/es detected and enforcement action taken.					3	13	6	10	10	42
Breaches detected - warning issued						2	5	1	7	15
Complaint assessed - no further action						6	9	3	4	22
Complaint outside OLGR jurisdiction.					2	1	4	1	4	12
Complaint withdrawn.						1			2	3
Exception should be granted.	8	1								9
Insufficient evidence to substantiate the complaint.		6	181	146	96	6	11	14	5	465
Licensee has implemented new practices/procedures.					3	6	4	3	2	18
Matter addressed									2	2
Matter transferred to Enforcement Team for action							1			1
No breach/es detected.			3	1	6	17	28	34	18	107
NULL		2	2	2	1	5	8	11	15	46
Procedural breaches identified warning letter sent. NFA						1	3	2	1	7
Referred to other agency.							1	2	1	4
Referred to Police for appropriate action.		1				1	1	2	1	6
Remedial action - educational letter sent									2	2
The evidence directly conflicts with the complainant.			1		1	7	1	4	1	15
The licensee has complied with the notice which was served.							1			1
There was no evidence to substantiate the complaint.						8	6	6	3	23
Voluntary undertakings accepted.						2	1			3
Total	**8**	**10**	**187**	**151**	**115**	**82**	**94**	**98**	**80**	**825**

Table 6: Breaches of the accountability provisions from 1 January 2007 to 31 December 2015

	2007 - 2015		
Breach Offence	**Compliance Notice**	**Penalty Notice**	**Prosecution Action**
Section 41C(1) - Club director fail to declare material personal interest in a matter	1		
Section 41J(2) - Club did not specify core and non-core property in annual report	260	1	
Section 41K(1) - Club enter into a contract without board's approval	1		
Section 41L(1)(a) - Club enter into a contract with club secretary or manager	1		
Section 41L(1)(b) - Club enter into a contract with a close relative of the secretary or manager	1		
Section 41M - Club enter into a contract for top executive remuneration without the board's approval	5		
Section 41U - Club fail to give a written notice to a person who is a top executive	4		
Section 41V - Secretary and directors allow breach of any provision of Part 4 Division 4 or section 41U(1)	7		
Clause 19(1)(c) - Club return form not approved by the Secretary	1		
Clause 20 - Secretary fail to keep a register of disclosures, declarations and returns	83	5	
Clause 21(a)(i) - Fail to prepare on a quarterly basis, financial statement that incorporate the club's profit and loss accounts and trading accounts	118	13	
Clause 21(a)(ii) - Fail to prepare on a quarterly basis, financial statement that incorporate the club's balance sheet as at the end of the quarter	2	1	
Clause 21(b) - Fail to provide financial statements to the governing body of the club	8		
Clause 21(c) - Fail to make financial statements available to club members within 48 hours of the statements being adopted by the governing body		1	
Clause 21(d) - Fail to display a notice indicating how to access financial statements by club members	15	1	
Clause 21(e) - Fail to provide a copy of the financial statements on request of member or the Secretary	5	1	
Clause 22(1)(a) - Fail to record and keep specified information	45	5	
Clause 22(1)(b) - Fail to make specified information available within the time prescribed	2		
Clause 22(1)(c) - Fail to display a notice indicating how to access specified information by club members	32	3	1
Clause 22(1)(d) - Fail to provide copy of specified information on request of member or the Secretary	6		
Clause 22(2)(a) - Fail to provide any disclosures, declarations or return under Division 2 of Part 4A of the Act	84		
Clause 22(2)(b) - Fail to disclose top executives remuneration	2		
Clause 22(2)(c) - Fail to disclose details of overseas travel by club directors and employees	1		
Clause 22(3) - Fail to make all reasonable inquiries to ascertain name of employee who is a close relative of a director or top executive	4		
Total	**688**	**31**	**1**
Grand Total	**720**		