



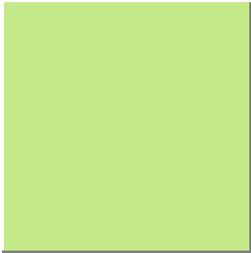
# Club CODE OF PRACTICE



For more information about the *NSW Club Code of Practice*  
and *Best Practice Guidelines* contact:

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**ClubsNSW**



**CLUB CODE OF PRACTICE**

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### WHAT IS THE CODE?

- A statement of common standards of conduct for all clubs that are members of ClubsNSW.
- An expression of the club industry's underlying values of honesty, fairness, integrity, compassion and community.
- A single, plain-English point of reference for the duty of care and due-diligence expectations of communities served by clubs.
- To bolster pride and confidence amongst club directors, managers, employees, members, suppliers and volunteers;
- To increase community trust in the effectiveness, accountability and transparency of club administration; and
- To guide and support clubs in fulfilling their mission and their obligations to all stakeholders.

### WHY IS THE CODE NECESSARY?

The governance demands upon clubs continue to grow and become more complex. The conduct of club directors and managers is closely scrutinised by club members, regulators, policy makers, trade unions and the media. By adhering to the Code, Clubs can have greater confidence that they are meeting their responsibilities to all stakeholders.

Club Directors, management and staff are custodians of significant member assets and have an obligation to ensure that the administration and management of the club is conducted with efficiency, fairness and integrity.

The service of food and alcohol, and provision of gambling and other entertainment facilities demand high standards of responsible governance and administration. The Code reminds all those in leadership positions of their obligations and provides a framework for effective club performance.

### OBJECTIVES OF THE CODE

- To promote consistently high standards of practice across the club industry;

### SCOPE OF THE CODE

This Code of Practice sets standards of conduct for clubs who are members of ClubsNSW.

An alleged breach of the Code by a club that is a member of ClubsNSW will be dealt with in accordance with Part E of the Code.

Compliance with the Code of Practice and all recommendations or directions made by the Code Authority, Code Administrator and their representatives is a condition of membership of ClubsNSW.

This Code of Practice is not binding on Clubs who are not members of ClubsNSW.

Complaints about non-member clubs or which are of a nature which is not captured within this Code should be referred to the appropriate regulator for investigation.

### CONFLICT WITH LEGISLATION

Where there is any conflict or inconsistency between the Code and any Commonwealth or State legislation or regulation, that legislation or regulation will prevail to the extent of the conflict or inconsistency.

## INTRODUCTION AND APPLICATION

### BEST PRACTICE GUIDELINES

ClubsNSW periodically issues Best Practice Guidelines for key areas of Club operation. By following them, clubs can minimise their risk of breaching the Code, or government regulations. Deviating from the *Best Practice Guidelines* does not always result in a breach of the Code.

### CITATION

This Code may be cited as the Club Code of Practice.

### DEFINITIONS

In this Code, unless the context requires otherwise:

**'Affiliated body'** means a related body corporate within the meaning of the *Corporations Act 2001* or any other body that within the preceding 12 months obtained a grant or subsidy from the Club;

**'Approved by the board'** means the matter is approved at a meeting of the Board at which a majority of the votes cast supported the approval;

**'Board'** means the governing body of the Club.

**'Controlling interest'** means an interest in a company or body where the person has the capacity to determine the outcome of decisions about the financial and operating policies of the company or body;

**'Close relative of a person'** means a parent, child, brother or sister of the person, or a spouse or de facto partner<sup>1</sup> of the person or of that persons' parent, child or sibling;

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<sup>1</sup> As defined in section 21C of the *Interpretation Act 1987 (NSW)*

**'Club'** means a registered club within the meaning of the *Registered Clubs Act 1976 (NSW)*;

**'Club industry'** means all licensed Clubs in New South Wales, whether or not they are members of ClubsNSW;

**'ClubsNSW'** means the Registered Clubs Association of NSW, a State organisation registered under Section 222 of the *Industrial Relations Act 1996 (NSW)*. ClubsNSW is the peak body for the club industry, representing registered clubs in New South Wales;

**'Code'** means this Code of Practice as revised and published by ClubsNSW from time to time;

**'Code Administrator'** means the individual authorised to investigate and prepare a report to the Code Authority on complaints against clubs involving alleged breaches of the Code;

**'Code Authority'** means the authority established under clause 55 of the Code;

**'Department'** means the NSW Department of Industry and/or Liquor and Gaming NSW;

**'Departmental Secretary'** means the Secretary of the Department of Industry;

**'Director'** means a currently serving club director, duly elected and/or appointed under the provisions of the *Corporations Act 2001 (Cth)*, the *Registered Clubs Act 1976 (NSW)* and individual club constitutions;

**'Gift'** means any gift including money, hospitality or discounts;

**'Major capital works'** means improvements, replacements or additions to clubs' fixed assets;<sup>2</sup>

<sup>2</sup> Whilst the term 'major' is subjective and assessed on a case basis, a general rule as per the ClubsNSW Best

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**'Management Contract'** means a contract under which a person who is not a director of a club, the secretary or a manager of a club or an employee of a club exercises functions in relation to the management of the business affairs of the club;

**'Manager'** means any person appointed under Section 66 of the *Liquor Act 2007 (NSW)* to manage premises of the Club;

**'Member'** means a member of a club;<sup>3</sup>

**'Natural Justice'** means the right to a fair hearing free of bias; individuals should not be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the matter, a fair opportunity to answer it, and the opportunity to present their own case.

**'Patron'** means a person (member or otherwise) visiting a club or using a club's facilities;

**'Pecuniary interest'** means an interest where the person has a shareholding of more than five per cent unless that company supplies liquor or gaming machines to a registered club then it shall mean any shareholding;

**"Registered Clubs Accountability Code"** means the Code contained in the Registered Clubs Regulation 2015 dealing with various accountability and governance matters. Any complaints arising under this Code must be referred to ClubsNSW if the matter relates to a ClubsNSW member Club;

**'Remuneration'** means any fee for service;

**'Staff'** means employees of a club other than the management;

**'Systemic Failure'** means a pattern of conduct or repeated Code breaches, that points to a serious and/or structural flaw in organisational practice;

**'Top Executive'** means any of the following:

- a. The secretary of the Club;
- b. A manager of the Club;
- c. Any employee of the Club who is nominated by the Club as a Top Executive; and
- d. Any employee of the Club (other than a person referred to in paragraphs a – c):
  - i. Who is one of the 5 highest paid employees of the Club; and
  - ii. Whose remuneration package exceeds the high-income threshold set by the Fair Work Commission under the Fair Work Act 2009; and
  - iii. Who is involved in the general administration of the Club or with its liquor and gaming operations.

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Practice Guideline for Major Capital Works is that further scrutiny should be given to projects that are estimated to have a capital cost in excess of \$500,000 or 2.5% of last audited total revenue, involve complex or

specialised issues or untried technology or are unique and unprecedented in the club industry.

<sup>3</sup> Unless otherwise stated a member means a full or lifetime member of a club and does not include temporary or provisional members.

# Club Code of Practice

## PART B: CODE COMMITMENTS

### LEGAL OBLIGATIONS

1. Because the provision of gambling, food services and alcohol are core activities, we accept that the club industry is highly regulated and that we have a responsibility to be fully informed as to our legal compliance obligations.<sup>4</sup>
2. In particular, we will ensure that our directors, management and staff are informed about the primary instruments regulating clubs, particularly the *Registered Clubs Act 1976 (NSW)* (and associated Regulations), the *Corporations Act 2001 (Cth)*, the *Gaming Machines Act 2001 (NSW)* (and associated Regulations) and the *Liquor Act 2007 (NSW)* (and associated Regulations).
3. We will provide adequate training and supervision to ensure compliance with all relevant laws relating to the club industry.
7. We are committed to promoting fair and democratic elections and maximising member involvement by adhering to relevant law and following appropriate procedures for the conduct of club elections.
8. We will have in place speedy, responsive, accessible and user-friendly procedures for dealing with complaints.
9. We recognise the democratic right of members to raise concerns in an appropriate manner in relation to our Club's operation or governance. Should a club member make a complaint to the club or to the Code Authority, that member shall not be subject to disciplinary action or other penalty for the act of making the complaint. However, this clause does not apply where the complaint is published in another forum or if a complaint is deliberately false or misleading.

### CLUB CONSTITUTIONS

4. We will have, in our constitution or elsewhere, a clear expression of our aims, purpose and governance structure as an organisation. This will be clearly communicated to members.
5. We will have procedures in our constitution for dealing with unacceptable behaviour by patrons. We are committed to ensuring that these procedures are faithfully followed and will apply the principles of natural justice in dealing with disciplinary matters.
6. Where there is any inconsistency between our club constitution and any State or Federal legislation, the legislation will prevail.<sup>5</sup>

### CONDUCT OF DIRECTORS, MANAGEMENT AND STAFF

10. We will pursue good governance to support the aims and purpose of our Club by:
  - a. making decisions that are consistent with these aims/purpose and the interests of members;
  - b. complying with any relevant legislative, industrial and administrative requirement and keeping up to date with any changes to these requirements;
  - c. maintaining adequate documentation to support any decisions made;

<sup>4</sup> A list of relevant legislation is available at Appendix A

<sup>5</sup> There may be instances where the Club Constitution is silent on matters that are addressed in legislation or

regulations. Club Directors and Managers should take steps to ensure that procedures contained in the Club Constitution are consistent with statutory requirements.

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- d. treating each club member and employee with due courtesy and respect;
- e. providing access to continuing professional development for managers, Directors and staff;
- f. achieving operating efficiencies in accordance with Board policies;
- g. obtaining value for club money spent<sup>6</sup>;
- h. contributing to a safe, healthy and discrimination-free club environment; and
- i. not taking or seeking to take improper advantage of any club information gained in the course of our appointment (in the case of Directors) or employment (in the case of managers or staff)<sup>7</sup>.

11. We will deal promptly and effectively with information received that relates to matters that may lead to a material loss to our Club.

### COMMITMENT TO THE COMMUNITIES IN WHICH CLUBS ARE LOCATED

12. We acknowledge our responsibility to the community in which our club is located in relation to key revenue-generating activities, in particular the provision of gambling and alcohol.<sup>8</sup>
13. We will comply with all relevant noise control measures and, when necessary, work with local councils, the NSW Police and the Environment Protection Authority to resolve noise-related issues.
14. As a not-for-profit community organisation, we will meet our

ClubGRANTS and other social obligations and maximise our financial commitment to and support for community projects within the means of the club.

### CONTRACTS OF EMPLOYMENT WITH TOP EXECUTIVES

15. We will ensure that each top executive of the Club enters into a contract of employment in writing with the Club that deals with the following:
- a. Terms of employment;
  - b. The role and responsibilities of the top executive;
  - c. Remuneration (including fees for service); and
  - d. Termination of employment.
16. We will ensure that any contract of employment with a top executive is first approved by the Board of the Club.
17. We will have any contract of employment for a top executive must be reviewed by an independent and qualified adviser<sup>9</sup> before it may be approved by the Board.

### MANAGEMENT CONTRACTS

18. We will not enter into a management contract with a person unless:
- a. The members of the Club have been given at least one month's notice of the proposed contract; and
  - b. The Club has provided a report on the proposed contract to the Departmental Secretary at least one

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<sup>6</sup> Examples of waste and extravagance may include, but are not limited to, private use of club vehicles, telephone or other assets; or sending more representatives than necessary on overseas study tours.

<sup>7</sup> Examples of taking improper advantage of Club information may include benefitting (either themselves, a family member or an associate) improperly from the

disposal of Club assets such as equipment or land, the improper awarding of a contract for major capital works.

<sup>8</sup> See also clauses 43 and 44.

<sup>9</sup> An independent and qualified advisor may include the Club's lawyer or in house legal counsel, corporate advisor or ClubsNSW Workplace Relations Advisory Service.

## CODE COMMITMENTS

month before entering into the contract.

### HUMAN RESOURCE MANAGEMENT AND INDUSTRIAL RELATIONS

19. We are committed to promoting best practice human resource management and industrial relations between our Club management and employees. With the full support of the Board of Directors, our Club Manager(s) will ensure the appropriate terms and conditions of the Award and other relevant industrial instruments are applied at all times. This includes effectively managing disputes that may occur in the workplace from time to time.<sup>10</sup>
20. We will make the continuing professional development and training of our Club Managers and other employees a priority.
21. We are committed to preventing and addressing incidents of bullying, either by or of club directors, employees, volunteers, and/or club members. Where an alleged incident of bullying is drawn to the attention of the Board or management, we will have processes in place to investigate the allegations and, should they be substantiated, take appropriate action.

### EMPLOYMENT OF CLOSE RELATIVES OF DIRECTORS OR TOP EXECUTIVES

22. Candidates who are known to be close relatives of a director of the Club will have their employment approved by the Board of the Club.

23. We will, before employing any person, make reasonable inquiries to ascertain whether that person is a close relative of a director or top executive of our club.
24. We will, before employing a person who is the close relative of a director ensure that that director takes no part in any decision relating to that person's employment.

### LOANS TO DIRECTORS AND EMPLOYEES

25. We will not lend any amount of money to any director of the Club.
26. We will not lend more than \$10,000 to any employee of the Club. These loans will only be granted with the approval of the Board.<sup>11</sup>

### ENTERING INTO CONTRACTS GENERALLY<sup>12</sup>

27. We will not enter into a contract with a director or top executive (not including the Secretary or a manager) of the Club or a company in which a director or top executive has a pecuniary interest unless the proposed contract is first approved by the board of the Club.
28. We will not enter into a contract with the Secretary or a manager of the Club unless entering into that contract is the result of an open tender process.
29. We will not enter into a contract with a close relative of the Secretary or a manager of the Club or a company in which a close relative of the Secretary or a manager of the Club has a controlling

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<sup>10</sup> Nothing in this Code applies to the resolution of industrial disputes or employment related disputes between a club and its employees.

<sup>11</sup> This does not apply to any amount of money lent to the employee in accordance with the terms and

conditions of that employee's contract of employment with the Club.

<sup>12</sup> This Section does not apply in relation to employment contracts.

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interest unless entering into that contract is the result of an open tender process.

30. For the purposes of Sections 37, 38 and 39 of this Code, we will make all reasonable enquiries to ensure that these provisions are not contravened.

### PROCUREMENT OF GOODS & SERVICES AND CAPITAL WORKS

31. We are committed to ensuring that Club procurement of goods & services and capital works represents quality and good value, is subject to a proper tendering process with competitive quotes, and is done in the best interests of the club and its members.
32. We have in place and are committed to following a sound framework for major procurements of goods & services and capital works based on the following criteria:
  - a. All major procurements and capital works will be properly defined, documented, cost planned and approved in accordance with board policy;
  - b. All major procurement and capital works projects will be subject to a risk assessment analysis; and
  - c. All major procurements and capital works will be subject to appropriate written contracts with the chosen supplier in accordance with Board policy.
33. Properly documented selection criteria will be used to appoint suppliers and service providers for major procurements.
34. The Board of Directors will act diligently and in the best interests of the club in approving and overseeing procurement

of goods & services and major capital works.

### DISCLOSURES BY DIRECTORS AND EMPLOYEES OF CLUBS

35. Our directors will disclose any material personal interest that they have in a matter relating to the affairs of the Club.
36. Our directors and top executives will disclose any personal or financial interest they have in a contract relating to the procurement of goods or services or any major capital works by the Club.
37. Our directors and top executives will disclose any financial interests in a hotel situated within 40km of our club's premises.
38. Our directors, top executives and employees will disclose any gift valued at \$1,000 or more, or any remuneration of an amount of \$1,000 or more received from an affiliated body of the club or from a person or body that has entered into a contract with the Club.
39. We will have procedures in place to ensure that each matter referred to in Sections 35 – 38 is disclosed to the Club within 21 days after the person becomes aware of the matter.
40. We will have procedures in place to ensure that any conflicts of interest, including those stated in Sections 35 – 38, are managed appropriately.
41. We will keep a register of the details of disclosures made to the Club pertaining to Sections 35 – 38.

### PROVISION OF INFORMATION TO MEMBERS

## CODE COMMITMENTS

42. We will make the following information available to members within four months after the end of each reporting period:

- a. Disclosures made under Section 35 – 38;
- b. Details of any overseas travel by a director or an employee of the Club in that person's capacity as a director or employee including any costs wholly or partly met by the Club in relation to that travel;
- c. Details of any loan over \$1,000 to an employee of the Club, including the amount of the loan and the interest rate (if any);
- d. Details of any contract of employment with a top executive of the Club approved during the reporting period;
- e. Details of any consultancy during the reporting period costing more than \$30,000, including the name of the consultant, the consultancy fee and the nature of the services provided by the consultant;
- f. The total amount paid to consultants during the reporting period (excluding the amounts reported as per above);
- g. Details of any legal settlement paid to a director or employee of the Club and any associated legal fees paid by the Club;<sup>13</sup>
- h. Details of any legal fees (not referred to above) paid by the Club on behalf of a director or employee;
- i. The amount allocated by the Club during the reporting period to community development and support under the ClubGRANTS scheme; and/or
- j. The total amount of gaming machine profits from the operating of gaming machines during the gaming

machine tax period relating to the reporting period.

### RESPONSIBLE PROVISION OF GAMBLING

43. We support the provision of a responsible gambling environment for all patrons of our club by:

- a. Informing and training staff to ensure they are familiar with all legislative requirements of licensed venues that offer their patrons gambling activities;
- b. Ensuring all staff who have gambling-related duties are trained in the Responsible Conduct of Gambling (RCG) and can respond appropriately to a request for assistance from a problem gambler or a concerned other;
- c. Implementing policies to encourage responsible practices in promotions related to gambling;
- d. Informing patrons and staff of the Club's responsible gambling policy and the availability of support services for problem gamblers; and
- e. Establishing a responsible gambling environment where anybody requiring assistance with a gambling problem will be handled with respect and discretion, and referred to services that can assist (such as a local cost-free gambling counselling service and/or self-exclusion).

### RESPONSIBLE SERVICE OF ALCOHOL

44. We will demonstrate our commitment to the responsible service of alcohol (RSA) by:

- a. Providing approved training of management and staff in RSA;
- b. Refusing to serve alcohol to persons who are obviously or visibly affected by alcohol;

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<sup>13</sup> Unless the disclosure would breach any confidentiality, agreement reached by the Club.

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- c. Avoiding the promotion of alcohol in a way that could encourage minors to seek to purchase or to consume alcohol;
- d. Avoiding the promotion of alcohol in a way that could encourage the excessive consumption of alcohol;
- e. Refusing alcohol service to under age persons and requiring the presentation of proof of age before providing services to persons we suspect of being minors;
- f. Making club patrons aware of their responsibility under the law in respect of the supply of alcohol to minors and intoxicated persons; and
- g. Not supporting any pricing practice which encourages the excessive consumption of alcohol.

### **FINANCIAL MANAGEMENT AND REPORTING**

- 45. We will ensure that financial statements incorporating a balance sheet and the club's profit and loss accounts and trading accounts are provided to the board of the club on a quarterly basis.
- 46. We will make these financial statements available to the members of the Club within seven days of those statements being adopted by the board.
- 47. We will display a notice on the Club's premises and website advising members how these financial statements can be accessed.
- 48. Financial management practices will be consistent with the appropriate standards.
- 49. Financial decisions will be consistent with the Board's approved goals and approved budgets.
- 50. The Board will oversee and ensure adherence to approved budgets.

- 51. The Board will establish boundaries and limits regarding:
  - a. capital investments;
  - b. remuneration and benefits;
  - c. protection of assets;
  - d. tendering;
  - e. cost containment; and
  - f. efficient use of labour.
- 52. The Board will obtain from management prompt and detailed reporting where limits and boundaries are exceeded.
- 53. Financial reports that accurately reflect the true financial position of the club will be provided for each Board meeting.

### **PRIVACY AND CONFIDENTIALITY**

- 54. We acknowledge that, as a membership-based organisation, our club is entrusted with personal information. We will comply with our duties under the Privacy Act 1998 (as amended in 2013).

55. The Code Authority and Code Administrator will oversee compliance with the Code
56. The Code Authority is appointed by the Board of ClubsNSW. It is made up of an independent Chair and two or more persons selected for their knowledge of the club industry and its regulatory framework, including the Code of Practice. All determinations are made by consensus agreement.
57. The Code Administrator will be appointed by ClubsNSW. The Code Administrator shall be entitled to appoint however many delegates as is required to assist in the management of their responsibilities under this Code.
58. The Code Authority will report to the Board of Directors of ClubsNSW annually or more frequently, if deemed necessary.
59. The Code Authority will report to Liquor and Gaming NSW on a quarterly basis, deidentified statistics detailing:
  - a. The number of complaints received by the Code Administrator that relate to the Registered Club Accountability Code;
  - b. The subjects of these complaints, reported as a percentage of total complaints received in the reporting period; and
  - c. The outcomes of these complaints, reported as a percentage of total complaints received in the reporting period.

The purpose of this is to foster a close relationship between the regulator and ClubsNSW to assist in managing compliance within the club industry.

**RESPONSIBILITY OF CLUBS TO CO-OPERATE WITH THE CODE AUTHORITY**

60. Clubs who are members of ClubsNSW are required to:
- a. Monitor its compliance with the Code;
  - b. Co-operate with the Code Administrator or his delegates and Code Authority; and
  - c. Provide information about any alleged breach of the Code.

**DEALING WITH ALLEGED BREACHES OF THE CODE OF PRACTICE**

61. Complainants should attempt to resolve their complaint directly with the club prior to making a complaint under the Code.
62. This Code only applies to clubs who are members of ClubsNSW. Where a complaint is received about a club who is not a member of ClubsNSW, the matter should be referred to the appropriate regulator for investigation.
63. Any complaint against a club alleging serious misconduct or that is otherwise not captured by this Code, regardless of the Club's membership status with ClubsNSW, may be referred<sup>14</sup> by the Code Administrator or Code Authority to Liquor and Gaming NSW or other relevant body where appropriate.
64. Where a complainant has made a complaint about the Club to another organisation or a government agency, and/or legal action is pending in relation to the allegations, this must be identified.

The Code Administrator may decline to investigate matters that are currently being investigated or pursued in other forums.<sup>15</sup>

65. In order to be investigated, complaints should:
- a. Identify the specific sections(s) of the Code that the club is alleged to have breached;
  - b. Include particulars of the alleged breach;
  - c. Identify what remedies are sought; and
  - d. Include the name and contact details of the complainant.
66. The Code Administrator will receive complaints about alleged breaches of the Code by clubs.
67. The club will be provided with a copy of all materials submitted by the complainant.
68. The Code Administrator or his or her delegates will make initial investigations into the matter. During this time, the Code Administrator will consult with the Club in respect of the complaint and make recommendations to the Club, if necessary, about the alleged breach and the Club's compliance with the Code.<sup>16</sup>
69. If, after the conclusion of these investigations, no clear potential breach of the Code is found or the Club has complied with the Code Administrator's or his or her delegate's recommendations and no further action is required, the complainant will be duly

<sup>14</sup> Referral will be determined by the capacity of the regulator to intervene in such matters.

<sup>15</sup> This section does not apply in relation to matters referred to the Code by the regulator.

<sup>16</sup> These recommendations may result in the matter being resolved without the intervention of the Code Authority and therefore no further action will be taken as per Section 59 of the Code.

## MAJOR CAPITAL WORKS

notified and the matter considered concluded.<sup>17</sup>

70. Should the results of the initial investigations show that further scrutiny is warranted or the complainant provides additional material which indicates a potential breach of the Code, the matter will be referred to the Code Authority for determination.
71. The Code Administrator may receive written submissions from both the complainant and the club, as well as any other individual or organisation deemed relevant, about alleged breaches of the Code. The club will also have an opportunity to make written representations to the Code Authority in respect of the steps taken to address the matter and to prevent the alleged breach or breaches recurring. This information will be compiled by the Code Administrator and provided to the Code Authority for consideration.
72. The Code Administrator will provide reports to the Code Authority concerning the facts of alleged breaches of the Code.
73. The Code Authority will determine the outcome of alleged breaches of the Code put to it by the Code Administrator.

### **DIRECTIONS AND SANCTIONS THAT MAY BE IMPOSED BY THE CODE AUTHORITY**

74. If the Code Authority finds that a breach of the Code has not occurred, then both the complainant and the club will be advised as such and the matter is considered concluded.
75. If the Code Authority finds that a breach of the Code has occurred, and the steps

taken to rectify the matter and prevent its recurrence are satisfactory, the Code Administrator will advise both the complainant and the club in writing of that conclusion and the matter is considered concluded.

76. If the Code Authority finds that a club has:
  - a. committed a breach of the Code and that steps (if any) taken for rectification or to stop the breach or breaches recurring are inadequate; and/or
  - b. committed a series of breaches of the Code indicating systemic failure,

it may apply one or more of the following directions or sanctions:

- that the matter be rectified in line with the Code Authority's determination;
- that particular remedial steps be taken by the club in accordance with a specified timetable;
- that staff, management or director training be undertaken;
- that an apology be offered (if appropriate);
- that financial compensation be made (if appropriate);
- that the club perform a specified community service;
- that a compliance audit be undertaken;
- that corrective advertising be placed;
- that the club be named either immediately in a ClubsNSW Circular and/or other publication as appropriate and/or in the ClubsNSW annual report as having breached the Code;

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<sup>17</sup> Unless the complainant, subsequent to a notification under this section, provides new and substantial information which warrants further investigation.

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- refer the matter to the ClubsNSW Board for review and potential discipline under the ClubsNSW constitution; or
  - refer the matter to the Minister for Racing or other Government Authority for further action.
77. When imposing any directions or sanctions on a Club, the Code Authority will have regard to:
- a. the objectives and purpose of the Code; and
  - b. the severity of the breach of the Code and the appropriateness of the sanction; and
  - c. the degree to which the club cooperated with the Code Administrator and the Code Authority during the investigation and adjudication of the matter.
78. Where the Code Authority determines to impose directions or sanctions under Section 76, the Code Administrator will provide notice to the governing body of the club in writing of the determination and of what the directions and sanctions will be.
79. The club will have one calendar month from the date of the notice referred to in Section 78 to make representations to the Code Administrator as to the manner in which the Club intends to comply with the directions or to make any further representations for the Code Authority's consideration. If at the end of that period the Code Administrator is still of the opinion that:
- a. there has been a breach or a systemic failure; or
  - b. there has been a breach or a systemic failure and the steps taken or proposed to be taken for rectification and to stop the breach

or breaches recurring are inadequate,

the Code Administrator may refer the matter back to the Authority who may impose further sanctions.

80. Where a Club takes disciplinary action against a member, or otherwise penalises that member, on the basis that the member has made a complaint to the Code Authority, it will be considered a breach of the Code. This section does not apply where the complaint is published in another forum or if a complaint is deliberately false or misleading.

### REVIEW OF SANCTIONS

81. A Club that is subject to a decision, direction or sanction under this Code may request that the sanction be reviewed by the Board of ClubsNSW and, in that case, if the Board considers that there are grounds for review, the Board may refer the matter back to the Code Authority for reconsideration.

### FAILURE TO COMPLY

82. Where a Club does not co-operate with the Code Administrator or does not comply with the determination of the Code Authority, it will be considered a serious breach of the Code, regardless of the nature of the original complaint. The Code Authority may avail itself of any sanction under Section 76.
83. Where a club fails to comply with the Authority's directions, the matter must be reported to the Board of ClubsNSW for information.

## MAJOR CAPITAL WORKS

84. Should the Code Administrator deem it appropriate<sup>18</sup>, the matter may also be referred to the relevant regulator for review and investigation.

### REFERRAL TO THE CLUBSNSW BOARD

85. Should the Code Authority determine it is necessary to refer a Club to the Board of ClubsNSW for review and potential discipline under Section 76 of the Code, the Code Administrator will provide a report to the Board outlining the complaint and the facts relating to the referral by the Code Authority to the Board.

86. A copy of the report to the Board of ClubsNSW by the Code Administrator under Section 85 will be given to the governing body of the club, and the Club is entitled, within 20 business days of receiving that report or in such further period as the Code Authority may permit, to make a submission to the Code Authority in relation to the matters contained in the report.

87. The Code Authority, after considering any submission made by the club under Section 79, may make a further report to the Board of ClubsNSW recommending further action to be taken by the Board.

88. The board of ClubsNSW may direct the Code Administrator to take such steps as it believes appropriate to enforce any direction or sanctions imposed by the Code Authority.

89. The Board of ClubsNSW may take other disciplinary actions against the member in accordance with the ClubsNSW constitution.

90. The Code Authority may report to the Board of ClubsNSW or an appropriate agency in respect of its activities but it shall not publicly disclose the name of a Club that is alleged to have breached the Code or on whom sanctions have been imposed, or any information that might identify the club, unless it recommends that the club be named immediately or in the annual report or unless the club consents.

### REPORTING

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<sup>18</sup> What is appropriate will be determined by the capacity of the regulator to intervene in such matters.

## **APPENDIX 1: LIST OF RELEVANT LEGISLATION**

Listed below are the main Acts that apply to all Clubs.

Note: this is not an exhaustive list and Acts are not presented in alphabetical order.

### **NSW State Legislation**

1. Registered Clubs Act 1976
2. Gaming Machines Act 2001
3. Gaming Machines Tax Act 2001
4. Liquor Act 2007
5. Charitable Fundraising Act 1991
6. Fair Trading Act 1987
7. Industrial Relations Act 1996
8. Annual Holidays Act 1944
9. Long Service Leave Act 1955
10. Lotteries and Art Unions Act 1901
11. Public Lotteries Act 1996
12. Racing Administration Act 1998
13. Work Health and Safety Act 2011
14. Apprenticeship and Traineeship Act 2001
15. Unlawful Gambling Act 1998
16. Smoke-free Environment Act 2000
17. Food Act 2003
18. Anti-Discrimination Act 1977

### **Commonwealth Legislation**

1. National Gambling Reform Act
2. Corporations Act 2001
3. Privacy Act 1988
4. Trade Practices Act 1974
5. Income Tax Assessment Act 1997
6. A New Tax System (Goods and Services Tax) Act 1999
7. Anti-Money Laundering and Counter-Terrorism Financing Act 2006
8. Sex Discrimination Act 1984
9. Disability Discrimination Act 1992
10. Registered and Licensed Clubs Award 2010

# PREVENTING AND MANAGING BULLYING

## APPENDIX 2: LIST OF BEST PRACTICE GUIDES AVAILABLE

### **Major Capital Works**

This Guideline aims to assist ClubsNSW Members dealing with major capital works projects.

### **Procurement of Goods and Services**

The purpose of this Guideline is to encourage the highest standard of practice by Clubs in regard to the procurement of goods and services.

### **Remuneration of Club Executives**

The purpose of this Guideline is to provide Clubs with information regarding the key principles and processes that should be followed when remunerating club executives.

### **Overseas Travel by Boards**

This Guideline provides Clubs with information that will assist them in planning and justifying overseas travel by Directors, management or staff.

### **Board Operation**

This Guideline aims to assist clubs in effective and efficient operation of their Board identifying best practice strategies for Board functioning and affirming individual Director responsibility.

### **Financial Reporting**

The purpose of this Guideline is to improve the accuracy and transparency of Club financial reporting. The guideline informs Clubs on their legal financial reporting obligations, and suggests ways of improving the flow of financial information to members.

### **Community Support**

The purpose of this Guideline is to assist Clubs to meet their community support obligations, as set down in their Constitution, by helping them to identify, value and report (i.e. benchmark) the extent of their contribution to the community.

### **Complaints Handling**

The purpose of this Guideline is to provide Clubs with information regarding the management of complaints by club members.

### **Member Disciplinary Proceedings**

This Guideline assists Clubs in conducting fair and open elections for Boards of Directors. The Guideline must be read in conjunction with the club's Constitution.

### **Conduct of Board Elections**

This Guideline assists Clubs in conducting fair and open elections for Boards of Directors. The Guideline must be read in conjunction with the club's Constitution.

### **Preventing and Managing Bullying**

This Guideline assists Clubs in managing the risks of bullying, and in responding to allegations of bullying where they may arise.