

Guidelines—Management agreements - Section 67 of the *Gaming Machine Act 1991*

These guidelines replace the previous Guidelines—Management agreements, which were released in May 2005.

Purpose

These guidelines are applicable to a club which is the holder of or an applicant for a gaming machine licence under the *Gaming Machine Act 1991* (the Act) and which intends:

- to enter into a management agreement as defined by the Act or
- to alter an existing management agreement.

These guidelines will assist the Office of Liquor and Gaming Regulation (OLGR) to assess the acceptability of the management agreement or any changes thereto in terms of the Act.

As the guidelines are based on the provisions of the Act, clubs will also find the guidelines useful when considering entering or amending a management agreement.

Definition

A “management agreement” is defined under section 67 of the Act as:

“... an agreement or arrangement made by the licensee about the management of the licensee’s business or operations, other than an agreement or arrangement—

- a) made by the licensee with an individual who—
 - (i) is not a party to an agreement or arrangement about the management of another licensee’s business or operations, or
 - (ii) is not an associate of a person who is a party to an agreement or arrangement about the management of another licensee’s business or operations, and

- b) for which the licensee is required, under the Taxation Administration Act 1953 (Cwlth), schedule 1, part 2–5, division 12, subdivision 12B, section 12–35, to withhold an amount from the individual’s salary or wages under the agreement or arrangement.

Put simply, an agreement between a club and an individual on an employer/employee basis, where the club withholds income tax and the individual works only for that club would not be a management agreement in terms of the Act.

Where the parties to an agreement are unsure as to whether the agreement falls within the definition they may need to seek legal advice. In the first instance enquiries may be made to the Probity Unit, OLGR on 07 3872 0999.

Background

It is usual for the elected body of a licensed club to appoint a person to conduct and manage the club’s day to day business. Throughout the industry, these persons are known as “Secretary Managers” or “Club Managers” and in most instances they work only for the one club as a salaried employee under the PAYG tax system.

However, it has been noted that some clubs are entering into formal arrangements with companies or individuals in the private sector, or other clubs, to provide management services on a contractual basis.

These agreements may offer the provision of services normally carried out by the traditional Secretary Manager or Club Manager as well as other specialised services.

It is these management agreements which fall within the definition stated above and to which these guidelines relate.

The Act does not prohibit a club from entering these arrangements but the club must remain a non-proprietary body pursuing a set of objectives for the benefit of its members and, as a consequence of entering a management agreement, must not become a device for the benefit of private interests. Notwithstanding the entering of a management agreement, the elected body must remain in control of the club's affairs.

The decision to negotiate and enter such an agreement rests with the elected body of the club which has the responsibility to ensure that the terms and conditions of the agreement are reasonable, in the best interests of the club, and otherwise comply with the provisions of the Act.

Prior assessment by OLGR

Section 67 of the Act provides that at least 28 days before entering, renewing or changing a management agreement a club must give to OLGR a copy of the proposed agreement or the proposed changes.

There is no formal approval given or required but OLGR will assess the proposed agreement or proposed changes in terms of the Act.

Where necessary, OLGR will contact the club through correspondence or otherwise in order to raise any concerns or to clarify issues before a final assessment in writing is given.

Whilst the assessment will entail consideration of all legislative provisions a number of sections are particularly relevant. A summary of the more relevant provisions is included in these guidelines.

The guidelines should not be considered as an exhaustive list of issues given the commercial nature of such agreements. Each proposed management agreement or each proposed change will be considered on a case by case basis.

Guidelines for assessment of management agreements

Is the agreement in the best interest of the club?

The terms and conditions of the agreement must:

- be allowable under and otherwise consistent with the club's constitution
- be executed by persons appropriately authorised by the club's elected body.

It is highly desirable:

- that the agreement should be transparent and therefore
 - the agreement is to be in writing
 - all ancillary arrangements or documents comprising the agreement should be disclosed and submitted
 - the agreement should fully and clearly describe:
 - the specific responsibilities and duties to be undertaken
 - financial and other delegations to be given
 - staff responsibilities
 - performance standards
- that the agreement be negotiated and entered into at "arm's length" meaning—
 - the selection process should be open, independent, rigorous and justifiable
 - any real or perceived conflicts of interest of the manager should be disclosed in the agreement along with how any conflict is to be managed
 - the basis for extension or termination of the agreement should be clear
 - performance standards to be achieved should be set
 - how and when performance is to be reviewed should be disclosed
 - consequences for non-achievement of performance standards should be clear
- adequate reporting—
 - the scope and regularity of reporting responsibilities to the management committee or board should be specifically stated.

Does the club remain in control of its affairs?

The agreement must not:

- require or be conditional upon changes being made to the composition or election of the management committee or board. In this regard the restrictions imposed by section 341A of the *Gaming Machine Act 1991* should be noted.
- limit the authority of the elected management committee or board in respect to—
 - determining the strategic direction of the club
 - the final approval of the club's budget
 - making or endorsing all major financial or operational decisions
 - reviewing and approving financial and operational control systems.

It is highly desirable that in respect to:

- budget and financial control—
 - any role the manager is to have in the preparation of the budget should be clearly stated
 - the agreement should clearly explain how the operational and financial performance of the club is to be regularly reported to the committee or board
- reasonable financial and other delegations—
 - financial and operational decisions and actions should be clearly specified
 - delegations generally should be for the purpose of day to day operations
 - authority to make changes to gaming machine operations in terms of increases or decreases should remain with the board
 - the ability to incur expenditure other than for day to day operations should be confined to where such expenditure is acknowledged in the budget approved by the management committee or board
 - the payment of accounts is subject to the prior approval of the management committee or board
 - moneys should only be banked to accounts opened and maintained by the club

- the permanent staff levels in terms of numbers and remuneration should be determined by the board although a delegation to appoint or replace within these levels may be given
 - the appointment of senior staff should be approved by the board
 - where staff are to be provided by the manager pursuant to the management agreement, those appointments are to be subject to the approval of the management committee or board
 - termination of permanent staff should be authorised by the board.
- calculations used to determine remuneration should exclude extraordinary or abnormal items.

Is the remuneration reasonable and properly based?

(“Remuneration” includes standard fees, allowances, bonuses or incentives.)

- Remuneration must:
 - be commercially realistic
 - be transparent and easily calculated
 - not be based, directly or indirectly, on a percentage or share of the amount bet on gaming or moneys, revenues, profits or earnings from gaming—this would be a contravention of section 342 unless approved by the Commissioner on the basis of public interest.
- It is highly desirable that remuneration is reasonable and justifiable:
 - full disclosure of the remuneration payable should be made
 - basis of reasonableness would include—
 - scope of services
 - level of experience, knowledge and skills provided
 - size of the club
 - comparative agreements
 - industry standards
 - any remuneration review, bonus or increase should be dependant on meeting performance standards
 - no incentive or bonus is payable where a net loss is suffered (unless predetermined performance standards are met)

Summary of relevant provisions

Section 58(6)

The several paragraphs in this section identify matters which, if not considered to be in the best interests of the club or its members, would lead to the refusal of an application for a gaming machine licence by the club or in the case of a licensed club, may present grounds for the cancellation or suspension of the gaming machine licence.

These matters are described in such terms as:

- the making of payments or benefits which are unreasonable
- the presence of outside influences which affect the election of officers
- the undesirability of a relationship between creditors or lessors and persons within the club
- the loss of complete control over the club's business by the board
- the use of the club as a device for the individual or commercial gain of others.

Section 92

Under this section a licensee or an applicant for a gaming machine licence or for the renewal of the licence must disclose to OLGR by way of an affidavit, details of persons who by any lease, agreement or arrangement may influence decisions or expect a benefit in relation to the conduct of gaming.

Section 97

This section sets out the grounds upon which a club may be called upon to show cause why its gaming machine licence should not be suspended or cancelled.

One ground includes those matters referred to under section 58(6). Other grounds include:

- the cessation of the non-proprietary status of the club
- gaming proceeds not being applied to promote the clubs objectives
- payments made being unreasonable or based on a percentage of gaming income.

Section 336

Under this section the licensee is to furnish information to OLGR. Unless that information satisfies the chief executive that the continuation of the agreement is in the public interest and does not jeopardise the integrity of gaming, a show cause notice as to why the agreement should not be permitted can be issued. The determination of the show cause is made by the Queensland Gaming Commissioner for Liquor and Gaming (the Commissioner).

Section 340

This section makes it an offence for a person, other than a recognised official, to have control or the ability to have control over an application for a gaming machine licence or an application for renewal of a gaming machine licence by a club.

Section 341

Under this section a person external to the club is prohibited from gaining control over the conduct of gaming at the club.

"Control" is defined as having the ability to dominate, directly or indirectly, policies for the conduct of gaming or to enjoy the majority of benefits and be exposed to the risks associated with the conduct of gaming.

Section 341A

This section prohibits certain persons or their associates from holding office as a member of a licensed club's management committee or board unless the approval of the chief executive is obtained. The restriction includes a creditor, a lessor, a person who has entered into a management agreement with the club or a person responsible for the day to day management of the club.

Section 342

This section makes it an offence for a licensee or any other person to enter an agreement for a thing or services in return for any direct or indirect interest in the percentage or share of gaming income or turnover.

The Commissioner may exempt an agreement from these provisions where it is considered that such exemption will be in the public interest. Such exemption may be subject to such conditions as the Commissioner considers appropriate.