

Prohibition on bonus and incentive payments under section 10(1)(K) of the *Registered Clubs Act 1976*



This Guideline provides guidance to registered clubs as to the Independent Liquor & Gaming Authority's ("Authority") interpretation of the prohibition on payments to employees calculated with reference to a club's liquor sales or its gaming machine operations under section 10(1)(k) of the *Registered Clubs Act 1976* ("Act").

Background

1. Section 10(1)(k) of the Act provides:

"The secretary or manager, or any employee, or a member of the governing body or of any committee, of the club is not entitled to receive, either directly or indirectly, any payment calculated by reference to:

 - i. the quantity of liquor purchased, supplied, sold or disposed of by the club or the receipts of the club for any liquor supplied or disposed of by the club, or
 - ii. the keeping or operation of approved gaming machines in the club."
2. In short, the Act prohibits certain individuals, including executives, managers and employees, of a registered club from receiving payments relating to the sale of liquor or the operation of gaming machines. The statutory purpose of section 10(1)(k) is harm minimisation and this prohibition is designed to prevent a registered club from giving its officers or employees a financial incentive to maximise the club's liquor sales or its gaming operations.

Bonus and incentive payments prohibited under the Act

3. It is common practice within registered clubs for contracts of employment with senior executives, managers and/or employees to contain provisions for the payment of bonuses or incentives in the event that the club reaches a stated financial

target. Often these financial targets do not relate to liquor sales or gaming revenue specifically, but are instead calculated by reference to the club's overall financial performance.

4. However, whilst a club's overall revenue will include some revenue from other sources, the majority of club revenue is generated from liquor sales and gaming machine operations. The Authority therefore considers that any payments to club employees which are calculated by reference to the club's overall revenue/sales targets or profit targets are, by necessary implication, a payment made by reference to the sale of liquor or gaming machine operations, which contravenes the remuneration restriction in section 10(1)(k) of the Act.
5. The Authority has specifically held that bonus or incentive payments calculated by reference to a club meeting the following objectives contravenes section 10(1)(k) of the Act:
 - a. budgeted sales;
 - b. budgeted profit before tax; or
 - c. achieving an operating profit.

Bonus and incentive payments permitted under the Act

6. While a club cannot pay a bonus or incentive payment purely on the basis of the club's revenue or profit targets, clubs have numerous other performance metrics by which bonus or incentive payments may be calculated without reference to the club's liquor sales or gaming machine operations.
7. Specifically, the Authority considers that bonus or incentive payments calculated by reference to the following performance metrics would potentially not contravene section 10(1)(k) of the Act (depending on the wording of the relevant contractual clause). It is stressed that clubs are not limited to these examples.

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- a. an increase in the number of members of the club;
 - b. the number of individual patron visits to the premises during a financial year;
 - c. an annual reduction in recurring operational costs;
 - d. the delivery of specified major project(s) on time and on budget;
 - e. an increase in dining and entertainment attendances;
 - f. a decrease in complaints made about the club;
 - g. a defined number of adverse regulatory events (e.g. Compliance or Penalty Notices issued by Police, Liquor & Gaming NSW or Council, or maintenance of the club's declared premises status under Schedule 4 of the *Liquor Act 2007*);
 - h. through an independent annual survey of awareness of the Club within a defined community catchment area;
 - i. a club reaching a designated target figure for sales, revenue or profit which expressly excludes any consideration of the club's liquor or gaming revenue when calculating the relevant target; or
 - j. an increase in, or better use of the club's assets (for example, the development of excess land held by the club and the establishment of facilities that will provide additional revenue streams).
8. Where a club can demonstrate that a bonus or incentive payment is made by reference to a financial target that is not:
- a. a direct derivative of either liquor sales; or
 - b. gaming machine proceeds;
- and that it may depend on items such as:
- a. the cost of goods;
 - b. the expenses of providing services; and
 - c. apportionment, if any, of capital costs and operational expenses across all heads of revenue;
- then such a bonus or incentive payment may not contravene section 10(1)(k) of the Act.

9. It should also be noted that bonus or incentive payments which are paid on the basis of an arbitrary event, eg a bonus of \$50,000 or 1% of

the club's profits, whichever is higher, which is automatically payable upon the club turning a profit, is more likely to contravene section 10(1)(k) than a financial target which is independently set by the club's governing body each financial year.

Process for determining breach of section 10(1)(k)

10. If a provision of section 10 of the Act has been breached, including section 10(1)(k), then section 57F(3) of the Act provides that disciplinary action may be taken against the registered club, or a person who is the secretary, or a member of the governing body of a registered club.
11. The Authority's "GL4012 – Guideline 8: Disciplinary Complaints Against Registered Clubs under Section 57F of the *Registered Clubs Act 1976*" outlines the Authority's process for making and determining disciplinary complaints made against registered clubs and associated individuals under section 57F of the Act.

Review of this Guideline

12. The Authority may review the operation of this Guideline from time to time and may update the Guideline as and when considered appropriate.

APPROVED by the Independent Liquor & Gaming Authority.

On 16 October 2019



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Chairperson