

Gaming Guideline G14: Suitability of category 2 (Club) licence applicants

Gaming Machine Act 1991 – Sections 57, 58, 67, 92, 340 and 341

Purpose of guideline

The purpose of this document is to provide guidance on the matters the Commissioner for Liquor and Gaming will have regard to when determining the suitability of an applicant for a category 2 (club) gaming machine licence. This guideline also includes information about the processes the Commissioner will adopt where issues of concern are identified.

Suitability of club applicants

Initial assessment

In considering an application for a gaming machine licence, the Commissioner is required to carry out investigations to be satisfied of, among other things, the suitability of the applicant.

In this regard, the Commissioner will assess the financial stability and business reputation of the applicant, in addition to the general reputation and character of the secretary and each executive officer of a body corporate.

In recognition of the non-proprietary status of clubs and the regulatory benefits they are afforded, the *Gaming Machine Act 1991 (Act)*, requires the Commissioner to conduct a more comprehensive assessment when considering an application for a club gaming licence (category 2 gaming machine licence).

Situations where the Commissioner must refuse an application

In general terms the Act intends that only eligible, bona fide clubs be granted a category 2 gaming licence. While the Act does not define what a bona fide club is, section 58 of the Act provides guidance as to relevant considerations when determining an applicant's non-proprietary status.

The Commissioner must refuse a category 2 gaming machine licence application if any of the following are established:

- lease payments are unreasonable or provide unreasonable benefits; or
- the club is being used as a device for personal gain; or
- the grant of the licence would not be in the public interest.

The Commissioner must also refuse a category 2 gaming machine licence application if the club has not been operating for two years or pursuing its objectives in good faith. Despite this, the Commissioner may grant the application if the Commissioner:

- considers the grant is reasonable because of the club's contractual commitments in pursuing its objects; and
- it is necessary to meet the reasonable gaming requirements of the club's members; and
- it is in the public interest.

Unless it can be shown to be in the best interests of the club, the Commissioner also must refuse a category 2 gaming machine licence application if any of the following are established:

- elections of board members are controlled or influenced by non-voting members or only some voting members; or
- voting members do not have sole control of the election of board members; or
- a board member or employee is the club's lessor, or is associated with the lessor; or
- a board member or employee is the club's creditor, or associated with the creditor; or
- the board does not have complete and sole control of its operations.

Examples where the Commissioner is likely to refuse an application

While the Commissioner will take into account the unique circumstances of each application, the following is a non-exhaustive list of examples where it is likely the Commissioner will refuse an application.

Reasonableness of payments

Where payments made by a club under a management agreement are not reasonable given the size of the operation or the services provided. Similarly, where payments under a lease are not commensurate with market rates for the size, location and facilities provided.

Where payments are made to board members that are above industry average or are paid without regard to the club's performance or financial position.

Where the terms of a lease require the club to be responsible for funding development works and the maintenance and upkeep of the facilities to the benefit of the lessor, with subsequent improvements to the property able to result in an increase in rent payments made under the lease.

Lack of board control

If voting and active membership in the club is not openly encouraged and made available, or if voting membership is restricted or made up of a high proportion of persons with associate relationships with entities with financial arrangements with the club.

Concerns are also held if a third-party is able to assert influence over the club's board, business, operations or decision making through economic dependence or any other means. Further general information and guidance about what may constitute unreasonable control are set out in the *Guideline for Management Agreements* (link below).

Elections are influenced or inequitable

It is of paramount importance the election of a club's management committee or board is not controlled or influenced by persons other than members of the club. This may occur where voting power is only vested in a specific class or classes of membership that is restricted in number.

Club used as a device for personal gain

This may occur where gaming proceeds are not being used to promote the club's objects, but rather are used to:

- pay third parties via unreasonable agreements or arrangements;

- pay large performance bonuses to managers without meeting performance benchmarks;
- to improving the lessor's assets (the premises) rather than paying down debt;
- repay loans provided by a non-traditional lender at higher than commercial rates.

Lack of financial stability

This may be evidenced by any of the following scenarios:

- uncertainty as to whether the club is likely to provide anticipated community benefit during its operations in support of its objects;
- inability of the club to pay employees entitlements;
- inability of the club to pay gaming machine wins (including jackpots) to patrons which impacts the integrity of gaming;
- where the applicant with a history of significant trading losses does not have a realistic business plan to return to profitability;
- where the applicant has a combination of limited cash assets, negative equity and significant outstanding debts;
- revenue projections rely almost entirely on proposed gaming operations;
- gaming revenue projections are unrealistic based on industry standards and geographic location.

Grant not in the public interest

The overarching object of the Act is “to ensure that on balance, the State and the community as a whole benefit from gaming machine gambling” and so a club must be able to demonstrate that it has, and will provide substantial benefit to the community outside of purely the provision of licensed premises operations.

This concern may be evidenced when an applicant is proposing to operate in a socially disadvantaged community and that community overwhelmingly opposes the grant of the application.

Commissioner concerns and natural justice

The Act establishes benchmarks upon which the Commissioner can assess the non-proprietary status of the applicant. These benchmarks are designed to ensure only bona fide clubs are eligible to be licensed as a category 2 licensee. The Commissioner therefore believes the operation and nature of bona fide clubs will meet the legislative benchmarks without undue change or amendment.

The Commissioner is also of the view that if an applicant's nature and operation does not meet the benchmarks, it is likely the applicant is not an eligible or bona fide club. In assessing any such deficiencies, it is not the role of the Commissioner to help the applicant meet the requisite standards and the investigative process undertaken will not be an iterative one.

In assessing a matter in accordance with this guideline, the Office of Liquor and Gaming Regulation (OLGR) will review the initial application and generally provide the applicant one opportunity to supplement the application to meet the legislative benchmarks for approval. Following receipt of the further information, the Commissioner will make a decision on the information provided.

For more information, contact OLGR on 13 QGOV (13 74 68) or email at: OLGRLicensing@justice.qld.gov.au.

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Also consider...

- Learn more about electronic gaming machine licensing. (link this to <https://www.business.qld.gov.au/industries/hospitality-tourism-sport/liquor-gaming/gaming/electronic-gaming-machines/licensing>).
- Read Guidelines – Management Agreements – Section 67 of the *Gaming Machine Act 1991* (<https://publications.qld.gov.au/dataset/olgr-publications/resource/f3b9c08b-ef43-41ff-8be5-286200be76f8>)
- Read – Schedule the rules *Liquor Act 1992*
- Read the *Gaming Machine Act 1991*. (link this to <https://www.legislation.qld.gov.au/view/html/inforce/current/act-1991-007>).
- Read Guideline 341A. (link this to <https://www.publications.qld.gov.au/dataset/olgr-publications/resource/650eb29e-7291-4717-8e15-47d201ec051d>).