

Guideline – Section 341A of the *Gaming Machine Act 1991*

This guideline serves to clarify the application of section 341A of the *Gaming Machine Act 1991* (the Act) titled, “**Restriction on membership of management committee or board**”.

Section 341A of the Act, under certain circumstances, prohibits certain persons from holding a position on a licensed club’s management committee or board (i.e. from being a board member). This section came into force from 1 May 2005.

Provision has been made for a person to be exempted from the prohibition if the Office of Liquor and Gaming Regulation (OLGR) makes an assessment that it is in the best interest of the club to do so.

Intentions of Section 341A

The intention of section 341A is to prohibit a person from being a board member where a substantial conflict of interest exists. Specifically, section 341A is directed at and will apply to a person such as:

1. the lessor of the club’s premises
2. a creditor of the club, other than a trade creditor
3. a person who has entered into a management agreement as described by section 67 of the Act where the management of the gaming machine activities of the club is included
4. any associate of the abovementioned.

Limits on the application of Section 341A

The prohibition from being a board member does not apply in the following cases and no request for an exemption is necessary:

1. trade creditors—where the supply of goods or services for the day to day operations of the club are arranged and paid for on usual commercial terms or on terms favourable to the club

2. a Secretary Manager or other person responsible for the day to day management of the club’s operations, who is an individual and for whom the licensed club is required under the Commonwealth taxation laws to withhold an amount from the individual’s salary or wages as a PAYG employee,

or any associate of the persons in (1) and (2) above.

While section 341A does not apply in the above circumstances it is expected that the governance of clubs would be such that board members that fall into any of the above categories would stand aside from any vote of the board where a conflict of interest exists.

Application for exemption

Where a request for an exemption from a prohibition imposed by section 341A is to be made, the submission to OLGR must address:

- why such an exemption is in the best interest of the club
- what arrangements have been put in place to ensure that the business and operations of the club remain under the control of the club, and
- how the club has assured that any commercial arrangement with the prohibited person are at arm’s length and on terms favourable to the club.

While each case will be considered on its merits it is unlikely that an exemption would be considered to be in the best interests of the club in the following circumstances:

- a) where the person has a conflict of interest arising from an agreement or arrangement entered into with the club, or



- b) where being a board member was a condition of the entry of any agreement or arrangement with the club particularly where this requirement is for the purpose of protecting the interests of the prohibited person, as this would suggest that the person intends to or could be seen to exercise undue influence or control over decisions relating to the conduct of gaming.

Further, any exemption given under section 341A is based on the circumstances submitted and considered to be existing at the time.

If those circumstances did not exist or if the circumstances of the exempted person change, the exemption under section 341A will lapse and the provisions of section 341A will apply forthwith.

Continuation of exemptions & application of other provisions of the Act

Section 341A is consistent with and supports other provisions of the Act which regulate the involvement of third party interest in the strategic management of the club and, in particular, control over the conduct of machine gaming.

Relevant sections include Sections 58, 92, 97, 336, 340, 341 and 342 whose provisions, amongst other things, prohibit external control or influence being exercised over the conduct of gaming and require agreements and costs of services and goods to be on reasonable terms and in the best interests of the club.

Any exemption given under section 341A does not excuse the club or the exempted persons from complying with other provisions of the Act. This applies equally to those persons who are not considered to be covered by the provisions of section 341A as mentioned in this document.