



# How do Amalgamation & De-amalgamation co-exist?

**A** amalgamations and de-amalgamations are akin to marriage and divorce. If a marriage is entered into lightly or circumstances change it often ends in divorce. In some respects the same is true for clubs but with appropriate due diligence, a properly considered amalgamation is unlikely to end in de-amalgamation.

A legislative framework for amalgamations between registered clubs has existed for at least 25 years, whereas the process of de-amalgamation is a recent phenomenon with relevant legislation passed in early 2012.

There are many misconceptions regarding amalgamation. One of the commonly asked questions is how can there be an amalgamation when one club goes into liquidation? The answer lies in the fact that amalgamation is a term drawn from the *Registered Clubs Act*, which has as its focus joining two groups of people to become one. The way in which the corporate structures are dealt with stems (usually) from the *Corporations Act* and has nothing to do with amalgamation of clubs.

When contemplating amalgamation, explaining the process to all stakeholders, including members, is essential for success. The rationale for amalgamation must be absolutely clear to both clubs' members and directors. Outcomes, expectations and obligations must be based on good faith and set out in a clearly worded document. Secret agendas or hidden issues could result in failure of the amalgamation.

Applying high standards of corporate governance is crucial to the amalgamation process. The directors of an acquiring club must exercise a business judgement in accordance with the *Corporations Act*. The application of business judgement to amalgamation was reviewed by the Office of Liquor Gaming and

Racing (OLGR) in its investigation into Ramsgate RSL. The OLGR found that there was a lack of business judgement evident in the decision to amalgamate with a small bowling club on the North Coast. Exercising business judgement includes completing appropriate due diligence and making enquiries into all the circumstances affecting the club's party to the amalgamation.

Successful examples of amalgamation include Bankstown Sports Club and Birrong Bowling Club. In this case, Birrong needed a small injection of capital to address a number of issues. Once those issues were addressed the club reconnected with its community and is now trading profitably, with a profit in excess of \$500,000 per annum. Other good examples include Mounties and Harbord Diggers and Manly 16 Foot Skiff Club and St George Sailing Club.

The process for de-amalgamations can be more complex depending on whether the club being separated will be a standalone entity or will form part of another group of clubs. The group of members associated with the proposed de-amalgamated club site must first vote to de-amalgamate. A second vote of all members of the amalgamated club in favour of de-amalgamation is also required. The approval process requires a number of applications and confirmation that the de-amalgamated entity will be financially viable.

The pathway to de-amalgamation is costly and the acquiring club will need to divest the asset and likely provide the separating club with sufficient capital to restart its operations. When considering either amalgamation or de-amalgamation, specialist advice should be sought.

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## THE PROCESS OF AMALGAMATION HAS 5 KEY STEPS

- 1** Clubs must seek expressions of interest from all other clubs within a 50 km radius for a recommended period of at least 30 days before they can enter into an amalgamation. If a club is unable to amalgamate with a club in the same area, then it may amalgamate with any other club.
- 2** Members must be notified (via a noticeboard or website) that an amalgamation partner has been chosen.
- 3** There must be a Memorandum of Understanding, which sets out key terms of the agreement between the clubs. At a minimum the MoU should address the following:
  - The manner in which the dissolving club will be managed and the degree of management autonomy.
  - The traditions, amenities and community support that will be continued by the amalgamated club.
  - The plans for the future of the amalgamated club.
  - The extent to which employees of the amalgamated club will be protected.
  - How the assets of the dissolved club, including the core property, any cash, investments and poker machine entitlements will be dealt with.
  - The circumstances that would permit the amalgamated club to cease trading on the premises of the dissolving club or substantially change the object of the dissolved club.
  - The period of time before the above measures could be taken.
- 4** Each group of members of the negotiating clubs must approve the amalgamation in principle. This resolution must be voted on by all members (excluding junior members) despite any other restriction on voting in the club's constitution. A simple majority is required to pass the resolution.
- 5** The final step is regulatory approval. An application must be made to the Independent Liquor Gaming Authority (ILGA) for approval of the amalgamation and transfer of the dissolving club's licence. Prior to this notification of the application must be on display at the ILGA for a period of 30 days. Once the approval is granted, the clubs can determine a mutually agreeable time for the amalgamation to complete. Following completion, the dissolving club will voluntarily wind-up.