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Finding and keeping the right long-term partner

Amalgamation activity remains high in the Club industry and must be managed carefully because it can be a very complex process involving competing interests and pressures

More registered clubs searching for the right long-term partner to help meet the future challenges facing the industry has prompted a recent spike in amalgamation activity.

But some proposed unions may never get off the ground or last beyond the honeymoon period unless the appropriate legal steps are taken before tying the knot.

Amalgamation activity remains high as clubs look for ways to deal with current pressures, including the effect of smoking bans and gaming machine tax increases. So far this year Thomson Playford Cutlers has been involved in six amalgamations (up from four in the whole of the previous year).

Even with the most recent amendments to the *Registered Clubs Act 1976* ("the Act") and regulations, an amalgamation can be a complex process with legal, financial and emotional pressures to contend with. Clubs need to ensure that the legal requirements are met, as poor communication with members and failure to comply with the Act can result in the failure of an amalgamation for technical reasons, even if it may be a good commercial option for both clubs.

Preliminary stage

The expression of interest process, which goes before selection of an amalgamation partner, gives clubs the opportunity to set criteria for the outcomes they want to see from an amalgamation. When handled properly it can assist in finding a partner which has a good cultural "fit" as well as the resources to build a financially viable amalgamated club.

Tale of an amalgamation triangle

The recent case of *Wilson & Anor v North Sydney ANZAC Memorial Club Ltd & Ors* in the Supreme Court in April 2008 highlighted the importance of strict compliance with the Act and regulations, and good communication with members. It should also prompt clubs to remember that external parties – like regulators, courts and even other clubs who put in expressions of interest (but are not the preferred amalgamation partner) – can affect the outcome of the process.

The club's failure to make the memorandum of understanding about the amalgamation properly available and provide sufficient material for the members to make an informed decision, gave another club (which was unsuccessful in the expression of interest process)



the opportunity to seek an injunction and prevent the members voting on the amalgamation.

Getting it right

Thomson Playford Cutlers has been involved in many successful amalgamations. One of the most significant was the Mount Pritchard Community Club and Harbord Diggers Club amalgamation, which created a combined club of approximately 83,000 members. This experience shows that identifying the “technical” legal requirements early in the amalgamation process, can lead to a smoother amalgamation.

For any clubs considering an amalgamation, Thomson Playford Cutlers recommends:

1. Clearly identifying the issues that are critical to each club as part of the amalgamation before moving into the expression of interest process.
2. Obtaining independent legal advice early in the proceedings to identify how to cover those critical issues. For example, reviewing each club’s constitution to ensure that membership rights are dealt with as agreed. Early consideration of the legal issues helps to ensure there is full agreement before the memorandum of understanding is prepared and also helps to prevent matters coming up at the last minute.
3. Consideration of other commercial issues with financial and legal advisors where appropriate, including the terms of any finance necessary to complete the amalgamation.

4. A high level of care and structured assessment process in the due diligence and expression of interest stages. It is most important that the assessment process is fair and transparent or it may not stand up if reviewed.
5. Club boards ensure they have a good understanding of the commercial impacts, and legal requirements, before moving ahead with the amalgamation process. Each club should be clear about the plan to take an amalgamated club forward into the future.
6. Clubs make sure that the Act is strictly complied with to ensure that the members can make an informed decision on whether to vote in favour of an amalgamation.

An important part of advising on the process is the understanding that every club is different and each amalgamation must be approached on a “case by case” basis. Amalgamations can also be an emotional and difficult time, even when all of the legal requirements are met. There is never a guarantee that a proposal will be acceptable to the members, who must ultimately make the decision about their own club’s future. However, careful attention to getting the process right can put members in the best position to make that decision.

The ultimate aim of an amalgamation is to create a new entity which better serves all its members and benefits the community, while making good financial sense. As

successful amalgamations show, the key to success is a comprehensive due diligence process, a fair assessment of expressions of interest, good communication with members (and with the other club) as well as compliance with the Act. Careful planning and seeking expert professional advice early in the process is therefore critical.

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