Registered Club Amalgamations and De-Amalgamations under the Registered Clubs Act 1976

ClubsNSW Submission

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Executive Summary

Liquor and Gaming NSW (L&GNSW) have announced a review of the registered club amalgamation and de-amalgamation framework. This is in response to a commitment made by the current NSW government in their MoU with ClubsNSW – *Resilient Clubs, Resilient Communities.*

The review looks largely at the amalgamation process which is regulated by the *Registered Clubs Act 1976,* the *Registered Clubs Regulation 2015,* the *Liquor Act 2007*, and the *Corporations Act 2001.*

An amalgamation is the joining together of two or more clubs either by the dissolution of each of those clubs and the formation of a new club or the continuation of one of those clubs and the dissolution of the other club or clubs.

Amalgamations provide a large number of efficiencies for clubs including granting access to better bargaining power, economies of scale, reduced competition and the sharing of key staff and services. It is also commonly used to assist clubs who are in financial distress and at risk of closing to improve their financial situation.

Since 2007, 114 clubs have closed, representing approximately 7.7 per cent of the industry. Conversely, 63 clubs have undergone the amalgamation process and subsequently survived.

However, data shows that 72 per cent of clubs that began the amalgamation process, did not complete it.[1] This highlights that there are range of cultural, commercial and regulatory barriers to the club amalgamation process.

ClubsNSW submits that amalgamations should be encouraged to ensure the sustainability of the club industry in NSW which makes an economic contribution of $3.7 billion and a social contribution of $1.3 billion each year.[2]

To support industry consolidation through amalgamation, ClubsNSW makes the following recommendations:

1. That section 17AH of the Registered Clubs Act, requiring clubs to initially seek to amalgamate with clubs within a 50km radius, be repealed;
2. That section 17AF of the Registered Clubs Act, placing a limit of 10 amalgamations per club group, be repealed;
3. That section 4 of the *Registered Clubs Regulation*, making the release of an expression of interest prior to amalgamation, be clarified;
4. That ILGA factor the time taken to consult with the community with regard to the licence transfer into the 120 day maximum and only club members or genuinely impacted community members be allowed to make submissions;
5. That the requirement for a community impact statement be produced when applying for a new club licence as part of the de-amalgamation process be removed;

[1] KPMG 2015 NSW Club Census – Financial Viability of Clubs 2015, p. 1
[2] KPMG New South Wales Club Census 2015, p. 4

6. That regulation be introduced to allow re-amalgamations to be effected by a single vote of members and the transfer of licence in these cases be allowed from one entity to another without the creation of an interim club licence;
7. That the NSW Government consider the creation of a tax incentive for small clubs to amalgamate; and
8. That a process be established to enable clubs to approach other clubs with unsolicited amalgamation offers.

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Introduction

The Club industry is in a period of rapid change. Issues such as an ageing population, changing community expectations and the impacts of increasingly onerous legislative requirements have made the operating environment for clubs challenging.

In addition, clubs have faced substantial increases in competition. The hotel sector, in particular, has benefited from significant economy of scale efficiencies as large corporate hotel chains have been established encompassing, in some cases, hundreds of venues nationwide. It is extremely difficult for small independent clubs to compete against hotel chains that have the substantial financial capacity of large Australian Stock Exchange (ASX) listed entities such as Woolworths and Wesfarmers on one hand and the operational agility of small bars on the other.

Clubs are owned by the community and exist for the purpose of providing services to members and the local community such as bowling greens, golf courses and social and recreational amenity. These community benefits are typically not provided by the private for-profit entities that clubs compete with in the entertainment and hospitality sectors, and therefore place clubs at a disadvantage when competing head-to-head with other businesses.

In recognition of both the substantial community benefits clubs provide and the significant competitive pressures they face, successive New South Wales Governments have enacted a range of policies to support the financial viability of clubs, for instance gaming machine tax concessions.

Some clubs have flourished within this shifting environment. Others, particularly the smaller community clubs, who are often run by volunteers, are struggling within the competitive atmosphere with an average of 11 clubs closing each year for the last decade.

Industry consolidation is a normal economic response to a mature or declining market. However, clubs experience closure more commonly than the private sector, as they face additional hurdles and impediments to mergers and acquisitions.

ClubsNSW submits that further industry consolidation, underpinned by club amalgamations is essential for ensuring a sustainable club industry in the future. Club amalgamations have shown to be an effective method of maintaining community assets whilst finding efficiencies in overall club operations.

In creating this submission, ClubsNSW has surveyed its 1,149 members. The responses indicate that for most clubs the biggest barriers to amalgamation are:

- time, cost and red-tape;
- support from the other club; and
- support from members.

ClubsNSW suggests that a number of efficiencies can be made in the process of amalgamation and de-amalgamation to lighten the red tape burden. These are:

1. removing the 50km radius rule to allow clubs to strategically consider amalgamations in different markets;

2. removing the cap on 10 amalgamations per club group;
3. clarifying the requirement for an expression of interest to be released
4. ILGA to factor the time taken to consult with the community with regard to the licence transfer into the 120 day maximum and only allow club members or genuinely impacted community members to make submissions;
5. removing the requirement for a CIS to be completed when creating a new club licence during the process of de-amalgamation; and
6. introducing regulation to allow re-amalgamations to be effected by a single vote of members and the transfer of licence in these cases be allowed from one entity to another without the creation of an interim club licence.

Further, ClubsNSW submits two policy changes which may actively encourage clubs to undergo the amalgamation process. These are:

1. creation of a tax incentive for small clubs to amalgamate; and
2. establishment of a process to enable clubs to approach other clubs with unsolicited amalgamation offers.

Club Amalgamation Overview

An amalgamation is the joining together of two or more clubs. Under the *Registered Clubs Act* this is effected either by the dissolution of each of those clubs and the formation of a new club that owns or occupies the same premises of at least one of the dissolved clubs or the continuation of one of those clubs and the dissolution of the other club or clubs.

An 'amalgamation' is generally where a larger parent club comes together with a smaller (often financially struggling) club with the intention to operate both premises. Clubs may also choose to 'merge' whereby two or more clubs come together as equals with the intention of either operating multiple sites or, more commonly, operating out of a single site.

Amalgamations provide a large number of efficiencies for clubs including granting access to better bargaining power, economies of scale, reduced competition and the sharing of key staff and services.

Since 2007, 114 clubs have closed, representing approximately 7.7 per cent of the industry. Conversely, 63 clubs have undergone the amalgamation process and subsequently survived. Whilst ClubsNSW actively encourages clubs to consider amalgamation before financial distress sets in, it is still the case that financial weakness is the main driver of amalgamation in the industry.

The 2015 NSW Club Census (the Census) found that 33 per cent of clubs are in financial distress.[3] [4] This financial situation negatively impacts certain types of clubs more than others with the Census showing that RSL, community and leagues clubs are among the most financially viable with only 22 per cent being in distress or serious distress.[5] This can be compared with 62 per cent of golf clubs and 40 per cent of bowling clubs who are in financial distress.[6] This difference is largely attributable to the high costs of maintaining community assets such as golf and bowling greens. However, once the club is gone, often so too is that asset.

Further, geography plays a role in determining financial viability with metropolitan clubs more likely to be in a solid or flourishing state than regional clubs.[7] The census found that "overall, clubs in regional NSW exhibit slightly lower levels of financial health than metropolitan based clubs, which may be driven by challenges relating to geographical dispersion and low population density."[8] Of the 114 clubs that closed in the last decade just under 50 per cent were in regional or rural areas.

The Census also showed that 78 clubs or 72 per cent of those that began the amalgamation process, did not complete it.[9] This highlights that there are range of cultural, commercial and regulatory barriers to the club amalgamation process.

[3] KPMG New South Wales Club Census 2015, p. 41
[4] Financial distress is measured in accordance with the criteria determined by the Independent Regulatory and Pricing Tribunal (IPART) in the Review of the Registered Clubs Industry in NSW, 2008.
[5] KPMG New South Wales Club Census 2015, p. 41
[6] Ibid
[7] Ibid p. 44
[8] Ibid
[9] KPMG 2015 NSW Club Census – Financial Viability of Clubs 2015, p. 1

ClubsNSW acknowledges that there are some cultural barriers to club amalgamations that cannot be addressed through legislative change. It can be the case that club boards are content for their club to remain very small, volunteer run organisations. Whilst this has traditionally been the way grassroots clubs operate, it is not sustainable long term. Many of these clubs face insolvency in the short to medium term as well as substantial compliance failures in properly managing alcohol and gambling.

Club members may also act as a barrier to a potential amalgamation that is in the long-term financial interest of the club. In a similar vein to club boards, members may hold concerns about the future of their club within the amalgamated group. This can result in club members choosing to vote down amalgamation proposals in favour of maintaining a financially insecure status quo.

While cultural barriers are likely the least significant deterrent, ClubsNSW is proactively addressing these through the Club Directors Institute educational programs. Further, ClubsNSW subsidiary, Club Biz also offers financial incentive through the Amalgamation Assistance Fund (AAF), a $2 million fund to assist small to medium clubs to undergo the amalgamation process by wholly or partially paying for financial due diligence and feasibility studies, legal fees and public relations services to drive communication with members about the proposed amalgamation.

The AAF has had a good take up since it was launched in October last year, however, if there is to be a real improvement in the attractiveness and success of amalgamations, they need to be encouraged including through the removal of red-tape, making the process easier and more appealing to clubs.

The amalgamation process is highly complex, governed by several pieces of legislation including the *Registered Clubs Act 1976,* the *Liquor Act 2007*, and the *Corporations Act 2001*. This makes amalgamation a daunting project and can deter smaller, under-resourced clubs from exploring this option.

Arguably, these smaller, under-resourced clubs are the neediest candidates for amalgamation. These clubs, largely because they are volunteer run, often struggle to maintain the rigorous requirements of the highly regulated club industry. Encouraging amalgamation could promote a drop in compliance related problems.

Club amalgamations are also hampered by cost and time demands. An amalgamation takes an average of 6-18 months to complete and generally costs between $50,000 to $100,000 in due diligence, legal fees, member information and engagement and other expenses.

ClubsNSW plays an active role within the industry educating directors about the potential benefits of amalgamation and how to manage director and member concerns. There is also work to be done in encouraging clubs to be proactive in their approach to amalgamation, considering this approach before the club becomes too financially unviable to continue through the amalgamation process.

Government assistance in facilitating club amalgamations would help assure the future viability of the industry, by decreasing red-tape and providing tax incentives for amalgamations.

The Current Amalgamation Process

Clubs are (for the most part) companies, limited by guarantee under the *Corporations Act 2001*. However, they are further subject to the rules contained within the *Registered Clubs Act 1976* and the *Registered Clubs Regulation 2015* which creates a more complex operating environment. *Table 1* outlines the current amalgamation process as compared with a typical corporate 'scheme of arrangement' which is the corporate takeover method most akin to club amalgamations.

Table 1: The club amalgamation process compared with a typical corporate scheme of arrangement process.

Step	Explanation for Clubs	Process for Corporations
Step One **Calling for Expressions of Interest (EOI)**	Clubs seeking to amalgamate must first call for EOI from other clubs situated within a 50km radius of its premises.	There is no requirement for corporations to notify others of their intentions to seek out a merger.
Step Two **Notifying Club Members of the Proposed Amalgamation**	Clubs proposing to amalgamate must notify their members in accordance with the regulations.	Shareholders are notified of the proposed acquisition immediately after a proposed agreement is reached.
Step Three **Entering into a Memorandum of Understanding (MoU)**	Clubs that are proposing to amalgamate must enter into a MoU which must state each clubs position on the proposed amalgamation.	After coming to an in-principle agreement the company must apply to ASIC to review the proposed scheme. They must also seek a court order to dispatch the scheme booklet and call a meeting of the shareholders.
Step Four **In-Principle Approval of the Proposed Amalgamation by Members.**	The proposed amalgamation must be approved, in-principle, by the members of each club at separate general meetings.	Shareholder must be given 28 days' notice prior to a meeting to vote on the scheme.
Step Five **Establishing Members of the Dissolved Club(s) by the Parent Club**	Before an amalgamation can occur, the parent club must establish the members of the dissolved club(s) as a separate class of members. These members must be identified by the parent club as the 'members of the dissolved club'.	After shareholder approval, the company must seek a court order approving the scheme.
Step Six **Applying to Transfer the Licence of the Dissolved Club to the Parent Club**	An application is to be made to the Authority under section 60 of the Liquor Act to transfer the licence of the dissolving club(s) to the parent club.	

Club Amalgamation Policy Objectives

ClubsNSW submits that the principles for takeovers outlined in Chapter 6 of the *Corporations Act 2001 (Cth)* should act as a guide for determining club amalgamation policy.

Club amalgamation policy should have the following objectives:

- the amalgamation takes place in an efficient, competitive and informed way;
- the members and directors of a club:
    - know the identity of any club who proposes to amalgamate with them;
    - have a reasonable time to consider the proposal; and
    - are given enough information to assess the merits of the proposal;
- as far as practicable, all members should have equal rights and benefits in the amalgamated entity; and
- an appropriate procedure is followed as a preliminary to the amalgamation or de-amalgamation under the *Registered Clubs Act*.

The current regulatory framework seeks to protect against perceived predatory behaviour. That is that large clubs would seek to amalgamate with smaller clubs simply to gain access to their assets, potentially selling them off and leaving local communities without the club amenities.

Regulation deals with this primarily through restricting the circumstances in which club amalgamations can occur, rather than through measures that promote transparency and informed member choice.

Further, ClubsNSW submits that locality and 'like purpose' (i.e. bowling clubs amalgamating with bowling clubs) are less important now than they were previously. As the club industry grows, the need for diversity in offerings does to. Clubs, in order to survive, must grow beyond their historical purpose to actively compete in the market and remain viable.

Limitations on Club Amalgamations

50km Radius Rule

Currently, clubs are required to first consider amalgamations within a 50km radius. If no suitable candidate within this radius can be found, clubs may then search outside this scope.

The policy rationale behind this rule is to allow nearby clubs an opportunity to negotiate an amalgamation before clubs outside the region do. The discussion paper notes that this is to 'increase the likelihood that both clubs will remain financially viable with the assets belonging to both clubs remaining accessible to members and local communities".

ClubsNSW is not aware of any evidence which suggests that the proximity of amalgamating clubs has any bearing on the likelihood that both clubs will remain financially viable. In our view there is greater commercial incentive to close a club premises when it is in close proximity to another, especially where they compete directly for membership.

Only 15 currently operating amalgamated sites sit outside of a 50km radius of the parent club. However, with the advent of the internet and other technology that allows businesses to reach far wider than just their local community, clubs will look more and more to areas outside their current location for more diverse markets.

Further, the rule can be a barrier for clubs in finding a suitable amalgamation partner. Particularly in remote towns where viable partners within a 50km radius are scarce. ClubsNSW submits that the 50km rule is arbitrary and does not provide clubs flexibility in their decision making. Whilst most amalgamations occur with local clubs within the 50km radius, there are several examples of successful club groups operating across NSW.

Where a club is located in the Sydney metropolitan area, there are a large variety of potential amalgamation partners within 50km. However, 739 clubs – more than half of the industry - are located in rural or regional areas.[10] In large regional centres such as Wollongong or Newcastle, whilst smaller than metro Sydney, there may still be a good selection of local clubs to potentially amalgamate with. But in more remote parts of NSW the options become slim.

The largest club group in NSW (by number of sites), is the Wyong Leagues Club Group. The group is concentrated on the NSW Central Coast with the exception of Goulburn Railway Bowling Club which is located 233km from Wyong. The Mingara Leisure group has five properties spanning from the far north of NSW to Sydney's southwest.

These club groups are known for their strong commitment to maintaining community assets and indeed often make committed financial efforts to turn their amalgamated clubs, which are usually struggling, into viable businesses. Clubs see options to expand their market, offer a wider variety of options to their members and an opportunity to create something new in a different community. This should be encouraged.

[10] KPMG New South Wales Club Census 2015, p. 5

Whilst ClubsNSW actively encourages clubs to first consider local amalgamations, it is not always a feasible option, particularly where the club seeking an amalgamation is in serious financial difficulty. Often these clubs require a medium to large parent club who has the ability to invest significantly in the business to turn it around. If this club is located remotely, large city based clubs, outside a 50km radius, may not even think to respond.

Removal of the 50km rule, which is already circumvented on application to the Authority anyway, would widen the scope for clubs seeking an amalgamation to find a suitable partner.

Recommendation

That Section 17AH of the *Registered Clubs Act* be repealed.

10 Club Amalgamation Limit

There is currently a cap on the number of times a club can amalgamate. This means that a club, once it reaches the cap of 10, cannot continue to grow, even where it no longer operates 10 sites for reasons of de-amalgamation or otherwise.

There are currently 87 'club groups' in NSW. This accounts for 232 sites or 17 per cent of clubs in NSW. Most club groups have two or three sites, however, 13 club groups have more than this average. The largest club group, Wyong Leagues, has eight sites whilst the second largest, Mounties Group have seven.

The original policy to limit club amalgamations to 10 was introduced to limit club groups from growing too large and ensuring that clubs remained connected to their community. The cap was initially four amalgamations but was increased to 10 in 2007 recognising that a number of club groups that had reached the cap were operating well and were in a position to continue growing.

ClubsNSW submits that this is still the case. A number of club groups are slowly approaching the cap and should be encouraged to continue to grow. In our view, the cap is unnecessary and hinders the overall purpose of amalgamation regulation which is to encourage the club industry to consolidate.

The largest groups have not expanded at an exponential rate as was originally anticipated with the introduction of the policy. The Wyong Leagues Club Group has grown to eight sites over the course of approximately 10 years. The group is concentrated largely in their home Council of Wyong with only one site located outside of a 50km radius in Goulburn.

Further, club groups spend a significant amount of money renovating smaller clubs and improving revenue streams to increase viability. The larger club groups are strong businesses, taking a model that has been successful and moving it into new markets and often saving otherwise struggling clubs. Removing the cap on the number of amalgamations, in conjunction with the removal of the 50km rule would increase the opportunities for clubs in regional, rural and remote areas to survive.

As large club groups approach the cap, they will start to look for other ways to grow the business. Clubs are not for profit and cannot pay dividends to members, this means that the surpluses that clubs generate must be reinvested into the club or the community. In recent years a number of clubs have begun diversifying revenue streams in other ways, constructing hotel accommodation, retail precincts and even shopping malls.

Whilst ClubsNSW is supportive of diversification, clubs should also be encouraged to invest back into the club industry, through amalgamations. Without the cap, clubs will be afforded the option of growing through the acquisition of diverse club sites, consolidating the industry and benefitting from economies of scale.

Historically, Penrith Panthers had 14 club sites in the group, prior to any cap on amalgamation numbers being brought in. They currently operate six sites, however, due to the cap they cannot grow any further.

If the cap cannot be lifted, ClubsNSW submits an alternative solution is to remove the retrospective 10 cap limit and limit clubs to 10 currently operating sites.

This would allow the club to make critical decisions about the viability of their sites without the fear of reaching the cap and being unable to grow.

Recommendation

That Section 17AF of the *Registered Clubs Act* be repealed or the cap limited to 'currently operating sites'.

The Club Amalgamation Process

Step One: Calling for Expressions of Interest (EOI)

At present, clubs are required to submit an EOI before coming to an agreement with an amalgamation partner.

It is important to note that some club boards see the prospect of lodging an EOI as a negative reflection of their administration of the club. Given that the impetus for amalgamation is often (although not exclusively) the deteriorating financial position of a club, which if allowed to continue would typically result in closure, the lodging of an EOI can be seen as an admission of the board and management's failure to appropriately manage the financial affairs of the club.

When many clubs consider amalgamation, it is usually from a position of financial concern and the lodging of an EOI is often undertaken as a 'last resort' once all other options have been exhausted, including the sale of club assets. This issue is compounded by the fact that many potential parent clubs will not undertake an amalgamation if partnering with a club in serious financial distress and without assets.

Clause 4 of the *Registered Clubs Regulation 2015* states that a registered club seeking to amalgamate *'must before entering into any agreement or understanding with another registered club about an amalgamation (regardless of where the premises of that other club are situated), call for expressions of interest'.*

ClubsNSW understands that the intent of the Clause is to prevent instances where an amalgamation is privately negotiated without the knowledge of club members or other (potentially interested) clubs.

However, we submit that the wording of the Clause, in particular the interpretation of the words 'agreement' and 'understanding' has led to a degree of confusion and a situation where some clubs refuse to hold even preliminary discussions with other clubs prior to an EOI being issued as such talks may be deemed an 'understanding' and therefore a breach of the Regulation.

Noting that most corporate merger and acquisition transactions occur off-market, meaning that the negotiations between the two boards occur in the absence of any public disclosure and that it is only when the two parties have reached an in-principle agreement that they are required to make disclosure to shareholders and the public, ClubsNSW submits that Clause 4 be amended to clarify that discussions may be entered into by clubs prior to an EOI being released, provided that no formalised agreement (such as an MOU) is entered into prior to an EOI being released.

Clarifying the Clause in such a way will enable smaller clubs that are seeking to secure their future, or larger clubs that have identified an opportunity to for growth and wish to open discussions with another club, to hold discussions without fear of non-compliance.

Recommendation

That Section 4 of the *Registered Clubs Regulation* be amended to clarify that certain discussions can be held prior to the release of an EOI.

Step Six: Applying to Transfer the Licence of the Dissolved Club(s) to the Parent Club

Time Taken to Approve Licence Transfers

One of the lengthiest processes involved in amalgamations is the time taken for the Independent Liquor and Gaming Authority (ILGA) to approve licence transfer applications.

ClubsNSW notes that the ministerial directive for processing times of these applications is maximum 120 days. This 120 days usually occurs after the required 30 day consultation period in which the licence transfer application has to appear on the ILGA noticeboard.

The time taken to process the licence transfer is important because during that time there is no certainty that the amalgamation will be approved.

ClubsNSW submits that this process could be timelier, with the 120 day period beginning with the submission of all correct documents. The application can be partially processed during the receiving of submissions and the results of the consultation factored in when that process is complete.

Community Consultation Process

Licence transfers are required to appear on the ILGA noticeboard for a period of 30 days before being approved. In this time, community members are invited to make a submission.

ClubsNSW submits that submissions should be limited to directly affected club members or community members with a demonstrable link to the club such as neighbours.

An open consultation attracts a number of community viewpoints. Some of these may be 'general industry detractors' such as those that have a staunch view of alcohol and/or gaming supply in the area. The agendas of these groups means the submission will generally be negative in nature, but not entirely relevant to the granting of the amalgamation.

This only adds to the time taken to process the application which, as stated above, is a significant contributor to the cost and uncertainty of the process.

Clubs welcome the views of the community with regard to their operations. However, amalgamations are principally a matter for members and therefore consultations should be limited to these stakeholders.

Recommendation

That ILGA consider the time taken to consult with the community be factored into the 120 day maximum and only club members or genuinely impacted community members allowed to make submissions.

Club De-Amalgamation Process

Requirement for Community Impact Statement

During the process of amalgamation the child club surrenders their liquor licence and the licence of the parent club is amended to cover the child club premises. If the members of the child club determine that the amalgamated club is no longer in their interests and seek to de-amalgamate from the parent club, the child club is required to create a new club licence to continue operations.

Before submitting an application for a new club licence, the club must first complete a Community Impact Statement (CIS) B. The CIS B is a form of community consultation, seeking to pre-emptively ascertain the views of the community about the potential new licence.

The purpose of the CIS is to help decision makers understand the outcomes of discussions between applicants and stakeholders regarding issues and concerns that are relevant to the application and allows them to be aware of relevant local issues.

Clubs are required to consult with a wide range of community groups, understand their concerns and manage or mitigate these before applying. As it currently stands, a CIS B requires consultation with the following community groups:

- Local council or other local consent authority;
- Neighbouring LGA (if within 500 metres of boundary);
- The local police;
- NSW Health;
- Department of Family and Community Services;
- NSW Roads and Maritime Services;
- Recognised leaders of the local Aboriginal community;
- Occupiers of buildings within 100 metres of the premises; and
- Special interest groups or individuals.

The CIS process is costly both in terms of time and money.

ClubsNSW submits that in the case of de-amalgamation a CIS should not be necessary. This is because as there is generally no change to the effective operations of the site there would be no change to the community impact. Whilst it is technically the creation of a new licence, it is more akin to a change of licensee for a hotel licence, which does not attract a CIS requirement.

Recommendation

That the requirement for a CIS to be completed when creating a new licence as part of a de-amalgamation be removed.

Club Re-Amalgamations

When a club de-amalgamates, it is possible for that club to then immediately "re-amalgamate" with another club. Often, the de-amalgamation does not occur unless there is a prospective re-amalgamation partner.

The de-amalgamation process is just as long and costly as the amalgamation process. Where a club re-amalgamates, they are required to effectively undergo both of these processes in quick succession.

To re-amalgamate, the club would have to undergo the de-amalgamation process and then undergo the amalgamation process over again. This is a double process with two separate meetings of members to approve the de-amalgamation and then subsequently the re-amalgamation, as well as all of the ensuing notices and communications.

Further, a new club licence would have to be created for the de-amalgamating club. This licence would only exist for a matter of weeks until it is transferred again to a new parent club as part of a re-amalgamation process. Both licence transfers require a mandatory, 30 day community consultation period and are each processed within a maximum of 120 days.

Once the child club has successfully de-amalgamated, it must essentially 'fend' for itself as it waits for the licence transfer to the new club to be completed. This is a period of considerable uncertainty.

ClubsNSW submits that the process could be refined to allow a single members meeting to approve both the de-amalgamation and re-amalgamation and to allow the licence transfer to occur in a single transaction, that is, the licence simply transfers from one parent club to another.

Where a club group has a site that is not viable, financially, for them to maintain, there are only two options; cease trading club or de-amalgamate. Often it may be the case that the child club might be better served by a new parent entity, however, the de-amalgamation (and subsequent re-amalgamation) is both costly and uncertain for the parent, child and prospective new parent. There is little incentive in this case to choose de-amalgamation over simply winding up the child club.

ClubsNSW submits that streamlining the process would encourage clubs with a struggling club site to consider passing it on to another group over cease trading, thus providing a better chance of the club assets remaining within the community.

Recommendation

That regulation be introduced to allow re-amalgamations to be effected by a single vote of members and the transfer of licence be allowed from one entity to another without the creation of an interim club licence.

Other Issues

Tax Incentives to Encourage Investment in Small Clubs

ClubsNSW proposes that clubs would benefit from incentives to consider amalgamations such as the introduction of a 'tax holiday' for newly amalgamated small clubs.

Often, the potential child club will be small, earning less than $1 million in gaming machine revenue and therefore paying no gaming machine tax. When a strong parent club takes over they will usually attempt to 'turn the club around', renovating the premises and diversifying revenue streams including improving the efficiency of gaming machine operations. Once the investment starts to show improvement in the viability of the club, the revenue is immediately captured by the $1 million revenue tax threshold.

The State Government could allow small clubs, with gaming machine revenue of less than $1 million in the previous gaming tax year, to receive a "tax holiday" for a period of five years from the approval of the amalgamation by ILGA. This would incentivise the parent club to make a substantial capital investment in the smaller club with focus on improving the viability of the club to ensure that it remains a place for the community.

This is particularly relevant to a local 'merger' where two or more clubs come together and then operate from one site. As *table 2* demonstrates, modelling shows that combining two gaming machine facilities into one larger gaming facility typically increases revenue.

However, this extra gaming revenue is eroded by gaming machine taxes, thus lessening the ability of the clubs in this situation to spend the extra money on making the club viable. It is in the interest of the State to support such clubs merging as it will generate additional tax revenues in the longer-term. It may also result in a club entity that is better resourced to comply with its obligations under NSW legislation including the responsible service and gambling. In addition, such an entity is likely to be more financial viable and able to better meet the needs of its local community.

Table 2: number of gaming machines modelling comparison.

The average club with 30 gaming machines	The average club with 60 gaming machines

• earns approx. $1 million in gaming revenue; and
• pays $73,272 in gaming taxes and ClubGRANTS comprising:
  • $0 in state tax
  • $73,727 in GST ; and
  • $0 in ClubGRANTS
	• earns approx. $2.5 million in gaming revenue
	• pays $588,591 in gaming taxes and ClubGRANTS comprising:
	  • $344,750 in state tax
	  • $210,091 in GST; and
	  • $33,750 in ClubGRANTS

Therefore one installation with 60 machines versus two gaming machine rooms with 30 machines each: • **earns $500,000 in extra gaming revenue;** • **pays $408,297 in additional taxes;** • **makes a $33,750 ClubGRANTS contribution; and** • **only earns an additional net revenue of $57,953.**	

As was reported in the Census, the majority of clubs releasing EOI's are unable to find suitable partners. Whilst this may be due to a range of issues, often it is simply because the club is too weak, financially to be considered a viable investment.

A tax holiday would encourage clubs to actively consider clubs which are in serious financial distress due to the potential tax offsets the club would receive in return. It would also encourage clubs to maintain operations in the smaller club, focussing on improving its viability during the tax holiday period without added tax burdens.

Due to the fact the eligible child club would not have been paying gaming machine tax, there would be minimal impact on government revenue, in the short-term. In the longer term, the State will have gained an additional tax paying club that will contribute to the State Budget.

Recommendation

The state government create a tax incentive for small clubs to amalgamate.

Unsolicited Amalgamation Offers

The amalgamation process is currently initiated by the lodging of an EOI by the target club. As mentioned above, many club boards view the requirement to lodge an EOI as a negative reflection of their administration and as such defer lodgement until such time as other options (such as the sale of assets) have been explored.

ClubsNSW submits that, similar to the manner in which corporations are able to make unsolicited merger offers to other firms, a process should exist for clubs to make unsolicited amalgamation offers to other clubs. Such a process should complement rather than replace the existing framework.

Such a process will allow for a prospective amalgamation partner to commence the process as a result of their own initiative and not due to the lodgement of an EOI by the target club which, as discussed earlier, often comes at a time when the financial position of that club has deteriorated to such an extent that their attractiveness as a partner is greatly diminished and an amalgamation is not viable.

Much like other mergers, it would be for the target club's board to consider any such offer and either provide in-principle approval to discuss it or reject it. Such offers should be made in good faith and be of a serious nature, and not superficial or flippant.

Such a process will provide the target club board with the ability to present the offer to members as an opportunity to be considered rather than a 'bail-out' or 'rescue mission' as a result of an EOI being lodged.

Further, it is important to note that the timing of an amalgamation is critical to its success. Some clubs may not fully understand the gravity of their financial position, which can result in them failing to initiate the amalgamation process until it is too late. Enabling other clubs to submit an offer at an earlier stage, before the financial position of the target clubs deteriorates, would maximise the potential for the amalgamation to be attractive and viable.

Club directors are required to exercise their duties with honesty, good faith, loyalty, skill and care. When considering an amalgamation, a director must act in the best interests of the club and its members. Directors are therefore required to think deeply, strategically and realistically about their club's current financial position and future viability when assessing an offer.

To ensure transparency, it is proposed that clubs that have received such offers be required to notify members of the offer and the board's position on whether it should be pursued or rejected. Such disclosures could be via statement made at the next AGM of the club and/or by notice on the clubs noticeboard.

Further, so as to ensure that small clubs are not overly burdened by unsolicited offers or placed under pressure, a cap could be placed on the number of unsolicited offers a club could make to another in any given period of time. For example, a club could only submit one unsolicited offer to another in any twelve month period. Other such measures, in line with best practice corporate governance procedures, may also be considered.

ClubsNSW notes that this concept is broadly similar to the process that occurs for mergers of other companies, and is interested in exploring this proposal with the Department in more detail.

Recommendation

That a process be established to enable clubs be allowed to approach other clubs with unsolicited amalgamation offers.