

From: Mark Nathan
To: [Club Amalgamations](#)
Subject: Submission for review of the registered club amalgamation and de-amalgamation framework
Date: Wednesday, 26 July 2017 11:20:33 AM

Dear Sir/Madam

Thank you for the opportunity to provide input on the amalgamation and de-amalgamation framework for clubs. I write this submission in my capacity as a member of the public. I am also currently an ordinary member the Easts Group.

1) Entering an MOU:

The current framework of entering into a MOU provides no protection for the acquired club. It is a requirement that the acquired club gets dissolved. Thus, the entity that could have enforced the MOU does not exist post the amalgamation. The acquiring club could disregard any undertaking in the MOU without being held to account by the acquired club. This is particularly relevant where the MOU contains undertakings that apply for extended periods of time.

An example of this is Easts Groups (Easts) acquisition of Waverley Bowling Club (WBC) in 2010. In this case, the MOU dated November 2009 between Easts and WBC contained several undertakings, some with a 20 year duration. For example:

- "Subject to the profitability of Waverley's premises the agreed period of time before Easts may cease trading on the premises of Waverley, or substantially change the objects of Waverley is 20 years from the date of completion of the amalgamation."
- "Subject to the profitability of Waverley's premises Easts undertakes to maintain the three bowling greens at Waverley for 20 years from the date of completion of the amalgamation."

Profitability was to be achieved in the following manner:

- "Easts will prepare a plan to upgrade the Waverley premises over a period of time. East's position on this is that it has previously amalgamated with Kingswood Bowling Club and over a period of time spent significant money on upgrading the premises of that club as was necessary to make it a modern viable bowling and sporting club. It proposes to formulate a plan for Waverley and invest such money as is necessary over a period of time to allow the premises to become the premier club in Waverley and generally conduct the development in a manner as it did at Kingswood."
- "Easts, as the corporate vehicle for the amalgamated club, recognises that it must and will maintain and upgrade the facility at Waverley's premises which is in keeping with a modern social and sporting club, not constrained by one sporting activity or group."

Prima facie, it appears that Easts have not spent "significant money on upgrading the premises" and are stating profitability as a trigger to sell the land (or substantially change the objectives of the land), subject to a vote by members on 22 August 2017. As WBC has been dissolved, there is no longer an entity that can compel Easts to provide sufficient information to evaluate Easts statements in relation to the MOU, or to enforce the MOU more generally.

Recommendation:

The act should be changed to allow for a committee formed by member of the dissolved club

to enforce the MOU. Recognising that the dissolved club will have limited financial resources, the act should also allow the members of a dissolved club to petition Liquor and Gaming NSW to take action to enforce a MOU.

2) Assets of the dissolved club

The assets of a dissolved club are only protected for a maximum period of 3 years. There is no protection to preserve assets past this period, regardless of any undertaking in a MOU.

An example of this is Easts amalgamation with WBC. In this case, Easts undertook to preserve the assets for a minimum period of 20 years (until 2030), subject to profitability. Easts state that the WBC premises are not profitable based on the accumulated profits/loss over the last seven years of trading. However, since the amalgamation, WBC club has reduced its losses each year, and based on publically available information, one can approximate it was profitable in 2016. Easts last published figures for the WBC premises in 2015. With reference to profitability, Easts have not presented evidence of its MOU undertakings to “prepare a plan to upgrade the Waverley premises over a period of time” and to “maintain and upgrade the facility at Waverley’s premises which is in keeping with a modern social and sporting club”. Easts are now planning to dispose of the WBC premises subject to members approval at an EGM set down for 22nd August 2017.

Recommendation:

The statutory period for disposing assets should be extended to include protection for any MOU provisions and undertaking. The act should allow for a committee formed by members of the acquired club to petition Liquor and Gaming NSW to take action on behalf of the members of a dissolved club to prevent the sale of assets where it is not consistent with MOU undertakings.

3) De Amalgamation

The current act requires the members of both the acquiring club and acquired club to vote in favour of a de-amalgamation to proceed. In a situation where the acquiring club is far larger than the acquired club, the acquired club has no prospect of de-amalgamating unless the acquiring club agrees. This is particularly relevant where the acquiring club has failed to uphold its MOU undertakings. It is not appropriate that one party can bind the other to a “marriage” where the marriage vows have been broken.

An example of this is Easts acquisition of WBC in 2010. WBC had a member base of around 400 at the time of amalgamation in comparison to Easts current member base of around 40,000. As WBC was in possession of extremely valuable land assets, the prospects of Easts agreeing to de-amalgamate with WBC is small. Even if it could be shown that Easts had not fully complied their MOU undertakings, WBC would not be able to de-amalgamate without an endorsement by Easts’ members.

Recommendation:

The act should allow the members of either acquiring or the acquired club to petition Liquor and Gaming NSW to arbitrate in a de-amalgamation. This arbitration should be based on the MOU undertaking and an evaluation of whether these have been fulfilled. Liquor and Gaming NSW should be able to force a de-amalgamation on either party, based on its merit based assessment, having been petitioned by either the acquiring or acquired club.

I would be happy to discuss these recommendations further if required.

Yours Sincerely

Mark Nathan

