



RAPSEY GRIFFITHS

TURNAROUND + INSOLVENCY

GETTING YOUR CLUB BACK ON TRACK

A turnaround & insolvency prevention guide
for directors, board members and advisors
of NSW registered clubs.

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This e-book is designed to help directors, company secretaries, board members and advisers of NSW registered clubs.

INTRODUCTION

Due to changing market conditions, working in the registered club industry has become increasingly challenging. However, for those clubs who find themselves in financial difficulties, it's possible to turn things around if you act swiftly and seek the right help.

Some of the main challenges clubs are facing include socio-demographic shifts, increasingly complex legislation and growing competition. These are set against a reliance on volunteer support, struggling membership figures, and a requirement to retain community assets.

Over the years, NSW governments have enacted a range of policies to support the financial viability of registered clubs. In addition, new provisions in insolvency law, such as safe harbour, have removed personal liability, making business turnaround increasingly plausible.

Amalgamation can be a good option for struggling clubs and for sustaining a healthy club industry going forward. Until recently, clubs had to jump through hoops to make it happen, leading to limited success. However, now that some of the red tape has been removed, it's another feasible option.

In this e-book, we take an in-depth look at the challenges clubs face and offer our recommendations on how you can turn things around if you're experiencing financial difficulties. We also cover the worst-case scenario – insolvency – looking at both your legal obligations and formal appointments.

\$3.7 billion

Estimated contribution of the clubs industry to the NSW economy
(2015 ClubsNSW Census)

114 clubs

closed between 2007 and 2017
(approximately 7.7 per cent of the industry)

1,350

registered clubs
in NSW

67%

of clubs in NSW are
in a strong position

33%

are showing signs
of financial distress



CHAPTER 1 MANAGING THE RISKS

Shifting market conditions and regulatory changes alongside other factors have put clubs, particularly smaller clubs, on the back foot. But what are the specific financial challenges clubs are facing? And what can you do to minimise the risks?

TOP FINANCIAL CHALLENGES FOR REGISTERED CLUBS

- **CASH FLOW ISSUES** – Registered clubs can be vulnerable to cash flow issues because they tend to operate on small cash reserves.
- **FOR-PROFIT COMPETITION** – Trying to compete with the entertainment and hospitality sectors can be extremely challenging, especially for smaller clubs that don't have economies of scale or broader offerings.
- **COMMUNITY OBLIGATIONS** – Balancing the need to support members through the delivery of efficient and effective services while also generating a profit to contribute to some form of service to a community or sector of the community.
- **KNOWLEDGE GAPS** – Board members and managers of registered clubs are often hired for their expertise in a specific area (or are in the role as a volunteer), not because of their financial capabilities or business acumen.
- **RELUCTANCE TO CHANGE** – The desire to keep a club small and volunteer-run is common. However, this can lead to a reluctance to expand, improve or amalgamate, blocking new potential sources of revenue and funding.
- **SECURING MEMBERSHIP** – Due to changes in customer expectations, achieving a stable and growing membership has become harder, especially for smaller clubs. In addition, low social membership fees make it hard to make ends meet.
- **REVENUE CONCENTRATION RISK** – Over-dependence on gaming machine revenue to fund or subsidise operations, without revenue diversification, increases susceptibility to changes in gaming legislation.

SMALLER CLUBS, BIGGER RISKS

Smaller clubs tend to exhibit greater signs of distress than other clubs.

The reason for this is that larger clubs have the advantage of scale and can invest and expand their operations and better serve the community through support activities.

HIRE, ESTABLISH AND MAINTAIN FINANCIAL CAPABILITIES

Every director, secretary and board member of your club should have a solid level of financial understanding. This includes being able to read and understand financial information. If yours don't, arrange appropriate training and stay informed.

When hiring any senior member, conduct informed, evidence-based interviews to assess financial skills and experience. If possible, form a collaborative partnership with a reputable financial organisation who can provide experts to sit in on the interviews.

MINIMISING THE RISKS

In addition to ensuring you're financially clued-up, there are several other actions you can take to help reduce the risk of your club running into financial strife:

- **KEEP ACCURATE, UP-TO-DATE RECORDS** – In addition, closely monitor your performance at all times. This can help ensure you're always fully aware of your financial situation, helping you avoid any overspends or missteps.
- **LEARN FROM YOUR AUDITS** – Instead of seeing them as something to get through. Plus, work with your auditor, listen to their recommendations and make sure no obvious deficiencies are overlooked – this can cause more serious problems down the track.
- **BUILD A CASH RESERVE** – A cash reserve can help you maintain financial stability and enable your club to continue to meet its commitments even in tough times. It can also be used to invest in new programs, initiatives, or infrastructure.
- **IMPROVE YOUR PROCESSES** – This means streamlining, for example, automating things like your accounting, reporting, and forecasting with fit-for-purpose systems. You might even consider outsourcing. You should also look at your operational efficiency.

- **CHECK YOUR INSURANCES** – Having the right insurances in place is vital to protecting your people and assets. These include general liability, directors and officers liability, assets and contents, and volunteer protection.
- **GET YOUR SUPPLIER CONTRACTS RIGHT** – This includes contracts for the procurement of goods and services for the day-to-day operation of your club, for example, food and beverages and cleaning and maintenance.
- **ADAPT AND DIVERSIFY** – Think beyond your traditional revenue streams of food and drink, gaming and sponsorship, to identify other ways to increase revenue. This could mean holding events and functions or partnering with caterers.
- **SHARE RESOURCES** – By sharing resources, such as training and development with neighbouring clubs, you can reduce your cost margins.

PRACTISING GOOD GOVERNANCE

Practising poor governance can put your club at increased risk of commercial failure and lead to financial and legal problems for directors and board members. To avoid these risks, you need to be business savvy and implement practices of good governance.

The requirements for the good governance of registered clubs are outlined in the [ClubsNSW Best Practice Guidelines](#). The RSL and Service Clubs Association has also published a guide to help ensure your club is fit for 2020, which includes information on governance.

These tactics to managing the risks can help keep you out of trouble in the first place. But what do you need to do if your club is already facing financial difficulties?



CHAPTER 2 TURNING YOUR CLUB AROUND

If your registered club is financially struggling, you need to be proactive and act fast. The sooner you act, the better your chances of turnaround and survival. Engaging a turnaround expert will make the process easier and can result in better outcomes.

FIRST STEPS

- Thoroughly investigate your financial difficulties
- Keep accurate records and stay informed as to your club's financial situation
- Seek help from a qualified advisor (e.g., an accountant) to determine your position

ENGAGING A TURNAROUND EXPERT

If you have concerns for the solvency of your club (see Chapter 4 page 12), you should swiftly engage a turnaround expert. They can help you identify problems and come up with a solution you may not have thought of. The sooner you seek help, the better your chances of survival.



Finding an experienced turnaround expert that understands your club is vital to the success of any turnaround strategy.

We're always available for a free confidential consultation to talk through your turnaround options and how the process could work for your club – 1300 727 739 | enquiries@rgia.com.au

3 STEPS TO TURNAROUND

STEP 1: ANALYSING THE SITUATION

Is your club in imminent danger of failure, do you have substantial losses but survival is not yet threatened, or are you simply in a declining business position?

For your club to be deemed viable, you must have;

- one or more viable core businesses
- adequate available financial resources, and
- sufficient organisational resources.

If these requirements are met, a detailed assessment of your strengths and weaknesses should be undertaken and stakeholder communication increased. If the above requirements are not met, go to page 17 to consider other options for your club.

STEP 2: DEVELOPING A STRATEGIC TURNAROUND PLAN

Your turnaround plan should have specific goals and detailed function areas. Management must also be accountable to deliver on these goals.

STEP 3: IMPLEMENTING THE PLAN

If the review identifies that your club has any major financial issues, your turnaround plan must be implemented.

The seven key ingredients of a successful turnaround strategy are crisis stabilisation, new leadership, stakeholder focus, strategic focus, organisational change, critical process improvements and financial restructuring.

Your turnaround plan might involve:

- Determining your current labour requirements and making redundancies
- Changing your management team and structure
- Eliminating any unprofitable offerings your club provides
- Identifying any surplus assets (non-core assets) and determining if they can be realised in a timely manner
- Identifying assets that can be maximised for further value
- Eliminating any unnecessary capital expenditure or considering and prioritising capital expenditure that maximises return on investment
- Improving your membership offerings and retention and targeting new members. This includes ensuring your application and renewal process is convenient and effective
- Focusing on your cashflow
- Communicating with your financiers, staff, creditors and members

Every situation is different, so will require different strategies. For example, the best course of action for your club could be an amalgamation (See Chapter 3), or it could be sale or lease of your land or changes to your gaming offering.

Importantly, these courses of action should be properly recorded. This means having a **written turnaround plan**, a business review document, and advice prepared by an expert.

ENTERING 'SAFE HARBOUR' – AVOIDING INSOLVENT TRADING LIABILITY

Under Section 588GA of the Corporations Act 2001 (the Act), if your club is taking actions to improve its financial situation (turnaround), you can access 'safe harbour'.

Safe harbour is a form of legal protection that provides a defence from insolvent trading liability for directors (see Chapter 5). Importantly, safe harbour is only available where a genuine turnaround attempt is being made, and you meet the eligibility criteria referred to as the 'better outcome test'.

To stay protected, you must be able to answer yes to the following questions:

- Are you informed about the financial position of your club?
- Are you taking appropriate steps to prevent misconduct?
- Are you taking appropriate steps to ensure your club is keeping proper financial records?
- Are you seeking advice from an appropriately qualified expert?
- Are you developing or implementing a plan for restructuring your club?

In addition to answering yes to all of these questions, you must also ensure your employee entitlements and superannuation are paid, and your ATO returns are lodged on time.

The best time to consider safe harbour is as soon as you suspect your club is approaching insolvency. The sooner you access it, the better protected you are.





CASE STUDY – TURNAROUND

BACKGROUND

A registered club in NSW was investigated by the Office of Liquor, Gaming & Racing (OLGR) due to various legal breaches. A report following this investigation identified the urgent need for the club to be administered by an independent third party. We were appointed as temporary administrators to urgently assess the club's operations and determine its future.

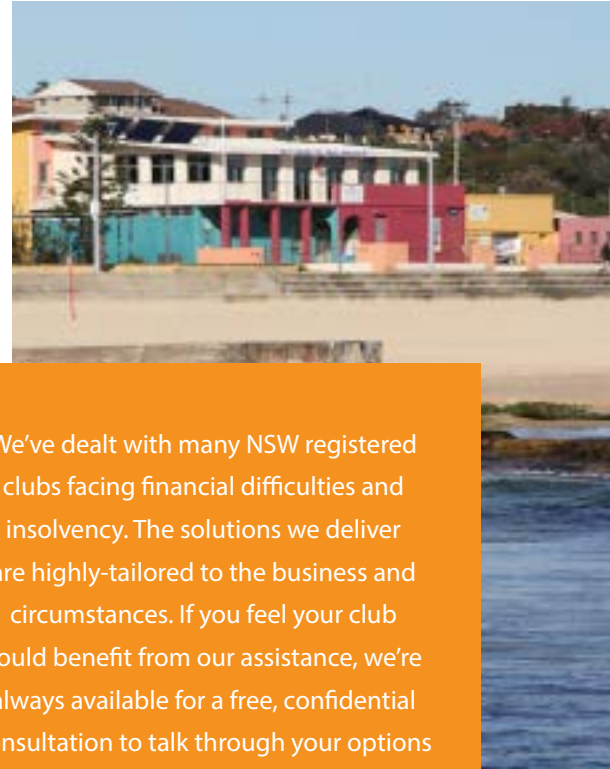
CORE PROBLEM

Ultimately, the club was in crisis mode. The report produced by the OLGR revealed significant financial and operational distress, with the club facing imminent closure unless a resolution could be reached.

THE SOLUTION

Acting swiftly, we implemented a turnaround plan that included:

- Executing a crises management plan
- Establishing a robust financial function
- Identifying and engaging with stakeholders
- Developing new operational processes and transitioning a new management team
- Facilitating the appointment of a new board of directors
- Arranging new leadership and training
- Refocusing the club's strategy



We've dealt with many NSW registered clubs facing financial difficulties and insolvency. The solutions we deliver are highly-tailored to the business and circumstances. If you feel your club could benefit from our assistance, we're always available for a free, confidential consultation to talk through your options – 1300 727 739 | enquiries@rgia.com.au

THE OUTCOME

The entire process took approximately five months from start to finish. As a result of engaging us, the club returned to profitability and was able to meet its legal obligations. The benefits of this successful turnaround were felt by the club as well as the local community.

“Clubs play a vital role in our communities. Together, we were able to help this club identify ways to take back control of its future.”

—CHAD RAPSEY (CO-FOUNDER / DIRECTOR)



CHAPTER 3 AMALGAMATION

Amalgamations provide multiple efficiencies for clubs. This includes access to better bargaining power, economies of scale, reduced competition and the sharing of key staff and services. They are also commonly used to assist clubs in financial distress.

WHAT IS AMALGAMATION?

Amalgamation is the joining together of two or more clubs. Under the Registered Clubs Act, this happens in one of two ways:

- a. 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
- b. the continuation of one of those clubs and the dissolution of the other club or clubs.

Amalgamation generally involves a larger parent club coming together with a smaller (often financially struggling) club with the intention to operate both premises.

Clubs may also choose to 'merge'. Merging is where 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.

BENEFITS OF AMALGAMATION

The main benefit of amalgamation is growth for all clubs involved. The club you amalgamate with can expand their licensed premises, membership numbers and asset base and you have the opportunity to upgrade and revitalise existing facilities.

The NSW registered clubs laws provide a framework for registered club amalgamation. These include:

- The Registered Clubs Act 1976 (the Act),
- The Registered Clubs Regulation 2015 (the Regulation)
- The Liquor Act 2007
- The Gaming Machines Act 2001
- The Corporations Act 2001

THE CLUB AMALGAMATION PROCESS

STEP 1: PRELIMINARY DISCUSSIONS

Identify potential partner clubs and enter into preliminary discussions about a potential amalgamation. This process can help you explore opportunities and consider future viability. It's important that you conduct due diligence exercises to assist with the decision-making process.

STEP 2: EXPRESSIONS OF INTEREST

Under clause 4 of the Regulation, clubs wanting to amalgamate are required to call for public expressions of interest to other clubs within a 50-kilometre radius. You can also make unsolicited expressions to other clubs across NSW.

STEP 3: NOTIFICATION OF CLUB MEMBERS

You must inform members of your intention to amalgamate, as well as of any offers and/or expressions of interest you have received. Section 17AE of the Act and clauses 4 and 5 of the Regulation set out the following disclosure requirements:

- You must post a notice on your premises or website about your intentions to amalgamate.
- All expressions of interest in the last 12 months must be raised at each annual meeting.
- Before proceeding with an amalgamation, all members must be notified of any other offers or expressions of interest.





STEP 4: MEMORANDUM OF UNDERSTANDING (MOU)

Your club, and the club you're proposing to amalgamate with, must enter into a MoU (clause 7 of the Regulation). Your MoU must detail the management of the dissolved club, intentions for future direction and employee protection and timeframes. It should be available to members at least 21 days before any meeting to vote for amalgamation.

STEP 5: IN-PRINCIPAL APPROVAL BY CLUB MEMBERS OF THE MOU

Your club and the club you intend to amalgamate with must have in-principal approval from all club members for the amalgamation.

STEP 6: ESTABLISHING MEMBERS OF THE DISSOLVED CLUB

The 'parent' club must establish the members of your club (the dissolved club) as a separate class of members.

STEP 7: AUTHORITY APPROVAL

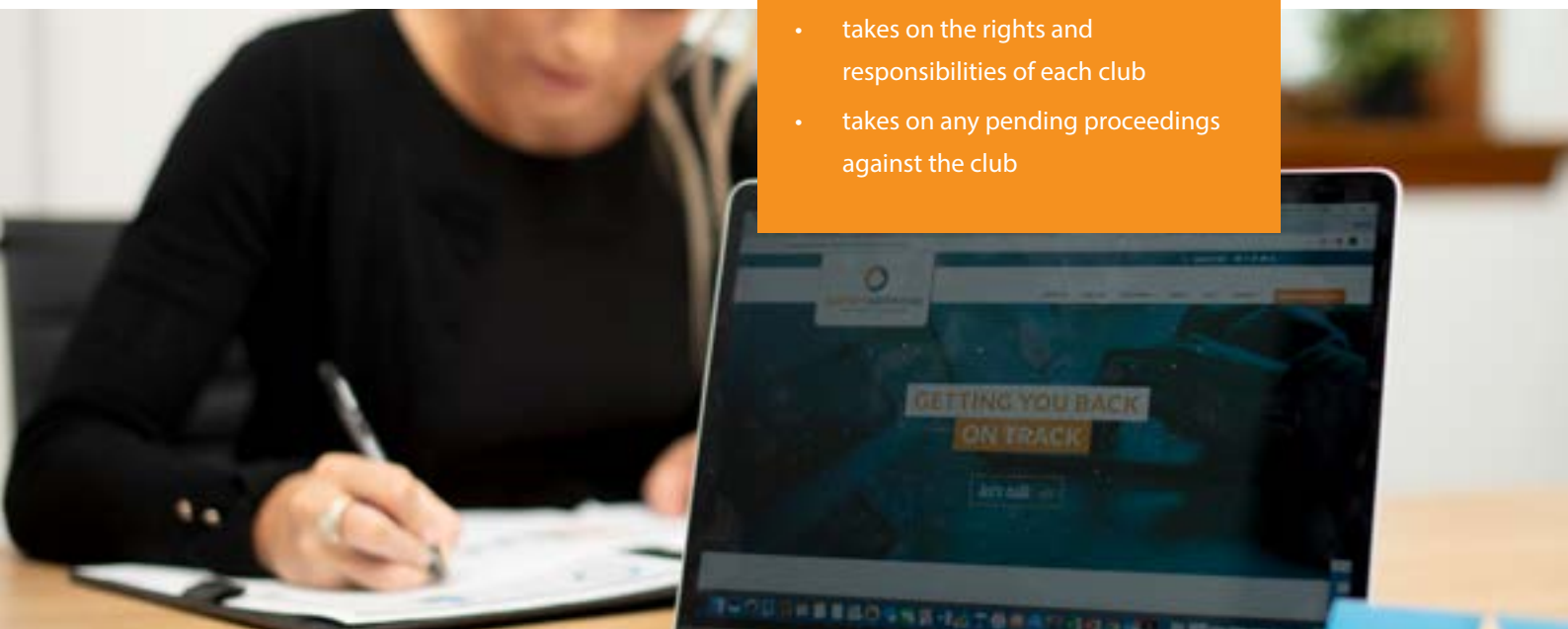
You must apply to transfer the licence of your dissolved club to the parent club (section 60 of the Liquor Act 2007).

While amalgamation can be a good option, avoiding closure isn't guaranteed. The sooner you seek an amalgamation, the better your chances of a successful one.

THE LEGAL IMPLICATIONS

After amalgamation, the 'parent club':

- becomes the registered entity
- takes on the liabilities of each club
- assumes the assets of each club
- takes on the rights and responsibilities of each club
- takes on any pending proceedings against the club





CASE STUDY – CONSULTING & AMALGAMATION

BACKGROUND

We were approached by a small, regionally-based sport and recreation club who were suffering from financial burden as the result of a large renovation bill and increased competition against hotel chains. They had also suffered a drop in patronage during the construction of a major government infrastructure project.

CORE PROBLEM

The small club was under-resourced, largely due to poor historical management decisions. As volunteers were running it, they struggled to maintain the rigorous requirements of the highly-regulated club industry.

THE SOLUTION

We helped the board review their position, explore all their options and eventually determine that the club couldn't trade its way out of difficulty, even with our guidance. We recommended that the club explore an amalgamation and advised them through the process.

THE OUTCOME

An amalgamation was successfully completed. Both clubs continue to operate and are benefitting from efficiencies and economies of scale. They were also able to maintain important community (social and recreational) assets for the continued benefit of locals.



We've dealt with many NSW registered clubs facing financial difficulties and insolvency. The solutions we deliver are highly-tailored to the business and circumstances. If you feel your club could benefit from our assistance, we're always available for a free, confidential consultation to talk through your options – 1300 727 739 | enquiries@rgia.com.au



“It was great that the club sought advice early in this situation. It's extremely rewarding to facilitate such a great outcome and to see the community benefit from the actions taken.”

—CHAD RAPSEY (CO-FOUNDER / DIRECTOR)



CHAPTER 4 TACKLING INSOLVENCY

If your club is facing financial difficulties, your biggest concern will be insolvency. Part of the turnaround process is determining whether or not you're solvent. But what does it mean to be insolvent, and what are the signs you need to watch out for?

DEFINING INSOLVENCY

Insolvency is the state of being insolvent or unable to pay your debts as and when they are due and payable. If you're facing it, it's a daunting reality.

WARNING SIGNS OF INSOLVENCY

Determining insolvency isn't always easy. A forward-looking cash flow test can help you assess your club's ability to pay its debts as and when they become payable. However, you also need to consider your wider financial position.

(1) A person (or company) is solvent if, and only if, the person (or company) is able to pay all the person's debts as and when they become due and payable.

(2) A person (or company) who is not solvent is insolvent — Section 95A of the Corporations Act 2001 (Cth) (the Act).



INSOLVENCY CHECKLIST

- Continued losses over recurring financial reporting periods
- Inability to borrow money or obtain loan approvals
- Overdue taxes
- Poor liquidity ratios
- Inability to produce timely and accurate information on your club's performance and financial position
- Dishonoured and post-dated cheques
- Special arrangements with certain creditors
- Sales of non-current assets (e.g., land, gaming machine entitlements) to fund working capital deficiencies
- Inability to meet employee payment obligations (e.g., superannuation payments)
- Replacing standing creditor payment terms with discretionary decisions on when and which creditors will be paid
- Absence of any budget or basic financial plan/goals (e.g., seasonal periods may cause reductions in service hours/revenue and need to be planned for operationally to reduce expenses to prevent hours being spent on post-analysis of suspected revenue loss)

If your club is facing any of the above, you should take immediate action by implementing the steps of a turnaround plan (see Chapter 2, page 4).

It's important to note the difference between a temporary lack of liquidity (you may still be solvent) and an endemic shortage of working capital. To figure out which applies to your club, you can use a **balance sheet test**.

CASH FLOW TEST

A cash flow test looks at whether your club can pay its liabilities, as and when they fall due.

BALANCE SHEET TEST

A balance sheet test involves looking at your balance sheet to work out whether your club would have more assets or liabilities if it were immediately wound up.

If you don't have the expertise to do these tests internally, consider seeking help from an external, independent expert.

A successful turnaround with safe harbour protection (see Chapter 2) can steer you back to solvency and protect you from liability. But what are your legal obligations when it comes to insolvency?



CHAPTER 5 UNDERSTANDING DIRECTORS' DUTIES

Under insolvency law, directors of all companies, including registered clubs, are bound by a series of statutory, common law and equitable obligations owed primarily to the company that employs them. These are called directors' duties.

DUTY TO PREVENT INSOLVENT TRADING

One of the duties imposed on directors is a duty to avoid insolvent trading. This duty falls under common law and the Corporations Act 2001 (the Act).

COMMON LAW DUTIES

Under common law, directors have a duty to:

- act in good faith and the best interests of the club;
- act with care and diligence;
- to avoid conflicts of interest; and
- to not improperly use company information.

If you allow your club to get into financial hot water or realise you're insolvent or facing insolvency and fail to act, you're failing to meet these duties.

THE CORPORATIONS ACT 2001 (THE ACT)

These common law duties are reinforced in the Act, which includes a duty to act with care and diligence and in good faith, and a requirement for directors to not improperly use their position or information.

These duties are also upheld in the **Clubs NSW Code of Conduct**.

The Act also makes specific provisions relating to insolvency, contained in Sections 588G-Z.

The obligation to avoid insolvent trading falls under Section 588G.

WHO IS A DIRECTOR?

The definition of 'director' under the Act includes shadow and de facto directors or any alternate director that is appointed and acts in that capacity. Clubs may call them directors of the board or board members.



THE LIQUOR ACT & THE REGISTERED CLUBS ACT (RCA)

Under both the Liquor Act and the Registered Clubs Act, directors are required to be 'a fit and proper person'. This means you need to possess honesty as well as knowledge and ability. Therefore, if you don't understand or are uncertain of something, seek advice to ensure you're complying.

ENSURING YOUR CLUB COMPLIES

To comply with these obligations, as director, you should:

- Monitor your club's management and policies
- Understand your club's business and stay informed about its activities
- Regularly review your club's financial position, performance and status
- Look into matters where necessary

If your club runs into trouble, the actions or inactions you take come under scrutiny. Even if you're a director of a small club and don't get paid, you still run the risk of exposure to personal liability for insolvent trading.

PENALTIES FOR BREACHES OF DUTY

COMPANIES LIMITED BY GUARANTEE

Contravening the insolvent trading principles of the Act can lead to:

- **Civil penalties of up to \$200,000** (where there were reasonable grounds the director suspected insolvency and failed to act)
- **Compensation proceedings for amounts lost**
- **Criminal charges of up to \$220,000 or imprisonment for up to 5 years, or both** (in cases where the director suspected insolvency and failed to act)

INCORPORATED ASSOCIATIONS

- Penalties of up to \$40,000
- Imprisonment of up to four years
- Directors may be held personally liable for debts incurred or to compensate for any losses incurred (if they allowed the company to incur debts while insolvent)

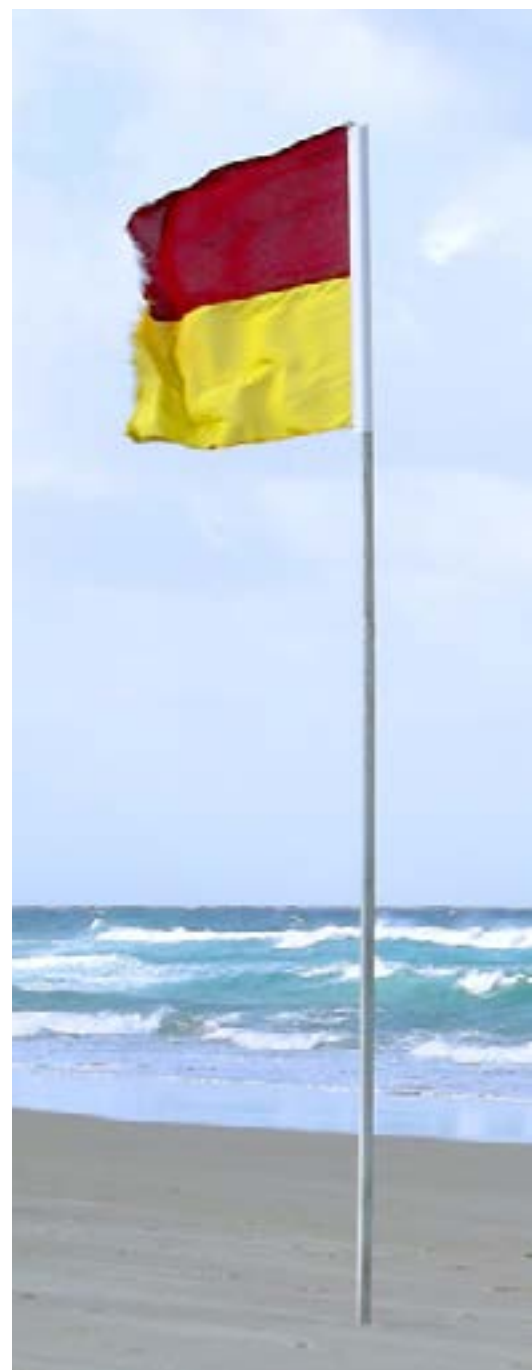
CLUB LICENCE DISQUALIFICATION

Directors who fail to take reasonable actions to avoid insolvent trading may also be disqualified from holding a club licence.

POTENTIAL DEFENCES

As a director, you have several defences open to you. These include reasonable grounds to expect solvency, reasonable reliance on information provided by others, absence from management, reasonable steps to prevent incurring of debt(s), and safe harbour defence.

Importantly, you shouldn't rely on these defences. Instead, you should take reasonable steps to identify the causes of your financial difficulties and take swift action.





CHAPTER 6 WHEN TURNAROUND ISN'T AN OPTION

If turnaround or amalgamation isn't viable and your club is suffering serious solvency issues, you should seek a formal insolvency appointment. For this, you should engage reputable and qualified experts registered with ASIC and ARITA to assist you.

The two main options of formal insolvency appointments available to clubs are voluntary administration and liquidation.

VOLUNTARY ADMINISTRATION

If your club's board resolves that your club is insolvent (or likely to become insolvent), the board can appoint an independent administrator to take control. They'll assess your club's viability moving forward and undertake a range of other activities such as:

- Complying with statutory obligations (such as the ATO)
- Communicating with governments, authorities and employees
- Procuring funding
- Engaging external experts to review your internal controls and implementing measures to ensure its integrity.

An administrator can also help you draw up a Deed of Company Arrangement (DOCA).

Working through insolvency is a daunting task. We're always available for a free, confidential consultation to talk you through the process and how it could work for your club – 1300 727 739 | enquiries@rgia.com.au

WHAT IS A DOCA?

A Deed of Company Arrangement (DOCA) is a binding arrangement between a company and its creditors governing how its affairs will be dealt with. It maximises the chances of a company being able to stay in business while providing a better return for creditors than winding up. (ASIC).

Your club's DOCA proposal may involve:

- A third party injecting cash into your club to partially repay creditor claims
- Your club contributing to a fund (managed by a deed administrator from trading profits) to partially repay creditor claims

When drawn up, your DOCA will be proposed and considered at a meeting of your club's creditors. If your creditors accept it, your board will generally resume control of the club.

The voluntary administration process typically takes 25 business days – enough time to get some clarity. However, the issues in a DOCA are generally not resolved in this timeframe.

Once the DOCA terms have been complied with, your club is released from administration and creditors can no longer recover any unpaid debts from prior to the administration.



CASE STUDY – VOLUNTARY ADMINISTRATION & DOCA

BACKGROUND

A golf club providing leisure activities for members and the general public had suffered financial hardship for some time. After entering into a development agreement with a retirement village developer, the club received funds as well as a new clubhouse and their 18-hole golf course was also partially reconfigured.

CORE PROBLEM

The club had suffered ongoing insufficient income for over two years as the result of a temporary course layout while the new course and clubhouse were under construction. After being unsuccessful in securing a line of credit for business continuance, they expended their cash reserves and ran out of funds to operate.

THE SOLUTION

After exploring and exhausting options to save the club, the board determined that the appointment of an administrator would allow them to secure emergency funding by the immediate sale of some or all gaming machine entitlements so they could continue to trade as normal.

A DOCA was drawn up and resulted in the club's creditors and members voting overwhelming for the sale and leaseback of its land and building. If the club was able to achieve its business plan and return to profitability in the future, there was also an option to purchase the club's land back in seven years at a set price.

THE OUTCOME

All creditors were paid in full. The club also received sufficient funds to allow them to continue to trade and to be in a position to implement and achieve their business plan for future long-term viability.

“There were extremely challenging and complex issues to consider in navigating a plan to rescue this club. We were able to engage and manage stakeholders to eventually work out a solution that gave the club the opportunity to survive”.

—CHAD RAPSEY (CO-FOUNDER / DIRECTOR)



LIQUIDATION

Liquidation is usually considered a last resort and offers a more conclusive outcome. It's a formal appointment that terminally winds up the affairs of your club if you can't pay your debts when they are due. This is generally a shutdown scenario.



THE WINDING UP PROCESS

During liquidation, control of your club is handed over to a liquidator. The process involves selling off your assets to repay creditors, winding up your financial affairs, and figuring out what happened. At the same time, your bank accounts are frozen and staff are laid off.

Once your organisation has been wound up, the Australian Securities and Investments Commission (ASIC) or NSW Fair Trading will deregister it.

HOW DO I PAY LAID OFF EMPLOYEES?

If there isn't enough money to pay your employees their entitlements, they can ask for help via the [Fair Entitlements Guarantee \(FEG\)](#). Entitlements covered by FEG include unpaid wages, annual leave, long service leave, and redundancy pay.

APPROVAL TO ACT AS ADMINISTRATOR OR LIQUIDATOR

Under section 41 of the Registered Clubs Act 1976, an insolvency practitioner may not be appointed to a registered club unless the person has been approved by the Supreme Court of NSW or by the Independent Liquor & Gaming Authority (ILGA).

Applications must be made by the president of the club to the Independent Liquor & Gaming Authority – ilga.secretariat@liquorandgaming.nsw.gov.au

For more information on the application process, see the [ILGA's guidelines](#).



CASE STUDY - LIQUIDATION

BACKGROUND

A bowling club, established in 1972, employed a new manager/treasurer after the former manager resigned. At the time of handover, the directors advised that the club was in a good financial position. After approximately 12 months under the new manager, the club ceased to trade and the directors suspected the club's funds were misappropriated.

CORE PROBLEM

Since the new manager was appointed, there was a lack of reporting to the board at the monthly board meetings. Enquiries led to allegations of misappropriation of funds and the manager was issued with a written warning and resigned the following day.

During this time, the club's cash resources were depleted. Financial records weren't being maintained and the board wasn't able to determine the actual financial position of the club. It appeared to be insolvent.

THE SOLUTION

The directors were concerned out the club's solvency, as well as the risks and personal liability exposure they might face and subsequently appointed us as voluntary administrator.

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Acting swiftly, we sought proposals from members to enable the continued existence of the club for the benefit of its members and the community. We also sent out an expression of interest for amalgamations.

No proposals were received from the club's members or any interest shown from clubs wanting to amalgamate. As a result, the club was closed and its assets were sold to repay creditors. We were able to identify assets they weren't aware they owned and these were also sold.

THE OUTCOME

Employees were paid their entitlements in full and ordinary unsecured creditors received 71 cents in the dollar.

“Even though the club needed to close, we were able to guide the board and members through the process and were still able to pay creditors a significant return.”

—MITCH GRIFFITHS (CO-FOUNDER / DIRECTOR)

NEED EXPERT TURNAROUND & INSOLVENCY ADVICE?

Contact us for a free,
confidential consultation today.

1300 727 739

enquiries@rgia.com.au

rapseygriffiths.com.au

ADDITIONAL RESOURCES

Options for NSW clubs in trouble

<https://rapseygriffiths.com.au/blog/director-options-for-clubs-in-financial-trouble>

Insolvent Trading | Australian Institute of Company Directors

https://aicd.companydirectors.com.au/-/media/cd2/resources/director-resources/director-tools/pdf/05446-6-3-duties-directors_insolvent-trading_a4-web.ashx

Insolvency checklist

<https://rapseygriffiths.com.au/questionnaire>

Are you fit for 2020? | RSL & Services Clubs Association

https://www.rslservicesclubs.com.au/ContentFiles/ServicesClubs/Documents/39440D_RSLSCA_Fit%20for%202020%20Booklet.pdf

Corporate turnaround: What you need to know

<https://rapseygriffiths.com.au/corporate-insolvency/corporate-turnaround>

Companies limited by guarantee | ASIC

<https://asic.gov.au/about-asic/contact-us/how-to-complain/companies-limited-by-guarantee-disputes-about-members-rights/>

Application for mergers and acquisitions | ASIC

<https://asic.gov.au/regulatory-resources/forms/forms-folder/cf03-applications-for-relief-mergers-acquisitions/>

Amalgamation: Information and application form | NSW Fair Trading

https://www.fairtrading.nsw.gov.au/help-centre/forms/associations-forms#Form_A3_-_Application_for_registration_of_an_amalgamated_incorporated_association

Voluntary deregistration or winding up | Not for profit law

https://www.nfplaw.org.au/sites/default/files/media/Voluntary_deregistration_or_winding_up_of_CLGs_0.pdf

Approval to act as an administrator guidelines | Independent Liquor & Gaming Authority

https://www.liquorandgaming.nsw.gov.au/documents/gl/GL4004_Guideline-9-Approval-to-Act-as-Administrator-Liquidator-or-in-Certain-Other-Capacities.pdf

LOCATIONS

NEWCASTLE

Level 5
55-57 Hunter St.
Newcastle NSW 2300
1300 727 739

CENTRAL COAST

Suite 320
1 Bryant Drive
Tuggerah NSW 2259
1300 727 739

TAMWORTH

1st Floor
12A Bourke St.
Tamworth NSW 2340
1300 727 739

SYDNEY

Level 17, The Ark
Coca-Cola Place
40 Mount Street
North Sydney NSW 2060
1300 727 739

PERTH

Level 3
267 Georges Terrace
Perth WA 6000
1300 727 739

BRISBANE

Level 10
15 Green Square Close
Fortitude Valley QLD 4006
1300 727 739

MELBOURNE

The Lantern
707 Collins St.
Docklands VIC 3008
1300 727 739

ADELAIDE

Level 5, City Central
Tower 2
121 King Street
Adelaide SA 5000
1300 727 739



RAPSEYGRIFFITHS

TURNAROUND + INSOLVENCY

As Registered Liquidators and registered trustees in bankruptcy we have the expertise and authority to act.