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Revised Edition

Getting your club back on track

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



RAPSEYGRIFFITHS
TURNAROUND + ADVISORY

Contents

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

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WE ARE RAPSEY GRIFFITHS.

We're not your average insolvency firm.
We're experts in business turnaround, crisis management, unmanageable debt and solving complex financial problems - and work collaboratively with you.

EXPERIENCE & AUTHORITY TO ACT

Founded in 2013 by Chad Rapsey and Mitch Griffiths, we're experts in developing strategies to help companies and individuals recover from financial distress. We provide our clients with honest and transparent assessments of their situation, clearly outlining their options and associated implications.

We've helped businesses across Australia and are committed to 'turning around' organisations and making them profitable again. If turnaround isn't possible, we act positively to implement strategies to minimise losses to all stakeholders.

Our team has extensive experience across all areas of business turnaround, including insolvency administration, liquidations, voluntary administrations, receiverships and bankruptcy. As registered liquidators and registered trustees in bankruptcy, we have the expertise and authority to act.

We do things differently

- ✓ Collaborative
- ✓ Solution-minded
- ✓ Cost-conscious
- ✓ Flexible
- ✓ Digitally connected

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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

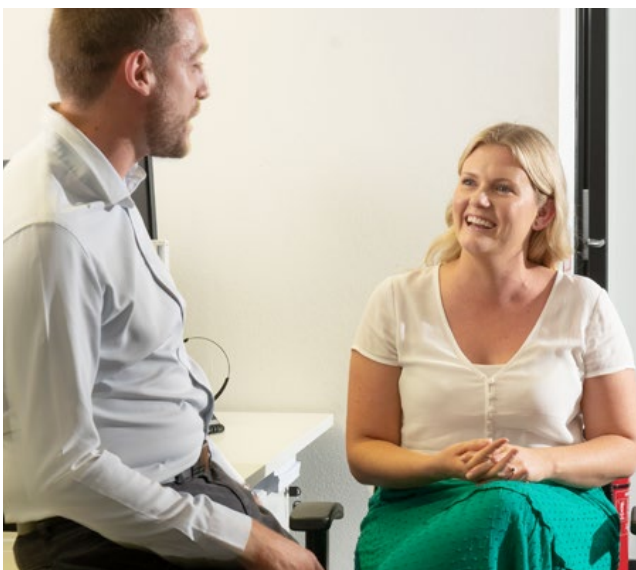
If your registered club is financially struggling, you need to be proactive and act fast. The sooner you act, the better your chances of turnaround and survival. Engaging a turnaround expert will make the process easier and can result in better outcomes.

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 13), 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 business 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 13 to consider other options for your business.

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 services your business offers
- 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 offering (process is convenient and effective)
- Focusing on your cash flow
- 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.





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

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 the 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 the 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.



CASE STUDY – TURNAROUND

“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)

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

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.

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

SMALL BUSINESS RESTRUCTURING PLAN (SBRP)

If you're a small business experiencing financial difficulties, as of January 1 2021, you may be able to access the small business restructuring plan. This new formal turnaround option – part of the government's COVID small business rescue reforms – offers an easier way to reduce debt and avert crisis, whilst remaining in control of your business.



SBRP PROCESS

The small business restructuring plan is a formal restructuring option; it's a simplified, lower-cost formal appointment. The purpose of this new process is to support more small businesses to survive, meaning better outcomes for businesses, creditors, employees and the economy.

ELIGIBILITY CRITERIA

To take advantage of this process, you must:

- ✓ be operated by an incorporated entity;
- ✓ owe less than \$1 million in liabilities (excluding liabilities to employees of the club);
- ✓ all outstanding employee entitlements, including superannuation, must have been paid (this does not include entitlements not yet due for payment, such as annual or long service leave);
- ✓ all tax lodgements for the company must be up to date.
- ✓ not have previously done a small business restructuring or used simplified liquidation in the past 7 year

Current and former directors (acting in the past 12 months) also cannot have been a director of a company that has done a small business restructuring or used simplified liquidation in the past 7 years.



HOW THE SBRP PROCESS WORKS

STEP 1: APPOINTING A QUALIFIED SMALL BUSINESS RESTRUCTURING PRACTITIONER

After announcing the decision to access restructuring, a qualified small business restructuring practitioner must be appointed. Their first job is to assess your situation and determine if your company is eligible to access the restructuring process.

STEP 2: DRAFTING A SMALL BUSINESS RESTRUCTURING PLAN

You and your practitioner have **20 days from the appointment to prepare a small business restructuring plan in the approved form.**

The plan must:

- Identify the property that is being dealt with and how it will be dealt with (this could be via third party contribution, proceeds from the sale of assets, future trading profits or refinance)
- Provide remuneration for the SBRP appointment
- State the date on which it was executed

Your practitioner must review and verify the information provided in the plan.

STEP 3: SERVING OF THE BUSINESS PLAN TO CREDITORS

Your practitioner must serve the plan and relevant papers to affected creditors. **Note** all employee entitlements must be paid and all tax reporting obligations up to date before this can happen.

STEP 4: ACCEPTANCE OR REJECTION OF THE PLAN

Once your creditors have received the plan, they have **15 days to vote on it** via a written statement.

If disputed: A creditor must provide specifics of the dispute. Your practitioner may reject the dispute or proposed variation to the proposal.

If the majority in value of creditors accept it: The plan will be approved, binding all unsecured creditors. It will then be administered as you continue to trade as normal.

If rejected: Control of the company returns to the directors. The directors may choose to appoint a liquidator or voluntary administrator (see Chapter 5).

Rapsey Griffiths are experienced small business turnaround and restructuring practitioners. We can guide you through developing and administering a small business restructuring plan.

Contact us -
1300 727 739 | enquiries@rgia.com.au



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 AND AMALGATION

“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)

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. Under the control of volunteers the club 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

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?



WHAT IS 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.

(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)**.

WARNING SIGNS OF INSOLVENCY

Determining insolvency isn't always easy.

A forward-looking **cash flow test** can help you determine your company's ability to pay its debts when they become payable. However, you also need to look at your wider financial position.



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, vehicles or equipment) 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 company can pay its liabilities, as and when they fall due. Because lengthy payment terms are typical in the construction industry due to the nature of big projects, these should be taken into account.

BALANCE SHEET TEST

A balance sheet test involves looking at your balance sheet to work out whether your company would have more assets or liabilities if it were immediately wound up. In the construction industry, work-in-progress (WIP) is considered an asset.

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 entity that employs them. These are called directors' duties.

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.

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 it's 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.





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 formal insolvency appointments available to companies 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

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 continuing while providing a better return for creditors than winding up. ([ASIC](#))

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

Your club's DOCA proposal may involve:

- A third party injecting cash into your business 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 company's creditors. If your creditors accept it, you, as director, 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.

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 organisation –
1300 727 739 | enquiries@rgia.com.au



CASE STUDY – VOLUNTARY ADMINISTRATION & DOCA

“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)

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 from a shortage of 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.

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



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](#).

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's not enough money to pay employees their entitlements in a liquidation scenario, these are covered by the [Fair Entitlements Guarantee](#). Entitlements include unpaid wages, annual leave, long service leave, and redundancy pay.



CASE STUDY – VOLUNTARY LIQUIDATION

“Clarity makes resolution easier to achieve. By working together, we can put mechanisms and processes in place that help move things towards a suitable outcome.”

MITCH GRIFFITHS
(CO-FOUNDER / DIRECTOR)

BACKGROUND

A medium-sized construction company specialising in residential property found itself in financial difficulty due to a range of internal and external factors, including defective work claims. We were called in to review the company's particulars and identify the most appropriate response to its challenges.

CORE PROBLEM

Following a business viability review, we determined the company was insolvent and unable to continue trading. As the owners and managers were experiencing high levels of stress and the business was lacking the capacity to undertake a turnaround strategy, we needed to provide a way for the company, its stakeholders and its creditors to move forward.

We deal with many clubs who are facing financial issues and insolvency. The solutions we deliver are highly-tailored to individual circumstances. If you feel your company 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 SOLUTION

Given the company's inability to pay its significant debts as and when they fell due, we determined the best solution would involve:

- Entering creditors' voluntary liquidation (also known as business liquidation)
- Establishing and realising the assets of the company
- Communicating with employees and creditors regarding the liquidation process
- The liquidator dealing with incomplete construction projects and assisting customer claims under the home building compensation scheme

THE OUTCOME

While liquidation is generally a last resort, the benefits of undertaking the creditors' voluntary liquidation reduced the risk of insolvent trading and ended the defective work claims. It also:

- Averted a standard director penalty notice (DPN) being issued by the ATO (subject to lodgements being made on time)
- Enabled employment entitlements to be paid in full via the Fair Entitlements Guarantee (FEG) scheme
- Saw employee superannuation paid from the assets realised by the liquidator
- Allowed customers to have their projects completed by another construction company
- Resulted in unsecured creditors receiving a distribution of 10c / \$
- Releasing the company from debts of approximately \$840,000.

The liquidation helped the directors to comply with their duties, providing employees and creditors with a return on outstanding debts.

NEED EXPERT TURNAROUND & INSOLVENCY ADVICE?

Contact us for a free, confidential consultation today.
1300 727 739 | enquiries@rgia.com.au

ADDITIONAL RESOURCES

[Options for NSW clubs in trouble](#)

[Insolvent Trading | Australian Institute of Company Directors](#)

[Insolvency checklist](#)

[Are you fit for 2020? | RSL & Services Clubs Association](#)

[Corporate turnaround: What you need to know](#)

[Companies limited by guarantee | ASIC](#)

[Application for mergers and acquisitions | ASIC](#)

[Amalgamation: Information and application form | NSW Fair Trading](#)

[Voluntary deregistration or winding up | Not for profit law](#)

[Approval to act as an administrator guidelines | Independent Liquor & Gaming Authority](#)

