

## Amalgamation of Clubs

MATTHEW BRADFORD



There is an increasing trend in recent times for clubs experiencing financial difficulties to look for support from a more profitable club to assist the smaller club in continuing its activities.

Typically, the profitable club will either takeover the lease or purchase the freehold land of the smaller club, and where the premises are licensed, the larger club will take over the liquor and gaming machine licence. In order to take over liquor and gaming machine licences, a club needs to have tenure to the premises, which is why it will generally purchase the freehold asset or take an assignment of the lease. However, if the club wished to retain its freehold asset or its interest in the lease of the premises, it could always grant a lease or a sublease to the larger club.

The club taking over the licensed premises will need to have complete control and discretion regarding the operation of the premises. As a result, this can leave the smaller club out of the loop regarding the management of the premises. There are two ways of dealing with this.

For the purposes of this article, we will use the example of a small football club that leases a sporting field and clubhouse from a local council, but is struggling financially with operating the licensed clubhouse and has approached a larger sports club to take over operation of the premises.

The easiest method of achieving this outcome is for the sports club to take an assignment of the lease of the premises and have the liquor licence and gaming machine licence transferred. Because the football club will still wish to use the premises to host football matches and club meetings, it needs to have some

kind of agreement with the sports club. What we would suggest is entering into a licence agreement or a venue hire agreement, in which the sports club agrees to hire the premises to the football club for use at certain times on certain days for hosting football matches and club meetings. There may or may not be a fee charged for this hiring, depending on the agreement reached between the clubs. The benefit of this



model is that generally, it will not require any amendments to either clubs' constitution and it allows the football club to continue to exist as an entity in its own right so that it can still control its affairs and remain an autonomous association.

The second model is to incorporate the football club as a sub-club of the sports club. This would require an amendment to both clubs' constitution. The football club, as a sub-club of the sports club, would want certain voting rights and entitlements to nominate members to the sports club's management committee, it could be quite difficult for an agreement to be reached regarding the powers and rights that the sports club will grant to the football club. The football club may also have a problem

with the fact that it is merely a sub-club, rather than a completely autonomous entity in its own right.

Another option would be for the football club to be wound up, with the assets all transferred to the sports club and the football club members all becoming members of the sports club.

Out of the options, we would generally suggest the first method. Of course, the problem with the first option is that

if there is a falling out between the football club and the sports club, then the football club would need to ensure that it has a binding agreement with the sports club regarding the hiring agreement, otherwise it could lose its right to use the premises for its activities.

There are a number of other legal issues that such a scenario raises and that would need to be addressed as part of any amalgamation between two clubs. This is merely a brief summary of the types of relationships that can be established between two clubs, where one club is taking over the operation of the premises of another club, but the other club wishes to retain the use of the premises to continue to conduct its activities.



In recent years, the State Government and Liquor Licensing Division have focussed on minimising alcohol related harm in the community, particularly through the implementation of various

responsible service of alcohol (RSA) policies and legislation.

Section 148A of the *Liquor Act 1992* is the cornerstone of the responsible service legislation. This provision places an obligation on licensees to ensure liquor is served, supplied and promoted in a way that is compatible with minimising harm. It also prohibits licensees from engaging in a practice or promotion that may encourage rapid or excessive consumption of liquor.

A Gold Coast nightclub operator was recently prosecuted by the LLD

1 The LLD had failed to produce sufficient evidence that there were intoxicated patrons at the venue. Even then the LLD had no evidence that those who were intoxicated were in this state as a result of the \$2 promotion. This was particularly difficult for the LLD to establish given there were drinks being sold at normal prices on the night in question, such as premium beers and top shelf spirits.

2 Most importantly, the Licensee had taken adequate steps in terms of staff numbers and monitoring and safety protocols to prevent the rapid consumption of alcohol by patrons during the \$2 promotion.

There is no doubt that it is important for the longevity of the liquor industry that all licensees comply strictly



**CURT SCHATZ**  
EDITORIAL

The current status in the Hospitality Industry, in my view, is very healthy.

In the hotel sector, we have seen a gradual slow down of the furious acquisition activity of many, including the Woolworths syndicate and Coles-Myer.

We have however seen other southern operators emerge to assist in keeping hotel prices buoyant, through competitive demand.

In addition, the enormous population shift to South East Queensland represents opportunities for those lucky hoteliers who have assets in prime real estate positions.

Another impetus to maintaining the high values for hotels is the redevelopment opportunities presented by these assets.

One wonders where it will all end, although I suspect that the heat is gradually dissipating from the market and that prices should stabilise.

Another supporting factor to this comment is the record high amounts tendered for Operating Authorities in the last tender - particularly for the South East Queensland territory.

There is a continuing rationalisation in respect of Clubs, in particular underperforming Clubs. Our firm enjoys the challenge of assisting those Clubs to consider alternative processes and options to either remain viable or improve their performance.

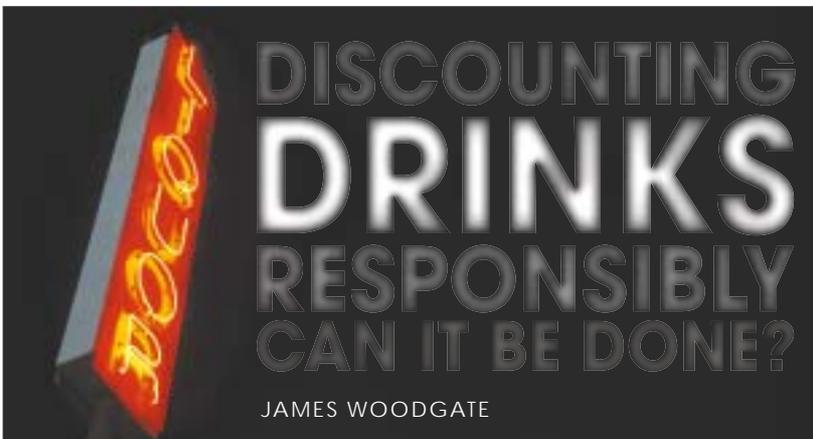
In this hospitality newsletter, Matthew Bradford has touched on some of the options in terms of amalgamation of clubs.

We have also seen a lengthy process in respect of the review of the Liquor Act. There is no doubting that the trend is toward making amendments to both the Act and Policy which emphasise harm minimisation from the effects of alcohol.

We certainly support a review of this nature as long as it is accepted that it is not a "one size fits all". There needs to be some form of sympathetic approach to different licensees in different environments with different sets of circumstances.

Our hospitality team remains stable in terms of its personnel. We continue to strive to improve both the breadth of our services, and the efficient delivery of them, to you, our loyal clients.

We trust that our specific expertise in the Hospitality Industry is self evident. We look forward to being of continuous service to you, and participating in your projects, and to add value to your business lives.



under this provision. However, the prosecution was unsuccessful with the District Court finding in favour of the licensee (*Gifford v Meshlawn Pty Ltd and Hunjadi* [2006] QDC 295).

On 27 November 2003, during schoolies week on the Gold Coast, the licensee of The Mark nightclub offered cheap drinks (\$2 drinks) at the venue between 8pm and 12 midnight.

The LLD alleged that the number of intoxicated patrons at the venue and the fact that the Licensee had taken inadequate steps to discourage the excessive consumption of alcohol resulted in a breach of Section 148A.

However, his Honour disagreed and found that there was no breach of section 148A because:

with responsible service of alcohol legislation and practices. However, this decision makes it clear that there must be a solid evidentiary basis for allegations that are made against a licensee for failing to comply with the responsible service provisions of the Act.

The most important practical guidance from this case is that it confirms offering discounted alcohol for on premises consumption is not necessarily in breach of Section 148A, provided that licensees take adequate steps and have procedures in place to ensure that there is not rapid and excessive consumption of alcohol and ensure that patrons do not become excessively intoxicated as a result of any discount promotion.