

## Clubs Legal Update: In Brief November 2010

### New annual reporting requirements

#### Changes to the law

The Federal Government has passed changes to the Corporations Act 2001 which include:

- introducing a 3-tiered annual reporting structure and simplifying the requirements for providing reports to members, for companies limited by guarantee (which is the corporate structure of most registered Clubs);
- making it easier for companies to change their financial year end date; and
- updating the requirements for directors reports.

#### The new structure

In summary, the 3-tiered annual reporting structure is as follows:

**Tier 1** - Clubs with annual revenue of less than \$250,000 are not required to prepare a financial statement, a directors report, or have a financial report audited, and are not required to send such reports to members (unless required by 5% of the members or ASIC).

**Tier 2** - Clubs which have annual revenue of less than \$1 million (and are not Tier 1 Clubs) must prepare a financial report and a simplified directors report. These Clubs must have the financial report reviewed but not audited. Members must be notified that the reports are available (and where they can be accessed) and that the members have the right to request copies of the reports in hard copy or electronic format. However, these Clubs only need to send reports to a member if the member requests this in writing.

**Tier 3** - Clubs with annual revenue of \$1 million or more must prepare a financial report and have it audited. They must also prepare a simplified directors report. Members must be notified that the reports are available (and where they can be accessed) and that the members have the right to request copies of the reports in hard copy or electronic format. However, these Clubs only need to send reports to a member if the member requests this in writing.

These changes apply to financial years ending 30 June 2010 and after, and Clubs should contact their financial advisors or auditors to ensure the appropriate reports are prepared.

### Tips

Thomsons Lawyers recommends that:

1. Clubs review their Constitution, as it may make reference to annual reporting requirements which are now out of date. The Constitution should be kept up to date with current law to minimise the risk of confusion over the Club's obligations.
2. Clubs review their membership application forms and other information given to members, to check that any references to annual reports are up to date.

Thomsons Lawyers regularly assists Clubs and industry organisations to keep their Constitutions current, and can also advise Clubs on the impact of these changes to the law. Please contact our team for a confidential discussion.

## Sexual harassment in the workplace: Implications from *Fraser-Kirk v David Jones Limited & Others*

The recent claim lodged in the Federal Court of Australia by Kristy Fraser-Kirk against her employer, David Jones and individual Board members and David Jones' former CEO Mark McInnes, highlights the importance for employers of taking action to protect their business from similar claims.

Most employers, including registered clubs, have in place workplace policies and procedures. It is essential that the employer adheres to the policies it has implemented.

Ms Fraser-Kirk sought compensation for loss of earnings, pain, suffering and loss of dignity. However, she also sought "punitive" damages, which are awarded to punish the respondents to the claim, on the grounds that the conduct was deliberate and in disregard of her legal rights under, among other things, the common law and her contract of employment.

The amount of damages sought was in the tens of millions of dollars, being partly linked to percentages of income of David Jones and the CEO over a period of years.

Ms Fraser-Kirk alleged that David Jones engaged in misleading and/or deceptive conduct under the Trade Practices Act 1974 (Cth) and Fair Trading Act 1987 (NSW) in the way it represented itself to Ms Fraser-Kirk through its workplace policies, such as its code of conduct.

Although the claim has reportedly settled for a sum of around \$850,000, it is an example of the kind of action that may be taken by an employee in circumstances where such allegations have been made.

Failure to take prompt action or act in accordance with the employer's workplace policies when an employer becomes aware of alleged harassment, can lead to a claim that the employer permitted the alleged conduct to continue, potentially increasing the compensation payable if the claim is successful.

In particular, allegations of a culture of sexual harassment within the workplace over a period of time potentially adds to the range of parties who may be liable for the alleged misconduct (such as directors) and can give broader scope to legal claims made (such as claims under the Trade Practices Act, Fair Trading Act and Occupational Health and Safety Act 2000 (NSW)).

## Tips

Clubs should check:

- all their workplace policies are kept up to date in accordance with changes in the law;
- workplace policies are properly communicated to staff and managers, with regular or frequent training;
- they adhere to the grievance procedures set out in their workplace policies and promptly deal with complaints;
- records are kept about management decisions on such matters as recruitment, promotion and redundancy; and
- detailed records of complaints and their investigation are kept.

Please contact our team if you would like further information or would like us to review your Club's current policies and procedures.

## Contract vetting can minimise contractual disputes and save money

Good business relationships with contractors and suppliers are essential to a successful club. One of the biggest risks to keeping relationships on a good footing is signing off on a standard contract which doesn't fully document the true agreement or which includes unreasonable terms that are detrimental to the club.

"The best way is to get each contract right from the start" says Brett Boon, partner in the team.

"Unfortunately we see many contracts where the work hasn't been done up front and the resulting problems can be costly to resolve. Day to day issues can't be totally eliminated but good contracting systems and seeking advice where it's needed minimises those risks".

Common problem areas are automatic renewal clauses, the inability of a Club to terminate a contract when appropriate, and, failure to include clear performance criteria for a supplier/contractor.

Also, specific legislation such as the Retail Leases Act 1994 (NSW), can apply to particular contracts like catering, retail shop or golf pro-shop licences. For example, failure to comply with the Retail Leases Act can result in the contractor being entitled to a longer term than was agreed by the Club in some cases and can result in some provisions, such as certain licence fee review clauses, being void.

The costs of resolving contractual disputes and problems can far outweigh the cost of reviewing the contract in the first instance. Getting a clearly documented agreement in place minimises the risk of issues and disputes arising in the future.

## Tips

Thomsons Lawyers works with its clients to develop tailored contracts and contracting procedures for each Club's circumstances. This allows Clubs to identify when legal advice is really needed and gives them more confidence when negotiating agreements. Please contact our team for further information.

For further information or a confidential discussion, please contact our team.

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