

Clubs Legal Update: In Brief August 2012

The first half of 2012 has seen developments on a number of general legal issues that can affect Clubs, in addition to matters which are specific to the registered club, liquor & gaming industry. This alert provides a snapshot of some of the important legal matters which may have an effect on your Club.

Club Trading/Business Names: Now under Federal jurisdiction

Clubs trading under a 'business' name rather than their full company name, will now find that the registration and regulation of their business name is subject to Federal law. A new national business names system and register came into effect on 28 May 2012, and business names are now registered and managed by the Australian Securities & Investments Commission (**ASIC Register**).

Some important issues to note:

- If your Club's business name was registered with the NSW Office of Fair Trading before 28 May 2012, then it should have been automatically transferred to the new ASIC Register. However, we recommend that you check to ensure that this has occurred.
- Clubs are no longer required to display the certificate of registration of its business name. You do however have to display the business name at the premises where you are trading. The name of the Club's premises should also be recorded on your Club licence, and any changes must be approved by the Independent Liquor & Gaming Authority.*
- All business names on the ASIC Register are now registered Australia-wide.
- Registration of a business name will not, by itself, fully protect your Club's brand or trading name. Nor will it give you ownership of that name, the exclusive right to

use it, or prevent the registration of a similar name. If you wish to achieve these objectives then your Club could consider registering a trade mark.

If your Club needs assistance registering a business name or a trade mark, or if you have any questions regarding the operation of the new ASIC Register, please contact us.

Click here to download a more detailed article on these changes that was recently prepared by Thomsons Lawyers Partner Peter Le Guay and our Sydney intellectual property team.

A profile of our national intellectual property team can also be found on our website at www.thomsonslawyers.com.au

* For NSW Clubs

High Court Decision: Minutes of Board Meetings

(Australian Securities and Investment Commission v Hellicar [2012] HCA 17)

Earlier this year, the High Court found that seven non-executive Directors of James Hardie Industries Limited had breached their duties by approving the release of a misleading announcement to the Australian Stock Exchange. The minutes of the relevant Board meeting, which were confirmed at a later Board meeting, recorded the tabling of the draft announcement and its approval by the Board. However, the Directors claimed they had not approved the announcement and that due to some inaccuracies, the Board minutes could not be treated as a true reflection of what occurred during the meeting.

The High Court found that despite some inaccuracies in the Board minutes, they were a formal record of the Board meeting in which the announcement was approved and were 'evidence of the truth of what they represented'. This case highlights the importance of having proper Board procedures in place and keeping accurate minutes.

This case reminds Directors and other Club officers to:

- Exercise independent review and judgement in each and every decision they make, even when competent advisors are engaged.
- Object or abstain from voting on any resolution where they are not confident that they have the necessary information to make a decision in the best interests of the Club.
- Ensure that minutes are accurate and properly record enough detail to provide an adequate description of what occurred in the meeting and each resolution passed by the Board.
- Ensure that minutes are signed by the Chair within the 1 month deadline.

Australian Consumer Law: Consumer Contracts with Club Members

Many Clubs offer programs that require Club members to sign up to terms and conditions, for example gym memberships and loyalty programs. These agreements are usually 'standard form' consumer contracts as they are not individually negotiated and are offered to members on a 'take it or leave it basis'.

As these benefits are usually goods or services that the member uses as a 'consumer' on a personal or domestic basis, the Australian Consumer Law (**ACL**) may apply to these kinds of contracts. Under the ACL, a term of a consumer contract will be void if it is included in a standard form contract and the term is unfair. It is recommended that Clubs review their standard terms and conditions to ensure that the terms they are offering their members are fair, as imposing unfair terms can result in legal action under the ACL.

A term will be considered unfair under the ACL if:

1. It would cause a significant imbalance in the parties' rights and obligations arising under the contract; and
2. The term is **not** reasonably necessary in order to protect the legitimate interests of the Club (and the Club would have to demonstrate that any such term is reasonably necessary); and

3. The term would cause detriment (financial or non-financial) to a party if it were to be applied or relied on.

Examples of terms that could be deemed unfair under the ACL include: terms which allow unilateral changes to the contract by the Club, and, terms permitting the Club to unilaterally vary the characteristics of the goods or services to be supplied.

The ACL includes consumer protections broader than the unfair contract term prohibitions. For more information, or for assistance in reviewing your Club's 'standard form contracts' or for any other aspect of the ACL, please contact our team.

Stop Press: Online Gambling

The *Interactive Gambling Act 2001* (Cth), which prohibits interactive gambling services from being provided to Australians, is currently under review and the latest report suggests the restrictions on online gaming and wagering may be lifted in certain areas.

With the final report due at the end of 2012, the Department of Broadband, Communications and the Digital Economy (**Department**) has released an Interim Report outlining recommended changes, including a proposal to legalise and licence online tournament poker sites in Australia.

[Click here](#) to download a copy of the Interim Report from the Department's website.

We will continue to monitor the review and report on significant developments.

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

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