

## LEGAL UPDATE

There have been a number of interesting events in the past 12 months that may be of interest to Clubs.

### **A mere apology is not a leave of absence:**

In the matter of Calabria Community Club Ltd [2013] NSW SC 998 (26 July 2013) the New South Wales Supreme Court considered the position of a director who had missed all Board meetings over a six month period.

The Club's Constitution carried a rule that a director ceases to be a director if "the director is absent without the consent of the directors, from all directors meeting over the six month period".

The Court found that the Director did not attend any directors meeting over a six month period, even though apologies were tendered for some of the meetings.

However, after the six month period the Director attended and participated in 4 consecutive directors meetings before the notice that the Director had ceased to be a director was lodged with ASIC.

In short, the Court considered that the mere noting of an apology did not amount to consent nor to a leave of absence approved by the Board.

However, caution needs to be sounded that some conduct may constitute consent. In this case the fact that the Director was permitted to participate in 4 consecutive directors meetings led the Court to find that the remaining directors had consented to the director's absence and therefore he did not cease to be a director.

### **Gambler turns over of \$1.479 billion at Casino and loses!**

The High Court of Australia dismissed a claim from a gambler that Crown Casino had unduly influenced him to continue gambling and ultimately lose \$20 million. In *Kakavas v Crown Melbourne Ltd* [2013] HCA 25, Mr Kakavas sought to recover \$20 million in net losses but did not succeed.

It appears that between June 2005 and August 2006 Mr Kakavas turned over **\$1.479 billion** playing baccarat at Crown Casino for a net loss of \$20.5 million. In a one hour session Mr Kakavas gambled \$86 million, on another day \$50 million in 4 hours and again on another day \$164 million in 5 ½ hours. He claimed he was a pathological gambler and therefore could not make decisions in his own self interest when gambling.

In short the High Court ruled that Mr Kakavas had not established that his losses were due to the exploitation by Crown Casino of his special disability and therefore did not amount to unconscionable conduct by Crown Casino.

However, the High Court did identify some instances where a finding of unconscionable conduct might be justified stating:

*“It is necessary to be clear that one isn’t concerned here with a Casino operator preying upon a widowed pensioner who is invited to cash her pension cheque at the Casino and to gamble with the proceeds. They might sensibly describe that scenario as a case of victimisation. One could also speak sensibly of a gambler who presents at a Casino with the cash necessary to play the game, as a victim of the Casino, if these are factors in play other than the occurrence of the outcome that was always on the cards. For example, the gambler may be evidently intoxicated, or adolescent or senescent or simply incompetent”.*

Accordingly, this is a lesson for Clubs that a Club needs to bring to bear all its responsibility and risk management tools to bear with adequate staff training in the Club gaming environment.

### **Federal Budget 2014. Good News for Clubs!**

Some good news in the Budget for Clubs. The Government announced on 14 December 2013 that it would not proceed with the previous Government’s proposed measures in the “Better targeting of Not for Profit Tax Concessions” (announced in May 2011 which sought to impose an unrelated business income tax (UBIT) on Clubs). The Government also announced on 14 December 2013 that it may consider alternative integrity measures to the Better Targeting proposals. However, the Government has now announced in the 2014 Budget Papers that it has concluded that alternative measures are not required at this time.

Accordingly, the UBIT will not now proceed. The UBIT had the potential to substantially affect Clubs, particularly those with significant gaming, liquor, bistro and functions operations.

This decision would infer that the Government does not accept the findings of the Labour Government appointed “Not for profit sector tax concession working group” final report dated May 2013 (the Final Report). The Labour Government chose not to release the Final Report prior to the 2013 Federal election. The Final Report was released in late 2013 following an FOI application. Amongst other things the report advocated the removal of the mutuality principle which would have adversely impacted on many clubs.

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