

## BOARD FREE TO SUPPORT GENERAL MANAGERS DECISION ON COMPETITION RULES

The General Manager of the New South Wales Touch Association Incorporated (“the Association”) effectively ruled Liverpool Touch Football Association known as Liverpool Lightning (“Lightning”) from playing in the senior grade of the third division grand final (see *Liverpool Touch Football Association v New South Wales Touch Association [2014] NSWSC 1553 (23 October 2014)*).

This was an interesting case where Lightning was seeking the Court’s consent to short notice to serve documents on the Association and other affected parties. The Court did not consent. The Court, unusually, determined the substantive claim by Lightning without hearing from the other parties. It was not a successful outcome on either count for Lightning.

### **Background**

Lightning participated in a touch football competition conducted by the Association in Sydney known as the Vawdon Cup.

Lightning fielded 3 teams in 3 separate divisions in the Vawdon Cup. Lightning was the minor premier for the Third Division.

The finals draw for the Third Division of the Vawdon Cup was semi final 1: 1<sup>st</sup> v 2<sup>nd</sup> and semi final 2: 3<sup>rd</sup> v 4<sup>th</sup>. The winner of semi final 1 was to go straight to the grand final and the loser to play the winner of semi final 2 in a preliminary final. The winner of the preliminary final was to play in the grand final. The loser of semi final 2 was to be eliminated. Lightning won semi final 1 and believed it was headed straight to the grand final however the Associations General Manager ruled that Lightning was deemed to have forfeited semi final 1 on the grounds that it had failed to pay a required fee in respect of 2 earlier forfeits of other teams from the club during the season.

The Association notified Lightning that it was to be treated as having lost semi final 1 and therefore would play the winner of semi final 2 in the preliminary final. Lightning brought the proceedings two days before the date for the preliminary final and hence sought from the Court consent to short notice of service of documents on the Association and other affected parties. The Court declined to grant its consent.

The Court relied on the celebrated High Court decision of *Cameron v Hogan* (1934) 51 CLR 358 quoting *Starke J* at p.384:-

*“As a general rule the Courts do not interfere in the contentions and quarrels of political parties, or indeed, in the internal affairs of any voluntary association, society or club. Agreements to associate for purposes of recreation, or an agreement to associate for scientific or philanthropic or social or religious purposes are not agreements which Courts of law can enforce. They are entirely personal. Therefore, in order to establish a civil wrong from the refusal to carry out such an agreement, if it can be inferred that any such agreement was made, it is necessary to see that the pursuer has suffered some practical injury either in his reputation or in his property.”*

The Court then went on to quote further from the High Court decision, *Rich, Dixon, Evatt and McTiernan JJ* at p.370:-

*“Judicial statements of authority are to be found to the effect that, except to enforce or establish some right of a proprietary nature, a member who complains that he has been unjustifiably excluded from the voluntary association, or that some breach of its rules has been committed, cannot maintain any action directly founded upon that complaint....*

*There are ....reasons which justifying the statement that, at common law as well as equity, no actionable breach of contract was committed by an unauthorised resolution expelling a member of a voluntary association or by the failure on the part of its officers to observe the rules regulating its affairs unless the members enjoyed under them some civil right of a proprietary nature.”*

The Court considered that Lightning had complained to the Board of the Association who had upheld the decision of the General Manager after reviewing the facts. The Association was satisfied that Lightning had been advised that the fines would have to be paid before the semi final.

The Court did not accept Lightning's contention that its reputation had been damaged and the Court should intervene. The Court decided that it should not intervene, nor interfere with the Associations management of its competition in these circumstances.

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