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EDITORIAL

By Curt Schatz

I am proud to announce the launch of the first Hospitality Newsletter from Mullins Lawyers. This publication will be prepared and issued quarterly. It is my aim to select two articles for each newsletter that will be particularly useful for hotels and clubs alike and will address topical issues and problems of the day.

As most of you know, Mullins Lawyers has been a sponsor of the Queensland Hotels Association for many years and we provide legal advice to the QHA from time to time. Our profile in the hotels arena is well developed and we look forward to assisting many of you in the hotel industry well into the future.

The issues confronting hotels are many and some of them new, particularly with constant amendments to the Liquor and Gaming Legislation. The multitude of disputes in 2004 between landlords and tenants of hotels in respect of Operating Authorities is simply one example of the complexity of laws surrounding the daily activities and rights of hoteliers.

This year, we have sponsored Clubs Queensland and act for several clubs.

Whilst the legal issues confronting Clubs are less transactional, and broader than those confronting hotels, we look forward to translating our specialist knowledge and expertise into the Club arena.

I hope you find this first edition of assistance and welcome any comments or questions that might arise from it. I have a dedicated team of lawyers dealing exclusively in Hotel and Club matters and either myself, Louise Wallace, Cameron Hurd or Joe Carey would be pleased to assist.

OPERATING AUTHORITIES - WHAT YOU CAN DO WHEN YOU THOUGHT YOU HAD **AN AGREEMENT**

By Leslie Venville

THE LEASE IS DRAWING TO A CLOSE. LANDLORD AND TENANT LOOK AT EACH OTHER WITH A STEELY GLARE. BOTH ARE DETERMINED TO KEEP THE OPERATING AUTHORITIES THEY NOW KNOW ARE WORTH A SMALL FORTUNE. THE PROBLEM THEY HAVE IS THAT THEY DIDN'T WRITE DOWN WHAT THEY THOUGHT WAS AGREED SOME 1 OR 2 YEARS EARLIER OR WORSE STILL, THEY DIDN'T REALLY AGREE. THE LANDLORD JUST SIGNED THE FORM 71 AND THE TENANT JUST LODGED IT WITH THE GAMING OFFICE. NEITHER PARTY REALLY THOUGHT ABOUT IT. WITH 10 AUTHORITIES NOW WORTH OVER $1 MILLION AND THE TIME FOR LODGING AN ALLOCATION DISPUTE APPLICATION WITH THE COMMERCIAL AND CONSUMER TRIBUNAL WELL AND TRULY EXPIRED THE PARTIES' WONDER,

"WHAT ARE MY RIGHTS", "WHAT CAN I DO".

If you are the Landlord in the scenario outlined above, your risk is possibly the greatest because of the impact of the Tenant selling the operating authorities. It will cost you twice as much as the Tenant receives from the sale to replace the operating authorities and then you also have the impact of interruption of the gaming business. If the Tenant surrenders the gaming licence and puts the operating authorities up for sale, the Tenant's application must be approved by the Queensland Office of Gaming Regulation ("QOGR") before the Lease expires, but the Tenant is able to complete the sale and take the proceeds after expiry. The Landlord's remedy now lies only in cold hard cash - if it is recoverable.

Conversely, for a Tenant, ownership of the operating authorities will pass automatically to the new gaming licensee. Once, this ownership hass passed, the Tenant will lose the commercial advantage and have to bring its own application to enforce any right to compensation. Again, it's now all about cold hard cash. The Tenant still has an advantage in terms of recovery. It is possible for a successful Tenant to get an order requiring the Landlord to sell Authorities and give the proceeds to the Tenant. However, if the Landlord on-sells the business after expiry of the Lease, compensation recovery becomes the main concern.

It is likely that this scenario will become more common as Hotel leases in Queensland draw to expiration and Landlord and Tenant realize they are about to lose a valuable asset. There have already been two applications made to the Tribunal outside of the 31 December 2003 deadline imposed under the *Gaming Machine Act 1995* (Qld). Fortunately for the parties, they both settled quickly. Unfortunately for everyone else, no decision was made providing authoritative guidance on what is to happen.

(story continued over page)

Story continued from page 1. OPERATING AUTHORITIES

The *Gaming Machine Act* makes it clear that where a Landlord and Tenant are parties to an allocation dispute, the Tribunal is to hear and decide the dispute. In hearing the application, the Tribunal is bound by the provisions of the *Commercial and Consumer Tribunal Act 2003* (Qld) ("CCT Act") which govern the way the Tribunal will hear the dispute. Importantly, section 40 of the CCT Act gives the Tribunal exclusive jurisdiction in relation to allocation disputes. This means if a party, for example, files a Supreme Court application; the opposing party can have it dismissed on the basis that the issues to be decided are in the sole jurisdiction of the Tribunal.

The hurdle to be overcome by an Applicant party who can't achieve a quick settlement with the Respondent is whether the Tribunal will extend the time for the Applicant to bring the Tribunal proceedings. The Tribunal has a clear power to extend the time, however, granting an extension will not be automatic. Whether an extension is granted is a matter of discretion for the Tribunal. In deciding the question, the Tribunal will look at the following:

- Are there good reasons for the delay?
- Have the parties conducted themselves in a fair and equitable manner?
- Does the Application have a prima facie case or reasonable prospects of success?
- Is there any prejudice to the Respondent that can't be addressed in costs?
- Is it in the interests of justice, or in other words, is an extension necessary to avoid injustice?

The answers to those questions will depend on the facts of each particular case. However, what is clear is that parties must act promptly to enforce their rights once it becomes known a dispute exists.

LAW AND AUDIT: Special Compliance Investigation

By Joseph Carey

Most publicans would be aware of recent changes to the *Gaming Machine Act* which require all Gaming Licensees to ensure a gaming related Compliance Program is in place which meets the minimum standards of the QOGR. The basis for this program is to ensure all Licensees continue to monitor the gaming business operated at their Hotel, and to further ensure compliance with the changing requirements of the QOGR. In this regard, the QOGR will require all Licensees to implement a Compliance Program in place from 1 July 2005. To comply, there are certain minimum standards which will need to be in place as follows:

1. A Statement of Commitment to gaming related compliance;
2. At meetings of the Board of Directors/Management Committee/Partners, a standing agenda item dealing with matters of compliance to be presented;
3. A documented complaint handling system and incident escalation procedures in place that can deal with gaming related issues;
4. A documented process in place for training in gaming related functions; and
5. An adequate system of record keeping.

While there are additional requirements for compliance at clubs, for the purposes of this article, we will simply look at the requirements for Hotels to satisfy their obligations. The Compliance Program needs to be held at the Hotel premises and made available to QOGR inspectors in the conduct of their audits. Furthermore, for company licenses, the QOGR will require evidence that the Gaming Compliance Program is endorsed by the Directors. To satisfy this requirement, Licencee's need to supply a copy of the company minutes of a properly constituted directors' meeting noting the Directors ratification of the Compliance Program. For individual Licensees, the Compliance Program must simply be signed off by the Licensee.

To assist Hotel owners, we have devised a Compliance Program Document containing the five issues required to be addressed as follows:

1 STATEMENT OF COMMITMENT TO MINIMUM STANDARDS

The Statement of Commitment is a simple written statement on behalf of the Licensee detailing their commitment to maintaining a gaming operation, which is fully compliant with the Rules and Regulations of the QOGR. The QOGR in this regard advise they do not require a particularly extensive statement but rather a simple indication of intent to comply.

2 STANDING AGENDA FOR BOARD OF DIRECTORS/MANAGEMENT COMMITTEE/PARTNERS MEETING

The Standing Agenda item is to be considered at regular meetings of the Board of Directors for a Body Corporate Licensee with a check list of items regarding gaming to ensure the Board of Directors are fully briefed on the gaming enterprise. The standing agenda should include but not be limited to such items as the Gaming Nominee's Report, responsible gambling matters, any incidents involving gaming such as self exclusion and any correspondence with the QOGR. The Compliance Program must also state how often the meetings of the board of Directors are held and the format of meetings where the standard agenda is considered.

3 COMPLAINT HANDLING AND INCIDENT ESCALATION PROCEDURES

The QOGR has also requested as part of the Compliance Program Document that Licensees install a system to handle complaints and incident escalation procedures occurring at their premises. This system must address items such as:

3.1 A frame work to assist staff in handling gaming complaints;

3.2 Processes to ensure that gaming complaints are reported to the appropriate level of management and ultimately to the nominee;

3.3 Time frames for resolutions of gaming complaints; and

3.4 Training to ensure staff are trained in responsible complaint handling processes.

4 TRAINING OF STAFF

The QOGR will also require as part of the Compliance Program that all Licensees ensure they employ adequately trained persons in gaming related activities. Therefore the Gaming Compliance Program should contain a document detailing the processes by which Licensees ensure staff are appropriately trained in the conduct of gaming activities.

5 RECORD KEEPING

Licensees will need to demonstrate that an appropriate record system is kept to ensure proper management and the integrity of gaming at the premises. In this regard, the QOGR require Licensees to maintain a system of record keeping which retains records relating to the conduct of gaming, staff training, minutes of Director's meetings, gaming complaints, escalated incidents, operating procedures as well as records of dealings with the QOGR. The purpose of the records is to ensure an adequate level of transparency and accountability of decisions of the Licensee.

Initially, the task of preparing and maintaining a Compliance Program may seem quite daunting and time consuming to many Licensees. However, all Licensees must have a Compliance Program in effect by 1 July 2005, and failure to do so will constitute a breach of the Act. It is hoped the successful implementation of the requirement will continue to ensure the responsible management of gaming venues in Queensland.

...ALL LICENSEES MUST HAVE A COMPLIANCE PROGRAM IN EFFECT BY 1 JULY 2005...

Please feel free to contact us should you require any assistance in the preparation of a Gaming Compliance Program or a general discussion as to whether current systems in place comply.

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