



Editorial



by John Mullins

As usual we canvas a wide spectrum of matters in each edition of our newsletter. In this edition one of the

topics is a general article on the failure of businesses.

This has caused me to reflect on what our firm is doing to ensure our viability and success into the next century. 1999 has been a significant year for our firm in which we have continued to grow but at the same time consolidated on the advancements made over recent years.

Over the last month we have finalised and delivered to our staff the strategic plan for our firm up to 2002. During 1999 we have focused on restructuring our human resource management and ensuring that the level and utility of our information technology enables us to deliver our services in a way that meets the expectations of our clients.

We, like any other business, must plan, manage and review to ensure that we are setting goals and achieving them.

An important part of our business is cash flow. It is important that we talk with our clients about fees. In this edition we specifically commit to talk to you about fees. We understand that this is important to the relationships we have with our clients.

All of our clients will have received letters of engagement. We understand that these are verbose and that in many cases due to the relationship that we have with you, are redundant. Unfortunately this is not within our control as it is the law in Queensland. Please feel free to discuss these with us and how we can make them more meaningful for you.

We wish you a very happy Christmas and all the best for New Years Eve and 2000.



by Curt Schatz

On 13 December 1999, Treasurer David Hamill released a Green Paper on Gaming in Queensland. The Paper, which contains

numerous recommendations for the future of gaming in Queensland, was the result of the Queensland Government's Gaming Review.

Focus of The Review

Since the introduction of gaming machines in 1991 the growth of the gaming industry has been massive. The annual report of the Queensland Gaming Commission states that as at 30 June 1999 there were 27,865 machines operating in 1,245 club and hotel venues, an increase of 4,430 machines and 85 venues from the previous year.

The focus of the Review was to examine the social impact of this rapid growth in these facilities.

Submissions were received from a large cross section of the community, church and interest groups, industry associations and the general public.

The Review reported on matters such as:

- The benefits to the community and how these can be enhanced;
- The extent to which responsible gaming policies and practices are implemented; and
- The ability to measure and contemplate the social impact of gaming when considering applications.

Considerations

The Review attempted to find a balance between the economic considerations of the industry and the social considerations of the community.

The economic considerations include the fact that gaming has played an integral part in the revitalisation of the hotel and club industries, many having undertaken expensive refurbishment to cater for

Gaming Review

In Search of Balance

gaming facilities. The resultant economic benefits include employment growth in these sectors and a large amount of funding to community and sporting groups via the Gaming Machine Benefit Fund.

The social considerations are difficult to record in dollar values, however are usually determined by reference to social indicators such as crime, personal bankruptcies and the demand for welfare and charitable services.



Recommendations

The report contained 70 recommendations covering 5 different areas. In relation to gaming machines, the recommendations included:

- Limiting gaming machines to traditional club and hotel venues and excluding "convenience gaming" venues such as shopping centres and bar & grills.
- Requiring applicants to advertise a gaming application and permitting members of the public to object.
- Requiring applicants to undertake social and economic impact studies in regard to their applications.
- Capping the number of machines permitted at existing levels.

A full copy of the recommendations are available on the Internet at www.treasury.qld.gov.au or by contacting our office. The recommendations are open to public comment until 31 January 2000.

Why do Businesses Fail?

by Paul Lutvey (Mullins & Mullins) and Mike McCann of Grant Thornton Chartered Accountants



The statistics show that in Australia almost 75% of small businesses will fail within the first seven years. This is a fact of business life. Too often we hear the causes for failure being attributed to squeezed margins, falling sales, rising material costs or even the loss of a key customer or major supplier. These are typically the symptoms and not the causes of business failure.

Recessions are also not the cause of failure, they may only hasten or exacerbate it.

Failure arises as a consequence of interaction between both external and internal factors with respect to a business. The internal factors are those business defects and the consequential errors by management.

The reality is that the failure of a business can usually be attributed to one or more flaws existing in the fundamentals of a business.

External Factors

There is almost an unlimited number of external factors which may effect businesses. Typically these include the following:

- Rising or high interest rates;
- Rising or high inflation;
- Movements in exchange rates;
- Changes in Government Policy or new Legislation;
- Changes in technology;
- Changes in demand and markets;
- Industrial unrest;
- Environmental issues and natural disasters;
- Import competition;

- Litigation;
- Loss of essential licences or other rights.

All the above factors effect the environment in which the business is to operate. They frequently impact directly upon the trading or performance of the business and effect its growth and profitability. Furthermore, these factors are usually all beyond the immediate control of management.

However, it is stressed that these factors, whilst effecting the environment, do not cause the failure of a business.

Internal Factors

The existence of internal defects within a business creates an environment for these external factors to have a potentially drastic impact on that business. It is these defects which cause failure.

The defects typically existing may be summarised as follows:

- Inadequate management;
- Under-capitalisation;
- Weak financial information and reporting;
- Inadequate financial controls;
- Inability to respond and adapt to change.

The above defects are all inter-related and the common denominator is poor management. In each instance it is usually the competency of management which lies at the root of these fundamental defects. Consequently some analysts attribute corporate failure solely to poor management.

Fatal Errors

With one or more of these defects existing in a business and pressure arising from external factors management may go on to



make one or more errors which prove fatal to the business. These business errors typically include the following:

- Inadequate management team;
- Reliance on a key customer;
- Reliance on a key supplier;
- Over-trading;
- Under-trading;
- Uninformed decisions;
- The big deal or project;
- Reluctance to seek help;
- Excessive drawings;
- Failure to stay close to the market.

Employers: Reduce your WorkCover



by Cameron Seymour

Employer's WorkCover premiums are non-individually calculated with reference to payments made in previous and anticipated claims. Too often, your first notification of an employee's claim for injury is when WorkCover Queensland notifies you that you have been sued. In some cases, this notice occurs up to four years after the accident!

It is not uncommon for a person to be injured at work but not make any complaint at the time. The injured worker may consult a solicitor and sue up to 3 years after the date of accident, then not serve the claim for almost another year.

Obviously there are difficulties defending an action that has not been reported to you until sometime after the event. Those problems include:-

- Witnesses may not recall the event.
- Witnesses may have left employment or cannot be found.



- The system of work which caused the injury may not have been properly documented, or has changed.

In the absence of positive evidence to refute the injured worker's claim, the injured worker will invariably succeed at trial. Employers now realise they are paying for this "ambush" through their own pocket and the premiums paid by some employers, rather than falling, are rising sharply.

The simple fact is that from now on, if you are well prepared to defend an action, that should translate to a lower damages award and a lower WorkCover premium.

Set out below are the three "Rs" which you should use to minimise your exposure in common law actions.

Risk management

If you apply a proactive risk management strategy, workplace injury should be reduced. This extends to where your employees conduct their business (eg company cars). While it



Many of these errors or mistakes are more typical of smaller businesses where resources and capital are restricted. Surprisingly these mistakes are evident in a large number of the high profile corporate collapses in history.

A recent and topical failure is the lipstick empire of Poppy King where poor management and under-capitalisation gave rise to the majority of the above listed fatal errors causing the collapse.

Warning Signs

Armed with the knowledge of the probable causes of business failure, how then should you identify the threat of potential failure so that action can be taken to address the problem and head off collapse or potential losses from dealing with such a business?

One means is to look for the early warning signs. The early warning signs include the following:

- Poor or ineffective management fraught by autocratic rule, nepotism, lack of management depth, incompetence, etc;
- Weak management reporting which is typically incomplete, unreliable and late;
- Absence of business planning;
- Continued deterioration of operating results;
- Build-up of outstanding creditors;
- Payment of rounded sums to creditors;
- Deferment of statutory payments, insurance, legal and accounting fees;
- Realisation of assets outside the ordinary course of business;
- Physical deterioration of premises;
- Loss of key personnel and declining morale;
- Failure to manage working capital properly typified by weak inventory and debtor controls, slow collections etc;
- Too many toys - extravagant corporate assets and lifestyles.

Many a time it has been noted that when a financially troubled business seeks help it is usually too late.

If you are in business and you are aware of warning signs or you notice warning signs from a customer or supplier whose failure would significantly affect your business, you should immediately seek professional help.

By getting the right legal and accounting team on the job at an early stage it may be possible to put strategies in place to put the business back on the right path and a better future.

If you consider you are in need of expert assistance please contact Paul Lutvey.

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may be impractical to undertake detailed risk assessments of non work premises, you should still appreciate the dangers that confront your employees in the course of their employment and whether or not those dangers exist in your own premises.

Records

If a work injury occurs, it is vital that sufficiently detailed records are kept containing all the relevant "who, what, when, where and how" information.

It is not uncommon for a worker to suffer injury outside work but sue the employer in respect of a trivial work related incident which the worker claims is the cause of the injury.

A detailed record of even a trivial incident may prevent an injured worker recovering damages later on down the track.

If a signed written statement can be taken from an injured worker, in appropriate circumstances, why not use a video? A video tape of a worker demonstrating what they were doing at the time they suffered the injury is an excellent resource if the worker

subsequently changes his or her version of how the accident occurred.

Rehabilitation

In all cases, genuine or otherwise, attempts should be made to rehabilitate injured workers. While smaller businesses may find it difficult to rehabilitate a worker, or offer light duties, dividends are usually paid where a worker is redeployed according to their ability.

You should bear in mind that Courts are normally sympathetic to injured workers and sometimes do not expect the injured worker to find alternative employment, but if a worker refuses to accept reasonable rehabilitation, that should reduce the amount of damages.

Conclusion

Familiarity with your business is a key factor in providing timely and effective advice. If you are unsure of what investigations to undertake in any particular matter, please telephone our Cameron Seymour or Pat Mullins. We can arrange with WorkCover Queensland to be appointed as your solicitors to defend any future claim against you. Our

Legal Practitioners Fidelity Guarantee Fund



by Patrick Mullins

The Queensland Law Society administers a fidelity fund set up under the provisions of the Queensland Law Society

Act 1952. The main source of income for the fund is the interest which is earned on monies held in solicitors' trust accounts, but there is a statutory cap on the fund of \$5 million. Once that cap is met, the rest of the interest earned on solicitors' trust accounts is paid to Legal Aid Queensland. In fact, from 1986 to 1999 Legal Aid Queensland received \$125 million from interest on funds held in solicitors' trust accounts. The fidelity fund in the same period received \$23.8 million.

In the last 12 months Legal Aid Queensland received \$9.1 million and the Fidelity Fund received \$1.5 million.



The funding of legal aid is a government responsibility. Much of legal aid funding comes from the Federal Government, but that funding is restricted to the funding of federal matters. The funding of state matters is the responsibility of the State Government, but most of the funding of state matters in fact comes from interest earned on solicitors' trust accounts.

Capping the Fidelity Fund at \$5 million constantly means that when there are a large number of claims paid out in any one year, the fund is depleted quickly.

No other profession guarantees the community against losses suffered through dishonesty of the members of the profession. That is the effect of the Fidelity Fund.

If the Government believes it is appropriate to retain the Fidelity Fund then the cap of \$5 million must be removed so that the proper reserves can be built up. Of course, if the fund is to be "funded" through interest on solicitors' trust accounts, the Government will have to find other funds to continue the operation of legal aid.

The Personal Legal Services Division of the firm looks after any legal problem an individual may have and will periodically provide articles for our Newsletter.

Let's Talk about Fees

by John Mullins

We are in the business of providing legal services, and we understand that the cost of these services are important to you. We understand that the only way that you can pay these promptly is if you have a good understanding of your likely exposure for fees.

We understand all of these things but it is still difficult to talk about money. Often it's with the best and most long standing of clients that it is most difficult to talk about fees. We recognise that this is not useful or productive for us or our valued clients. Accordingly in the next millennium, fees will be on the agenda. We want to discuss fees with you from the outset so that you understand the cost and on some occasions you can then determine by cost benefit analysis whether or not you in fact want these services.



In some instances we can quote fixed fees, in some instances we can give you estimates with upper and lower ranges, in some instances we can only give you hourly rates and in some instances we can give you rates dependant upon outcomes. Our commitment to you is to talk about fees. If for some reason that is not happening there is an open invitation to you to raise the topic.

Our stated goal in our strategic plan for the next three years is to provide outstanding service to our clients. Part of providing that outstanding service is to avoid misunderstandings with our clients in relation to accounts. These occur rarely but do not contribute positively to the relationship which we are seeking to create and the services we are seeking to deliver.

So henceforth in any initial discussions we need to say "let's talk about fees". We believe that frank discussions about fee issues will enhance the relationship with our clients and not in any way diminish them.

Provisional Work Licences

by Annie White

Especially during the festive season, people should be aware that they must not drive while under the influence of alcohol. Aside of the fact it endangers lives, a person disqualified from driving can have their ability to earn their livelihood compromised.

There is a common perception that a provisional work or day licence (as it is commonly known) is par for the course. There are, however, important steps that must be taken and onerous criteria to be met before the court will grant a work licence.

First, a person applying for the work licence should be aware that if the work licence is granted, the disqualification period will be twice that which would normally apply.

The person charged is required to appear before a Magistrate on a specified date at which the matter is "mentioned". At this time an indication must be given to the court that the application is to be made and a hearing date is set at which time the plea of guilty is entered. It is not possible once the conviction occurs to, at a later date, make the application.

To be granted the provisional licence, the person needs to show:

- they have no conviction for drink or dangerous driving in the last five years;
- at the time of the offence they held a current Queensland licence;
- they were not a disqualified driver or holder of a provisional licence at the time of the offence;
- they were not engaged in a work related activity at the time of the offence;
- that they are a fit and proper person to hold such licence having regard to the safety of the public having regard to the person's driving history; and
- refusal to grant the licence would cause extreme hardship to the person by depriving him or her of the means of earning their livelihood often requiring evidence from the employer that the job is dependant on the person holding a licence.

If granted, the work licence is subject to restrictions in relation to specified hours in which the licence is effective and then only in circumstances directly connected with the person's means of earning their livelihood.

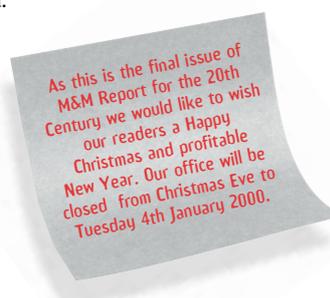
Property Notices & Council Requisitions

by Michael Klatt

The standard terms of a REIO Residential Contract provide the buyer with a right to terminate the Contract if there are outstanding show cause or enforcement Notices pursuant to Sections 21 or 22 of the Building Act (1975). Such Notices, however, are fairly rare and are of a serious nature, issued only in circumstances such as when a structure is unfit for occupation. The standard conditions, however, also provide that if there is a valid Notice or Order by any competent authority or Court (generally the Local Council) requiring work to be done or money spent in relation to the property and that Notice was issued before the Contract date, the seller is required to comply with that Notice before the settlement date.

There is no right, however, to terminate in the event the seller does not carry out those works by the settlement date nor a right to deduct the cost of such works from the purchase price. The buyer is, however, left with a right to commence proceedings against the seller to enforce the Contract terms which is often costly. Special conditions can be drawn which give the buyer a right to terminate the Contract or direct that part of the purchase price be held in a trust account pending the completion of the works by the seller.

A further problem frequently encountered is that Councils may not issue a Notice requiring works to be done and simply note a requisition on their files in relation to the property which are revealed once searches are obtained. Generally the existence of requisitions which may reveal that there is no final building approvals on the dwelling or structures do not give a buyer a right to terminate the Contract nor can the buyer force the seller to undertake works to remedy the requisition. Special conditions can be drawn which require the seller to remedy the requisition and provide the buyer with other rights in the event the seller fails to do so.



Mullins & Mullins
LAWYERS AND NOTARY

Level 22 Central Plaza One
GPO Box 2026, Brisbane Q 4001
345 Queen Street, Brisbane Q 4000
Phone: (07) 3229 2955
Fax: (07) 3229 8075
Email: ltaylor@mullins-mullins.com.au



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Postscript: The information contained herein whilst accurate is of a general nature. If you have any queries in relation to the information contained herein we ask that you consult the partners or solicitors of Mullins & Mullins with whom you usually deal. If you have any comments regarding our newsletter we would like to hear from you.