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A TAXING TIME FOR SOUTHS

JONATHAN BROUGHTON

The recent decision of the Administrative Appeals Tribunal in *South Sydney Junior Rugby League Club Limited v Commissioner of Taxation* has affirmed the decision to remove the tax-free status of Souths.

Section 50-1 of the Income Tax Assessment Act 1997 (the Act) provides an exemption for certain entities from paying income tax. According to *section 50-45* of the Act this exemption applies to a society, association or club established for the encouragement of a game or sport.

In deciding whether Souths were entitled to retain their tax-free status the Tribunal examined the Club's main purpose. The difficulty in this instance was that Souths conducted extensive commercial activities in addition to the encouragement of rugby league.

Souths is the owner and manager of a licensed club in South Sydney. The Club has extensive facilities including gymnasium, swimming pool, squash courts, function rooms, restaurants, bars, TAB and Keno facilities, poker machines, hotels and a catamaran.

During the years in question the Club generated substantial revenue from gambling, entertainment and shows, hotel accommodation and the sale of land. Although Souths also provided sizable donations to the South Sydney Rugby League Club (the Rabbitohs), the commitment to the Rabbitohs was described as an "in principle commitment" only.

Although there was a great deal of interest and involvement in rugby league at the level of the board of directors, the Tribunal found that there was no evidence as to the level of involvement of the members. The Tribunal held that rugby league was only a peripheral interest and that the members of the Club were solely interested in the numerous benefits obtained from their membership.

The Tribunal stated that:

"…if the main purpose of the entity is or becomes the carrying out of those other (commercial) activities (as ends in themselves), the entity will not be exempt."

The tribunal held that Souths' main purpose was the carrying on of a social club for the benefit of its members, or the provision of the facilities of a licensed club for its members or visitors and was not for the encouragement or promotion of rugby league. The decision to remove Souths' tax-free status was, therefore, affirmed.

According to this decision, a club that seeks to maximise its surplus to support a sporting club, by making donations, will not be regarded as established primarily for the encouragement or promotion of that sport and will not be entitled to hold a tax free status.

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It wasn't me Sir!

Crowd Control Measures

JAMES WOODGATE

Put 20,000 people who are high on emotion in a confined space and chances are they will create problems. Last year the Canterbury Bulldogs rugby league side came under pressure when a small number of their fans were involved in violent incidents at the club's matches. Also last year, fans from two rival Sydney soccer clubs clashed and rioted at a match.

More recently the international one-day cricket season attracted its fair share of unruly behaviour. Spectators were ejected from the stadiums and police called for the Mexican wave, beach balls and even the sale of alcohol to be banned in an attempt to curb poor spectator behaviour.

So what measures can stadium managers and police take to control badly behaving crowds. Is banning the Mexican wave or the sale of alcohol going too far? There is no doubt that both stadium mangers and sporting clubs would have seen the Bulldogs and Sydney soccer incidents last year and thought, we don't want this happening to us.

One of the main mechanisms used by stadium managers to control crowds is to eject spectators for poor behaviour. The terms of entry to many stadiums often contain provisions which give the stadium management the right to eject spectators who are drunk and disorderly, acting illegally, offensively and or inappropriately.

These terms are fairly general so what do they mean in practical terms?

Does this include throwing beach balls and participating in Mexican waves or should a spectator's behaviour be more serious than this before they are ejected?

On the face of it, conduct such as participating in a Mexican wave or hitting a beach ball around, would be unlikely to breach the terms of entry - such as behaving offensively or inappropriately. However, given the grounds upon which stadium managers often have to eject spectators it will ultimately come down to the facts of the particular case.

For example, if in the process of participating in these activities a spectator throws a projectile or object or otherwise acts in a manner that could harm other spectators or players then this could give the stadium manager clear grounds to eject the spectator.

While it is possible for us to consider whether these acts constitute a breach of the terms of entry the reality is that a stadium manager has this right and is therefore in a position of control to be able to determine whether a spectator has breached the terms of entry and whether they are entitled to eject them. The spectator may argue until they are blue in the face that they have not done anything which deserves ejection, but in the face of forcible removal there is little that a spectator can do whether they have breached the terms of entry or not.

Also, of importance in crowd situations is that stadium managers owe a duty of care to spectators and players at the stadium under both the implied terms of their contract with spectators and in tort. Stadium managers have an obligation to ensure the safety of spectators and players. Therefore, while stadium managers may be seen as heavily regulating crowd behaviour at events, it is likely that they are considering the possibility they could end up liable for the actions of an unruly spectator if they fail to take proper action.

New Sports Doping Agency ASADA

MATT BRADFORD

The Federal Government is in the process of establishing a new independent body to fight against drugs in sport. The Australian Sports Anti-Doping Authority (ASADA) will take over the existing drug testing, education and advocacy functions of the current Australian Sports Drug Agency (ASDA). I t will also incorporate the Australian Sports Drug Medical Advisory Committee. Additionally, ASADA will be responsible for the Australian Sports Commission's policy development and will deal with all anti-doping rule violations as outlined in the World Anti-Doping Code.

ALL SPORTS WILL BE REQUIRED TO SUBMIT TO THE POWERS OF ASADA....

ASADA will also have the power to appear before the Court of Arbitration for Sport or other sporting tribunals to present cases against alleged doping offenders.

All sports will be required to submit to the powers of ASADA as a condition of funding and other support provided by the Federal Government. Sports must refer all instances of doping violations to ASADA, accept any adverse findings made by ASADA and ensure compliance with their anti-doping code when imposing penalties.

The benefit of the creation of ASADA will be that it removes the responsibility for investigating doping allegations from each sporting body. This will be appreciated. Most sports would not have the resources or expertise to ensure that the allegations are fully investigated. This mechanism should also ensure that all doping violations are investigated consistently and independently.

Athletes and sporting organisations will continue to have access to the already established external review mechanisms if they are concerned with ASADA's testing or investigations, which include the Administrative Appeals Tribunal and the Federal Court.

The $67,000 Question

JODIE WARREN

The former Manager and Agent of Australian soccer player, Scott Chipperfield, has been ordered to pay $67,000.00 under the New South Wales Industrial Relation Commission's unfair contract provisions.

Chipperfield, who will represent Australia at this year's World Cup, entered into a verbal players agency agreement with Alain Barataud in May 2001. In June 2001 Chipperfield transferred from the Wollongong Wolves to Swiss Club Basel SC. As part of the agreement between Chipperfield's former club and Basel SC, the Wolves were paid a transfer fee of $100,000.00, of which Chipperfield was entitled to 10%. He authorised Barataud to collect the 10% on his behalf, but the cheque Barataud subsequently wrote to Chipperfield for $10,000.00 bounced.

In June 2002 Chipperfield signed an agreement with Barataud, giving Barataud exclusive rights to negotiate playing contracts. Chipperfield was also informed by Barataud that if he paid the sum of $35,000.00 he could have a 20% shareholding in the company, Australian Beach Soccer Management Pty Ltd, which Barataud had established in an attempt to start up an Australian Professional Beach Soccer League. Chipperfield paid the amount of $35,000.00 but never received any shareholding in the company.

The Judge held that the evidence in this case amounted to "oppressive exploitation" and that the oral and written player's contract contained terms that permitted the agent to obtain and claim payments of money from Chipperfield in circumstances where the agent performed no work and provided no service. It was further held that the exclusivity clause, which deprived Chipperfield from negotiating employment contracts on his own behalf, was clearly harsh and unfair.

Arguably there is a need for closer scrutiny of player agents and managers. A recent initiative of the Australian Taxation Office could considerably curtail the questionable practices of agents and managers in sport. In a move that has the potential to uncover any player payment rorts and have severe implications for rugby league players the ATO has recently announced a probe into player managers that will focus on undisclosed income managers have received. The NRL has been asked to hand over all details on every player manager's dealings during the past five years. Although confined to Rugby League at this stage, the tax investigation could extend to agents in other codes such as rugby union, soccer and possibly AFL.

Managers Under the Microscope

WorkChoices
will they affect you?

ANDREW PERRY

As all of you would be aware by now, the Australian Federal Government is in the process of implementing significant industrial relations reforms that will significantly alter the industrial landscape as we know it today. The reforms will also have an impact on many sporting organisations.

One of the principal justifications for the reforms was the benefit to be obtained by both employers and employees if industrial relations in Australia could be managed under the one central system. Unfortunately, the only vehicle available to the Federal Government to impose the reform, in contrast to the wishes of the various state governments, was the corporation's power under the Constitution. The effect of which is that that the Federal Government is only able to legislate on matters relating to *"trading or financial corporations formed within the limit of the Commonwealth"*.

The logical question that follows is, *will the reforms apply to sporting organisations?* The answer will depend on the originating structure of the sporting organisation concerned and their current activities.

Many sporting organisations in Queensland are Incorporated Associations under the *Association Incorporations Act* 1981 (Queensland). These Incorporated Associations will be a corporation for the purpose of the new legislation but they will still need to meet the definition of a "trading corporation" before the new reforms will apply. Trading can generally be defined as the act of buying and selling of goods or services.

The courts have interpreted the meaning of "trading corporations" under the Constitution broadly and when considering the issue have focused on the following factors:

- The current activities of the organisation; and
- Whether the "trading" activities form a substantial and not trivial part of the operations of the organisation.

In the past Courts have held that organisations can be trading corporations, even where trading was not the primary or predominant activity.

Similarly, the matter is not conclusively determined by the issue of whether or not a profit is made by the organisation, the source of funding for the organisations or by the stated objects of the organisation in its constitution or governing rules. What is clear is that the characterisation of a corporation outside the business sector is a difficult task.

It has been held in the past that sporting organisations in particular can be a trading corporation (as was held in the *Western Australian Cricket Association (Inc)* 1986 decision), but they may not always be. It will be a question of fact in every case in determining whether your organisation will or will not be subject to the new reforms and there is no template to produce a simple answer to this question.

If your organisation is subject to the reforms some of the key changes will include:

- New minimum conditions of employment under a Fair Pay and Conditions Standard;
- The establishment of a new body for setting and adjusting minimum wages;
- A reduction in the complexity currently involved in making agreements with employees;
- The rationalisation and simplification of current industrial awards; and
- The limitation of employer's exposure to unfair dismissal claims and other industrial action.

POSITIVE DISCRIMINATION 6 HIT FOR

JONATHAN BROUGHTON

The Victorian Civil and Administrative Tribunal has found that the Melbourne Cricket Club's (MCC) member rules discriminated against men by allowing some women on membership waiting lists to jump the queue.

The MCC, which was established in 1838, first allowed women to become members in 1983. In 1986 the MCC amended their rules to enable existing members to nominate a woman for full membership providing they relinquished their own lady's or guest card. The rule was introduced to increase female membership in a traditionally male dominated club.

Mr Matthew Mangan challenged this rule after the MCC refused to grant him membership through his brother forfeiting his guest card because Mangan was male.

Under section 59(b) of the Equal Opportunity Act 1995 (the Act) a club must not discriminate against a person who applies for membership of a club, for example, by giving preference to men over women, or women over men. However, section 82 of the Act, which overrides this provision, allows positive discrimination to occur to meet special needs where appropriate.

The Tribunal found that the rule *"allowing a male member to nominate a woman for membership in lieu of taking up a lady's card, was a sound and lawful rule designed to redress historic circumstances. However, the rule has now served its purpose…and the discriminatory practice is no longer justified nor lawful."*

Accordingly, the MCC was ordered to either amend the rule so as to permit any person (male or female) to be nominated for membership in lieu of an entitlement to a lady's or guest card, or to simply repeal the rule.

The Tribunal also awarded Mangan $50,000 in legal costs because he had performed a positive role in publicly raising the current legitimacy of a discriminatory rule.

Audit your Auditors

CHRIS HARGREAVES

The cleverly titled *Audit Legislation Amendment Act 2006* received Royal assent on 15 March 2006 and came into force on that date. The legislation amends a raft of Queensland Acts, including amendments of the formal qualification requirements of auditors of entities requiring annual compulsory audits, for example incorporated associations. Auditors of incorporated associations (similar changes have also been made relating to auditors of charities and charitable funds) are now required to be:

- registered as an auditor under the *Corporations Act*; or
- a member of CPA Australia who is entitled to use the letters "CPA" or "FCPA"; or
- a member of the Institute of Chartered Accountants in Australia who is entitled to use the letters "CA" or "FCA"; or
- a member of the National Institute of Accountants who is entitled to use the letters "MNIA", "FNIA", "PNA" or "FPNA"; or
- a person who the Chief Executive considers has appropriate qualifications.

Transitional arrangements allow auditors that have already been appointed to complete the audit if they were eligible before the amendment. The chances are high that your current auditor will meet these new standards, however you should check with them if you are unsure.

JOHN MULLINS
EDITORIAL

Our lead article on South Sydney Juniors has major ramifications for all member based associations. Regardless of the mode of incorporation, whether under the *Associations Incorporations Act* or the *Corporations Act*, the tax-free status of clubs is because they fit within the definition in the *Income Tax Assessment Act* as a not-for-profit organisation. For a sporting club to lose its tax free status would have a major impact on any association.

Last year BRW magazine ran a feature on the size of Australia's not-for-profit industries including the charities, the churches and the sports. It has been mooted for sometime whether the Government would seek to increase its tax revenue from this sector.

Significantly, this ruling is not a result of any change in the law but an examination of the practices of the club and the determination that this does not fit within the exemption. No doubt South Sydney will appeal this decision one would think all the way to the High Court if necessary. We will need to follow closely the appeals to see the final position.

It is an increasing concern to me the way sporting association's deal with disciplinary matters. Typically, the football codes are reasonably well organised to deal with on field misbehaviour. For sports where on field misbehaviour is not a problem they are often extremely ill equipped to deal with disciplinary matters when they arise. It seems that most sports are not well equipped to deal with off field disciplinary matters.

All sports are different but there are some basic principles that need to be applied. The first one is independence of the judicial tribunal. Often in dealing with off field matters the committee of the club "brings the charges" and then acts as judge and jury. This is a deprival of natural justice.

What is needed is for a judicial body to be set up. Hopefully it may never need to meet. But when you need one it is too late to start trying to organise one then. You need to have appropriate by-laws and more often than not you need assistance from a lawyer to ensure that you meet all of your obligations.

Very often this legal advice can be obtained on an honorary basis and there are many members of the legal profession who are willing and able to donate their time to assist sporting organisations. You have a responsibility to your sport and to your members to see that you deal with these matters properly. If in doubt, ask.

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