



The GST & Sport

by Matthew Stapleton.

The GST will impact on all sectors of the Australian economy. The sporting industry is no exception. The introduction of the GST from 1 July 2000 will effect every aspect of sport from a sports club's canteen to a professional sports star's endorsement contract.

What effect will it have on Sport ?

To understand the effect the GST will have on the sporting industry, it is necessary to consider the circumstances in which GST is applicable and the types of goods and services that are subject to GST.

Simply put, GST is payable on all taxable supplies. A taxable supply has four elements:

1. A supply is made for consideration
2. In the course of enterprise
3. Is connected with Australia
4. The supplier is registered or required to be registered

Supply - The definition of a supply is broad and expressly includes the supply of goods and services.

Consideration - Consideration includes any payment in connection with a supply of anything. This includes non-monetary payments in certain circumstances.

Enterprise - Enterprise includes an activity or a series of activities done in the form of a business. It expressly excludes activities done as an employee.

Registration - Registration is required if your turnover will be greater than \$50,000.00 per annum.

Who pays the GST ?

It is important to remember that whilst usually the cost of the GST will be passed on to the consumer, it is the supplier who is



liable for the GST and responsible for collecting it.

Effect on Existing Contracts

The transitional provisions set out the effect on existing contracts. They provide that a supply is GST free to the extent that it is made before the earlier of 1 July 2005 or any review date after 8 July 1999. A review date is defined as an opportunity for the supplier (either alone or with the other parties):

- (a) to change the consideration because of the GST
- (b) to conduct a general review, renegotiation or alteration of the consideration

A contract that was in place prior to 8 July 1999 and does not contain review clauses, will be GST free until 1 July 2005. Otherwise, GST will be applicable from the next review date.

Some Specific Sporting Examples

The Individual

Sporting Goods - The definition of goods and services is wide. In a sporting context it will include items such as match fees, ground hire, membership/club subscriptions, sporting equipment, protective gear and clothing, gate receipts and gym membership.

Endorsement Contracts - The GST does not apply to employment contracts. However, often an arrangement between a sporting personality and a sponsor may be structured such that the sporting personality is not an employee of the sponsor, but rather provides certain promotional services, often through some form of trust or company structure. This may have other taxation benefits, however the impact of the GST must be considered. Depending on all the circumstances, it is possible that the sporting personality will have to pay the GST on the services they provide.

Coaching - The same principle that applies to endorsement contracts may apply to coaching where it is provided on a service basis. Coaches who are employed by organisations (e.g tennis clubs) to provide coaching to members would not have to pay GST in respect of the services they are providing, however, the club will have to pay GST when those services are provided to its members.

Sporting Organisations

Compliance - All sporting organisations should ensure that they are prepared to meet the obligations imposed upon them in regard to collecting and remitting GST. This involves the use of the correct invoices and accurate record keeping.

Ground Leases - Payments made under a lease will be subject to GST. In the case of a long term lease, the payments will be GST free until such time as there is a review opportunity or 1 July 2005, whichever occurs first.

All sporting organisations should immediately begin reviewing their procedures and arrangements to ensure they are prepared for the impact of the GST. This article provides a brief outline of the GST and how it works, however all organisations should seek the necessary further advice to ensure they will manage the introduction of the GST.

Who should play?

By Simon Hayes

Recently in *Hall -v- The Victoria Amateur Football Association* (VAFA), it was stated that a person who was HIV Positive was discriminated against for not being allowed to play for an amateur club in an Australian Rules football competition.

FACTS: Hall registered with his club at the commencement of the 1998 season to enable him to play in the competition organised by the VAFA. On his application form were written the words "Please note that this player is HIV Positive". In July 1998 the VAFA refused Hall's application on the basis that it was reasonably necessary in order to protect the health and safety of other registered players.

Hall made a complaint to the Equal Opportunity Commission which was subsequently referred to the Victorian Civil and Administration Tribunal in August 1998. Hall alleged that the VAFA discriminated against him pursuant to the Equal Opportunity Act 1995 which states that a person "must not discriminate against another by excluding them from participating in a sporting activity". The VAFA conceded that their decision was discriminatory but justifiable pursuant another section of the Act that allows discrimination if it is reasonably necessary to protect the health and safety of any person, namely other players and officials.

DECISION: The Tribunal decided that the VAFA had discriminated against Hall.

REASONS: The reason for the decision was that medical evidence was produced which concluded the risk of transmission of HIV to the other players or officials was so low that it was not reasonably necessary to discriminate against him. Further, the health and safety of the class in question (ie players and officials) is better protected by an understanding of the implementation of procedures to reduce the risks of transmission of HIV. The rationale behind the decision was that an individual's interest should not be discriminated against where the chance of risk of injury to others, is unclear and unquantifiable. The decision implies that for discrimination to be justifiable the following conditions must be satisfied:

1. The class of persons at risk must be clearly identifiable rather than a general class, ie "other players".
2. The risk of the injury occurring on that class of person must be clearly foreseeable rather than a mere chance.
3. The risk must be quantifiable to a degree that can be objectively considered dangerous.

Making It Official

The **official** Wallaby pencil case. The **official** Grant Hackett

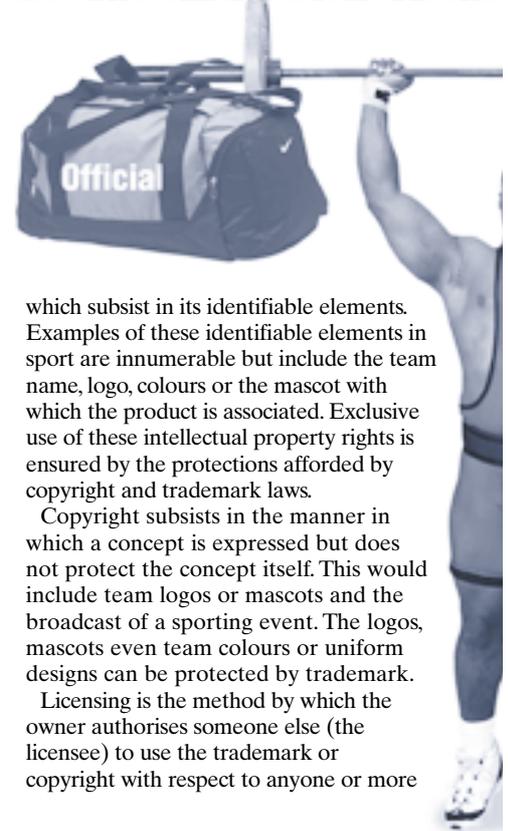
by Annie White

We have all seen "official" merchandise and with the Olympics drawing nigh, it seems the rings are everywhere. Given the highly recognised image and prestige that association with the Olympics provides commercially, it is critical for the Olympic brand to ensure its use is profitable, consistent and in no way tarnished. The revenue obtained through use of the association is undertaken through a commercial process known as merchandising and licensing.

Merchandising and licensing are among the most lucrative aspects in the commercialisation and marketing of sport. With carefully tailored and well managed programs, merchandising and licensing are some of the most important ways for sporting identities, teams and events to generate income.

Merchandising is the marketing of a product (an identity, team or event) by selling other goods bearing its "official" identifiable element thereby promoting the visibility of the product itself.

Sporting identities, teams and events control the merchandising of associated product by ownership of the intellectual property rights,



which subsist in its identifiable elements. Examples of these identifiable elements in sport are innumerable but include the team name, logo, colours or the mascot with which the product is associated. Exclusive use of these intellectual property rights is ensured by the protections afforded by copyright and trademark laws.

Copyright subsists in the manner in which a concept is expressed but does not protect the concept itself. This would include team logos or mascots and the broadcast of a sporting event. The logos, mascots even team colours or uniform designs can be protected by trademark.

Licensing is the method by which the owner authorises someone else (the licensee) to use the trademark or copyright with respect to anyone or more

SHORTS

BY SAM MCNEICE AND ELIZABETH SHEEHAN

■ Voluntary Administration

Recently there have been reports that North Sydney Rugby League Club is in voluntary administration. The Club has been presenting a brave face suggesting that this is a stage it is going through to get back on track. Unfortunately, the reality is that only a very small percentage of companies who enter into this process recover.

The object of voluntary administration is to administer a struggling company in a way that maximises the chances of the company continuing in existence, or, if this is not possible, to ensure a better run for the company's creditors and members than would result from an immediate winding up of the company.

It begins with the appointment of an administrator for 28 days. The administrator takes control of the affairs and business of the company and investigates the financial situation and affairs of the company

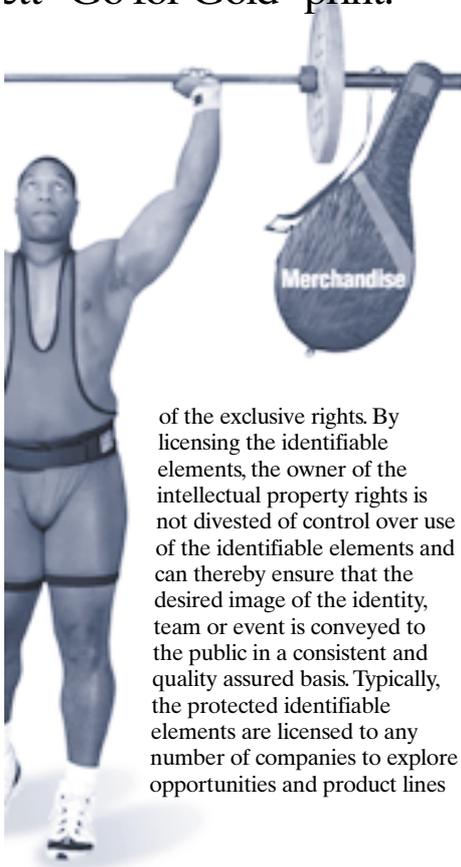
with a view to recommending to the company's creditors at the end of that period whether it is in the interests of the creditors for the company to execute a deed of company arrangement under which it is expected the difficulties of the company can be overcome. The deed of company arrangement governs relations between the company and its creditors including the scheduling of payments. If it is determined that it is not in the interest of creditors to enter into a deed, the creditors may resolve that the company be wound up. For most companies, voluntary administration is the beginning of the end.

■ Discrimination in Ticketing

To add to SOCOG's ticketing woes, Mr Bruce Maguire was recently successful in bringing a complaint against SOCOG under the *Disability Discrimination Act* (1992) Cth. Mr Maguire claimed that the Games organisers has discriminated against

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att "Go for Gold" print.



of the exclusive rights. By licensing the identifiable elements, the owner of the intellectual property rights is not divested of control over use of the identifiable elements and can thereby ensure that the desired image of the identity, team or event is conveyed to the public in a consistent and quality assured basis. Typically, the protected identifiable elements are licensed to any number of companies to explore opportunities and product lines

that have an application and practical link to the sport or its athletes.

The licence itself involves reciprocal benefits to the licensor and licensees. The licensor benefits from the fees and royalties payable under the licence agreement and the licensee enjoys financial benefits and credibility gained from association with the identity or event.

Greg McLure's company Heritage Sporting Products are licensed to use the Wallaby logo on their Summit footballs. McLure considers that for his Brisbane based company the association with the Wallabies has been critical. "Our brand has come from relative obscurity and it is important for our marketing strategy that the Wallaby logo can stand alongside our brand" he says. "It has given the brand credibility and opened doors both domestically and internationally."

The license is typically granted on a contractual basis and it is important that both parties have regard to their respective objectives in drafting the contract. Issues such as the inclusion of performance criteria (eg a target level of sales) that must be met by the licensee during the term of the arrangement are embodied in the agreement. In this way, the owner ensures that use of the logo or colours develops the particular brand in the desired respect.

The licensing and merchandising programs employed by major events and large sporting organisations are highly sophisticated. Given the speciality of the area and the income potentially derived for the stakeholders, sporting agencies and marketing bodies are largely responsible for the commercial coordination of sophisticated licensing programs.

Elite Sports Properties (ESP), who manage some of Australia's leading sporting talent, coordinate several licensing properties. Significantly, ESP is the licensee for AFL memorabilia. AFL clubs retain the general merchandise licenses and ESP coordinate the production, marketing and distribution at the retail level of all official AFL memorabilia. With a strong personality based focus in their core business, ESP also manage group licensing programs for Olympic clients. After the close of the Sydney Games, the magic Olympic moments of ESP clients will be merchandised with commemorative photos and other goods.

The World Cup Cricket took the cricket loving world by storm earlier this year. Behind the event was the application of sophisticated merchandising and licensing programs ensuring its commercial success for the ECB. With about 30 to 40 licensees in five key areas, the management company, Copyright Promotions Group (CPG) raised revenue at a retail level of £45 million. The greatest revenue raiser was the coloured clothing agreement with ASICS who supplied the uniforms to all competing teams. To overcome the wealth disparity of competing teams and to convey a carnival atmosphere, the control of player apparel was centralised by the grant of the license to ASICS.

All important in a successful merchandising and licensing program is the governing contract. Official merchandise promotes the product and is often central to the individual, team or event's marketing strategy. Adequate controls must be implemented in the agreement so that any association with the product itself is both positive and profitable.

the blind by not producing a ticket order booklet in braille.

The Act seeks to eliminate discrimination against persons on the ground of disability in the areas of, amongst others, sport and the provision of goods, facilities and services. In relation to goods, services and facilities, it is unlawful for a person who, whether for payment or not, provides goods and services, or makes facilities available, to discriminate against another on the ground of the other person's disability by refusing to provide the other person with those goods and services or to make those facilities available to the other person.

It is not unlawful to discriminate against a person on the ground of the person's disability if the provision of the goods or services would impose unjustifiable hardship on the person who provides the goods or services or makes the facilities available.

SOCOG claimed that it would cost around \$17,000.00 to print 200

copies of the book in braille, placing an unjustifiable hardship on SOCOG. Human Rights Commissioner Bill Carter found that Mr Maguire was the victim of direct discrimination by SOCOG and has been ordered to provide a braille version of the third-round ticket order book. Discrimination issues should not be overlooked by the organisers of public sporting events.

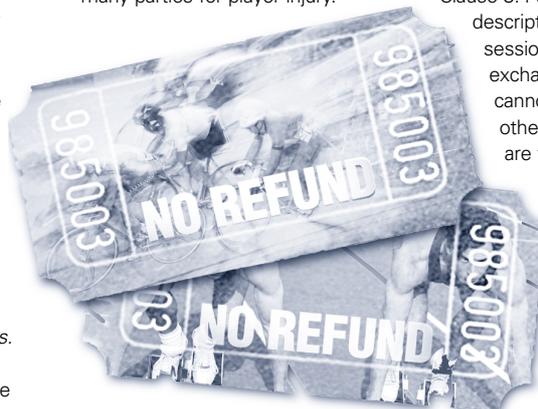
■ How many defendants?

In previous editions we have touched on legal liability in the sporting arena. According to the Uniform Civil Procedure Rules, two or more persons may be Defendants to an action if all rights to relief arise out of the same transaction or series of transactions. A recent interesting example is the case of *Perry Cross -v- International Rugby Football Union and others*. Cross sustained serious spinal injuries during a rugby match. He

was able to join 22 defendants in the action. Some of the bodies to which the defendants belong include IRB, ARU, QRU, Administrators, Facility Owners and Managers, Coaches, Referees, Team Managers, Insurance Companies, Fitness Trainers, Doctors, Physiotherapists, and other Players. This is an example of a situation where potential liability can be extended to many parties for player injury.

■ Olympic Ticket Conditions

The possible changes to the Sydney 2000 session times, in particular the Womens 400m final hopefully featuring Cathy Freeman, has brought the issue of the versatility of Olympic tickets to the forefront in recent weeks. Those of us who purchased tickets agreed to be bound by the "Condition of Ticket Sales" in the Olympic Ticket Book. Clause 3.4 states that "if the description of or participants in a session change, you cannot exchange your ticket and you cannot get a refund." Some other interesting exclusions are that spectators are not allowed to bring any of the following items into any of the Olympic venues: strollers, food & drink, horns, banners, poles, signs or flags of non-participating countries but to name a few.



Editorial

by John Mullins



At the time of writing this editorial there is a lot happening on the sports law horizon. The mighty South Sydney Rabbitohs have been excluded from the NRL competition, sporting clubs are regularly going into voluntary administration, SOCOG continue to have difficulty in disclosure in relation to their ticketing and the Judiciary system at the Rugby World Cup, particularly the action of the citing officers is under great scrutiny.

In this edition we look at a range of topical legal issues including the application of GST to sport, something which is going to have a massive effect on the administration of most sporting organisations.

We profile our client, Queensland Events Corporation, who played an integral part in bringing the Goodwill Games to Queensland. The Goodwill Games were recently launched with a gala lunch at the convention centre in the presence of the Goodwill Games founder Ted Turner and his celebrity wife Jane Fonda.

We also look into the very lucrative area of merchandising and licensing. This is arguably the most public face of the commercialisation of sport. You only have to look at your Banana's in Pyjamas milk, Grant Hackett pencil cases or Wallaby footballs. (Are Banana's in Pyjamas really sportsmen?).

Sports Law is so varied, to illustrate this here are some of the sports law matters we have been attending to over the last month: we have been advising footballers and referees on their contracts; appearing for in court for a high profile sportsman; redrawing a number of sporting clubs' rules and constitutions; advising on sporting event agreements; advising on solvency issues of sporting organisations; acting in personal injuries actions for young sports persons and advising various organisations in relation to risk management policies.

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Who can help host a National or International Event?

Profile of the Queensland Events Corporation

By Alicia Hill

It is only recently that the significant benefits of attracting major national and international events have been so clearly highlighted. The advantages, which are inter-related, include: -

- (a) Economic development
- (b) Increased Tourism, and
- (c) Media Promotion / Increased Area Profile

As a result there has been increased competition amongst the States to host national and international events. Several examples include, New South Wales hosting the Olympics and the Sydney-to-Hobart Yacht Race, Queensland hosting the Goodwill Games, the Asia Pacific Masters Games and the Gold Coast Honda Indy 300 and Victoria hosting the Grand Prix, which they snatched from South Australia.

The Queensland Government recognized the importance of events for State economic development after the success of the 1982 Commonwealth Games and World Expo '88. Due to these benefits the Government established the Queensland Events Corporation in 1989.

Who is the Queensland Events Corporation?

Queensland Events was established as a proprietary listed company and forms part of the portfolio of the Queensland Minister for Tourism, Sport and Racing. Queensland Events has a charter that requires it to "identify, secure and support major international events within Queensland".

To perform the objects of its charter it provides support to events in any of the following ways: -

- (a) In conjunction with other relevant stakeholders provide finances to develop the event's capacity to attract national and international visitors or raise the profile of the State,
- (b) Support investigations into the feasibility of events
- (c) Assist with bids to attract major national and international events
- (d) Advise on marketing and promotions strategies
- (e) Undertake economic impact studies as part of a review of supported events.

For an organisation considering hosting an international or national event, Queensland Events is a potential source of financial assistance. To be able to access Queensland Events' support a detailed proposal must be submitted to Queensland Events for consideration and early planning and budgeting is essential.

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.

To Obtain Queensland Events' Support - Proposal Essentials

All decisions to support an event are made by the Board of Queensland Events, which meets monthly.

Any proposal submitted to Queensland Events for consideration must include specific minimum criteria. The proposals submitted must provide detailed information that indicates careful planning and project management issues have been considered by the proposed organisers of the event.

This includes providing a profile of the event concept, including a program, formats, proposed dates, venues and target audiences. Previous management experience of the organising entity or individuals must be outlined and Queensland Events require the organiser to be a legally constituted body.

The objectives of the hosting organisation must be outlined and an explanation of how staging the event will meet these objectives is required.

Other items required to be outlined relate to proposed budgeting, who are likely to be the event participants, likely spectator numbers, and their likely origin, specific marketing and public relations strategies, details of the proposed television coverage sought and if any formal sanctioning is required by world governing bodies.

Most importantly the full extent of support being requested and the activities for which the support is sought must be stated clearly.

The organising body will not succeed in obtaining support if it does not address all of the criteria required by Queensland Events. The body should nominate purposes for any financial support given by Queensland Events. Should the body fail to apply it as stated, the organising entity will potentially render itself liable to legal action for an account of the financial assistance provided.

Seeking Support Generally

In submitting proposals and requests for financial support or sponsorship, groups should be aware of the potential liability for providing false or misleading information, making agreements which will not be able to be kept, and not addressing issues of insurance and liability for participants of events. With some forward planning, realistic budgeting, hard work and good advisors the chances of the Event being a success are greatly increased. The detailed proposal requirements of bodies such as Queensland Events assist in clarifying the approach to the organisation of large events and help clarify early the financial viability of the event.