

SPORTING MATTERS

Newsletter

October 2013



The Sporting Club as a Property Developer

Key Issues to Take Away

Thank you to all those who attended our recent breakfast seminar on the processes and considerations that sporting clubs must undertake when pursuing development opportunities. Our expert panel consisted of:

Brad Paastch, General Manager of Strategic Projects - Fremantle Dockers;

Luke Parsons, Partner (Corporate Finance) Deloitte, specialist in PPP infrastructure development;

David Hatt, Author of the Hatt Report into WA Football and Board Member of Hockey WA; and

Michael Ferguson, Senior Partner in Litigation, Competition and Regulatory team, Squire Sanders (AU).

The key points that came out of the panel discussion were:

- Embarking on redevelopment can be an exceptionally drawn out process. A strong and clear strategy is vital to ensure the viability and success of a project.

- Sporting clubs are often restricted by funding and land tenure – consulting with local government and developers is a necessity.
- Many sporting clubs do not have the corporate structure in place to appropriately manage the additional funds and demands associated with redevelopment, particularly recipients of large State government funding. Governance structures should be reviewed and amended where necessary.
- If a club lacks the expertise to play an active role in development, consider appointing a consultant.
- Ultimately, sporting club membership is the most important factor – ensure there is a balance between future development of the club and the needs and wishes of its members.

Margie Tannock, Partner in Project Development, chaired the event. Her recent interview with The West Australian can be [viewed here](#).

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Save The Date

Strategic Developments & Sporting Facilities Breakfast Seminar

Following on from the success of the breakfast seminar held on 13 August 2013, we will host a follow up event to discuss opportunities and new developments with this aspect of property and project development.

Please save the date in your diary and further details regarding the expanded topic and presenters will follow.

When: Tuesday 19 November 2013
7.00am for a 7.30am start

Please contact [Isla Rollason](#) for further information.

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[Click here for our sports team contact card](#)

Employment Angles



Adverse Action vs. Unfair dismissal

When Cricket Australia dismissed the Australian coach Mickey Arthur two weeks ahead of the recent Ashes tour of England, a media storm was a given. What Cricket Australia arguably did not envisage, was an adverse action claim brought by Arthur in the Fair Work Commission.

Adverse action is the lesser known statutory claim that sits alongside the more well-known unfair dismissal claim in the *Fair Work Act 2009 (Cth)* (FW Act). 'Adverse action' is the collective term used to describe a range of claims that can be brought under the general protections provisions of the FW Act. In a nutshell a person is 'protected' from being treated 'adversely' because of a prohibited reason. Unlike the claim of unfair dismissal which caps financial compensation at 26 weeks' pay or half the high income threshold (whichever is the lesser), adverse action claims have no financial cap. Also, high income earners, who can be excluded from unfair dismissal protection, are not excluded from making adverse action claims.

Employees who earn over the high income threshold (\$129,300 per annum as of 1 July 2013) will not have unfair dismissal protection unless they are covered by a modern award or an enterprise agreement applies to their employment.

Arthur was reportedly on an annual salary of \$400,000 (with potential for bonuses). While he may have been covered by the modern award known as the Sporting Organisations Award 2010, and therefore eligible to claim unfair dismissal despite his high salary, an adverse action claim would allow him to make the alleged claim of up to \$4 million in compensation for his dismissal.

Arthur's claim proceeded to conciliation between Cricket Australia and Arthur at the Fair Work Commission – which is the first step to settling a matter privately before the applicant proceeds to court and a hearing (usually public). The claim was settled privately between the parties at conciliation, with the settlement figure rumoured to be around \$400,000.

Corporate Corner

Is your sporting club a company limited by guarantee?

The Sports Governance Principles released by the Australian Sports Commission (ASC) in March 2012 and reiterated in the ASC's High Performance Strategy, Australia's Winning Edge, released in November 2012, outlined the ASC's best practice for the corporate governance of sports in Australia. Principle 1.2 states that a national sporting organisation (NSO) should be incorporated as a company limited by guarantee under the *Corporations Act 2001 (Cth)* (Corporations Act). Additionally, for ASC large partner NSOs, it is a mandatory requirement of the ASC that the NSO is established as a company limited by guarantee.

Why should your sporting club be a company limited by guarantee?

Sporting clubs may be incorporated as associations under the applicable legislation in the relevant State. Whilst this State based legislation contains corporate governance requirements, they are not as comprehensive as those set out in the Corporations Act.

Being registered as a company limited by guarantee also allows the organisation to carry on a business in another State or Territory.

How does a sporting club become a company limited by guarantee?

If a sporting club is an incorporated association in Western Australia under the *Associations Incorporation Act 1987 (WA)* (Associations Act), it can apply for registration as a company under the Corporations Act pursuant to amendments made to the Associations Act in 2010.

There are a number of key steps to be taken and approvals to be obtained to enable transfer of an incorporated association to a company.

For further information please contact the Squire Sanders sports team.

Squire Sanders Sporting Practice

To review our Sports Law Brochure, please [click here](#)