HIGH COURT JUDGMENTS

ANDREW YUILE

Gaming regulation

Construction of statutes and agreements with government

In *Tabcorp Holdings Limited v Victoria* [2016] HCA 4 (2 March 2016) the High Court held that Tabcorp was not entitled to a terminal payment under the *Gambling Regulation Act 2003* (Vic) (*GR Act*) following the non-renewal of their wagering and gaming licences. Since 1991, Tabcorp and Tatts Group had enjoyed a duopoly over gaming licences. Section 4.3.23(1) of the *GR Act*, which applied specifically to Tabcorp, provided for a terminal payment – if new licences were issued, the holder of former licences would be entitled to a payout equal to the value of the former licences or the premium paid for the new licences. In 2008 and 2009, the government substantially restructured the regulation of the gaming industry, replacing the existing gaming licences with new gaming machine entitlements (GMEs). One result of this was that neither Tatts nor Tabcorp were to have their licences reissued. Tabcorp claimed entitlement to the terminal payment, arguing that the substantive operation of the GMEs was to authorise substantially the same activities as its licence. The Court held that, properly construed, s4.3.23 applied only in relation to new licences issued under the former structure of the *GR Act*. New licences did not include the grant of other entitlements (such as the GMEs under the new structure). Accordingly, Tabcorp was not entitled to a terminal payment. French CJ, Kiefel, Bell, Keane and Gordon JJ jointly. Appeal from the Court of Appeal (Vic) dismissed.

Gaming regulation

Construction of statutes and agreements with government

The High Court dealt with a related appeal involving Tatts in *Victoria v Tatts Group Limited* [2016] HCA 5 (2 March 2016). That decision concerned a different part of the *GR Act* which dealt specifically with Tatts. However, the question was essentially the same: was Tatts entitled to a terminal payment when its licence was not renewed as a part of the gambling regulation restructure? The wording of s3.4.33, which conferred on Tatts an entitlement to a terminal payment in certain circumstances, was slightly different – a terminal payment would be payable if Tatts' gaming operator's licence expired without a new licence having been issued to Tatts (or a member of the Tatts group), unless a gaming operator's licence was not issued to any person. Similar to the *Tabcorp* decision, the Court held that gaming operator's licence meant a licence issued under the former structure of the *GR Act* and did not include the entitlements under the new GME regime. Accordingly, Tatts was not entitled to a terminal payment. French CJ, Kiefel, Bell, Keane and Gordon JJ jointly. Appeal from the Court of Appeal (Vic) upheld.

Criminal law

Evidence – unsworn evidence – jury directions

In *The Queen v GW* [2016] HCA 6 (2 March 2016) the High Court held that there was no requirement under the *Evidence Act 2011* (ACT) (*Evidence Act*) for a trial court to give a direction to the jury about the general unreliability of unsworn evidence, and that the trial judge had properly approached the question of whether unsworn evidence should be given. The trial judge had directed that evidence from the six and a half year old complainant should be taken unsworn, under s13(5) of the *Evidence Act*, as he was not satisfied that the child understood the obligation to give truthful evidence. The defence later argued that the judge wrongly approached the test under s13(5) and had erred in receiving the evidence unsworn. In addition, defence argued that the trial judge erred in refusing an application to give directions to the jury that the evidence was given unsworn and might be unreliable. The High Court held that the trial judge's approach to the test was satisfactory, taking into account that the ruling was given ex tempore and no party objected to the judge's proposal to proceed under s13(5). The Court also held that the *Evidence Act* did not treat unsworn evidence inherently as a kind of evidence that may be unreliable and there was no requirement to warn a jury to that effect. Nor did the common law require a warning to the jury to exercise caution in accepting the evidence. French CJ, Bell, Gageler, Keane and Nettle JJ jointly. Appeal from the Court of Appeal (ACT) allowed.

Property law

Real property – construction of leases – amalgamation of lots

In *Moreton Bay Regional Council v Mekpine Pty Ltd* [2016] HCA 7 (10 March 2016) the High Court held that Mekpine did not have a leasehold interest in an expanded area of land following the amalgamation of lots. Mekpine held a lease over premises on land described as former lot 6. The lessor amalgamated former lot 6 with an adjacent lot, former lot 1, to create one larger lot: new lot 1. Prior to the amalgamation, Mekpine held no interest in former lot 1 and the terms of the lease did not change with the amalgamation. The Council subsequently sought to resume a part of new lot 1 that had been part of former lot 1. Mekpine claimed compensation for the resumption under the *Acquisition of Land Act 1967* (Qld) (*ALA*). It argued that, after the amalgamation, its rights under the lease over the land extended to the whole of the area comprising new lot 1. Alternatively, Mekpine argued that the definition of common areas in the *Retail Shop Leases Act 1994* (Qld) (*RSLA*) had to be substituted for the definition of common areas in the lease, and the *RSLA* definition was broad enough to include areas in the resumed land in new lot 1. The Court held that, on the proper construction of the lease

and the *ALA*, Mekpine's interest was limited to that part of new lot 1 that corresponded with former lot 6. Further, the definition of common areas in the *RSLA* was to be read as confined to the *RSLA*, there was no relevant inconsistency with the lease, and therefore Mekpine had no interest in the common area part of the resumed land. French CJ, Kiefel, Bell and Nettle JJ jointly; Gageler J concurring. Appeal from the Court of Appeal (Qld) allowed.

Power to conduct examinations

Statutory interpretation – investigation powers – examinations where possible future criminal charges

In *R v Independent Broad-based Anti-corruption Commissioner* [2016] HCA 8 (10 March 2016) the High Court held that it was open to the Commission to compulsorily examine persons who might be, but had not yet been, charged with criminal offences. The Commission had begun investigating members of Victoria Police in relation to assaults and human rights based complaints. The appellants were issued witness summonses under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) (*IBAC Act*). The *IBAC Act* allowed the Commission to begin or continue an investigation despite civil or criminal proceedings being on foot, though the Commission was required to take all reasonable steps to ensure the investigation did not prejudice such proceedings. Officers could be directed to give information or documents, or to answer questions. The privilege against self-incrimination was abrogated for such examinations but answers were subject to a "use immunity". Non-publication orders were also to be made in some circumstances. The appellant had not been charged with any offence but argued that the *IBAC Act* could not authorise compulsory examination of a person reasonably suspected of a crime. The Court held that the companion principle (that an accused person cannot be required to testify or assist the prosecution) was not engaged, as the appellants had not been charged and there was no basis for extending the principle to cover situations of reasonable suspicion of crimes, or similar. Further, to so limit the *IBAC Act* would be to fetter the pursuit of the objects of the Act. The *IBAC Act* had also clearly adverted to the possibility of curtailing the privilege against self-incrimination and of examining persons whose actions might be the subject of the investigation. French CJ, Kiefel, Bell, Keane, Nettle and Gordon JJ jointly; Gageler J concurring. Appeal from the Court of Appeal (Vic) dismissed. ■

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