

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M52 OF 2019

ON APPEAL FROM THE FULL COURT OF THE FEDERAL
COURT OF AUSTRALIA

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BETWEEN:

COMMISSIONER OF TAXATION OF THE
COMMONWEALTH OF AUSTRALIA

Appellant

and

SHARPCAN PTY LTD

Respondent



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APPELLANT'S CHRONOLOGY

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Part I: CERTIFICATION

I certify that this chronology is in a form suitable for publication on the internet.

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Part II: CHRONOLOGY OF PRINCIPAL EVENTS

Date	Description	Reference
2 Aug 2005	Spazor Venue Operators Licence approved. Approved venue of Royal Hotel (Daylesford).	FCAB72 ¹

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¹ "FCAB72" indicates the Full Federal Court (**Full Court**) Appeal Book Part B Index (contained in the Core Appeal Book pages 136 to 143), Tab 72

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8 Aug 2005	Spazor Pty Ltd as trustee for the Daylesford Royal Hotel Trust acquired the business of the Royal Hotel, Daylesford for \$1,025,000.	Tribunal Reasons, ² [6]; Full Court Reasons, ³ [1], [4]; FCAB78
Undated	Venue Operators' Agreement between Spazor and Tattersalls, commencement date 8 August 2005.	Full Court Reasons, [4]; FCAB69
10 Apr 2008	Victorian government announced a new regime to apply from 2012 for gaming in Victoria.	Tribunal Reasons, [8]; Full Court Reasons, [56]
2009	<i>Gambling Regulation Amendment (Licensing) Act 2009</i> introduced new Part 4A into the Gaming Act which provided for GMEs.	Full Court Reasons, [18]
Sept 2009	Victorian government issues information pack entitled "Gaming Machine Arrangements 2012".	Full Court Reasons, [56]; FCAB90
16 Feb 2010	Notice of Approved Venue for approval of premises of Royal Hotel (Daylesford) to have 18 gaming machines.	FCAB70
April 2010	Victorian government issues "Gaming Auction Event Booklet".	Full Court Reasons, [58]; FCAB91

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² Reasons of the Administrative Appeals Tribunal (**Tribunal**), *Sharpcan Pty Ltd and Commissioner of Taxation (Taxation)* [2017] AATA 2948 (Core Appeal Book pages 4 to 25)

³ Full Court, *Commissioner of Taxation v Sharpcan Pty Ltd* [2018] FCAFC 163 (Core Appeal Book pages 38 to 130)

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Undated	Richard Whitehouse, analyst at Tatts and PVS, provides report to David Canny for the Red Lion Hotel setting out the maximum price that a rational person would bid up to, to acquire GMEs for the Red Lion Hotel (being \$81,515).	Full Court Reasons, [59]; Canny (1) ⁴ , [77]-[78]; Canny (2) ⁵ , [4]; FCAB92
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Undated	David Canny prepares bidding guide for his wife for the Royal Hotel showing maximum bid for 18 GMEs of \$81,515 per GME, which was based on the Whitehouse report for the Red Lion Hotel.	Full Court Reasons, [328]; Canny(1), [79]-[80]; Canny(2), [5]; FCAB93
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10 May 2010	Public auction at which the Trustee acquired 18 GMEs for \$33,350 each.	Full Court Reasons, [30]; FCAB94, Canny(1), [81]
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By 7 Jun 2010	Spazor elected to pay the GME Expenditure using deferred payment terms, and to apply the \$10,000 bond against the first instalment of \$60,030 due by 7 June 2010.	Full Court Reasons, [30]; FCAB95, FCAB96-1718
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⁴ Witness Statement of D J Canny dated 28 April 2017 at FCAB60

⁵ Witness Statement of D J Canny dated 28 April 2017 at FCAB105

7 Jun 2010	Ministerial Determination published in the Victorian Government Gazette whereby the Minister for Gaming determined under ss 3.4A.5(1)(a) and 3.4A.5(9)(e) of the Act to create 17,500 gaming machine entitlements for the State of Victoria and declared under s 3.4A.1(2) of the Gaming Act that the day on and after which a venue operator must hold a gaming machine entitlement to conduct gaming in an approved venue is 16 August 2012.	Provided to the Tribunal by solicitors to Sharpcan on 15 November 2017; Full Court Reasons, [79]
25 Jun 2010	The Minister for Gaming allocated 18 GMEs to Spazor with effective date 16 August 2012 permitting gaming in a hotel venue in the Geographic Area of Hepburn.	FCAB10-231
29 July 2010	The Minister for Gaming wrote to David John Canny of Spazor confirming that he had allocated the 18 GMEs and enclosing a copy of the allocation instrument of 25 June 2010 which set out an allocation amount of \$33,350 for each GME.	FCAB97
Undated	The Minister and Spazor entered into an “Entitlement Related Agreement for Payment (Hotel Entitlements)”.	FCAB10-293
12 Jan 2011	Victorian Commission of Gambling Regulation provided Spazor with a payment schedule for GMEs showing first instalment of \$60,030 paid with balance due of \$600,300 to be paid in quarterly instalments between 16 August 2012 and 31 August 2016.	FCAB98

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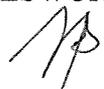
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By March 2012	Spazor agreement with PVS for the installation and maintenance of 18 gaming machines at the Royal Hotel for a fee of \$26.25 per gaming machine per day plus GST. PVS's services also included undertaking audits and other compliance activities previously undertaken by Tattersalls.	Full Court Reasons, [20]; Canny(1), [97]; FCAB100
15 Aug 2012	Tattersalls gaming operator's licence expired.	Canny(1), [72]
16 Aug 2012	Effective date for 18 GMEs issued to Spazor.	FCAB10-231
6 Dec 2012	The Trustee filed its income tax return for the 2012 income year, returning net income of \$139,901.	FCAB9-161
6 Dec 2012	Sharpcan filed its income tax return for the 2012 income year, returning in its assessable income "gross distribution from trusts" in the amount of \$139,901.	FCAB8-147
9 Nov 2015	Spazor sold the Royal Hotel to Jamco Pty Ltd for \$2,453,000 plus \$40,000 for stock. Jamco assumed liability for the remaining quarterly payments (totaling \$90,045) to be paid for the GMEs.	Full Court Reasons, [249], [301]; Canny(1), [104]; FCAB103; clause 4.5 at FCAB103-1813 to 1814; FCAB23; FCAB24-706

10 Jun 2016	Sharpcan objected against its income tax assessment for the 2012 income year, claiming that the amount of net income of the Trust should have been nil on the basis that the Trust was entitled to a deduction under either s 8-1 or s 40-880 for GME Expenditure, but had not claimed a deduction.	FCAB10
31 Aug 2016	Final instalment for GME Expenditure due. Purchaser of Royal Hotel, Jamco, had assumed liability for the remaining quarterly payments after 9 Nov 2015.	FCAB103
1 Sep 2016	The Commissioner disallowed Sharpcan's objection.	FCAB11
14 Dec 2017	Tribunal decision to allow the objection of Sharpcan on the ground the GME Expenditure was allowable as a deduction in the 2010 income year under s 8-1.	[2017] AATA 2948 ⁶
27 Sep 2018	Full Court decision to disallow the appeal from the decision of the Tribunal.	[2018] FCAFC 163 ⁷

Dated: 8 May 2019


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⁶ Core Appeal Book pages 4 to 25

⁷ Core Appeal Book pages 38 to 130