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## Smoking Bans in Licensed Premises – Update – Blacktown Workers Club Court of Appeal Success

### Background

In our August Licensing Law Update we gave a summary of the position of smoking bans in licensed premises and referred to a case which had been determined in the Supreme Court of NSW involving the Blacktown Workers Club. The outcome of that case was a determination that the smoking terrace provided by the Club was an enclosed place for the purposes of the legislation because mesh screens which had been relied upon by the Club as not being included in the total actual enclosed area, were in fact walls, and any gaps within such walls did not open directly to the outside.

### Court of Appeal

The Club appealed the decision of the Supreme Court to the Court of Appeal, which upheld the Club's appeal. The Court of Appeal found the in determining the question of what constituted a wall for the purposes of the legislation, the language of the legislation itself needed to be considered, rather than broader meanings which were applied by the Supreme Court.

### Wall or Not a Wall?

Submissions advanced by the Club to the effect that the mesh screens were not a wall for the purposes of the legislation because they did not operate to impede or prevent lateral airflow in any discernable way were accepted.

The Court took the view that the mesh screens were not walls for the purposes of the legislation and should therefore not be included in the total actual enclosed area. Further the Court said that the absence of a wall or ceiling did not give rise to a conclusion that this could be treated as a gap in the wall or ceiling.

The prosecutor raised the question as to whether or not columns or architraves intruding into areas lacking walls would give rise to a question as to whether or not the area was in fact a wall with a large gap, however the Court did not address this

issue as it was not directly relevant for the purposes of that case.

### Open Directly to the Outside

Given that the Court had determined that the mesh screens were not walls for the purposes of the legislation, there

was no need for it to determine the question of whether or not the mesh screens opened directly to the outside. The Court however did consider the issues, as it was a matter determined by the original Local Court Magistrate.

The Court determined that it was open to take a purposive approach to construction of the words "open directly to the outside" and that the intentions of the legislation needed to be considered, that is access to the open air.

### Points to Note

The overall purpose of the legislation is a relevant factor in determining whether or not a structure is a wall for the purpose of the legislation.

If a structure does not prevent or impede lateral airflow it generally will not be considered as a wall.