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Amendments to World Anti-Doping Code

MATTHEW BRADFORD

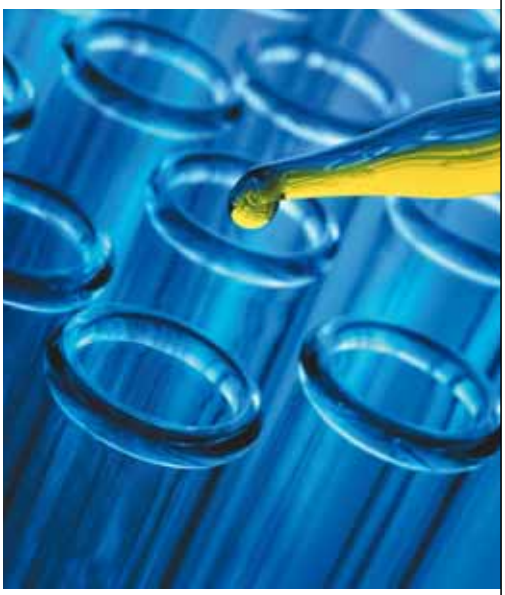
At its meeting in November, the World Anti-Doping Agency ("WADA") adopted a number of amendments to the World Anti-Doping Code ("the Code").

Some of the key changes are:

- Athletes may now be provisionally suspended after the result of their A sample and before their B sample is tested. This will prevent athletes from competing in events where it is likely that they will be suspended.
- Where an athlete breaches a sanction (e.g. playing in a match during a suspension) the sanction shall start over again.
- Penalties can be imposed on teams where 2 or more members of a team commit an anti-doping violation (e.g. loss of points or disqualification of team). Individual penalties would still apply to those team members who committed the violation.
- There is an increased obligation on athletes to keep WADA and other agencies informed of their whereabouts at all times and on a periodical basis.
- Whilst maintaining the principle of strict liability for doping offences, the Code now recognises that penalties should be more flexible in cases where athlete can show that they did not intend to enhance their performance or use the substance as a masking agent as the mandatory minimum 2-year suspension no longer applies.
- In certain limited circumstances, admissions of guilt may result in a reduction in penalty of up to 50%.
- On the other hand, an increased penalty may be given where there are aggravating circumstances.
- There is a new right for WADA to appeal against a decision of a sporting body to not proceed with an alleged anti-doping violation.
- WADA has acknowledged that some atypical findings (such as high levels of naturally produced substances such as testosterone) may need to undergo further investigation before WADA gives notice of an adverse sample result.

Some of these amendments are quite onerous, particularly the requirement for athletes to provide details of their whereabouts at all times. Additionally, giving WADA a right to appeal against a decision by a sporting body to not proceed with prosecuting a suspected anti-doping violation (e.g. because there is not enough evidence) is quite powerful and potentially burdensome for sporting bodies. However, there is now more flexibility in circumstances where it would not be appropriate to impose a mandatory penalty.

It is clear that WADA's power will increase as more national and international sporting organisations become signatories to the Code. As such, it will be important to ensure that a fair and balanced approach to anti-doping violations is maintained and that decisions remain consistent, whilst recognising the individual circumstances of each case.



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ASF GRANTS

CHRIS HARGREAVES

Generally, many sports related activities conducted by schools and organisations are not eligible for direct tax-deductible donations from members, parents and friends or participants.

The Australian Sports Foundation ("ASF") offers grants for particular projects to non-profit, incorporated organisations (e.g. schools or sporting clubs). In turn, the community is able to make tax-deductible donations to the ASF that will ultimately end up in the hands of their chosen sporting organisation, provided it meets the eligibility criteria that the ASF determines for its grant process.

How does this work? Your non-profit organisation needs to register a project with the ASF that meets the requirements. This might be, for example, developing a sporting facility (or conducting a feasibility study to see if such a facility is possible), purchasing new equipment, necessary travel for a sporting team, or hosting a major sporting event.

Once registered, a person may make a donation to the ASF and nominate a registered project as the preferred beneficiary. The ASF will issue a receipt to the donor for tax purposes, and then pay a grant to the organisation that has registered the project.

As you would expect, there are more criteria and details to the ASF grant scheme than can be outlined in this short article. If you are involved with a non-profit registered organisation which is not otherwise eligible for tax-deductible donations, the ASF could be a viable and useful fundraising tool for your next project. Further information about registering an ASF project and the grant system can be obtained at www.asf.org.au.

The ASF is a very helpful organisation and a phone call might be the best start.

ASC's Active After School Communities Program

SARAH LUDWIG

Young Australians are being encouraged to become involved in sport through innovative national and state programs offered in schools.

In its 2004 policy *Backing Australian communities through sport* (BACTS), the Howard Government re-affirmed its support for sport at all levels with one priority being 'encouraging a greater number of Australians, particularly young people, to participate in community sport'.

In 2005 the Australian Sport Commission (ASC), which plays a central role in the delivery of key elements of Federal Government sport policy, developed the *Active After-School Communities* (AASC) program. This program was designed to respond to increases in the rates of childhood obesity and sedentary behaviour, changes within society that have decreased the ability of families to support extracurricular activities and the decline in daily physical education in Australian schools.

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AASC is a national program that provides free, structured activity programs to primary school-aged children in the after-school timeslot. It aims to engage traditionally non-active children in structured physical activities and to build pathways with local community organisations, including sporting clubs. An estimated 150,000 children in around 3200 schools and out of school hour care services will take part in the program in 2008.

Under its BACTS policy, the Howard Government made a commitment to review the *Australian Sports Commission Act 1989* (the Act). The Act established the ASC and the review was intended to assess its effectiveness in empowering the ASC to deliver outcomes that support sport policy. An Issues Paper was released with submissions closing in June 2007. Kate Ellis, the Minister for Youth and Sport under the Rudd Government has yet to decide whether a report will be released.

In Queensland, 2008 has been declared "The Year of Physical Activity" in state schools and marks the introduction of *Smart Moves.* This State Government initiative aims to increase the quantity and quality of student participation in physical activity.

The policy document *Smart Moves - Physical Activity Programs in Queensland State Schools* should be read in conjunction with *Smart Moves - Guidelines* which provides support for planning as well as specific advice on the six components that schools need to address.

To implement *Smart Moves,* all state schools will:

- Allocate time for physical activity of moderate intensity – 30 minutes minimum of daily exercise for primary schools and at least two hours a week for secondary schools
- Improve community access to school sport and recreational facilities
- Increase teachers' capacity to deliver physical activity
- Deliver staff professional development in physical activity
- Build community partnerships by working with local councils, sports groups, Queensland Health and the Local Government, Sport and Recreation Department
- Account for students' physical activity by keeping timetables and auditing progress.

Smart Moves requires all state schools to plan for implementation to commence in July 2008 with programs to be fully implemented by December 2008.

Getting young people up and running whether through curriculum based or after-school activities is an important step in improving their health and well being and combating problems such as obesity.

Green v Country Rugby Football League of NSW

INES EDWARDS

Shane Green ("Green") sued the Country Rugby Football League of New South Wales ("CRL") for damages as a result of fracturing his cervical spine resulting in tetraplegia. Green's injury occurred when a scrum collapsed while he was playing in a rugby league game when he was 16 years old.

If Green was successful in his claim, the parties agreed the damages would be $6.5million.

Green's allegations

Green alleged CRL should not have allowed him to play in a position in the front row (hooker) in an open age competition with his long thin neck, youth and small frame. Green was 175cms and 55 kilograms at the time.

Green alleged CRL should have warned players with his characteristics and/or their parents about the risk of playing in the hooker role. Green submitted CRL should have advised him to have neck strengthening exercises which would have made him less vulnerable to injury or reduce the severity of any injury. Green submitted CRL should have ensured players underwent medical examinations to establish each player's physique.

CRL's defence

CRL denied it owed Green a duty of care. CRL submitted it did not know of Green's existence or his physical characteristics to enable them to prevent him from playing in that position and/or warn him about any risks. CRL was responsible for organising and controlling rugby league in New South Wales and possessed powers to regulate the game.

Decision

Justice Walmsley held CRL owed Green a duty to take reasonable care, however, Green did not succeed in establishing any of the allegations of negligence against CRL.

Justice Walmsley stated that:

- There was no breach by CRL in relation to the allegation CRL should have used its rule making power to change the way scrums were undertaken. He stated he was not persuaded the rules needed to be changed, the witnesses were not asked to comment on whether the suggested changes to the rules were appropriate and CRL would have had difficulties in its relationship with NSWRL if CRL introduced this rule unilaterally. He also commented on the High Court decision of Agar v Hyde (2000) 201 CLR 552 and the difficulties raised in that case about formulating rules in relation to a potentially dangerous activity;
- CRL was not in breach of its duty to Green for not arranging a medical examination. Justice Walmsley stated this would have required someone to assess which players were at risk and there was an expense to arrange the examinations. He stated this may have been a matter for the club but not for CRL;
- As to the allegation CRL should have published information informing players of the risks to players with Green's characteristics, Justice Walmsley stated CRL's response was reasonable considering the coaching system in 1994 and CRL's financial limitations.
- CRL's failure to warn players of the danger and acknowledge the danger would have been practicable and relatively inexpensive but CRL's failure to do this was not a breach of duty;
- It would have been wise for CRL to give a direction that physical mismatching of players did not occur when players were underage, of certain physical attributes and/or playing in a certain position, however, CRL was not in breach by not giving the direction and it acted reasonably by leaving this to the clubs and coaches;
- There was no obligation upon CRL to warn of the associated risks. Justice Walmsley stated he was not persuaded Green would have played in a different position had he been warned of the risks;
- CRL was not unreasonable in leaving decisions to the coach about Green's position. Justice Walmsley said this was especially so because CRL arranged for coaches to be accredited;
- Justice Wlamsley was not persuaded CRL was in breach for not ensuring players undertook neck exercises. CRL acted reasonably in leaving matters like this to the clubs and coaches.

Green's claims against his coach and the referee of the game in which he was injured, had settled.

Latrobe Council v Williams

ANDREA TOWSON

Recently, the Full Court of the Tasmanian Supreme Court heard the matter of *Latrobe Council v Williams*, which considered the scope of the duty of care owed by a local council and two football clubs to an AFL player.

Facts

In summary, the relevant facts considered by the Full Court on appeal in determining whether the Council and clubs were negligent included:

- The fact that a representative from each football club was required to complete a "facility inspection sheet", which listed 76 matters to be checked off, including 8 questions about the field of play, 24 hours prior to the game;
- Evidence which indicated that the irrigation cover had not been lifted for approximately 6 weeks (since the end of the previous cricket season) and, as a result of this, did not sit flush with the playing surface; and
- Evidence about how similar playing fields were maintained to ensure that the covers of the irrigation outlets remained flush with the playing surface.

Council's Appeal

The Full Court unanimously dismissed the appeal by the Council and found that the Council had breached its duty of care and had been negligent through its failure to take reasonable care to maintain the pit and irrigation cover to ensure that it sat flush with the playing surface. It was therefore liable for the player's injuries.

The Full Court held that the difference in height between the irrigation cover and the playing surface created a real risk of injury, which could have been avoided if the Council had replaced the irrigation cover at the start of the football season and appropriately covered it with Astroturf to avoid a hard edge, or replaced the cover completely with compacted soil and grass.

Football Clubs' Appeals

In contrast, the Full Court upheld the appeals of the two football clubs and held that neither club had breached its duty of care to the player by failing to identify the height difference between the playing surface and irrigation cover during the pre-match inspection.

Notably, the Full Court found that the trial judge had imposed too onerous a standard of care on the football clubs as to what constituted a "reasonable inspection" of the grounds. The Full Court was of the view that it was unreasonable to except a club member (probably an unpaid volunteer) to be out on the ground *"on their hands and knees and lifting the grass at the edge of the irrigation pits to ensure that there was no significant hard edge height difference"*.

Closing Comments

This case reinforces the need for sporting clubs (and their insurers) to properly action agreements for the inspection and maintenance of sporting grounds in accordance with industry standards and to pay particular attention to the risks posed by foreign objects, which may affect the condition of the ground.

JOHN MULLINS
EDITORIAL

Member Protection By-laws cause a lot of grief for most sporting organisations. A Member Protection By-law is a creation of the Australian Sports Commission, which mandated a few years ago that if sports wished to continue to receive Government funding, they were required to adopt a Member Protection By-law.

The Australian Sport Commission has a sample document on its website which is open to sports to adopt as their Member Protection By-law. This would all appear to be a fairly simple exercise, so why is there a problem?

A Member Protection By-law seeks to address matters of child and sexual abuse, assault, harassment in sport and even transgender issues. The goal of addressing and eradicating these negative elements from sport is both admirable and desirable. The difficulty is not in the goal, but in how the policy delivers on this aspiration.

Member Protection By-laws create a protocol for dealing with complaints. The problem is a lack of understanding by sports bodies as to the application of this protocol, as well as a lack of the necessary skill and ability to be able to action this. This problem further compounds itself with the confusion between disciplinary and mediation processes contained elsewhere in the policies and procedures of a sport.

If you add to that confusion the application of grievance policies, there is major confusion as to whether a matter is to be dealt with under the Judiciary Policy, Member Protection By-law or Grievance Policies.

You end up with bizarre situations of employees wanting to deal with employment related issues under the Member Protection Policy and sports bodies dealing with misbehaviour by mediation, when clearly, this should be dealt with under the sports disciplinary processes.

All of this leads to confusion, bad outcomes, the incurring of legal fees and potential breaches of child protection legislation as well as other legislation involving investigations of crime.

Critically we get unqualified people stomping around organisations investigating complaints and broadly defaming innocent people.

The eradication of undesirable elements in sport is really important. Member Protection By-laws highlight the need to do this, however, the process is proving unworkable which can only lead to greater drama and difficult outcomes.

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