

SPORT

MULLINS

Newsletter of **Mullins Lawyers**

Issue Number 27

October 2007

ANZSLA

JOHN MULLINS

Somehow or other, I was talked into being the Chairman of the Conference Organising Committee for the Australian/New Zealand Sports Law Conference, to be held at the Sofitel Hotel on the Gold Coast on the 1st and 2nd November.

The theme of this year's conference is 'Sport - Risky Business'? This year will focus on areas of significant current importance to sport and sports law. These are governance, ambush marketing, sports venue issues, and drugs in sport, taxation in sport, child protection and risk management.

We have assembled an impressive array of speakers. From the Federal and State Sports Ministers and the Deputy Commissioner of Taxation to Presidents and CEO's of sporting organisations as well as lawyers and accountants from both sides of the ditch who practice extensively in the area of sports law. In addition to this, the line up includes prominent TV personality Stuart Littlemore QC and ABC Radio's Michael O'Regan.

We are also fortunate to have CEO's and Chairmen of national and state bodies. We have encouraged our speakers to speak frankly and openly and to challenge the delegates to think differently about various issues confronting the sporting industry in Australia.

Governance of sport in Australia remains a very important issue. We have eminent speakers from both sides of the Tasman drawn from major sports such as Tennis, Cricket and Bowls. Both Bowls and Tennis have had major overhauls to their governance model in recent years. Cricket, which has what most would consider an 'old' model, appears to go from strength to strength.

The session on drugs titled "Sargent, Sailor, Cousins: three football codes and illicit drugs" has been spiced up significantly with recent revelations in the football codes.

This conference would not be possible without the generous contribution of the speakers. As

anyone who has delivered a paper at a conference knows there is an enormous amount of time, effort and sweat put into every presentation. We believe that the ANZSLA Conference is the benchmark conference of sports administration and legal matters in Australasia. A quick review of the speakers will confirm this.

When the Board of ANZSLA wished to hold the conference in Queensland, we decided that the Gold Coast with all of its obvious attractions was a perfect location. We hope that many of you will attend the conference. Unfortunately there are no major sporting events on in Queensland at this time of year but hopefully you will find the social and add on packages of interest, particularly the opportunity to get behind the scenes to look at the new Gold Coast Football Stadium, Skilled Park.

Further information is available from www.anzsla.com.au

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Focus Ambush Marketing

NZ Major Sports Event Bill and QLD Major Sports Facilities Amendment Act 2006

ANDREA TOWSON



In the December 2006 edition of the Mullins Sports Newsletter, an article on the *Major Sports Facility Bill (Qld)* was featured (*"Tables Turned on Ambush Marketers"*). The amendments proposed by this Bill in relation to ambush

marketing have since been passed by Parliament and have been incorporated into the *Major Sports Facilities Amendment Act (No. 2) 2006* (*"the QLD MSFA"*).

In the true spirit of cross Tasman rivalry, New Zealand have recently introduced a similar Bill, the *New Zealand Major Events Management Bill (1) 2007* (*"the NZ MEMB"*), which also deals with the issue of ambush marketing.

The NZ MEMB is designed to enact protections against ambush marketing for major events. It also includes provisions relating to the protection of Olympic and Commonwealth Games symbols and names. The important provisions in the NZ MEMB in relation to ambush marketing are contained in:

- Part II – Protection for Major Events; and
- Part IV- Enforcement.

The NZ MEMB is currently before the Commerce Select Committee and it is anticipated that the NZ MEMB will be passed in law by November 2007, in time for the Netball World Cup to be held in New Zealand.

The NZ MEMB proposes that the New Zealand Government should have the ability to declare individual events as "major events" on a case-by-case basis. The NZ MEMB provides greater flexibility as to what could constitute a "major event", and covers sporting events, as well as cultural events and concerts.

This ability to declare "major events" on a case-by-case basis under the NZ MEMB is considerably wider than the equivalent provision in the QLD MSFA, which limits declarations of events to "major sports facility event(s)". Interestingly, a major event does not have to be solely held in New Zealand to be covered by the NZ MEMB. If the NZ MEMB is passed in its current form, it could have impact on the activities of Australian marketers who are responsible for developing advertising campaigns for events that are jointly hosted by Australian and New Zealand venues (such as the 1987 Rugby World Cup).

The NZ MEMB attempts to control ambush marketing by declaring

"clean zones" (advertising free zones) around major events and stadiums around the time of the major event. The "clean zone" also includes areas close to the venue, clean transport and clean transport routes up to 5kms from the boundary of the clean zone.

In contrast the QLD MSFA provisions simply ban advertising in airspace, or on a building or other structure that is within "sight" of Queensland's major sports facilities, such as Suncorp Stadium and the Gabba.

Furthermore, breaching provisions of the NZ MEMB are likely to result in fines of up to \$150,000. This is substantially greater than the maximum penalty of \$52,500 imposed under the QLD MSFA.

There has been comment that the NZ MEMB has been "heavy handed" in its approach to ambush marketing. Accordingly, it will be interesting to see how the final version of the NZ MEMB applies in practice and whether its attempt to combat ambush marketing will be successful, especially as compared to the QLD MSFA.

AOC MEDAL INCENTIVE FUNDING

CHRIS HARGREAVES



A class ruling (CR2007/36) released by the Australian Tax Office recently has confirmed that athletes who are awarded

payments pursuant to the AOC Medal Incentive Funding ("MIF") program will not be taxed on those payments, provided they are not carrying on a business as a sportsperson.

The MIF is available to certain athletes in order to assist them gain selection to represent Australia at the 2008 Olympic Games in Beijing or the 2010 Olympic Winter Games in Vancouver.

The class ruling applies to the income years ending 30 June 2005, 30 June 2006, 30 June 2007, and 30 June 2008. The class ruling also continues

to apply to athletes receiving MIF payments provided the AOC does not change the scheme.

MIF payments will, however, be taxable when an athlete is carrying on a business as a sportsperson,

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as those athletes are specifically excluded from eligibility under the ruling.

Whether an athlete is carrying on business as a sportsman will depend on all of the circumstances surrounding their specific case, as each case is considered on its individual facts.

Generally, an athlete who does not have any major sponsorships, a

manager, and is not usually paid to participate in events will most likely be found not to be carrying on a business and therefore is eligible for a tax free MIF payment under the ruling.

Athletes who frequently win significant prize money for participating in events, or who hold major sponsorships for their sporting endeavours are going to be subject to more scrutiny by the ATO to determine whether they are, in fact, carrying on business as a sports person and accordingly will not be eligible to benefit from ruling should they receive an MIF payment.

CHANNEL 7 IN THE WARS

MATT BRADFORD



Channel 7 has recently been involved in two major court battles involving sport, showing the close relationship that sport and

the media have and that sport is well and truly within the realms of the courts.

The first matter related to Channel 7's failed C7 pay TV channel. In 2002, Channel 7 launched legal action in the Federal Court alleging that C7 was driven out of business by News Limited, PBL, Foxtel and Telstra. Channel 7's allegation was that the companies had colluded to ensure that C7 did not win the broadcasting rights for AFL or NRL matches, which effectively put it out of business.

After 5 years of litigation, a 12 month trial, 589,392 pages of evidence, 22 defendants and approximately \$200 million in legal costs, the Federal Court decided that Channel 7 had not established that the defendants had taken advantage of their market power or engaged in anti-competitive conduct that substantially lessened competition in the market.

In the more recent matter, Channel 7 divulged the contents of the medical records of two players, which revealed that the players were seeking help at a drug rehabilitation clinic. Apparently Channel 7 bought the records for \$3,000 from a woman after she found the records in a gutter outside the clinic.

The players' doctor obtained a Supreme Court injunction preventing Channel 7 from publishing any further details from the records. Channel 7 had sought to have the injunction overturned, but ultimately withdrew its appeal after a significant backlash from the public, members of the community and AFL players, who had boycotted Channel 7 reporters.

Whilst the first case was essentially commercial litigation, the second matter reveals the scrutiny that professional athletes face from the media. Many commentators have seen this result as a positive outcome for sportspeople, believing that at some point the media needs to respect the privacy that athletes should be entitled to, regardless of their celebrity and role model status.

Justice Allsop Rules

NO NRL

TO TELSTRA

MARISA MUCHOW



Telstra entered into a \$90 million naming rights sponsorship agreement with the National Rugby League ("NRL"). The sponsorship deal entails a grant to Telstra of an exclusive licence for specific broadcast rights of NRL game footage on the Internet and mobile phones.

As the sixteen NRL teams were battling it out on field, Telstra took game play to the courtroom starting proceedings against Premier Media Group. Premier Media Group is

the company that produces Fox Sports channels and the Publisher of the Fox Sports website.

Telstra alleged that video footage posted on the Fox Sports website and authorising communication via the Hutchinson and Vodafone mobile telephone network, infringed the copyright agreement that had been exclusively licensed to Telstra.

Premier Media Group argued that its broadcasts fell within the fair dealing exception to copyright infringement that applies to use of copyright material for the purposes of reporting news.

The video reports that were under review were branded 'Fox Sports News' and covered up to two minutes of footage from the 80-minute match of each NRL team. Telstra, believing that this was a breach of the licence agreement sought damages and an injunction.

Telstra, while waiting the final determination of the proceedings sought an interlocutory injunction against Premier Media Group to limit the broadcast of footage to 45 seconds per NRL match.

The case turned on the sole argument of whether the video reports were fair dealings for the purpose of reporting news within the meaning of section 103B of the Copyright Act 1968 (Cth).

Justice Allsop in his reasons for judgement pointed to the following when stating his decision on why Telstra's argument fell short of the line:

Clause 8.5 within Telstra's licence agreement states as follows:

Nothing in this agreement limits or affects Telstra's rights or the rights of any other person to communicate or disseminate the NRL Matches or any other NRL Content in accordance with any statutory or common law rights including, without limitation, fair dealing rights under the Copyright Act 1968 (Cth).

A further blow was dealt to Telstra when an email was produced stating the following acknowledgments by Telstra to the Australian Football League ("AFL"):

...the fair dealing - that Telstra would recognise, others would take, thereby undermining the utility of any grant, would be one minute per quarter and two minutes "at end of game."

For these reasons and others stated within the judgement Justice Allsop found that Telstra had failed to make out a prima facie case and dismissed the application for the interlocutory injunction and ordered Telstra to pay the costs of the other parties.

Following the decision, the case was settled between the parties.



SARAH LUDWIG

The Australian Institute of Health and Welfare conducted a study which shows that 36 deaths occur per day as a result of physical inactivity. John Howard stated in 2006 that Australia appears "to be struggling as a nation with the challenge of obesity". The World Health

Organisation states that increasing physical activity is the most cost effective and sustainable way for a nation to reduce its burden of lifestyle related diseases and improve its economic performance. It is clear from the above statements that Australians need to be encouraged to increase their participation in sport.

...36 deaths occur per day as a result of physical inactivity.

the concept to the Queensland Obesity Summit and was agreed to by other State/Territory Federations via the ASFA which consists of over 500 national and state sporting organisations.

The concept is to provide an incentive to parents to maintain and enhance their children's participation in organised sporting activity by recommending that up to at least \$250.00 per financial year per child be allowed as a tax deduction. ASFA approximates that the rebate would mean a saving of up to \$75 per child per financial year



JOHN MULLINS
EDITORIAL

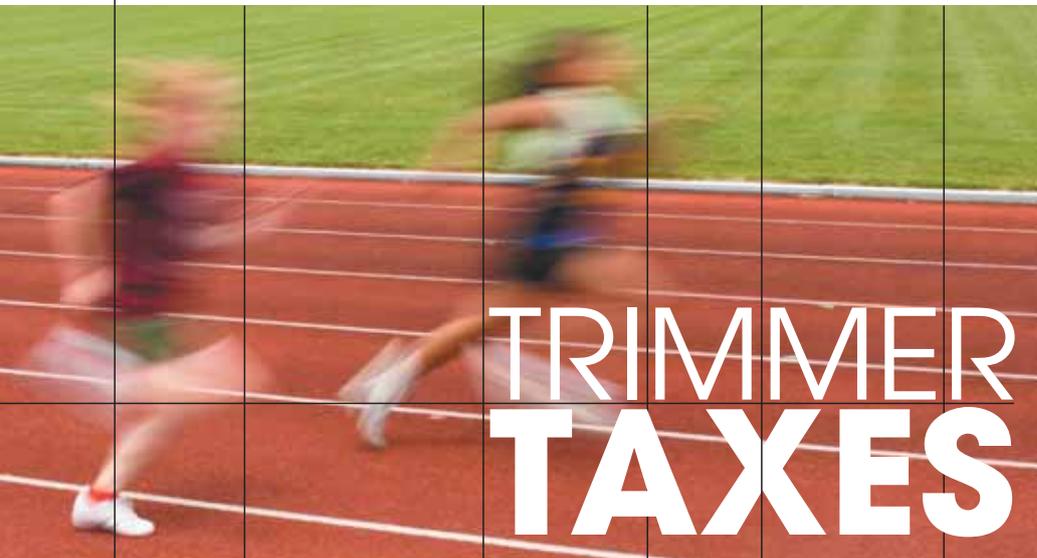
Drugs in sport is undoubtedly the hottest issue for sport in Australia. Traditionally however, the drugs in sport issue (the World Anti Doping Agency and its Code) was focused on performance enhancing drugs. Put simply, drugs taken by athletes in breach of the rules with a view to improving their performance as athletes. The Tour de France, one of the biggest global sporting events, seems inextricably linked to drug taking. Even the mere suggestion that the event could be cancelled, because of the inability of the organisers to deal adequately with drug taking, is extraordinary.

Amazingly, today's hot issue is not performance enhancing drugs, but street drugs. Call them illicit drugs, party drugs, social drugs, recreational drugs, we are talking not about steroids or blood doping, we are talking about the drugs that are widely available to teenagers and young adults (in particular), in any city of Australia today. The fact that drug taking is illegal is known to everyone. The Shapelle Corby case highlighted the consequences of being involved in the drug industry. Wendell Sailor was banned from professional sport for two years for taking illicit drugs. Andrew Johns has now famously come out and declared that he has been a drug taker for many years, he also said he has been a heavy drinker for many years. Consumption of alcohol is an acceptable social norm, and indeed the promotion of sport by beer and alcohol companies is an Australian icon.

The association between sporting success and having a few drinks to celebrate are constantly connected. The spraying of champagne to celebrate victory further enshrines this. Alcohol however is not illegal, taking illicit drugs is. There are questions which need to be asked: -

1. Is it really the responsibility of the employer, the sporting association or sporting club, to delve into the private lives of its players?
2. Do the clubs have the will, resources, and ability to deal with these highly complex issues?
3. Will the clubs be doing anything about this whatsoever, if not for the concern of the impact of the sponsors?

It would be a good thing if sport were to assist in the fight against drugs. Is it or should it be, the responsibility of sport? Is this a legal or moral question?



TRIMMER TAXES

In March this year the Australian Sports Federation Alliance ("ASFA") provided the Federal Government with its Physical Activity Tax Rebate Initiative to increase participation in sport and fight the problem of obesity in future generations.

The idea of tax deductibility for direct costs of children's participation in organised sport was first considered about a year ago when the ASFA researched potential barriers towards participation in sport. ABS statistics showed that less than 50% of the 3 million children in Australia participate in organised sport once per week or more outside school hours. The ASFA then recommended

for the majority of parents. While the tax revenue foregone by the Federal Government could range between \$112.5 million and \$225 million it is important to consider that the burden of diabetes, cardiovascular disease and obesity in Australia is estimated to cost \$3.7 billion annually.

By supporting the tax rebate initiative the Federal Government will be helping the community maintain and increase participation in sport by Australian children and as a result reduce the incidence and the cost of lifestyle diseases.