# NEW IOC POLICY

SARAH LUDWIG

On 8 February 2007 the International Olympic Committee adopted the IOC Medical Commission's Consensus Statement entitled "Sexual Harassment and Abuse in Sport". The statement acknowledges that sexual harassment and abuse occur worldwide and that a healthy sport system that empowers athletes can contribute to the prevention of sexual harassment and abuse inside and outside of sport. It provides a summary of current scientific knowledge about types of sexual harassment and abuse, risk factors for early intervention and myths surrounding the problem. It also proposes a set of recommendations for awareness, policy development and implementation, education and prevention and criteria for policies and codes of practice in a sport organisation.

The statement says that accepted prevention strategies should be adopted by all sport organisations regardless of culture. Policies that ought to be in place include those that deal with Codes of Practice, education and training, complaint and support mechanisms, and monitoring and evaluation systems. The policy should include a statement of intent that demonstrates a commitment to create a safe and mutually respectful environment and what is required in relation to the promotion of rights, well being and protection. The policy according to the IOC should allow the sporting organisation to take prompt, impartial and fair action when a complaint is generated with disciplinary, penal and other measurements where appropriate as consequences.

Recommendations about what sport organisations should be looking to achieve are also made including:-

1. Develop polices and procedures for the prevention of sexual harassment and abuse;
2. Monitor the implementation of these policies and procedures;
3. Evaluate the impact of these polices in identifying and reducing sexual harassment and abuse;
4. Develop an education and training program on sexual harassment and abuse in their sport(s);
5. Promote and exemplify equitable, respectful and ethical leadership;
6. Foster strong partnerships with parents/carers in the prevention of sexual harassment and abuse; and
7. Promote and support scientific research on these issues.

Whilst the statement provides some helpful guidelines and recommendations for prevention and resolution of sexual harassment and abuse, it does not go any further than to provide an outline about what they *should* be doing with regards to their policies. Most sport organisations in Australia already have prevention strategies in place by way of the Member Protection Policy developed by the Australian Sports Commission. The Consensus Statement does not provide a specific statement regarding the intended application of the statement or whom the statement is to bind.

The Australian Sports Commission Ethics in Sports Newsletter (Autumn 2005), the "Good Sports on and off the field" stated that even though sport organisations had codes of conduct in place "they were ineffective due to people not knowing they existed or what information they contained". Maybe the statement by the IOC will lend some grunt to the issues of harassment and abuse and people will sit up and take notice of the codes of conduct already in place. Regardless of the IOC's statement, we agree with the Australian Sports Commission that the administration of these policies needs to be improved in order to hold the perpetrators of sexual harassment and abuse accountable.


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JOHN MULLINS
EDITORIAL

This edition of Mullins Sport highlights the diversity of legal issues that apply to sport.

We have been speaking for some time about the need for sports to take seriously their obligations with respect to disciplining their members. It is pleasing that the NSW Courts have supported the rights of a member in giving the Australian Boxing Federation a firm wrap across the knuckles for failing to give the defendant Natural Justice and Due Process. Attending to these matters is relatively easy. We are constantly amazed as to failure of sports to comply with and to provide matters as simple as adequate particulars of the charge. I have previously in this editorial questioned whether this is born out of ignorance or arrogance and hopefully decisions such as this will make sports recognise that they have an obligation to do the right thing which is not particularly difficult.

There is another article about the ongoing difficulty in relation to injuries arising out of playing surfaces. This case does little to add clarity to the situation reaching a situation contrary to some other decisions. All this really points to is that these matters will be judged on the facts and that each circumstance is different.

Employment Law plays a major part in sport as most sporting contracts are in fact employment agreements. There are aspects of employment law however that don't lend themselves easily to sporting circumstances. The two articles on the Netball's Players Association and the new legislation to protect children in employment in Queensland highlight some of the difficulties and challenges that exist in employment in sport, particularly when that employment relates to children.

In the last edition I wrote a piece on the difference between the unitary and federated model. I continue the theme of governance of sport with my article which deals with the tensions between State and National associations. In the same way that we have many layers of government in Australia, we have many layers of sports administration. It is incumbent upon sport as it is upon government to ensure that we are not over governed and that resources are adequately and competently used to deliver outcomes for the stakeholders of the sport. The increasing tensions in competition between state and national governing bodies in sport do not in my opinion advance the interest of the sport and the stakeholders of the sport. I believe that there is a time for leadership and statesmanship within the sports, not to pursue individual agendas, but ensure that the limited resources are being used optimally for delivering outcomes for the sport. The irony is that single mindedness and ego is a key characteristic for all great sportspeople but in the modern world. These are arguably not characteristics for successful administrators of sport.


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MULLINS

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# WHY IS EVERYONE IN SPORTS ADMINISTRATION SO TENSE?

JOHN MULLINS

Behind the scenes of Australian sport there is a quiet war going on. This war is between national Governing Bodies and their State Bodies.

To understand this issue it is necessary to look at the background as to how sport has been organised in Australia. For most Australian sports their history goes back prior to Federation and the creation of Australia as a country. In those days sporting organisations representing representing the respective colonies (States) were created probably as unincorporated associations. With the advent of Federation the sporting bodies grouped together to form a national body.

At that time the national body probably did little more than appoint the national selectors and some how manage the national team. The state bodies have continued to run their sports in their states. Over the time both the States and national bodies became incorporated bodies and typically the States became members of the national body and typically the States directly controlled the National body. Although incorporated, the National bodies (as well as the State bodies) had all the characteristics of an association and not a company.

With modern corporate law and corporate governance notions, we have seen these associations become corporations and the notion of the national body being an association of the States is no longer applicable. For some time now, that's been the case but whilst the national boards were representative of the States, this was not an issue.

In more recent times, as a National corporate entity is now being run by elected directors who are not representative directors, we have a situation where the national body of the sport exists and operates independently of the State bodies. It is easy to see that, as a governance exercise, that is desirable for the corporate entity. But is it desirable for the sport?

Sport may be business but it is not normal business. One of the key elements to differentiate sport from normal business is the massive participation of unpaid workers. Sport would not exist without these volunteers. These volunteers, the participants in the sport and the people who have played the sport and the people who have formed the sport are the stakeholders of the game. Sport does not have shareholders, it has stakeholders. There is a real question mark as to whether or not the directors of the national corporate entities are able in discharging their directors' duties to the body corporate, can in fact represent, protect and support the interests of the stakeholders of the game. Surely the directors' duties of a full profit company are different to those of a not for profit company. The Corporations Act does not make this distinction.

We read almost daily of the disputes between state sporting organisations and the national governing body. There is a fundamental reason for this and it is that they are now competitors. As hard as that is to conceive, national governing bodies of sport and their state based organisations compete for Players and sponsors. Recent incidents of rugby players and cricketers not being available for their states so as to make them more ready to perform the National team is an example of this. Fights over competing beer sponsors is another.

No one could argue that the administration of sport does not need to efficient, organised and financially well managed. But it must also understand and play its role as the national governing body of the sport and understand that the position of authority has been given to it by its members and that it is accountable to act collectively in the best interests of its members. And that from time to time the interests of its members should be put ahead of its singular commercial interests of the Corporation.

States would appear to have the ultimate ability to ensure that this happens and that is through:

(a) controlling the activities of the national governing body by maintaining control of the constitution; and

(b) ensuring that people that understand this problem and that care about the game and the stakeholders are elected as directors of the sport.

# ONE IN OR ALL IN...

ANDREA TOWSON

The recent controversy surrounding Netball Queensland's decision to offer individual player contracts has, for the first time, put the spotlight on the Government's workplace laws in the arena of professional sport.

In 2005 an alliance was formed between Australian Netball Players Association ("ANPA") and the Australian Workers Union ("AWU"). This alliance is particularly significant as it:

- is one of the first organised players association for professional women's sport in Australia;
- brought together the top 120 players in Australia's eight national teams (including players in Australia's international squad); and
- developed a national agreement, which is a base level contract for all players.

Since this alliance was formed, ANPA has represented all elite Australian netball players during contract negotiations through a union representative. ANPA's current union representative is AWU national secretary, Bill Shorten.

In February 2007, two of the Firebirds refused to sign the individual players contracts provided to them by Netball Queensland. Consequently, both players were refused the right to train and were effectively sacked from the team.

Additionally, the other 18 Firebirds, who all signed individual contracts, have consulted ANPA about the validity of these agreements.

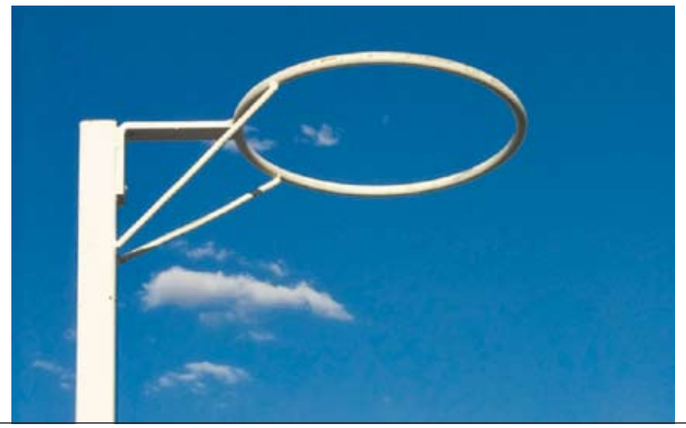
ANPA is of the view these individual contracts are "inferior" as they are not in line with ANPA's national agreement and because players have lost conditions such as the protection over the use of their images and the right to childcare. However, Netball Queensland is of the view that it has simply tailored individual contracts to meet individual players needs. Queensland is the only state which has refused to consult with ANPA and bargain collectively.

Despite the fact that the vast majority of Australia's sporting bodies, including cricket and rugby union, all bargain collectively; Netball Queensland has elected to negotiate and issue contracts to individual players. This suggests that Netball Queensland has looked at its rights under *Work Choices* in isolation, instead of considering the way other professional sports currently operate in Australia.

Under *Work Choices*, an employer (Netball Queensland) is not compelled to bargain collectively with a union (ANPA) or make a "union collective agreement". Instead an employer and employee can elect to negotiate individually and sign an individual Australian Worker's Agreement.

Queensland's Office of Workplace Services is currently investigating whether Netball Queensland breached the law by offering players individual work contracts.

Additionally, ANPA are currently involved in constructive discussions with Netball Queensland in an attempt to resolve this dispute. These negotiations between ANPA and Netball Queensland over these alleged "inferior contracts" will be the first true test of ANPA's powers and the effectiveness of this players association.



# COMPENSATION FOR ON-FIELD INJURY

MATT BRADFORD

The recent case of Williams v Latrobe Council (2007) TASSC 2 re-affirms the obligations of owners and occupiers of sporting fields to ensure that the playing surface is safe. Williams, a player for East Devonport Football Club, was playing an Australian Football match against Latrobe Football Club at its home ground. As Williams was running to take a mark, he appeared to step on the cover of an irrigation pit and he fell awkwardly, resulting in a broken ankle and broken leg.

Williams took action against both clubs and the Latrobe Council. The Council owned the grounds but Latrobe Football Club had the right to use the grounds. The Council agreed to provide all care and maintenance for the grounds, but imposed an obligation on Latrobe Football Club to inspect the grounds before they were used.

Although the Council's groundsman inspected the grounds prior to the match, he did not check that the irrigation covers were completely level with the surface of the ground. Instead, he simply pressed his foot on the covers to ensure they were securely in place. A representative from Latrobe Football Club also visually inspected the grounds but no-one from East Devonport Football Club conducted an inspection.

It was determined that there was a duty of care owed by the Council and the clubs to Williams, which had been breached. However, although the inspections of the field were inadequate, the real risk was created because even when it was correctly fitted, the irrigation cover was not level with the playing field. As it was reasonably foreseeable that the difference in height would create a risk of injury, the Council and the clubs should have taken reasonable steps to eliminate this risk.

The Court held that the Council was 85% responsible for William's injuries and has not yet apportioned liability for the remaining 15% between the two clubs.

The key point to take from this case is that it is not sufficient for owners and occupiers to simply inspect a ground for obvious defects, but they must take reasonable steps to ensure that all potential risks are eliminated.

# BOXINGNSW
# Rose delivers a TKO

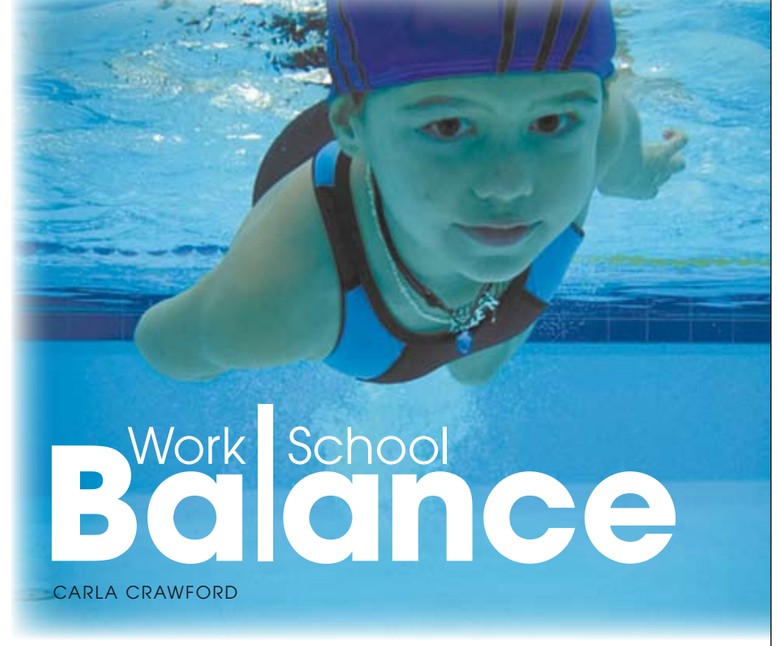
MARISA MUCHOW

The Executive Committee of Boxing New South Wales delivered the first punch to Wayne Rose, jabbing him with a 5 year suspension for alleged criticism of the Association; Rose fought back in an epic fight to win all five rounds and KO Boxing New South Wales.

The case of Rose v Boxing New South Wales lead to a very important decision of the New South Wales Supreme Court. This case reinforces the obligation of sporting bodies to act properly in dealing with disciplinary matters. Importantly sporting bodies must ensure that the defendant is provided with natural justice.

Sir Justice Brereton not only found that Boxing New South Wales had failed to provide natural justice to Mr Rose but also awarded damages of $4,000 in favour of Mr Rose. The amount of $5,000 was arrived at on the basis of vexation and disappointment occasioned to Mr Rose by Boxing New South Wales, excluding him from refereeing in New South Wales for almost two and a half years. His Honour originally awarded the sum of $5,000 but discounted this by 20% for the reason that Mr Rose may very well be expelled in any event.

Within his judgement Justice Brereton reinforced the position of members' rights within a club and reiterated the importance of clubs and their committees to exercise caution and provide due process when sanctioning a member under the Association's constitution.




CARLA CRAWFORD

In 1997, swimming sensation, Ian Thorpe became the youngest male to represent Australia. He was only 14 years of age. However, in light of the new Queensland legislation introduced in July 2006, will the sporting contracts and sponsorships of future child sport stars be affected?

The employment of children is now governed by the Child Employment Act 2006 and the Child Employment Regulation 2006.

Its purpose is to safeguard children by:

- Preventing children performing work that may be harmful to their health, safety, mental, moral or social development; and
- Ensuring that work does not interfere with schooling.

The concept of 'work' is wide and includes a contract of service, piecework rate arrangements, participation in business for profit, unpaid or voluntary work. Therefore, playing contracts or sponsorships are classified as 'work'. Work experience, vocational placements, traineeships and charitable collections are not included.

The law limits the hours, school-age children are allowed to work. The regulation of maximum and prohibited hours and the required supervision will impact on a child's ability to perform a contract, but should ensure their schooling is not affected.

Before employment, children must have authority; either parental consent or a special circumstances certificate.

Employers must be aware of their obligations and consequences, including:

- Duties in relation to contacting parents if a child is injured; implementing measures that allow children /parents two-way contact;
- Ensuring children are not subjected to deliberate or unnecessary social isolation; and
- Maintaining basic employment records.

The Act outlines offences and penalties for non-compliant employers, with higher penalties for employers without parental authority.

Given the emergence of young professional athletes and the increased trend to have them sign playing/sponsorship contracts, it means sporting bodies will need to be aware of their obligations to avoid penalties.

It will be interesting to see if this new legislation will be tested in the cases of elite junior athletes with existing strict training regimes.

The Act should assist employers of children strike the right balance.