

Rules is rules.

JOHN MULLINS

The *Associations Incorporation Act* regulates the incorporation of many sporting bodies in Queensland. Unlike the *Corporations Act* it is a State based Act and each State has their own *Associations Incorporation Act*. Despite the fact that many sporting organisations in the State are incorporated under this legislation, and despite the fact there are many disputes that arise under this, there are relatively few matters that actually go to Court to enable the Act to be interpreted by a Judge.

The *Associations Incorporation Act* specifically provides that the members of the Club must elect the members of the Management Committee. This is different to the provisions of the *Corporations Act* that enables Directors to be appointed and not elected.

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A recent case involved the Constitution of the Beerwah RSL & Citizens Memorial Club Inc. Whilst this case relates to an RSL Club, the circumstances equally apply to all bodies incorporated under this Act.

The particular circumstances related to the fact that the RSL Club had the ability to appoint persons to the Board of the Citizens Memorial Club. We see situations where Supporters Clubs exist connected to the principal body. This occurs commonly in Rugby League and Surf Life Saving Clubs where the body that runs the licensed premises and the gaming is different to the sporting club.

the provisions were invalid, these provisions were to be struck out of the rules, thus effectively changing the rules of the Association.

In my view the decision of the Court was correct and the outcome fairly obvious. What this tells us is that Constitutions must comply with the Act and the mere fact that a Constitution is created which purports to bind the members and the Management Committees it does not do so in those terms unless those terms are compliant with the Act.

If you have a Constitution like this, it might be time to review it.



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What happens on the field, stays on the field... **well not always**

ADAM HAMREY



A recent Queensland District Court case has again brought into sharp focus the potential for civil and criminal action to arise out of sporting incidents that result in physical injury to another. Since *The King v Bradshaw* in 1878, there has been a relatively steady stream of cases that prove the old adage "what happens on the field stays on the field" is not necessarily true when it comes to certain violent conduct.

The principal type of unlawful behaviour that is most likely to occur on the sporting field is common assault and its related offences. The same conduct that gives rise to these criminal offences can also constitute a civil cause of action, for example, in the tort of battery.

The *King v Bradshaw* mentioned earlier involved a charge of manslaughter arising out of conduct during a soccer match. The accused player had "kneed" another player in the stomach which resulted in severe internal injury and ultimately death. The Court found the accused player 'not guilty' and concluded that the death was an accident.

In Australia, many of the reported cases involve Australian Rules football, and particularly the "hip and shoulder bump". In 1985, AFL legend Leigh Matthews pleaded guilty to a charge of assault occasioning actual bodily harm after he fractured another player's jaw. The recent Queensland District Court case also involved a hip and shoulder bump during a local match. As at the date of print, the Court's decision in this case has not been published.

Given that assault/battery is the most likely offence/cause of action, the critical issue is almost always one of consent, and particularly implied consent. Although there have been numerous expressions of the test, it is generally recognised that consent extends to applications of force that are "ordinarily and reasonably to be contemplated as incidental to the sport in question".

Consent will ordinarily be found to extend to conduct falling within the rules of the particular sport, and also to "commonly encountered infringements of the rules". Conversely, where the conduct in question is so far outside the rules or spirit of the game, and is committed by a person who intends to cause injury, it is unlikely that consent will be found to have been given.

Although it is clear that violent sporting conduct can constitute unlawful behaviour, in a practical sense whether such matters are pursued further will often depend firstly on whether the matter is reported by those who witness the incident, and secondly the view that the relevant authorities/parties take of the incident. It is not unreasonable to suggest that, in the majority of cases, such incidents will be accepted as part and parcel of the game. Finally, club officials and coaches also need to be wary of encouraging players to engage in violent play by virtue of the criminal complicity provisions that exist around Australia.

Match fixing conviction in Rugby League

JOHN MULLINS

The newspapers are full of articles about the conviction of Rugby League footballer Ryan Tandy for dishonestly attempting to obtain a financial advantage by deception. His actions have started a cascade of legal issues in relation to the regulation and management of Rugby League in particular, and sport in general.

Graham Annesley, former Chief Operating Officer for the NRL, is now the New South Wales Sports Minister. He is proposing some match fixing legislation, which is currently with the New South Wales Attorney General.

It is to be noted that there is currently no match fixing legislation. Clearly New South Wales legislation alone would not fix the issue, and reportedly Attorney Generals across Australia propose to bring in uniform legislation.

Whether this is State or Federal, legislation creates issues as to who is responsible for enforcing the law.

It is interesting that Tandy was convicted of a fraud offence because there is no legislation relating to match fixing. It is not suggested for a moment that Tandy fixed the result of the match. What he is accused of doing is spot fixing which is simply affecting a spot bet that the first score would be a penalty.

Now the NRL are refusing to register Tandy as a player and they are looking at whether to maintain the accreditation of Sam Ayoub because of his alleged role in the Cowboys – Bulldogs betting saga. Ayoub has pleaded not guilty

to the same charge as Tandy and his matter is yet to be heard.

It is understandable and commendable that the NRL and Australian Governments wants to stamp out match fixing, and it is desirable that the legislation be brought in to deal with these things, but fixing the game is almost as old as the game itself so you can't help but think Rugby League's efforts may be a little naive and perhaps too little too late.

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There is also the question as to whether Rugby League as a sport should be entitled to refuse to register contracts. It is understandable that the game needs to protect its integrity. There is talk that Tandy would not be able to play overseas. This is a very difficult and vexed question as to whether or not a person convicted of an illegality in relation to the game should be entitled to play the game again in a professional sense. For other "offences" a player is generally allowed back after a period of time. Time will tell.

It is to be noted that Tandy's case is on appeal.

The more the merrier at Suncorp Stadium

HOLLY WHITCROFT



The use of Suncorp Stadium (Suncorp) is governed by the *Major Sports Facility Act 2001* (the Act) and its associated regulation, as well as the conditions contained in the Suncorp Stadium Development Approval (SSDA). Condition 42 of the SSDA provides that, "... there are to be no more than 24 major events (crowd size exceeding 25,000 persons) per annum". Condition 42 was drafted in 2001, at which time the Brisbane Broncos were the only national and international team to regularly play at Suncorp.

2011 saw the phenomenal success of the Brisbane Broncos, Brisbane Roar and the Queensland Reds. The teams' unprecedented success has seen an increase in their popularity, which has resulted in more fans attending home games. Significant population growth in South East Queensland in the last decade has also contributed to the increase in patronage.

The NRL preliminary final between the New Zealand Warriors and Brisbane Broncos was the 24th event hosted in 2011 that had a crowd capacity exceeding the 25,000-person cap. For any game hosted at Suncorp thereafter, organisers would have had to turn away spectators after the 25,000 limit was reached, or host the game at an alternative venue.

To overcome this, the Government urgently drafted the Major Sports Facilities Amendment Bill. With only 13

calendar days between the introduction of the Bill and the commencement of the next sittings of the Legislative Assembly (where the Bill would be passed, if acceptable), the pressure was on. A six-member bipartisan parliamentary committee was charged with assessing the proposed changes and their impacts on the local community. The committee released a report backing the Bill, commenting that despite the potential adverse impacts, for example increases in noise pollution and traffic congestion, a reduction in available street parking, potential increases in alcohol related violence and the number of intoxicated patrons in the area, the increased crowd capacity would also serve to boost revenue for local businesses and would be beneficial for the tourism industry.

The *Major Sports Facilities Amendment Act 2011* (Amendment Act) was passed, with retrospective effect. It amended the Act by increasing the cap for 2011 to a limit of 35,000 patrons.

The Amendment Act also inserted provisions to deal with major sport events after 2011. After 2011, a new cap will be imposed by Government regulation. The flexibility to deal with the cap after 2011 will allow the Government to balance the competing rights and liberties of residents in the area with the rights and liberties of the broader Queensland community, eager to proudly witness our sporting champions represent our State.

College Ball



RYAN DUFTY



In 1988 Andrew Gaze became a household name in the United States when he enrolled as a student-athlete at Seton Hall University. Gaze led their basketball team to the championship game of The National Collegiate Athletic Association (NCAA) Tournament, before returning to Australia in the midst of a scandal concerning unproven allegations that he competed in breach of the NCAA

Amateurism Bylaws. Enrolment as a student-athlete in American colleges has since become a popular option for Australian athletes, lured by the guarantee of a free tertiary education and the opportunity to convert standout performances in collegiate competition into lucrative professional sporting careers. However, a student-athlete's earlier participation in their chosen sport in Australia may breach the NCAA Operating Bylaws concerning amateurism, rendering them ineligible to compete in collegiate competition.

The amateur status of all student-athletes is required to be certified by the NCAA Eligibility Center before they may participate in NCAA sanctioned competition. The Eligibility Center may determine that an individual has forfeited their amateur status as a result of activities prior to enrolment in a college.

An Australian athlete will be considered to have forfeited their amateur status if prior to enrolment they:

1. Receive a salary, reimbursement of expenses or other financial assistance from a professional sports organisation in relation to their participation in their chosen sport. Athletes are allowed to accept prize money for individual participation in non-invitational events (such as an open golf championship), or team competition (such as a rugby sevens tournament), but only if the value of that prize money does not exceed the actual and necessary expenses incurred by the athlete to participate in that event.
2. Compete on any professional team, or sign a contract to participate as a professional athlete. Exceptions under the Bylaws allow athletes, prior to enrolment, to sign a contract, try out with a professional team, and participate in practice sessions or competition with a professional team, provided that the athlete does not receive compensation other than actual and necessary expenses.
3. Enter into an oral or written agreement with an agent for the purpose of marketing their athletic ability or reputation in that particular sport. An athlete is allowed to secure advice from a lawyer regarding a proposed professional sports contract, unless the lawyer also represents the athlete in negotiations regarding the proposed contract. Lawyers are also allowed to advise athletes on the application of NCAA Bylaws.

The NCAA is empowered to impose penalties on a college that fields a non-amateur athlete in sanctioned competition, ranging from public reprimand to the forfeiture of national championships and the "death penalty", where a college's particular sporting team may be barred from competition for a period of time.

The example of Andrew Gaze's collegiate athletic experience illustrates how even unproven allegations regarding an athlete's amateur status can tarnish the legacy of that athlete's achievements in NCAA competition. It is of vital importance that prospective Australian student-athletes familiarise themselves with NCAA amateurism requirements well in advance of their college enrolment.



JOHN MULLINS
EDITORIAL

Issues of corruption in sport and betting reached a high point in the UK when the Pakistani Cricketers were jailed.

In this edition there is an article on the Ryan Tandy case. Much has been spoken in the press about the need for specific legislation in Australia so that these matters are not dealt with under the general fraud provisions of the Criminal Code but under specific provisions which relate to match fixing and spot fixing in sport. Former ICC Chairman Malcolm Speed has been particularly outspoken on this issue even suggesting that Tandy's penalty was insufficient.

Fixing of sporting matches is hardly a new phenomenon. I suspect that fixing of sporting matches is as old as sport itself, but as society changes and society expectations change, the criminal law needs to change to reflect this changing environment.

I anticipate that with pressure from sport, society and Government, we will see some legislation. The difficulty is whether each State has its own or whether there is federal legislation, and then depending upon whether it is State or federal legislation whether the State or federal police have enforcement powers.

With the cricket season about to start we are seeing the newest competition in Australia the 20/20 competition, in which cities around Australia have teams. In that we are seeing the return of legends of the game such as Shane Warne and Matt Hayden.

This is a dramatic change to the positioning of cricket as a sport in Australia clearly targeted at a different demographic to that which traditionally attends test matches. It will be very interesting to see how successful this new competition is immediately and how sustainable the competition will be, but I have no doubt that the new look Shane Warne accompanied by Liz Hurley will draw some additional patrons to those games.

At the Queensland Sports Awards to be held on the 21st of November, the Queensland Hall of Fame will induct 11 legends. On the same night it will present the Queensland team of the year and sport star of the year.

The success of Queensland teams and Queenslanders on a national and international scale this year has been extraordinary. It is hard to conceive such a successful year with a number of Queensland teams in particular having swept all those before them in so many sports.

The combination of inducting some of the greatest sports men and women on the planet together with recognising the local success will make it a night to remember.