



SPORT | *Weighing in on the “blackest day in Australian sport”*

August 2014

Lots of people have been talking to me lately about the Australian Sports Anti-Doping Authority (ASADA) Essendon Cronulla issues and asking me to explain how this all works. Questions like: How the short suspensions were offered to the Cronulla players? How Hird was suspended by the AFL before ASADA had handed down its report? What the ASADA Essendon litigation is all about?

It would be great if I was able to set all of this out for you in very simple and easy to understand terms which would equip you to speak as an expert at the next barbeque or dinner party. The fact of the matter is it's extraordinarily difficult to understand.

We hear conflicting reports on whether World Anti-Doping Agency (WADA) is happy with the penalties which have been negotiated with the NRL players. WADA Rules provide for reductions in two year bans if athletes make full admissions, have no significant fault, or provide substantial assistance. WADA have issued a statement saying it is "...comfortable with the principles and will review the application in due course".

Remarkably, it seems that right up to and even subsequent to accepting the penalties, Cronulla players have denied doing anything wrong.

Hopefully, after we hear the decision of Mr Justice Middleton in the Federal Court, we may be in a better position to understand the ASADA processes, and for that matter the AFL processes, which have lead to this amazing lack of clarity and transparency over what has occurred.

My understanding of the process is that:

- The ASADA's CEO issues "show cause" notices to the players.
- Players have ten days to reply to the show cause notice (that information is then put to the Independent Anti-Doping Rule Violation Panel).
- If the Panel enter the player onto the "Register of Findings" the players are then offered an opportunity to have the matter heard before the NRL Anti-Doping Tribunal who assess the evidence and players' submissions before delivering a judgment.
- There are rights of appeal under the WADA Code.

Drugs in sport have been a front page story since the 1972 Olympics and perhaps even before that. Banning of Olympic champions Ben Johnson and Marion Jones (along with many other world and Olympic champions) and the more recent Lance Armstrong saga have lead to the changes in a worldwide anti-drug regime driven by the Olympics and WADA.

Australian sports signed up to the World Anti-Doping Agency Code (the Code), in some cases after pressure from the Federal Government. The notion was that by signing up to the Code we would see sport conducted fairly and without teams or individual athletes seeking to gain advantage from taking performance enhancing drugs.

Recently, the CEO of ASADA, Ben McDevitt, claimed they were not ready for the scale of investigation needed for the Essendon and Cronulla clubs and he doubted any other national anti-doping agency would have been ready.

So what does the current scoreboard look like now?

- Some rugby league players have been given backdated suspensions despite maintaining a denial they have done anything wrong;
- There is a Federal Court action claiming ASADA acted improperly in conjunction with the AFL;
- The Essendon coach has been suspended for 12 months but has now returned to work;
- So far none of the Essendon players have received any penalty at all.

This is all that has been achieved since the famous “blackest day in Australian sport” press conference.

In the cases of both Essendon and Cronulla in relation to offences that occurred in 2011, I think this leaves us all with some big questions. What is going on in the professional football clubs in Australia? Who is actually in control? How well equipped is ASADA to deal with and apprehend drug cheats in Australian sport?

Perhaps the more important question is what has changed in the governance or control of the Clubs (or the competitions or the capacity of the regulatory authority) to ensure there is no repeat of this whole affair?

However, if today’s Australian newspaper is any indication; this saga has many more acts to play out before the curtain is drawn. There are suggestions that there are potentially multiple litigious issues against Cronulla and suggestion that a deal has been offered to the Essendon players. There is the issue of players being eligible or ineligible for end of year awards and whether banned players should be given victory lap farewells on retirement. By the way, how can a player have a suspension backdated and have played during the period of suspension?

The “blackest day in Australian sport” press conference – it is said that it’s darkest before the dawn. Have we entered a new dawn for the regulation of drugs in sport in Australia?

Settle in, this will be one to watch.



John Mullins
Partner
Mullins Lawyers
t +61 7 3224 0210
jmullins@mullinslaw.com.au