

EDITORIAL

Deborah Healey

The seventh edition of the ANZSLA Journal covers a tumultuous year in global sport, including the much anticipated 30th Olympiad in London. It was a year marred by controversy over the use of performance enhancing drugs and which confirmed the worst fears of many who love sport. It was reported that 107 athletes were ineligible to compete following targeted testing and bans in the six months prior to the Games, indicating that anti-doping programs are having some success. The controversy surrounding legendary Tour de France winner Lance Armstrong and his eventual admissions after years of denial almost overshadowed many magnificent performances at the London Olympics.

While there are no doping articles in the Journal this year, it is impossible to refer to legal issues in sport without mentioning the area, particularly in light of the commencement in 2012 of consultations for a review of the World Anti-Doping Code by the World Anti-Doping Authority. The review is expected to be completed and a new version of the Code available in 2013. We expect that there will be articles on this topic following the revision.

The London Olympics were otherwise a wonderful event showcasing superb performances by athletes from many countries. In a bright spot for New Zealand, a positive doping result for the original winner of the women's discus saw national hero Valerie Adams handed one of the country's 6 gold medals. In Australia, we celebrated the success of athletes like the amazing Sally Pearson and won medals across a wide range of sports.

In an area of critical importance to Australian sport the Convergence Review of 2012 reported during the year. It took account of the Independent Inquiry into the Media and Media Regulation, and recommended a new approach and a new regulator. Of particular interest, it emphasised the importance of promoting fair and effective competition for content in digital markets. It also cautioned against the enactment of legislation "favouring or disadvantaging particular communications technology, business models or delivery methods for content services." The Australian Law Reform Commission is also investigating Copyright and the Digital Economy in 2012, giving detailed consideration to the appropriateness of Australia's fair dealing provisions in particular in relation to sports broadcasting and user's rights re time and format shifting. A report is due out in November 2013. These two reports and their subsequent implementation will have substantial implications for sports broadcasting in Australia.

Once again the range of Journal articles covers a diversity of legal areas.

Competition law has been prominent in commercialised sport, and the sports cases have been important in the development of competition law itself in Australia, the EU and the US. In the first article Dr Andrew Simpson has contributed a piece which may provide food for thought for other codes. It analyses determinations of the New Zealand Commerce Commission, the competition regulator, relating to rugby player transfer and salary cap arrangements over 15 years. The author refers to the implementation by sports of rules and mechanisms to maintain competitive balance in their competitions, and recognises the sophisticated body of economic theory that has emerged internationally in this area. The author examines in detail the Commerce Commission's interpretation of the "match quality" hypothesis in the context of the New Zealand Commerce Act and the sport of rugby in New Zealand. He suggests that a number of lessons for sporting organisations emerge from the Commission's analysis.

In the article "Bringing the 'strangers' within the rules of racing", Anthony Crocker examines the extent to which racing clubs may impose penalties under their rules. The article looks at the issue from the perspective of those who are not members or licensees, who have not submitted to jurisdiction nor specifically agreed to be bound by club rules, and who may only wish to attend race meetings (or may not even wish to do that). The author concludes that there is orthodoxy in decision-making on the issue.

David Thorpe, a regular contributor, considers the issue of restraint of trade from a different perspective in his piece "The use of multiple restraints of trade in sport and the question of reasonableness". He argues that athletes, particularly those in team sports, are regularly restricted by a number of restraints, including those limiting the potential endorsement of products for their personal sponsors. He examines the concept of reasonableness in the context of such multiple restraints arguing that the question needs to be considered specifically in that context and also in the context of changing economic, technological and social needs.

The question of whether courts may review "field of play" decisions is the subject of the article by Mark Lebbon. He approaches the issue from the perspective of fairness and access to natural justice, reviewing decisions of the courts and also the Court of Arbitration for sport. Using the 2006 "Sirengate" incident in the Australian Rules football match between St Kilda and Fremantle, the author considers the implications for all sports but particularly the AFL. He suggests that the answer to the issue lies in the rules of organisations.

The final article reviews in detail the regulation of the private conduct of athletes as employees. The authors, Glen Bartlett and Regan Sterry, emphasise the expectations of sporting organisations of their player/employees and compare the contractual regulation of the behaviour of AFL players with that of other employees in Australia, particularly in relation to discipline in relation to their

out of hours conduct. The authors conclude that the obligations placed on these athletes are indeed onerous by way of comparison with more traditional employees.

The Journal ends with two book reviews. The first, by Dr Tom Hickie, is of “Sports law: Cases and Materials” 7th edn by Ray Yasser, James R. McCurdy, C. Peter Goplerud and Maureen A. Weston. The second by Braham Dabscheck is of “Sports Economics” by Roger Blair. Both books receive high praise.

Once again the Editorial Committee thanks contributors and the anonymous reviewers for their contribution. We trust that you will enjoy reading the articles in this edition, that they will stimulate your interest and that you will ultimately find them useful in your investigation of the area of sport law.

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