TRANS-TASMAN SPORT AND LAW – SOME OBSERVATIONS

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I. Introduction

There is little academic and professional literature on the legal aspects of trans-Tasman sport or on how the sport laws of one country influence those of the other. This appears curious given the substantial interest over the past few decades in trans-Tasman legal issues generally, the popularity of sport in both Australia and New Zealand and a shared interest in sports law issues as evidenced by the 20 year-old Australian and New Zealand Sports Law Association.[2] A possible explanation is found in the circumstance that there has been little *trans-Tasman* sport aside from contests between national representative teams (mainly in amateur sports). Also, there has been little occasion for each nation to draw on the legal experience of the other because the legislative regulation of sport is mainly recent (other than in the animal racing sports).

This landscape is changing with a number of trans-Tasman professional sports leagues emerging rapidly as a feature of at least the social dimension to the wider relationship between the two countries.

The main purposes of this article are to make observations on some of the trans-Tasman legal features of those leagues and to draw attention to two instances where legislators on both sides of the Tasman have addressed similar sports law issues: one co-operatively and the other independently. The leagues highlight an alternative form of politico-economic engagement, that of regionalism, but also a point of major division concerning compensation for personal injury. In regard to anti-doping regulation New Zealand drew on the experience of Australia, while independent paths were pursued when it came to establishing a legal framework for multiple major sports events. We believe that in looking to sports law some useful insights and lessons may be extracted which are of relevance to an overall assessment of the trans-Tasman legal relationship.

II. Trans-Tasman Sporting Contacts

The history of sporting contacts between Australia and New Zealand is long and at times colourful. It may be traced to the period before the federation of the Australian colonies in 1901.

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2 For information about the Australian and New Zealand Sports Law Association Inc see: <www.anzsla.com>.

Commentators[3] have identified three principal features of these early contacts; namely, a shared sporting culture derived from the trans-Tasman movement of population,[4] the formation of Australasian[5] governing bodies for organised sport[6] and the pooling of talent and resources to field teams representing Australasia in international competition.[7] The latter two had significant connections with the federation movement but petered out in the early decades of the 20th century.

During the first half of the 20th century, Australia and New Zealand gradually emerged from their colonial cocoons as fledgling national entities to pursue separate but often parallel paths on the international stage. A similar progression may be observed on the international sporting scene which at the beginning of the 20th century was itself youthful. At the Games of the 4th and 5th Olympiads held in London in 1908 and Stockholm in 1912, Australia and New Zealand were represented by a combined Australasian team. Not only did this cause the organising committee at Stockholm some confusion – "Australasia" and New Zealand were listed separately in the official report – but they were also grouped under "Britain". Over the intervening years Australia and New Zealand have become distinct and well-established members of the Olympic Movement and of numerous international sports federations. They are even members of separate confederations within the Federation of International Football Associations: Asia[8] and Oceania[9] respectively. A strong rivalry has emerged at the national level and competition between the two can be fierce and at times even touched with ill feeling.[10]

3 See principally, Charles Little, "Trans-Tasman Federations in Sport; The Changing Relationship between Australia and New Zealand" in Richard Cashman, John O'Hara and Andrew Honey (eds), *Sport, Federation, Nation* (Walla Walla Press, Sydney, 2001) at 63; see also, Charles Little and Richard Cashman, "Ambiguous and Overlapping Identities; Australasia at the Olympic Games, 1896-1914" in Richard Cashman, John O'Hara and Andrew Honey (eds), *Sport, Federation, Nation* (above) at 81 and Rob Hess, "A Football Federation? The Australasian Football Council and the Jubilee Carnival of Australian Rules Football" in Richard Cashman, John O'Hara and Andrew Honey (eds), *Sport, Federation, Nation* (above) at 97.

4 Australian-born athletes have represented New Zealand and vice-versa. Perhaps the most famous is Dunedin-born Clarrie Grimmett who played Test cricket for Australia in the 1920s and 1930s; see further, Richard Cashman, "Grimmett, Clarence Victor" in Wray Vamplew et al (eds), *The Oxford Companion to Australian Sport* (2nd ed, Oxford University Press, Melbourne, 1994) at 194.

5 "Australasia" is used here in its sometimes geopolitical sense to mean Australia and New Zealand exclusive of the island of New Guinea and neighbouring islands in the Pacific Ocean.

6 Foremost among these appears to have been the Australasian Lawn Tennis Association and the Amateur Athletic Union of Australasia: Little, "Trans-Tasman Federations in Sport" above n 3, at 69-70.

7 For example, the combination of Canterbury's Anthony Wilding and Victoria's Norman Brookes enabled Australasia to claim the Davis Cup in 1907 and again in 1908 in the face of strong competition from the United Kingdom and the United States: Little, "Trans-Tasman Federations in Sport" above n 3, at 70-1.

8 The Asian Football Confederation: <www.the-afc.com>.

9 The Oceania Football Confederation: <www.oceaniafootball.com>.

10 Perhaps there has been no more exciting game in the history of trans-Tasman sport than the contest for the gold medal in netball at the 2010 New Delhi Commonwealth Games which saw New Zealand victorious in double-extra time: "Is Australia vs New Zealand Netball

Despite this divergence, the last decade of the 20th century and the early years of the 21st century have witnessed a degree of intermingling of Australian and New Zealand sport possessed of legal elements which both mirror and provide insights into the evolving legal relationship between the two countries.

III. Sports Leagues and the Trans-Tasman Relationship

The most prominent aspect of sporting contact between Australia and New Zealand has been competition between national senior teams, especially in rugby union and netball. Overall trans-Tasman bragging rights are significantly affected if not determined by major competitions such as rugby union's Bledisloe Cup. Additionally, there are numerous other sporting competitions where national representatives confront each other either in bilateral trans-Tasman competition or as part of a world or regional championship. The general pattern among these competitions is that they are occasional events held in addition to on-going domestic sporting arrangements.

A new and significant development in sporting contact between the two countries has occurred in the past two decades.[11] Distinct from the long-term pattern of representative national level competition, trans-Tasman elite league championships are now contested between club teams in five sports.[12] The club teams tend to be based on major cities and regions[13] and are not *necessarily* representative of either nation or an Australian State. The distribution of club teams across population centres appears in the Table.

Sports' Greatest Rivalry?" *The Roar* 15 October 2010, <www.theroar.com.au/2010/10/15/aust-nz-netball-sports-greatest-rivalry>. Perhaps no more infamous incident has occurred in trans-Tasman sport than the underarm delivery in the third final of the Benson & Hedges World Series Cup on 1 February 1981 which secured a series victory for Australia: J Neville Turner, "Underarm Bowling Incident" in Wray Vamplew et al (eds), *The Oxford Companion to Australian Sport* (2nd ed, Oxford University Press, Melbourne, 1994) at 438.

11 There has, however, been at least one earlier attempt at establishing league-style competition in trans-Tasman sport. In the summer of 1969-70, the Australasian Cricket Knock-Out Challenge Competition was held between teams representing the six Australian state cricket associations and a representative New Zealand team. This attempt was an early experiment with the one-day format of the game of cricket but it did not survive beyond one year. See Robert Stewart, "The Commercial and Cultural Development of Australian First Class Cricket, 1946-1985" (1995) PhD Thesis, Faculty of Arts, LaTrobe University, Melbourne, at 163-71.

12 It may also be noted that in the sport of rugby league one level down from the National Rugby League is the *NSW Cup*. This 12-team league competition is based entirely in New South Wales except for the Auckland Vulcans which is an affiliate of the New Zealand Warriors of the National Rugby League. Excluded from this analysis are the "circuit" sports which have rounds in, inter alia, Australia and New Zealand such as the ATP World Tour (men's tennis) and the V8 Supercars Championship (motor-racing). Also excluded is the Australasian Inter Dominion Championship for harness racing. The clubs in team sport leagues exhibit more strongly the characteristic of a regional allegiance or base than do the participants in circuit sports.

13 A region has been defined as:

> [A] homogeneous area with physical and cultural characteristics distinct from those of neighbouring areas. As part of a national domain a region is sufficiently unified to have a consciousness of its customs and ideals and thus possess a sense of identity distinct

Two models can be discerned. The first involves a New Zealand based team admitted into essentially an Australian competition where the league is established in and governed from Australia. The three sports where this occurs and the New Zealand teams are:

- A League (soccer) (10 teams including the Wellington Phoenix);
- National Basketball League (nine teams including the New Zealand Breakers in Auckland); and
- National Rugby League (16 teams including the New Zealand Warriors in Auckland).

Each team in these three leagues (other than the Breakers and the Warriors) has a branding association with a major city or region. The Warriors were once the Auckland Warriors but it may be presumed that for marketing reasons both the Breakers and the rebranded Warriors aim to appeal to a wider New Zealand audience notwithstanding both are based in and play their home games in Auckland.

The second model has seen the establishment of a new or "start-up" league with substantial numbers of teams from both countries and in the case of rugby union, from South Africa as well.

- Super 15 rugby – five teams from each of Australia, New Zealand and South Africa; and
- ANZ Netball Championship – five teams from each of Australia and New Zealand.

In these two leagues, there is a greater tendency to brand the Australian teams along state lines (for New South Wales and Queensland in particular), but cities and regions also lay claim to the teams' identities.[14]

Trans-Tasman Sports Leagues: Location, Population, Teams

Home Base (city or region: west to east)	Population	Name / Branding of Team By Sport				
		A-League (10 teams)	NBL (9 teams)	NRL (16 teams)	ANZ Championship (10 teams)	Super XV (15 teams) South African teams excluded
Perth	1,602,559	Perth Glory	Perth Wildcats	–	West Coast Fever	Western Force
Adelaide	1,172,105	Adelaide United	Adelaide 36ers	–	Adelaide Thunderbirds	–

from the rest of the country.
(Rupert B Vance, "Region", in David L Sills (ed), *International Encyclopedia of the Social Sciences* (Macmillan, New York, 1968) vol 13 at 377-8).

More recently, regions have been identified as of four types: distinguished by common physical or cultural characteristics, set off from other areas by physical or human-created boundaries, areas of interdependent activities, or having common administrative arrangements. See Kenneth N Eslinger, "'Regions" in William A Darity Jnr (ed), *International Encyclopedia of the Social Sciences* (Macmillan Reference USA, Detroit, 2nd ed, 2008) vol 7 at 130.

14 This is strongly so in New Zealand as well as in connection with the Melbourne Swifts in netball and the Melbourne Rebels in rugby union (rather than Victorian).

Melbourne	3,892,419	• Melbourne Heart • Melbourne Victory	Melbourne Tigers	Melbourne Storm	Melbourne Vixens	Melbourne Rebels
Canberra	395,126 (includes Queanbeyan)	–	–	Canberra Raiders	–	ACT Brumbies
Wollongong	284,169	–	Wollongong Hawks	*	–	–
Sydney	4,399,722	Sydney	Sydney Kings	**	NSW Swifts	NSW Waratahs
Central Coast (Gosford-Wyong)	299,000	Central Coast Mariners	–	–	–	–
Newcastle	531,191	Newcastle Jets	–	Newcastle Knights	–	–
Gold Coast	558,888 (includes Tweed)	Gold Coast United	Gold Coast Blaze	Gold Coast Titans	–	–
Brisbane	1,945,639	Brisbane Roar	–	Brisbane Broncos	Queensland Firebirds	Queensland Reds
Townsville	162,730	–	Townsville Crocodiles	North Queensland Cowboys	–	–
Cairns	142,001	_	Cairns Taipans	–	–	–
Auckland	1,461,900	–	New Zealand Breakers	New Zealand Warriors	Northern Mystics	Blues
Hamilton (Waikato)	409,300	–	–	–	Waikato / BoP Magic	Chiefs
Wellington	483,300	Wellington Phoenix	–	–	Central Pulse	Hurricanes
Christchurch (Canterbury)	565,700	–	–	–	Canterbury Tactix	Crusaders
Dunedin (Otago)	207,400	–	–	–	–	Highlanders
Invercargill (Southland)	94,200	–	–	–	Southern Steel	_

Sources: Population data for Australia: Australian Bureau of Statistics, *Regional Population Growth*, Australia at 30 June 2008; <www.abs.gov.au/ausstats/abs@.nsf/mf/3218.0>. Population data for New Zealand: Statistics New Zealand, *Subnational Population Estimates* at 30 June 2010; <www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/subnational-pop-estimates-tables.aspx>.

* Wollongong may lay some claim to the St George Illawara Dragons which for present purposes has been allocated to the Sydney region.

** The Sydney region has 9 NRL teams: Canterbury-Bankstown Bulldogs; Manly-Warringah Sea Eagles; Parramatta Eels; Penrith Panthers; Cronulla Sharks; South Sydney Rabbitohs; St George Illawara Dragons; Sydney Roosters; Wests Tigers.

The temptation is to suggest that these developments in elite league competitive sport mirror the closer relations between Australia and New Zealand. Indeed, they may be seen as particularly illustrative of that closeness in social and economic respects.

They also shine an interesting light on the old chestnut of Australia-New Zealand relations, that of political union. One contrary influence in New Zealand in the debate about whether that colony should have joined with the other six colonies in the Australian federation was concern over detriment to the emerging sense of a separate New Zealand identity flowing from merger with a much larger "Australia".[15] Post-federation, those sports which had formed Australasian governing bodies were forced to confront the issue of whether New Zealand should be regarded as one of two (reflecting its political separateness) or one of seven (reflecting its former colonial status and, at least in comparison with some Australian States, its population and resources). Notwithstanding the very considerable success of combined teams in the Davis Cup, tensions existed in the Australasian Lawn Tennis Association over issues such as division of the proceeds of events and the location of Davis Cup matches. New Zealand interests objected to treatment equivalent to a State, as the Australians were wont to do.[16] Separation was eventually the way of the Australasian sports bodies and in those sports where New Zealand was strong, notably rugby union and cricket, merger never eventuated in the first place.

The recent emergence of the trans-Tasman sports leagues might suggest something about the possible future political engagement of Australia and New Zealand. The city and region structural basis of these leagues rests on sporting, demographic, marketing and geographic considerations. Taking the A League as an example, the sporting contest is between Newcastle and Wellington rather than Australia and New Zealand, or New South Wales and New Zealand. The consequence of this approach is to circumvent the debate about one of 2 or one of 7. It is a much easier task to accord city and region-based teams equal rights and responsibilities in a sports league when membership of the league is based on satisfying "objective' criteria".[17] The sole New Zealand team in each of the A-League, NBL and NRL may resemble one of 7 and the equal numbers of Australian and New Zealand teams in the Rugby Super 15 and ANZ Netball Championship suggests one of 2, but in reality these allocations reflect to a significant degree the respective popularity and strengths of the various sports across the regions. Under the structures of these sports leagues, the Australian States are dispensed with as organisational units and cities and regions of New Zealand and Australia are included if they meet qualifying criteria.

15 Charles Little, "Trans-Tasman Federations in Sport" above n 3, at 66 referring to the views of the leading New Zealand historian of the time, Keith Sinclair.

16 Ibid, at 71-3.

17 An example of the considerations which may be applied can be found in the agreement in 1997 to establish the NRL and restructure professional rugby league competition following the "Super League War". "The criteria were generally objective. They were, in substance: spectator attendances home and away; competition points won; gate receipts; sponsorships and their value; and profitability." *News Limited v South Sydney District Rugby League Football Club Ltd* (2003) 215 CLR 563 at 619-20 (Callinan J).

The substitution of regional government for the States under the Australian Constitution has been advocated and explored from time to time[18] but the States endure. What is interesting about the trans-Tasman sports leagues is that the idea of an overriding regional structure has not only been applied in the Australian context but carried into the trans-Tasman sphere without significant contest. Is this a more appropriate way for Australia and New Zealand to engage within a single polity? It might be added that the trans-Tasman sports leagues phenomena cannot be dismissed simply as business enterprises driven by commercial imperatives. Professional sports clubs in the Australian and New Zealand context tend to be motivated by the principle of win-maximisation rather than profit-maximisation,[19] and the leagues themselves are subject to direct community control or face meaningful community accountability, thereby cloaking them with elements of a political or representative persona.

IV. Compensation for Personal Injury

If the emergence of trans-Tasman sports leagues may be taken as representative of growing closeness, the leagues also draw attention to a legal field in which Australia and New Zealand are far apart; namely, compensation for personal injury. While Australia persists with common law liability supplemented by a limited patchwork of activity-specific compensation schemes, New Zealand has adopted a compensation scheme which largely abrogates common law claims in favour of universal no-fault compensation.[20]

Sports teams present peculiar challenges for personal injury compensation in the trans-Tasman context. Few other business units operating in a field where the risk of serious physical injury is substantial would repeatedly move a large proportion of their key workers across the trans-Tasman jurisdictional boundary as occurs in trans-Tasman sports leagues. The entitlement to compensation for personal injury therefore becomes a matter of considerable concern to the players in those leagues.

This is not the occasion for an expansive analysis of the entitlements of professional players in trans-Tasman sports leagues to compensation benefits or common law damages depending on the jurisdiction for personal injuries they may sustain in the course of participation. However, in general terms (subject to some exceptions and qualifications), player entitlements may be outlined as follows:

18 See Wayne Hudson and A J Brown, *Restructuring Australia; Regionalism, Republicanism and Reform of the Nation-State* (Federation Press, Annandale, 2004) at 11-78 for analysis of regionalism and the Australian constitution by six authors.

19 Braham Dabschek, "Sporting Equality: Labour Market vs Product Market Control" (1975) 17 Journal of Industrial Relations 174; Robert Macdonald and Ross Booth, "Around the Grounds; A Comparative Analysis of Football in Australia" in Bob Stewart (ed), *The Games are not the Same; The Political Economy of Football in Australia* (Melbourne University Publishing, Carlton, 2007) 236 at 239. Leagues tend to be interested in revenue maximisation and may engage in revenue distribution practices intended to ensure the competitiveness and survival of new or struggling clubs some of which may operate in smaller markets.

20 Harold Luntz et al, *Torts: Cases and Commentary* (6th ed, Lexis Nexis Butterworths Australia, Chatswood, 2009) at 47-57, 60.

(a) Injured New Zealand players have entitlement to cover under the Accident Compensation Act 2001 (NZ) whether they are injured in New Zealand or in Australia.[21]
(b) Injured Australian players have no entitlement to Australian workers' compensation.[22]
(c) Australian players injured in New Zealand have very limited cover under the Accident Compensation Act 2001 (NZ) – basically medical expenses until they leave New Zealand.[23]
(d) Australian and New Zealand players injured in Australia may pursue common law claims for damages where circumstances permit.[24]
(e) Australian and New Zealand players injured in New Zealand may not as a general matter pursue common law claims in New Zealand[25] or Australian[26] courts.

21 Accident Compensation Act 2001 (NZ), ss 20 and 22. See generally, Stephen Todd (ed), *The Law of Torts in New Zealand* (5th ed, Brookers/Thomson Reuters, Wellington, 2009) chapters 2 and 3 for analysis of entitlements to cover under the Act. For an example of a player ordinarily resident in New Zealand and entitled to cover for personal injury sustained playing sport while overseas: see *Kirk v Accident Compensation Corporation* HC Napier AP 15 1994, 5 October 1994; Tony Oxnevad, "Soccer Player Covered by ACC While Overseas" (1995) 5(1) ANZSLA Newsletter 6.

22 In the overwhelming number of circumstances arising in the present context, professional contestants injured while participating in sporting contests and related training are denied access to Australian workers' compensation benefits. See, for example, Accident Compensation Act 1985 (Vic), s 16(1). See also, Hayden Opie and Graham Smith, "The Withering of Individualism: Professional Team Sports and Employment Law" (1992) 15 University of New South Wales Law Journal 313 at 323-4; Eugénie Buckley, "Athlete or Employee? Is the Different Treatment Accorded to Professional Team Athletes Under Workers' Compensation Legislation Justified?" (1996) 26 Queensland Law Society Journal 523.

23 Accident Compensation Act 2001 (NZ), s 20, confers a right to cover for personal injury sustained by persons even though they are not ordinarily resident in New Zealand but this coverage for visitors is limited and does not include earnings-related income: see Todd, above n 21, at 33.

24 There exist various types of circumstances in which claims might arise but the main types and leading Australian authorities include: actions against fellow participants in battery (*McNamara v Duncan* (1971) 26 ALR 584) and in negligence (*Rootes v Shelton* (1967) 116 CLR 383 and *Johnston v Frazer* (1990) 21 NSWLR 89); claims in negligence against occupiers for dangerous premises and playing surfaces (*Nowak v Waverley Municipal Council* (1984) Aust Torts Reports ¶80-200) and claims for negligent coaching and supervision (*Foscolos v Footscray Youth Club* (2002) Aust Torts Reports ¶81-658). Also, the employer of a tortfeasor may be held vicariously liable (*Canterbury-Bankstown Rugby Football Club Ltd v Rogers* (1993) Aust Torts Reports ¶81-246). A New Zealand player injured in Australia may be able to sue in New Zealand courts relying relevant Australian law: see Todd, above n 21, at 257-8. However, Accident Compensation Act 2001 (NZ), s 321 guards against double recovery by an injured person seeking to claim both cover under the Act and common law damages.

25 Accident Compensation Act 2001 (NZ), s 317 (although s 319 preserves the right to claim exemplary damages which has particular relevance in light of *Canterbury-Bankstown Rugby Football Club Ltd v Rogers* (1993) Aust Torts Reports ¶81-246 where a successful claim for battery was accompanied by an award of exemplary damages against the assailant).

26 If proceedings were to be commenced in Australia, the courts would apply the *lex loci delicti* (the law of the place where the wrong is committed) as the *lex causae* (the law of cause of action) which would be New Zealand law: *Regie Nationale des Usines Renault v Zhang* (2002) 210 CLR 491.

The standout feature is that Australian players injured in New Zealand even in circumstances which would permit a successful common law claim in Australia have virtually no entitlement to injury compensation aside from any personal accident insurance coverage purchased. New Zealand players fare very much better than Australians under a trans-Tasman comparison.

These very different approaches to the employment conditions of this population of trans-Tasman workers derives in significant measure from the denial of workers' compensation to injured Australian athletes, but it also serves to demonstrate that significant challenges will face any attempt to harmonise or integrate employment and social welfare policies across the two countries.

Also of possible significance is the potential for New Zealand players and their employer clubs to incur common law liability for injury caused in Australia. The general absence of common law claims for personal injury in New Zealand could induce a degree of complacency (to be guarded against) among New Zealand clubs regarding their exposure to possible legal liability and the need for appropriate insurance, a potential shared with New Zealand firms doing business in Australia.

V. Anti-Doping Regulation and the Role of Government: ASDA and NZSDA

Prior to the Games of the XXIVth Olympiad held in Seoul in 1988, there was little interest or involvement by governments worldwide in controlling the use of performance-enhancing drugs in sport. Most control which did occur happened coincidentally. The use and trafficking of some performance-enhancing drugs attracted sanctions under the general criminal law[27] while others were subject to restriction under legislation applying to pharmaceuticals for human or veterinary use.[28] Some countries had moved to prohibit doping in sport,[29] but this was unusual. In large measure, the world of sport was left to its own devices to deal with the prohibition, detection and punishment of transgressing athletes and those who assisted them.

27 For example, the use of narcotics such as heroin and stimulants such as cocaine was (and still is) prohibited in sport but was also subject to long-time criminalisation in many countries for reasons unrelated to sporting performance.

28 For example, before 1988 the use and abuse in sport of the now notorious performance-enhancing anabolic steroids was neither widely known nor well understood. In consequence, the supply and importation of these drugs for human and veterinary use was subject to relatively mild, if any, restriction under general laws. For the position in Australia in the late 1980s see Senate Standing Committee on Environment, Recreation and the Arts, Parliament of Australia, "Drugs in Sport (Interim Report)" (1989) 148-81 and "Drugs in Sport (Second Report)" (1990) 373-91.

29 An early initiative was taken in France: Law No 65-412 of 1 June 1965 being a law "tending to the repression of stimulants on the occasion of sporting competitions". See also: A de Schaepdryver and M Hebbelinck (eds), *Doping: Proceedings of an International Seminar Organized at the Universities of Ghent and Brussels, May 1964 by the Research Committee of the International Council of Sport and Physical Recreation (UNESCO)* (1964); Michelle Gallen, "Model Law for Anti-Doping in Sport" (PhD Thesis, The University of Melbourne, 2006) at 88. A similar law was enacted in Belgium two months earlier: Jean Constant, "Belgian Legislation against Drug Taking in Sport" (1968) 19 Northern Ireland Legal Quarterly 160 at 163.

The world was alerted to the drugs in sport issue by the sensational disqualification of Canadian runner Ben Johnson after he had crossed the finish line first in the men's 100 metres sprint final at Seoul in 1988. Johnson's use of anabolic steroids attracted immense international attention and outrage. The Canadian government responded with a judicial inquiry[30] and the fracas formed part of the background against which the landmark *Council of Europe Anti-Doping Convention* was established.[31] In the intervening years, government involvement in issues surrounding drugs in sport has increased immensely.[32]

Yet, even before Johnson's fateful sprint, the beginnings of what would prove a revolutionary change were occurring in Australia. Allegations made on 30 November 1987 that athletes at the Australian Institute of Sport in Canberra were taking prohibited performance-enhancing drugs prompted the Australian Senate to resolve on 19 May 1988 to refer the issue of "[t]he use by Australian sportsmen and sportswomen of performance enhancing drugs and the role played by Commonwealth agencies" to the Standing Committee on Environment, Recreation and the Arts for investigation and report.[33] In its Interim Report delivered in May 1989, the Committee recommended that the Commonwealth Government[34]

> establish an independent Australian Sports Drug Commission to carry out all sports drug testing in Australia. The Commission should be responsible for developing sports drug policies, conducting relevant research, selecting sportspeople for drug testing, collecting samples, dispatching samples to an IOC accredited laboratory, receiving results, conducting necessary investigations and carrying out the necessary liaison activities with law enforcement agencies, customs officials and health departments. The Commission should report the results of drug tests to the appropriate sporting federations for the imposition of penalties on athletes, coaches, doctors or officials who use or encourage [sic] performance enhancing drugs.

Amid allegations that in some sports and countries the drug testing process had been corrupted, the Standing Committee envisaged the need for a body independent of sport that could confer integrity and uniformity upon key elements of the anti-doping effort. There appeared to be no question that this new body should be anything other than a federal government organisation. Concerns that these measures could disadvantage Australian athletes "in international events because of less stringent sports drugs policies and programs in overseas countries"[35] were to be addressed by a deliberately high-profile Commission working towards stricter standards internationally.

30 Charles L Dubin, *Commission of Inquiry into the Use of Drugs and Banned Practices Intended to Increase Athletic Performance* (Minister of Supply and Services Canada, Ottawa, 1990).

31 Opened for signature 16 November 1989, CETS No 135 (entered into force 1 March 1990). Moves to establish the Convention were already underway before this time: Council of Europe, "Explanatory Report to the Anti-Doping Convention" (ETS no 135) <www.conventions.coe.int/Treaty/en/Reports/Html/135.htm>.

32 See generally, Matthew J Mitten and Hayden Opie, "'Sports Law': Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution" (2010) 85 Tulane Law Review 269, at 274-83.

33 Senate, "Drugs in Sport (Interim Report)", above n 28, at xvii.

34 Ibid, at xxxiii-iv.

35 Ibid, at 137.

This recommendation was in large measure accepted although the new body was known as the Australian Sports Drug Agency (ASDA). The Australian Sports Drug Agency Act 1990 (Cth) came into force on 17 February 1991 with s 8 stipulating the following objects for ASDA:

(a) to encourage the practice of sport free from the use of drugs, in a manner consistent with the objectives of protecting:
  (i) the health of competitors; and
  (ii) the values of fair play and competition; and
  (iii) the rights of those who take part in sport; and
(b) to encourage the development of programs to educate the sporting community and the community at large about the dangers of using drugs in sport; and
(c) to provide leadership in the development of a national strategy concerning drugs in sport; and
(d) to encourage the establishment of a centralised drug sampling and testing program that exposes all competitors to sampling and drug testing, at short notice, at sporting events, during training and at any other time; and
(e) to encourage State and Territory governments, and national, State and Territory sporting organisations, to adopt uniform drug sampling and testing procedures; and
(f) to encourage the development and maintenance of drug testing laboratories accredited by the International Olympic Committee; and
(g) to promote and encourage the adoption, at an international level, of uniform sampling and drug testing procedures, and of educational programs relating to the use of drugs in sport.

To encourage sports to come "under the control" of ASDA, the Select Committee recommended that government funding be conditional upon sports' co-operation in this respect.[36] Central to the functioning of ASDA was the Register of Defaulting Competitors.[37] Athletes who failed to provide a sample for testing when requested to do so[38] or returned positive test results[39] were to have their names entered on the Register and that information passed onto their sports. A noteworthy feature of this model was that while the legislation sought to take away from sports bodies control over the testing of athletes, it left with them the roles of defining doping offences and instituting and enforcing disciplinary measures.

This independent, centralised model of testing proved successful and was to inspire developments in many other countries; ASDA was the forerunner of what today is known as a National Anti-Doping Organization under the World Anti-Doping Code.[40]

Given ASDA's mandate to adopt a high profile in working towards stricter standards internationally, it is not surprising that it would seek to assist and enlist the support of similarly minded nations. Adopting the recommendation of a taskforce created by the New Zealand Hillary Commission to establish an independent sports authority to conduct testing of athletes, on 26 July 1994 the New Zealand Parliament passed the New Zealand Sports Drug Agency Act 1994 (NZ) which came into force on 5 January 1995. This legislation

36 Ibid, at 139.
37 Australian Sports Drug Agency Act 1991 (Cth), Part 3.
38 Australian Sports Drug Agency Act 1991, s 14.
39 Australian Sports Drug Agency Act 1991, s 16.
40 World Anti-Doping Agency, *World Anti-Doping Code* (2nd ed, 2009) Appendix One.

was described as "following in the footsteps of our Australian counterparts"[41] by adopting a model in many respects identical with that applying to ASDA. When introducing the Bill into Parliament the Minister for Sport, Fitness and Leisure, the Hon John Banks, acknowledged that New Zealand had "worked very closely with the Australian Sports Drug Agency".[42] The New Zealand Sports Drug Agency (NZSDA) was charged with the task of testing athletes for prohibited performance-enhancing drugs and was required to maintain a Sports Drug Register onto which would be entered the names of those competitors who failed to provide a sample for testing or committed a "doping infraction". As with ASDA arrangements, the establishment of anti-doping rules and the institution and enforcement of disciplinary measures were left in the hands of sports organisations.[43]

ASDA and NZSDA went on to work closely in various respects including testing athletes under each other's jurisdiction and in multi-lateral arrangements with other nations.[44] In the intervening years, leadership of the international effort against doping in sport has devolved to the World Anti-Doping Agency[45] and an important global legal system to control doping is now in place.[46] However, the pioneering Australian legislation, which inspired similar legislation in New Zealand, and the experience which it generated enabled Australia and New Zealand to influence significantly the direction of global legal developments in the field of anti-doping.

VI. Major Events Legislation: The Multi-Sport Template Approach

In the eyes of many nations and cities, hosting major sports events such as the Olympic or Commonwealth Games and the World Cup of a major sport is regarded as an excellent way to attract attention and present a favourable image to the world. Benefits which are believed to flow from the successful hosting of internationally significant sports events include international prestige and recognition, economic development, international trade (especially tourism), a legacy consisting of facilities for sport, broadcasting, tourism and transport, and enhanced national self-esteem. So intense is the competition to win the rights to host such events that those who hold those rights are able to extract very considerable concessions from successful bidders. Aside from the payment of rights fees and the promise of world class

41 Maria Shand, "New Legislation for Drug Testing in New Zealand" (1995) 5(2) ANZSLA Newsletter 3, at 3.

42 New Zealand, *Parliamentary Debates*, 29 March 1994 (Hon John Banks, Minister for Sport, Fitness and Leisure).

43 See generally, Shand, above n 41.

44 See, for example, *International Anti-Doping Arrangement 1997* (IADA) which was a multi-lateral agreement between Australia, Canada, Denmark, Finland, the Netherlands, New Zealand, Norway, Sweden, and the United Kingdom. The member countries in IADA worked to establish international standards of anti-doping practice.

45 Incidentally, the Director-General (Chief Executive Officer) of the World Anti-Doping Agency during most of its existence has been the New Zealand lawyer, David Howman, who was a member of the Hillary Commission taskforce and later acted as an external adviser to NZSDA.

46 Mitten and Opie, above n 32, at 274-83.

facilities and organisation, bidders may be required to address issues such as providing a favourable intellectual property regime for the rights holder and the event sponsors as well as protection against "ambush marketing", appropriate levels of security and suitable arrangements for the allocation of tickets to spectators. Invariably the largest multisport events will require special enabling legislation.[47] Less complex events may also require special legislation either on a one-off[48] or an on-going basis,[49] while others may make do with elaborate contractual arrangements.[50]

Australia and New Zealand have been at the forefront of international developments in special legislative arrangements for major sports events. However, unlike the field of anti-doping, there is little incentive for Australia and New Zealand to work together; indeed, the Australian states are fierce rivals when it comes to securing hosting rights. In this section the authors compare in detail developments in the State of Victoria and in New Zealand. In a series of specific legislative measures in the first decade of this century Victoria sought to deal with commonly occurring, troublesome issues affecting events generally. New Zealand on the other hand enacted legislation that could apply not only to multiple events but to multiple issues as well. However, the authors argue that New Zealand did not take the opportunity to draw on the experience of Victoria because it failed to adequately address a sufficiently wide range of event management issues. This opportunity was taken by Victoria when in 2009 it enacted legislation which provided a multi-event and wide-ranging multi-issue "template" to facilitate hosting major sports events.

A. The Two Acts

In 2007, New Zealand passed its Major Events Management Act 2007 (MEMA). The statute's purpose is two-fold:[51]

(i) to provide certain protections for major events[52] in order to:
  (i) obtain maximum benefits from such an event for New Zealanders; and
  (ii) prevent unauthorised commercial exploitation; and
  (iii) ensure the smooth running of any such event; and

47 See for example, Sydney 2000 Games (Indicia and Images) Protection Act 1996 (Cth) and Olympic Arrangements Act 2000 (NSW) (Sydney 2000 Olympic Games) and Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Act 2005 (Cth) and Commonwealth Games Arrangements Act 2001 (Vic) (Melbourne 2006 Commonwealth Games).

48 World Swimming Championships Act 2004 (Vic).

49 Australian Grands Prix Act 1994 (Vic).

50 Such was the case when Australia hosted the Rugby World Cup in 2003.

51 See Major Events Management Act 2007, s 3.

52 A "major event" is defined as an event that is declared by Order in Council under s 7(1) to be a major event. Under s 7(4), the Minister must also take into account whether the event will:
  (a) attract a large number of international participants or spectators and therefore generate significant tourism opportunities for New Zealand;
  (b) significantly raise New Zealand's international profile;
  (c) require a high level of professional management and co-ordination;
  (d) attract significant sponsorship and international media coverage;
  (e) attract large numbers of New Zealanders as participants or spectators; and
  (f) offer substantial sporting, cultural, social, economic or other benefits for New Zealand or New Zealanders.

(ii) to ensure the protection and control of certain emblems and words in relation to Olympic Games and Commonwealth Games.

In the authors' opinion, it fails to deliver its promises on several counts. At the time of its passing there were three Victorian statutes (now repealed) relating to major sporting events - the Major Events (Aerial Advertising) Act 2007, the Major Events (Crowd Management) Act 2003 and the Sports Event Ticketing (Fair Access) Act 2002. The New Zealand legislators, promising to "ensure the smooth running of any such event" and the prevention of "unauthorised commercial exploitation" appear to have ignored the fact that Melbourne, world-renowned for its management of top sporting events (for instance, the Australian Open Tennis Championships, the Australian Formula One Grand Prix, and the Melbourne Cup thoroughbred race might have useful precedents from which they could learn.

Two years later, Victoria enacted its Major Sporting Events Act 2009 (MSEA). The statute incorporates the three above-mentioned statutes and, in addition, includes provisions relating to the operational requirements of major sporting events, the protection of commercial interests of those events, protections from claims for economic loss and regulation of the application of other laws to major sporting events.[53] In his press release the day after the MSEA was passed, the Minister of Sport and Recreation suggested that the statute was, to use a well-known sporting phrase, "first out of the blocks":[54]

> The Major Sporting Events Act is the most comprehensive major sporting event-related legislation anywhere in the world and will further enhance our unparalleled reputation as the destination for major sporting events.

The MSEA is a very sophisticated piece of legislation. It comprises 206 sections divided into 13 Parts and, as its name suggests, deals only with major sporting events. Unlike the MEMA, it does not address the protection of Olympic insignia from ambush marketing, that being a federal responsibility.[55] The MEMA boasts only 83 sections divided into five Parts, over 50% of which deal with enforcement primarily related to ambush marketing. The fact that a major event under the MEMA is not restricted to sporting events but could include concerts and cultural events raises further concern. As its name suggests, it is designed to *manage* major events.

B. Comparing the MSEA with the MEMA: What are the Shortcomings of the Latter?

This part of the paper provides some comparative comment on the two statutes and, in doing so, illustrates the shortcomings of the MEMA. It concentrates on four particular areas: crowd management, ticketing, advertising and commercial arrangements.

53 See The Major Sporting Events Bill explanatory memoranda, <www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs_Arch.nsf/5da7442d8f61e92bca256de50013d008/CA2570CE0018AC6DCA257568007A6B06/$FILE/561269exi1.pdf>, accessed 13/5/2011 and "New Laws Protect Victoria's Major Sporting Events" <www.archive.premier.vic.gov.au/newsroom/7211.html> accessed 13 May 2011.

54 "New Laws Protect Victoria's Major Sporting Events" <www.archive.premier.vic.gov.au/newsroom/7211.html> accessed 13 May 2011.

55 Olympic Insignia Protection Act 1987 (Cth).

1. Crowd Management

One of the MEMA's purposes is to ensure the "smooth running" of a major event. It has only one provision relating to crowd management and, in its general enforcement provisions, appears to have only one provision that gives police any powers to control a crowd.[56]

Under s 27 ("Pitch invasions"), no unauthorised person can go onto, or propel any object onto, a playing surface at a major sporting event.[57] "Propel" means intentionally setting an object in motion in any manner, including, for example, throwing, kicking, dropping or rolling.[58] There is no definition of an "object".

The MSEA devotes a whole Part to managing crowd behaviour.[59]

Under the MSEA, a "prohibited item" means:[60]

- an animal, other than a guide dog, a police dog or police horse, or an animal competing or participating in a major sporting event;
- a laser pointer;
- a distress signal;
- dangerous goods;
- a prohibited or controlled weapon within the meaning of the Control of Weapons Act 1990;
- a firearm within the meaning of the Firearms Act 1996;
- a bicycle (other than a police bicycle or a bicycle for use in competing or participating in a major sporting event);
- scooter, skateboard, roller skates or roller blades;
- a firework;
- a horn or bugle;
- a whistle or loud hailer;
- a flag or banner that is larger than 1metre by 1 metre, or has a handle longer than 1 metre;
- any items that are in such a quantity as to infer they are to be used for commercial purposes; and
- a public address system, electronic equipment, broadcast equipment or similar device that may interfere with equivalent equipment used by the event organiser or other authorised people.

56 See Major Events Management Act 2007, s 48: "Functions and powers of police":
"Every member of the police –
(a) may perform any of the functions of an enforcement officer; and
(b) has all, and may exercise any, of the powers of an enforcement officer".

57 The penalty for breach is imprisonment for a term not exceeding three months or a fine not exceeding $5,000: s 27(3).

58 Major Events Management Act 2007, s 27(2).

59 Major Sporting Events Act 2009, Part 4. The application of crowd management provisions is specified in s 61. Part 4 applies to a major sporting event.

60 Major Sporting Events Act 2009, s 3.

In the event venue[61] or event area,[62] it is an offence to possess unauthorised prohibited items.[63]

Distress signals and fireworks are dealt with separately – unless authorised, it is an offence to possess them as lit[64] or unlit;[65] and/or to throw them lit.[66]

Unless authorised, it is also an offence to:

- throw or kick any stone, bottle or other projectile unless this happens in the course of participating in, officiating at or officially acting as a volunteer in the match, game, sport or event;[67]
- deface or damage any building, fence, barrier, barricade, seat, chair, table, structure, vehicle, craft, truck, pipe, tap, tap fitting, conduit, electrical equipment, wiring or sign;[68]
- damage any trees, plants or other flora;[69]
- block (without reasonable excuse) any stairs, steps, aisle, gangway, overpass, bridge, passage, entry, exit or other thoroughfare;[70]
- climb (without reasonable excuse) on any fence, barrier or barricade, including any of these that delineate the boundaries of an event venue or event area;[71]
- obstruct (without reasonable cause) obstruct the view of any person seated in the immediate vicinity;[72]
- climb a roof or parapet of a building.[73]

Unless otherwise authorised,[74] a person must not possess any alcohol that has not been purchased at the event venue or event area in accordance with the Liquor Control Reform Act 1998.[75] No unauthorised person[76] can

61 Section 3 of the Major Sporting Events Act 2009 defines an "event venue" as:
(a) the MCG;
(b) Phillip Island Grand Prix Circuit;
(c) the Docklands Stadium;
(d) the Melbourne Sports and Aquatic Centre land;
(e) the State Netball and Hockey Centre land;
(f) national tennis centre land;
(g) Olympic Park land;
(h) The Bob Jane stadium;
(i) any venue specified as an event venue in a major sporting event order;
(j) an area of land that is specified as an event venue in a major sporting event order.

62 Section 3 of the Major Sporting Events Act 2009 defines an "event area" as an area of land that is specified in a major sporting event order to be an event area for the purposes of a major sporting event.

63 Major Sporting Events Act 2009, s 62. This section does not apply to distress signals or fireworks. Offences under this section attract 20 penalty units.

64 Major Sporting Events Act 2009, s 63. An offence attracts 30 penalty units.

65 Major Sporting Events Act 2009, s 65. An offence attracts 20 penalty units.

66 Major Sporting Events Act 2009, s 64. An offence attracts 40 penalty units.

67 Major Sporting Events Act 2009, s 68. An offence attracts 20 penalty units.

68 Major Sporting Events Act 2009, s 69. An offence attracts 20 penalty units.

69 Major Sporting Events Act 2009, s 70. An offence attracts 20 penalty units.

70 Major Sporting Events Act 2009, s 71. An offence attracts 10 penalty units.

71 Major Sporting Events Act 2009, s 72. An offence attracts 10 penalty units.

72 Major Sporting Events Act 2009, s 73. An offence attracts 10 penalty units.

73 Major Sporting Events Act 2009, s 74. An offence attracts 10 penalty units.

74 Major Sporting Events Act 2009, s 66(2).

75 Major Sporting Events Act 2009, s 66(1). An offence attracts 20 penalty units.

76 This includes a member of a class of persons.

enter into a sporting competition space unless he or she is participating in the match, game, sport or event or is engaged in the activity's control or management;[77] and any person who is in the sporting competition space must not, without reasonable excuse, disrupt the activity.[78]

Upon application, a venue manger or event organiser may authorise certain activities.[79] Any such authorisation is subject to any terms and conditions considered reasonable to impose;[80] and it is an offence to fail to comply with any such terms or conditions.[81]

Venue managers have power to prohibit other items.[82] Any authorised person has power to request the surrender of or to confiscate prohibited items;[83] and police may retain or otherwise deal with such items that come into their possession for the purpose of proceedings.[84] However, subject to the police detention provision, a venue manager must ensure that any surrendered or confiscated item is securely stored at the event venue or event area and, on request, returned to the owner when that person leaves the venue or area or within 28 days after the item was surrendered.[85]

There are procedures for dealing with offenders under this Part of the Act.[86] Such offenders include those disrupting or interrupting the sport,[87] engaging in risky behaviour,[88] or refusing to leave the event venue or area.[89] Repeat offenders face the possibility of a court order prohibiting them from entering the event venue or area and any contravention of this order attracts a penalty[90] as does a contravention of a ban order.[91]

Police are able to serve infringement notices on anyone whom they suspect has committed an offence under this Part.[92]

2. Ticketing

The MEMA has only one provision relating to ticketing. No unauthorised person can sell or trade a ticket to a major event activity for a value greater than the original sale price of that ticket.[93]

77 Major Sporting Events Act 2009, s 67(1). An offence attracts 10 penalty units.
78 Major Sporting Events Act 2009, s 67(2). An offence attracts 60 penalty units.
79 Major Sporting Events Act 2009, s 75.
80 These include but are not limited to the duration of the authorisation, whether the authorisation applies generally or in specified circumstances, whether it applies to a specified person or class of person and whether it applies to a specified type of activity or class or classes of activity. There is a specific provision that enables an authorised officer or member of the police force to demand proof of any authorisation; and failure to do this attracts 5 units (s 78).
81 Major Sporting Events Act 2009, s 77. An offence attracts 20 penalty units.
82 Major Sporting Events Act 2009, s 79.
83 Major Sporting Events Act 2009, s 80.
84 Major Sporting Events Act 2009, s 81.
85 Major Sporting Events Act 2009, s 82(1). Different procedures are in place if the surrendered or confiscated item is a firearm, a type of dangerous good, or a perishable foodstuff : s 82(2).
86 Major Sporting Events Act 2009, ss 83-90.
87 Major Sporting Events Act 2009, s 84(a).
88 Major Sporting Events Act 2009, s 84(b).
89 Major Sporting Events Act 2009, s 85. An offence attracts 20 units.
90 Major Sporting Events Act 2009, s 86. The penalty comprises 60 units.
91 Major Sporting Events Act 2009, s 87. The penalty comprises 60 units.
92 Major Sporting Events Act 2009, s 91.
93 Major Events Management Act 2007, s 25. Anyone who does so knowingly commits an offence, punishable by a fine of not more than $5,000 (s 26).

Again, the MSEA devotes a whole Part to sports event ticketing with the aim of ensuring fair methods of sale.[94]

Under the MSEA, a notice of intention to make a sports ticketing event[95] declaration must be given by the Minister to the sports organiser no less than nine months before the event is to be held, and the sports organiser is given 14 days to provide a written submission as to whether the event should be declared a sports ticketing event.[96] The Minister then has 14 days to either make, or decide not to make, the declaration.[97] One of the factors influencing this decision will be whether the sports event is major, having regard to the likely number of spectators for the event.[98]

The event organiser must submit a ticketing scheme proposal[99] and the Minister may ask for further details if required.[100] The Minister must either approve or decline the proposal within specified time frames.[101] Among other criteria, the proposal must comply with the ticketing guidelines.[102] The event organiser may submit a ticket scheme proposal for an event that has not been declared,[103] and may also submit a replacement ticket scheme proposal if the declaration applies to the event generally.[104] Once a ticket scheme has been approved, the organiser must ensure that any authorisation given to sell or distribute tickets is in writing and must give the Minister the name and contact details of anyone so authorised.[105] The approved ticket scheme may be varied[106] or cancelled.[107]

The Minister must give written guidelines for ticket scheme proposals and approved ticket schemes. These guidelines may require that an approved ticket scheme

(a) provide that a specified minimum proportion of tickets to the event must be made available for sale or distribution to the public generally or to particular classes of persons; and
(b) place conditions on the sale or distribution of the tickets prohibiting the same by unauthorised people; and

94 Major Sporting Events Act 2009, Part 9 (ss 151- 182).
95 A "sports ticketing event" means a sports event to which a sports ticketing declaration applies, and if such an event is to be replayed or rescheduled for any reason, includes such replaying or rescheduling.
96 Major Sporting Events Act 2009, s 151.
97 Major Sporting Events Act 2009, s 152. This can be revoked: s 153. The sports event organiser may apply to Victorian Civil and Administrative Appeals Tribunal ("VCAT") for a review of this decision: s 168(1)(a).
98 Major Sporting Events Act 2009, s 152(2)(b).
99 Major Sporting Events Act 2009, s 154.
100 Major Sporting Events Act 2009, s 155.
101 Major Sporting Events Act 2009, s 157. The sports event organiser may apply to VCAT for a review of this decision: s 168(2). If the declaration applies to the event generally, there is provision for a replacement ticket scheme proposal: s 159.
102 Major Sporting Events Act 2009, s 157(4)(a). See s 163 below.
103 Major Sporting Events Act 2009, s 158.
104 Major Sporting Events Act 2009, s 159.
105 Major Sporting Events Act 2009, s 160.
106 Major Sporting Events Act 2009, s 161.
107 Major Sporting Events Act 2009, s 162.

(c) require certain information to be printed on the tickets, such as conditions of sale and distribution and offences for contravening any such conditions.[108]

It is an offence if the organiser, without reasonable excuse, holds an event, sells tickets, or authorises tickets to be sold or distributed before there is an approved ticket scheme.[109] Failure to comply with an approved ticket scheme also attracts a penalty.[110] Anyone who, without reasonable excuse, sells event tickets contrary to the ticket conditions, commits an offence.[111]

Enforcement provisions under this Part include the ability to enter or search premises with consent or with a warrant;[112] to obtain a court order requiring a potentially offending person to answer questions or produce information or documents;[113] and to inspect, make copies, seize or keep documents under that order.[114] There is a protective provision against self-incrimination[115] and a provision for confidentiality.[116] It is an offence to give false or misleading information.[117]

3. Advertising

Despite its stated purposes, the MEMA, on its third reading as a Bill,[118] was heralded as a stand-alone, generic piece of legislation that provides a "clear, predictable and fair regime for dealing with ambush marketing issues."[119] Of course, this is only one aspect of managing a major event,

108 Major Sporting Events Act 2009, s 163.

109 Major Sporting Events Act 2009, s 164. An offence attracts 600 units (natural person) or 3000 units (body corporate). These acts cannot take place during the "prohibited time period". This is defined in s 164(4) as the period between the receipt by the organiser of the Minister's notice of intention to make a sports ticketing declaration, and the receipt by the organiser of the Minister's decision not to do this or to approve a ticket scheme.

110 Major Sporting Events Act 2009, s 165. The penalty is 600 units (natural person) or 3000 units (body corporate).

111 Major Sporting Events Act 2009, s 166(1). The penalty is 60 units (natural person) and 300 units (body corporate). If more than one offence occurs under this section in respect of a particular event on a particular day, the offender's total fine must not exceed 600 units (natural person) or 3000 units (body corporate): s 166(2). All such offences are indictable: s 166(3).

112 Major Sporting Events Act 2009, s 170.

113 Major Sporting Events Act 2009, s 172.

114 Major Sporting Events Act 2009, s 173. There are provision for returning copies of the documents to the person from whom they were taken (s 174) and for returning seized documents or things (s 175).

115 Major Sporting Events Act 2009, s 176.

116 Major Sporting Events Act 2009, s 181.

117 Major Sporting Events Act 2009, s 177. The penalty is 60 units (both for a natural person and a body corporate).

118 23 August 2007.

119 The term "ambush marketing" suggests an unlawful approach to marketing strategies but this has long being a controversial point. Some strategies might be better considered as border-line but ingenious. Ambush marketing divides itself into three categories: illegal behaviour - infringement of traditional intellectual property rights including misleading and deceptive behaviour; normally legal behaviour that anti-ambush legislation makes illegal - for example aerial advertising; and successful and lawful ambush behaviour because no legal rights are infringed. See commentary in J Curthoys and C Kendall, "Ambush marketing and the Sydney 2000 Games (Indicia and Images) Protection Act: A Retrospective" (2001) 8(2) Murdoch University Electronic Journal of Law <www.murdoch.edu.au/elaw/issues/v8n2/kendall82.html>; N Litt, "Ambush Marketing and the Olympics" in E Toomey (ed) *Keeping the Score: Essays in Law and Sport* (2005) 155 at 156; H Opie, Book Review; "Structuring

but it is clear that commercial protection is the heart of the MEMA. One might have hoped that, at least in this area, the New Zealand statute would compare favourably with its now Victorian counterpart. Unfortunately, there are some serious omissions.

The MEMA provides two specific categories of protection: "ambush marketing by association" and "ambush marketing by intrusion". The latter protects against unauthorised advertising. The MSEA parallel to New Zealand's protective provisions for ambush marketing by intrusion comprises two Parts: "Advertising other than aerial advertising" and "Aerial advertising".[120] These Parts are separate from the MSEA's "Commercial Arrangements" Part.[121]

MEMA: Ambush marketing by intrusion

The MEMA empowers the Economic Minister to declare a "clean zone", "clean transport routes"' and a "clean period" in relation to a major event.[122]

MEMA: Land

The language in the relevant statutory provisions suggests quite clearly that the intention is to prohibit certain activities on land. A good example is s 16(3) of the Act in which a "clean zone" is defined: the clean zone area comprises:

> (i) the venue of a major event activity; and
> (ii) areas that are directly proximate to the area in subparagraph (i) (for example, *the adjacent footpath, road or other thoroughfare*); and
> (iii) areas that are otherwise necessary to enable the major event activity to occur;[123]
> and the area does not consist of excluded *land and buildings*.[124] (emphasis added).

Similarly, under s 16(4) of the Act, a "clean transport route" must not extend more than 5 kilometres from the closest point of the boundary of a clean zone,[125] and consists of, or is directly proximate to either

> (i) *a motorway or State highway* (as those terms are defined in section 2(1) of the government Rating Powers Act 1989); or
> (ii) *a railway line* (as that term is defined in section 2(1) of the New Zealand Railways Corporation Act 1981);[126]
> The route does not consist of *excluded land and buildings*.[127] (emphasis added).

Effective Sponsorships" (1999) 23 Melbourne University Law Review 257 although readers must note that these commentaries pre-date the ambush marketing legislation discussed in this paper. For commentary on the Major Events Management Act 2007 and ambush marketing, see S Corbett and Y van Roy, "The Major Events Management Act" [2008] New Zealand Law Journal 211; C Elliot, "Ambush Marketing: A Wide New Sponsorship Right" [2008] New Zealand Law Journal 207; and D Morgan, "Legislation to Control Ambush Marketing: The New Zealand Model" (2008) 19 Australian Intellectual Property Journal 148.

120 Major Sporting Events Act 2009, Part 7 and Part 8 (ss 124-150).
121 Major Sporting Events Act 2009, Part 3.
122 Major Events Management Act 2007, s 16.
123 Major Events Management Act 2007, s 16(3)(a).
124 Major Events Management Act 2007, s 16(3)(b).
125 Major Events Management Act 2007, s 16(4)(a).
126 Major Events Management Act 2007, s 16(4)(b).
127 Major Events Management Act 2007, s 16(4)(c).

The authors also note the examples the MEMA provides under various statutory provisions. Fourteen of the seventeen examples provided appear in the "ambush marketing by intrusion" sub-part. Each one of these fourteen examples relates to some sort of intrusion solely on land. Any statutory references to intrusion in the air or on the water are almost incidental.

MEMA: the "clean" zone"

Clean zones are described above. As noted, they do not include private land and buildings except those to which the public normally has access (for example, *a railway station or venue's car park*)[128] (emphasis added). Within the clean zones, all unauthorised street trading,[129] or advertising is prohibited during the clean period.[130] Also prohibited during that time is unauthorised advertising that is clearly visible from a clean zone (s 19(1)). "Clearly visible" means visible to an extent that[131]

> a reasonable person would consider the content, subject, message, or purpose of the advertisement to be able to be determined without the use of visual apparatus other than contact lenses or glasses.

In an unmistakeably understated way, s 19(2) states that s 19(1) includes

> advertising on or by means of an aircraft, but does not include normal markings and livery on an aircraft.

In the definition section of the Act, an "aircraft" includes[132]

> any airship, balloon (including kite balloon), blimp, glider(including hang glider) kite and parachute.

The two examples given under s 19 relate to billboards located outside the clean zone.

The reference to aircraft in s 19(2) is the only reference in the Act to aerial advertising. This must be compared to the extensive Part 8 of the MSEA described below in which intrusion by air is considered a major threat.

MEMA: the "clean period"

A clean period is the declared time period for which clean zones and clean transport routes may be imposed. Clean periods may include a reasonable time before and after the main event activity.[133]

MEMA: "clean transport routes"

Clean transport routes are described above. During the clean period no person may advertise within them without authorisation from the event organiser.[134] This includes anyone who pays for, authorises or receives consideration for, the placement of the advertisement.[135]

128 Major Events Management Act 2007, s 16(3)(b); s 16(5).
129 "Street trading" means selling, hawking, or giving away goods or services, but excludes operating an existing business out of existing permanent premises of that business: Major Events Management Act 2007, s 17)(3).
130 Major Events Management Act 2007, s 17, 18.
131 Major Events Management Act 2007, s 19(3).
132 Major Events Management Act 2007, s 4.
133 Major Events Management Act 2007, s 16(3)(c); 16(4)(d).
134 Major Events Management Act 2007, s 20.
135 Major Events Management Act 2007, s 21.

MEMA: Exceptions and defences

Section 22 of the Act provides a series of exceptions to such unauthorised advertising. The exceptions allow advertising if "in accordance with honest practices in industrial or commercial matters" it is done by an existing organisation "continuing to carry out its ordinary activities"[136] or it appears on articles of clothing, newspapers, magazines, electronic devices, and *boats* or trains, as long as there is no intention to intrude on a major event activity or the attention of the associated audience (emphasis added).[137] It is a defence if those publishing advertisements did so in the ordinary course of business, and did not know, and had no reason to believe, that publishing them would constitute a breach.[138]

The reference to "boats", used in s 22 (the exception provision!), is the only water-based reference in the Act. A "boat" is not defined. New Zealand perceives no threat of unauthorised advertising on the water. Again, Part 7 of the MSEA (see below) has several prohibitive provisions relating specifically to vessels.

MEMA: Enforcement

It is perhaps best to note here that the large proportion of the MEMA dealing with enforcement[139] concentrates primarily on offences occurring under the "ambush marketing by intrusion" and "ambush marketing by association" categories.

Enforcement officers are given a wide range of powers.[140] These include identifying breaches or potential breaches, issuing formal warnings, inspecting and monitoring clean zones, and seizing and covering things in clean zones. Enforcement officers may enter premises but this is limited to the premises being within the clean zone; outside the clean zone if they can lawfully enter without a search warrant; or where a search warrant has been issued.[141] They have the power to seize or cover any thing if they reasonably believe that it breaches the Act,[142] and liability is excluded if those actions are done in good faith.[143]

Sub-part 4 provides for civil proceedings; and the remaining sub-parts deal with general matters (including injunctions, orders for erasure and delivery up, and directives for corrective advertising), criminal offences and search warrants.

MSEA: Aerial advertising

The MSEA considers aerial advertising a major risk.[144]

136 Major Events Management Act 2007, s 22(a).
137 Major Events Management Act 2007, s 22.
138 Major Events Management Act 2007, s 24. Those committing an offence under these provisions are liable on summary conviction to a fine not exceeding $150,000: s 23.
139 Major Events Management Act 2007, Part 4: ss 35-78.
140 Major Events Management Act 2007, s 40.
141 Major Events Management Act 2007, s 41.
142 Major Events Management Act 2007, s 42.
143 Major Events Management Act 2007, s 47.
144 Part 8 comprises 27 sections (ss 124-150).

Part 8 applies to both aerial advertising events and venues.[145] Aerial advertising includes:[146]

- skywriting or sign writing by an aircraft;
- a banner or other sign towed by or attached to an aircraft;
- matter displayed on an aircraft, other than its normal markings and livery;
- matter displayed on a hang glider, parachute, paraglider or similar device other than its normal markings; or a banner or sign attached to the same;
- a banner or sign attached to a person suspended from a hang glider, parachute, paragilder or similar device;
- any laser or digital projection of advertising.

Aerial advertising events and venues include Melbourne's famous hosting events (such as the Boxing Day cricket test at the MCG), the Australian Open Tennis Championships (in Melbourne Park); the Formula One Grand Prix (at an area declared by notice under s 27 of the Australian Grand Prix Act 1994), the AFL Grand Final (at the MCG), the Melbourne Cup carnival (at the Flemington racecourse) as well as any event specified in a major event order as an aerial advertising event (a specified aerial advertising venue).[147] Aerial advertising limitation times are specified.[148] For example, in relation to the Boxing Day cricket match, the block-out period is from 9.00 am until 7.00 pm on each day of the event (a "clean period" in New Zealand terms).

Unauthorised aerial advertising is an indictable offence.[149] During the prescribed limitation period, no one without the necessary authorisation can display or cause to be displayed commercial aerial advertising that is within sight of the aerial advertising venue or event area where the aerial advertising event is being conducted and that is displayed in such a manner that the content can be seen without the aid of optical apparatus other than contact lenses or spectacles.[150] There is an exception for any person who flies an aircraft over the relevant area if there is an emergency; if the aircraft is being used for the provision of emergency services; or if the aircraft is being used for gathering information for the purpose of reporting news or presenting current affairs.[151]

145 Major Sporting Events Act 2009, s 124.
146 Major Sporting Events Act 2009, s 3.
147 Major Sporting Events Act 2009, s 3.
148 Major Sporting Events Act 2009, s 3.
149 Major Sporting Events Act 2009, s 125(4). It attracts 400 units (natural person) or 2400 units (body corporate).
150 Major Sporting Events Act 2009, s 125(1).
151 Major Sporting Events Act 2009, s 125(2). It is also not an offence if the person has the required authorisation for another aerial advertising event at another aerial advertising venue or event area: s 125(3).

An application must be made for aerial advertising[152] and the Secretary[153] may grant the necessary authorisation.[154] Authorisation is forbidden if the display of aerial advertising would adversely affect the organisation or conduct of the relevant aerial advertising event or any other commercial arrangements relating to it. If the event is an annual one, the display must not adversely affect the future conduct of that event.[155] The relevant event organiser must be consulted before any authorisation is given.[156] Any such authorisation must be notified;[157] and must be in writing.[158] It is subject to terms and conditions including its duration, and whether it applies generally or in specified circumstances, to a specified person or class of person or to a specified type or class of advertising.[159] The event organiser or the Secretary may apply to the courts for injunctions to restrain a person engaging in conduct that is unauthorised under these provisions,[160] and the courts have the power to vary or rescind any such injunction.[161] Anyone that suffers loss, injury or damage from any such offence may bring an action for damages.[162]

There are various aerial advertising inspection powers that include search warrants for searching, seizing and securing against interference any things or documents relating to the contravention;[163] the use of equipment to examine or process things found at the premises;[164] and the use or seizure of electronic equipment found there.[165] An authorised officer has power to require information or production of documents and refusal to comply with the order is an offence;[166] as is providing false or misleading information.[167] There is a protective provision against self-incrimination.[168]

MSEA: Advertising other than aerial advertising

Part 7 deals with advertising other than aerial advertising and specifically excludes the provisions for the latter.[169]

MSEA: Buildings or structures

152 Major Sporting Events Act 2009, s 126.
153 Secretary means the person who for the time being is the Department head under the Public Administration Act 2004 of the department of Planning and Community development (Major Sporting Events Act 2009, s 3).
154 Major Sporting Events Act 2009, s 127(1).
155 Major Sporting Events Act 2009, s 127(2).
156 Major Sporting Events Act 2009, s 127(3).
157 Major Sporting Events Act 2009, s 128.
158 Major Sporting Events Act 2009, s 129(1).
159 Major Sporting Events Act 2009, s 129(2).
160 Major Sporting Events Act 2009, s 131.
161 Major Sporting Events Act 2009, s 132.
162 Major Sporting Events Act 2009, s 133.
163 Major Sporting Events Act 2009, ss 134-139.
164 Major Sporting Events Act 2009, s 140.
165 Major Sporting Events Act 2009, s 141.
166 Major Sporting Events Act 2009, s 144. The offence attracts 60 penalty points.
167 Major Sporting Events Act 2009, s 145. The offence attracts 60 penalty units.
168 Major Sporting Events Act 2009, s 146.
169 Major Sporting Events Act 2009, s 115. Part 7 applies if a major sporting event order specifies that it should apply to a specified major sporting event or a specified event venue or a specified area in relation to that event: s 115(2).

Unless authorised or permitted by the event organiser, unauthorised advertising is prohibited during an advertising limitation period[170] for the specific event. This applies to any person who is the owner or occupier or holder of a lease or licence relation to a building or structure in an area that is an event venue or event area. That person must not cause or permit any advertising material to be affixed to or placed on, or to remain on, the building or structure.[171] If that occurs, the event organiser may obliterate or remove it[172] causing as little damage as possible.[173] This does not apply if conditions of use of an event venue or event area have been established in any agreement between the respective manager and event organiser;[174] or if there is any pre-existing advertising displayed for purposes unrelated to the holding of the event.

This sets out the criteria clearly. Unlike the MEMA, all buildings and structures within the specified area are targeted. There is no exception for private ownership. "Private ownership" is not defined in the MEMA: does it mean only ownership or is it intended to include occupiers of a lease or licence of a building? This is one of the many shortcomings in New Zealand's statute. So also is the MEMA's loose exception for any organisation "continuing to carry out its ordinary activities" in accordance with "honest practices in industrial or commercial matters".[175] What does that mean? Apart from exempting pre-existing advertising, any Victorian must reach a prior advertising agreement with either the event manager or event organiser. This is a superior mechanism for controlling the problem.

MSEA: Vessels

As noted above, New Zealand perceives no threat of unauthorised advertising on the water.

The MSEA provides specific protective measures for unauthorised advertising on the water.

Unless authorised and acting within that authorisation, no person can display, or cause to be displayed, commercial advertising on a vessel that is within sight of the event venue or event area.[176]

170 Unlike the Major Events Managements Act's "clean zone" criteria, the Major Sporting Events Act has specific block-out times. Its definition of an "advertising limitation period" (s 3) as it relates to Part 7, comprises:
(a) the period –
(i) starting 7 days before the major sporting event starts; and
(ii) ending 2 days after the major sporting event ends; or
(b) if a different period is specified in a major sporting event order, a period specified in that order to be an advertising limitation period for that major sporting event.

171 Major Sporting Events Act 2009, s 116(1). There are some specific exceptions for the Australian Formula One Grand Prix: s 116(4).

172 Major Sporting Events Act 2009, s 116(2).

173 Major Sporting Events Act 2009, s 116(3).

174 Major Sporting Events Act 2009, s 116(5)(a) and (b).

175 See Major Events Management Act 2007, s 22(a).

176 Major Sporting Events Act 2009, s 117(1). The offence attracts 400 units (natural person) or 2400 units (body corporate).

This does not apply if the person has any such authorisation for another event at another event venue or area and carries out the activity in the course of conducting the authorised activity.[177]

The event organiser has the power to authorise advertising on vessels.

An application must be made for advertising on vessels[178] and the event organiser may grant the necessary authorisation.[179] Authorisation is forbidden if the display of advertising on the vessel would adversely affect the organisation or conduct of the relevant event or any other commercial arrangements relating to it. If the event is an annual one, the display must not adversely affect the future conduct of that event.[180] Any such authorisation must be in writing.[181] It is subject to terms and conditions including its duration, and whether it applies generally or in specified circumstances, to a specified person or class of person or to a specified type or class of advertising.[182] The event organiser may apply to the courts for injunctions to restrain a person engaging in conduct that is unauthorised under these provisions,[183] and the courts have the power to vary or rescind any such injunction.[184] Anyone that suffers loss, injury or damage from any such offence may bring an action for damages.[185]

4. Commercial Arrangements

Part 3[186] of the MSEA authorises commercial arrangements. These comprise the use of logos, images and references, and broadcasting. Any comparative provision in the MEMA relates to "ambush marketing by association" and this involves only emblems and words. The word "broadcasting" does not appear anywhere in the MEMA.

MEMA: logos, images and references

In the MEMA, the principal provision in the "ambush marketing by association" subpart[187] prohibits any person from making a representation in a way likely to suggest to a reasonable person that there is an association

177 Major Sporting Events Act 2009, s 117(2).
178 Major Sporting Events Act 2009, s 119.
179 Major Sporting Events Act 2009, s 118.
180 Major Sporting Events Act 2009, s 118.
181 Major Sporting Events Act 2009, s 118(3).
182 Major Sporting Events Act 2009, s 120.
183 Major Sporting Events Act 2009, s 121.
184 Major Sporting Events Act 2009, s 122.
185 Major Sporting Events Act 2009, s 123.
186 Major Sporting Events Act 2009, ss 27-60. The Major Sporting Events Act 2009 states that nothing in Part 3 derogates from any rights subsisting in or any remedy available to any person under any other law or any contract or agreement in relation to protected event logos or images; or any other logos or images; or protected event references (s 28), affects rights relating to the use of business or company names (s 29) or affects rights in respect of passing off (s 30). The comparative provision in the Major Events Management Act 2007 (s 35) provides that nothing in the Act affects any principle of law or any other remedy in any other Act including –
(a) the law relating to passing off; or
(b) rights under the Fair Trading Act 1986; or
(c) rights under the Geographical Indications (Wines and Spirits) Registration Act 2006; or
(d) rights under the Trade Marks Act 2002; or
(e) rights under the Copyright Act 1994.
187 Major Events Management Act 2007, s 10.

between the major event and any good, service or brand. This includes anyone who pays for, authorises, or receives consideration for, the placement of the representation.[188]

By Order in Council, the Governor General may declare emblems to be major event emblems; and a word, words if combined with other words, or a combination of words to be a major event word or major event words.[189] The order made must identify the relevant major event and must specify the protection period, which cannot run beyond 30 days after the end of the event.[190] The Act does not designate a starting period.

Association will be presumed to exist where any major protected emblems or event words are used during the period specified. This includes a representation that so closely resembles a major event emblem, or major event word, or words, as to be likely to deceive or confuse a reasonable person.[191] The presumption also operates regardless of whether qualified by words like "unauthorised" or "unofficial" or other words that are designed to defeat the purpose of s 10.[192]

Prosecution can be avoided if authorisation has been obtained from the major event organiser or if the representation is in accordance with honest practices in industrial or commercial matters.[193] It is also a defence if those publishing the representation did so in the ordinary course of business, and did not know, and had no reason to believe, that such publishing would constitute a breach of s 10.[194]

MSEA: authorisation for logos and images

Under the MSEA, again the Minister may declare that specified logos or images are protected logos or images for the particular major sporting event and that specified references are protected event references for that event.[195] However, before doing so, he or she must be satisfied that the logos, images or references relate to and are sufficiently connected to the identity and conduct of the event, and that the event has commercial arrangements that are likely to be adversely affected by the unauthorised use.[196]

The Act then makes detailed provisions for authorising the use of protected event logos or images or protected event references. The event organiser may issue such an authorisation;[197] and the Minister may authorise any non-commercial use of the logos, images or references.[198] Any such authorisations are subject to any terms and conditions, the imposition of which is considered reasonable. These include the duration of the authorisation, whether it applies

188 Major Events Management Act 2007, s 10(2).
189 Major Events Management Act 2007, s 8(1).
190 Major Events Management Act 2007, s 9.
191 Major Events Management Act 2007, s 11(1).
192 Major Events Management Act 2007, s 11(2).
193 Major Events Management Act 2007, s 12.
194 Major Events Management Act 2007, s 14.
195 Major Sporting Events Act 2009, s 31(1).
196 Major Sporting Events Act 2009, s 31(3).
197 Major Sporting Events Act 2009, s 32.
198 Major Sporting Events Act 2009, s 33.

generally or in specified circumstances, and whether it authorises the use of all such logos, images or event references, or just those specified.[199] A register of authorisations must be established.[200]

The Act provides for the use of protected event logos or images or protected references that do not need authorisation. As well as the event organiser or other authorised person,[201] any person may use them if the use is incidental to either the provision of information, including the reporting of news and the presentation of current affairs, or the purposes of criticism and review;[202] or if the use is for the purposes of professional advice, research or study purposes or educational purposes.[203] It is an offence to engage in conduct that suggests sponsorship, approval or affiliation[204] and/or to use protected event logos or images or protected event references without authorisation.[205]

The MSEA also defines the meaning of "marked with logos or images or references". "Marking" exists if the logos, images or references are affixed to, annexed to, marked or incorporated in or with –

- the goods; or
- any covering or container, or anything placed or attached to that covering or container, in which the goods are wholly
- or partly enclosed; or
- anything that is attached to the goods or around which the goods are wrapped or wound.[206]

There are no provisions or guidelines on the mechanics of authorising the use of any major protected emblems or event words in the MEMA. Given the detail in the MSEA, the process of authorisation is an important protective measure. So also is a provision protecting the markings on the goods, not just the goods. The MSEA provides this; the MEMA does not.

MSEA: authorisation for broadcasting

There is no reference to broadcasting in the MEMA. This is a serious omission.

By contrast, the MSEA provides statutory provisions for authorised broadcasting. The event organiser may authorise broadcasting but not if, in the opinion of the event organiser, any such activity would adversely affect the organisation or conduct of the particular event, or any commercial arrangements relating to it.[207] An application must be made for this authorisation;[208] the authorisation is subject to any terms and conditions considered reasonable to

199 Major Sporting Events Act 2009, s 34.
200 Major Sporting Events Act 2009, s 35.
201 Major Sporting Events Act 2009, s 36(1).
202 Major Sporting Events Act 2009, s 36(2)(a).
203 Major Sporting Events Act 2009, s 36(2)(b).
204 Major Sporting Events Act 2009, s 37.
205 Major Sporting Events Act 2009, s 38. Any such offence attracts 100 penalty units in the case of a natural person, or 600 units in the case of a body corporate: ss 37, 38.
206 Major Sporting Events Act 2009, s 39.
207 Major Sporting Events Act 2009, s 40.
208 Major Sporting Events Act 2009, s 41.

impose;[209] and it is an offence to broadcast or to make a recording without a broadcasting authorisation[210] unless the broadcasting, telecasting or transmission is not for profit or gain or, if it is, it is not a substantial part of the event or is for the purpose of criticism, parody, reporting or the like.[211]

Enforcement procedures include injunctions,[212] corrective advertising,[213] actions for damages,[214] account of profits,[215] and seizure and forfeiture.[216]

5. Stand-Alone Legislation

The prescriptive nature of the MSEA makes it clear that the MEMA falls far short of providing robust legislation for the management of specified major events. This was its aim. Perhaps the best indicator of this is the subsequent Rugby World Cup 2011 (Empowering) Act 2010 which will cover off some of the detailed MSEA provisions. There are many omissions in the MEMA as a stand-alone piece of legislation. As a final illustration, unlike the MSEA, there is no provision in the MEMA to suspend other legislation. Clean zones and clean routes have now been declared.[217] The possibility that their enforcement might clash with other statutory provisions has already been observed. Under the MSEA, on the Minister's recommendation, the Governor in Council may make an order that any of the following Acts[218] as specified in the order should not apply to the development or use of an event venue or event area for the purposes of a major sporting event specified in the order to the extent and period so specified.[219] The Acts comprise:

(a) Planning and Environment Act 1987
(b) Heritage Act 1995
(c) Environments Effects Act 1978
(d) Coastal Management Act 1995
(e) Crown Land (Reserves) Act 1978
(f) Land Act 1958
(g) Building Act 1993.[220]

209 Major Sporting Events Act 2009, s 42. These include but are not limited to the duration of the authorisation, whether the authorisation applies generally or in specified circumstances, and whether it applies to a specified person or class of person.
210 Major Sporting Events Act 2009, ss 43, 44.
211 Major Sporting Events Act 2009, s 43(2). An offence under this category attracts 400 units (natural person) or 2400 units (body corporate).
212 Major Sporting Events Act 2009, s 45, 46.
213 Major Sporting Events Act 2009, s 47.
214 Major Sporting Events Act 2009, s 48.
215 Major Sporting Events Act 2009, s 49.
216 Major Sporting Events Act 2009, ss 51-60.
217 As this article goes to print, these have just been announced; Supplement to New Zealand Gazette, Thursday 5 May 2011, issue no 63 of Tuesday 10 May 2011, "Clean Zones, Clean Transport Routes and Clean Periods for the Rugby World Cup 2011" pursuant to the Major Events Management Act 2007.
218 These are specified in ss 93-98 Major Sporting Events Act 2009 (ss 93-98).
219 Major Sporting Events Act 2009, s 15(1). The Minister must be satisfied that the making of any such order is in the public interest and is necessary for the effective management and conduct of the event, or for the effective preparation or management and conduct of the associated event venue or event area.
220 There is also a limitation on powers to make local laws (s 99) and the ability to make a no compensation order (ss 17, 18).

VII. Conclusion

This paper offers some observations on trans-Tasman sport and law and in the process demonstrates that sport is a vibrant domain in which to observe and evaluate important themes in the trans-Tasman legal relationship such as governance, the impact of different social and welfare policies, mutual inspiration and co-operation, or the pursuit of independent paths. To what degree sport is likely to influence future trans-Tasman legal initiatives is hard to say, but increasingly it will have a role to play.