

EDITORIAL

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2013 was a year which saw sporting highs and lows in Australia and New Zealand. The highs included Australia qualifying for the Football World Cup in 2014 and winning back the Ashes. Depending upon where you are, the All Blacks retaining the Bledisloe Cup for the 11th consecutive year might fall under either heading.

The lows in Australia, however, were dominated by matters of doping linked to the “blackest day in sport” – allegations in February 2013 that Australian professional sport was “highly vulnerable to organised crime infiltration” following an investigation and report by the Australian Crime Commission. The Justice and Sports Ministers of the day reinforced the view that doping was widespread and that criminal charges would be laid. The report and attendant statements dominated both the general and sports press for the whole of 2013. Despite the furore, no criminal charges were laid. The Australian Sports Anti-Doping Authority (ASADA) successfully lobbied the federal government to pass legislation amending the Australian Sports Anti-Doping Amendment Act to give the CEO of ASADA the equivalent of criminal coercive powers. Both the Australian Football League (AFL) and the National Rugby League (NRL) imposed substantial fines on clubs for bringing their sports into disrepute in relation to alleged use of performance enhancing drugs by their players. By the end of 2013 ASADA had placed few names of players on its Register of Findings arising out of this investigation, with investigations continuing into 2014.

The Journal was fortunate in 2013 to receive a number of international submissions and cross-disciplinary pieces which injected different perspectives for the consideration of our readers. Individual articles again address a diversity of legal areas and sports, which give the current issue of the journal a very broad ambit.

Dr Catherine Bond has contributed a piece “‘A spectacle cannot be owned’: A history of the uneasy relationship between copyright and sport in Australia”, highlighting the difficult relationship which has always existed between copyright and sport, although noting that it is, in effect, symbiotic. She outlines a history where sports have historically sought greater protection from copyright law than the courts have generally been prepared to give. At the same time, sport itself has shaped copyright law, particularly in areas relating to publication of information. The author notes that the on-going development of technology will provide continuing challenges for both sports and copyright law.

A submission from the United States provides interesting commentary on the application of US bankruptcy law in the context of professional sport. In their fascinating article “Financial distress and the culture of sports”, Professor Jack Williams and Elizabeth Simmons outline issues linked to financial hardship in the sport of baseball and the processes which are ultimately required to keep a club playing. Looking at the bankruptcies of the Texas Rangers and the Los Angeles Dodgers, the authors address the implications of private ownership of sporting teams in a piece which underscores the important role of the sports franchisor, in this case Major League Baseball, in determining the eventual outcome.

A cross- disciplinary piece on role models in sport “The Contractual and Ethical Duty for a Professional Athlete to be an Exemplary Role Model: Bringing the Sport and Sportsperson into Unreasonable and Unfair Disrepute” has been written by Associate Professors Paul Jonson, Sandra Lynch and Daryl Adair. In an area which has been the subject of a number of previous articles, the authors take issue with the broad ranging and uncertain nature of the concept of disrepute in existing contract terms, and the vague role model expectations of athletes beyond the playing field. It queries what a role model actually is. It directs sports to clarify their expectations of athlete behaviour off the field and recommends education of athletes and the community about an appropriate role for athletes.

A second cross- disciplinary piece by a comprehensive list of senior academics from disciplines including law, psychology, exercise science and sport injury research looks at the interesting issue of the fitness industry, its training standards and potential legal liability. “Train the trainers: Maintaining standards to minimise injuries and avoiding legal liability in the fitness industry” arises from detailed funded research in the fitness industry, including surveys on perceptions of competence amongst fitness professionals. The authors assess the survey and potential liability of fitness professionals to ultimately determine that if perceptions by the survey participants of insufficient professional qualifications for fitness industry professionals are correct, further training may be warranted.

Finally and importantly given the topicality of anti-doping, we have two international pieces on the World Anti-Doping Code (Code) and its interpretation internationally. The first is by Mark Smith from the UK. In his article “A critical analysis of the divided Court of Arbitration for Sport Jurisprudence on the World Anti-Doping Code article 10.4” he looks carefully at the Code and the interpretation of the term “intent to enhance sport performance”, exhorting reasonableness in the assessment of athletes who unintentionally breach the Code. The second article from Swiss lawyer Philippe Fuchs looks at the proposals for change in relation to inadvertent doping in the 2015 Code.

The Editorial Committee thanks contributors and the anonymous reviewers for their contributions. We trust that readers will find the wide range of articles interesting and will find them useful in their consideration of the important issues that they raise. Finally we encourage and would welcome high quality contributions from Australia, New Zealand and internationally to ensure that the Journal continues to be informative and interesting.

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