

# Foreword

It is often said that he who ignores history is condemned to relive it. In sport, the administrator or athlete who fails to understand the importance of the law may find themselves reliving 'that' moment many times over as it is contested and re-contested in one jurisdiction after another.

Sport has always been a contradiction of unbridled passion and fixed boundaries. Increasingly it has also become a business environment that can determine athletes' financial futures as well as their places in the record books. International corporations invest their corporate image in sporting codes, sporting events and in individual sportsmen and sportswomen.

As the stakes rise, so to does the likelihood that people will seek to resolve disputes through the legal process.

Too often people in sport have seen this as some sort of intrusion, something foreign to their way of life.

On the other side, those looking to the law have sought to see sport as merely another business that can be classified in normal market terms.

*Sport and the Law* can assist in the establishment of some common ground between these two views. It also encourages an understanding of the realities we all live with in terms of rights and obligations.

Sports law is a relatively new and therefore quickly evolving speciality. The importance therefore of revising editions of *Sport and the Law* cannot be overstated, any more than can the importance of people within sport taking the time to read such publications.

The law is not a threat to the way we play and administer sport; instead, the law is something that can map out the pathway through the complicated problems which can arise either on or off the field.

In recent years, the National Rugby League has not only weathered some highly publicized drama but has produced record breaking results due not only to the excitement of our sport but our careful adherence to our rules and to the processes that support those rules. These have allowed us to deal with onfield issues with confidence, and to deal with what can at times seem like a minefield of off-field issues in ways that do not unduly interfere with the effective running of the competition.

The law's role in the business of sport has indeed become so critical that some of the early generation of 'in-house' sporting

lawyers have become chief executives or commissioners of those sports, a trend evidenced in Australian sport and at both the NFL and the NBA.

It's true that on an emotional level the theatre of sport allows us to suspend our daily existence for a while, but in some ways that also increases the responsibility of administrators to ensure that we do not lose sight of the rights and obligations of those connected with a sporting competition or event.

Being aware of those rights and obligations will also hopefully assist in demystifying much that is often said of sport and the law. Terms such as restraint of trade, passing off, discrimination and natural justice are waved around as some new sporting vernacular at the slightest hint of an argument, and are often argued, even by lawyers, with little attention to the relevant sport's established rules.

Deborah's book represents the most informed and concentrated reference guide to assist us all in exploring those issues.

I encourage everyone involved in sport and in the coverage of sport to read it and to keep it within close reach.

David Gallop  
Chief Executive  
National Rugby League

# Introduction

Players, officials and coaches have rights, obligations and potential liabilities, whether or not they are paid for their services. The unpaid sportsperson may at least possess the right to fair treatment by a judiciary or disciplinary committee. A sportsperson injured by the intentional or negligent action of an opponent or other person may take action in court, or may be liable for injury caused. Unpaid officials may have a duty to consider the safety of both players and spectators.

Laws that place responsibility on directors and committee members apply whether or not they are receiving any remuneration for their efforts. The 'amateur' distinction counts for little where issues such as corporate governance are concerned. The sheer numbers of people engaged in sports such as netball and lawn bowls mean that those involved have enormous responsibilities, regardless of the fact that most participants are unpaid. These numbers are set to increase with the focus on active lifestyles, as obesity and an aging population present challenges to the community.

Other sports such as surfing and running have numerous unregistered participants, and the law may also apply to aspects of these. A recreational runner may suffer injury through faulty equipment – running shoes that are not up to the job. A tennis player might aggravate an injury through poor treatment or advice, and be able to sue the treating doctor or physiotherapist or podiatrist. A marathon runner may dehydrate because insufficient drink stations were provided by organisers of the marathon course. A surfer may cause injury through negligent use of a surfboard, and be liable to pay damages to the injured person.

The areas of criminal law, negligence and the principles of natural justice are potentially relevant to most sports. Once a sport pays its players or participants, or where large amounts of money are involved through sponsorship or grants, the potential application of the law increases. Contract law, trade practices, taxation and employment law are some of the legal areas that might apply.

This book attempts to show, through a wide range of possible scenarios, the enormous application that the law can have to sport, and ways in which those involved can deal with potential problems.

# How the law comes into sport

The law is the method that our society uses to determine the rights of individuals. It touches every aspect of our lives, and sport is no exception. The growth and expansion of professional sport, the fact that so many people now make a living from the sports industry, and a heightened community awareness of individual rights suggest that those involved in sport will increasingly turn to the courts to protect their interests.<sup>1</sup> The Sydney Olympics in 2000 focused the attention of Australians and the world on sport in this country as never before. Australia's success in the Rugby World Cup likewise underscored the importance of sport to the nation and its economy. Developments like the introduction of subscription television turned professional sport on its head, challenging the role of sporting organisations.

Sportsmen and women have long passed the point where they are surprised that the law might apply to them, and they now expect it to protect their rights in circumstances that would not have been contemplated twenty years ago. The application of the law to all aspects of sporting life continues to present a range of legal challenges for sporting organisations, athletes and promoters, and a variety of ideological and emotional challenges for many fans.

The increasing range of complex legislation in areas such as child protection, privacy and discrimination, coupled with new civil liability legislation and an increased focus on risk management, challenge even the best run sporting organisations. For those not in the top tier in terms of sponsorship, or not able to attract funds from the sale of things like broadcast rights, the effects of regulation can be stifling.

This book discusses the rights and liabilities of those involved in sport, whether in a paid or voluntary capacity. It explains the areas of commercial law that are relevant to sporting organisations and individuals. It also provides a useful explanation of some basic legal concepts and principles for the lay person.

## What is sport?

While most people could name and describe many sports, defining the word itself is a more difficult task. The Oxford Dictionary defines 'sport' as 'amusement, diversion, fun ... pastime, game'.<sup>2</sup> Sports have been differentiated from games on the basis of the high physical skill factor they involve, and a sociologist has defined sport as

institutionalised competitive activity which involves two or more opponents and stresses physical exertion by serious competitors who represent or are part of formally organised associations.<sup>3</sup>

The extent to which these factors are present in a sport varies. It is possible to think of many activities that most people would describe as sports, but that do not contain all of them. A more appropriate definition for current purposes would be one encompassing athletic activity, some skill and an element of competition.

Definitions, however, do little to convey the passion that sport arouses in competitors and spectators alike. Many writers have described the place of particular sports in their society:

To think of football as merely 22 hirelings kicking a ball is merely to say that a violin is wood and cat gut, Hamlet is so much ink and paper. It is Conflict and Art. (JB Priestley)

Life itself is a game of football. (Sir Walter Scott)

There is no way to explain that baseball is not a sport, or a game or a contest; it is a state of mind and you can't learn it. (John Steinbeck)<sup>4</sup>

Those involved in sports have held a variety of views on the place of sport in their lives and in society generally:

I sometimes think that running has given me a glimpse of the greatest freedom a man can ever know, because it results in the simultaneous liberation of both body and mind. (Roger Bannister, the first man to run a mile in under four minutes)

Winning is not everything, it's the only thing. (Red Saunders, college football coach, 1940)

Some people think football is a matter of life and death. I don't like that attitude. I can assure them it is much more serious than that. (Bill Shankly, English football manager)<sup>5</sup>

It has been suggested that sport is a national obsession in Australia.<sup>6</sup> While some would dispute this, there is no denying the extensive media coverage that sport of all kinds attracts, or the status afforded our sporting 'heroes'. The euphoria following the success of the Sydney 2000 Olympic bid overshadowed most other news for many