

THE AUSTRALIAN

Era of sports sitting in judgment on themselves is over

PAUL HAYES THE AUSTRALIAN 12:00AM May 27, 2017

The announcement this week by the federal Minister for Sport, Greg Hunt, that the government is considering the establishment of a sporting equivalent of the Court of Arbitration is a welcome first step in what could be a timely reform of national, and possibly, international sports governance.

In an era now where most sports have been professionalised, the minister and others are correct to assert that it is no longer appropriate for sports bodies to sit in judgment of themselves.

However, the real worth to the Australian sporting community of the proposed national integrity tribunal will depend on two elements: its availability and affordability; and, its legal structure and powers.

Participation in sport for many is an integral part of Australian life. However, unlike many other aspects of people's daily lives, sport is governed by a private contract between member and sports organisation, which incorporates into it a vast body of international rules and regulations. The fact that most of the world's sports participants (at all levels) are bound to the World Anti-Doping Code is a good example of the reach of international sports law.

When a member infringes the rules of a sports organisation to which he or she is contractually bound, natural justice requires that the member be entitled to a fair hearing before being subjected to any sanction.

Often, as is the case with anti-doping, integrity, off-field conduct, or Olympic selection disputes, these cases carry with them a layer of complexity due to the increased international regulation of sport in recent years.

For most Australian athletes involved in these types of disputes, a first-instance hearing will take place before either a domestic tribunal or the Court of Arbitration for Sport, which is legally anchored in Lausanne in Switzerland (no longer as "fast and affordable" as originally intended when it was established in 1984).

The government's proposal of a third way to determine sporting disputes through a central independent specialist sports tribunal is not a new idea. It has been a topic of discussion within the Australian sports law community for well over a decade.

Centralised government-backed sports disputes tribunals have operated in New Zealand and Canada with considerable success for some years. A similar tribunal (based on a mediation/arbitration model) is currently under development in Malaysia.

One of the main advantages of this form of sports justice is that disputes are determined by a common specialist panel, with the potential for more consistent outcomes to be reached for disputes common to most sports such as anti-doping and match-fixing.

The ability for sports organisations to "opt in" (possibly incentivised by being tied to Australian Sports Commission funding) would be a gentle way to introduce a sports tribunal to the local sporting community.

Another important feature is the ability to compel witnesses to attend before the tribunal and give evidence. The absence of this power in the Essendon doping dispute heard at first-instance before the AFL Anti-Doping Tribunal was starkly exposed when it was determined that subpoenas were not available to the parties to force other persons to produce documents and/or attend and give evidence in that proceeding.

Although a national sports tribunal will go some way towards improving sports justice in Australia, it should not be overlooked that it is impossible for any form of regulatory intervention in Australian sports governance to be a complete panacea to many of the problems currently inherent in Australian sport's administration.

That is because Australian sport remains all but a cog within the international sports system.

The fact that anti-doping cases heard at first instance will always remain subject to appeal to the CAS by reason of the World Anti-Doping Code is a good illustration of this point. Any real reform of sports governance therefore must take place at an international level.

Between 1999 and 2003, Australia played a key role in the establishment of the World Anti-Doping Agency and the International Convention Against Doping in Sport in 2005. Given Australia's good reputation on and off the sporting field, there is no reason why Australia could not once more take the lead in the development of a more harmonised body of international sports regulation.

Properly establishing a national sports tribunal is the first step in ensuring our homegrown attempts to reform sports justice doesn't result in just another kangaroo court.

Paul Hayes is a Melbourne barrister and international sports law expert



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