

Submission of the Australian Athletes Alliance  
to the  
Inquiry into the reporting of sports news and the emergence of digital media

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The Australian Athletes' Alliance ("AAA") is the peak body of associations representing Australian athletes. Its members currently include the

- Australian Cricketers' Association,
- AFL Players' Association,
- Australian Netballers' Association,
- Australian Swimmers' Association,
- Professional Footballers Association,
- Rugby League Players' Association, and
- Rugby Union Players' Association.

As the peak body, we provide a unified voice on issues affecting Australian athletes.

There are two major areas of concern relevant to the current inquiry.

- The inappropriate media intrusion into the private lives of athletes.
- The illegitimate commercial media exploitation of individual athletes and the sporting bodies that employ them.

#### Unwarranted Intrusions by Media into Athletes' Private Lives

Currently, the only protection athletes enjoy against unwarranted intrusions into their private lives by media companies is through a self-regulatory scheme administered by the Press Council. While the standards set out in the self-regulatory scheme are adequate, the complaint procedure is unreasonably complex and the remedies woefully inadequate. Australia requires an independent enforcement system that permits sanctions sufficient to deter media companies from intruding on the private lives of public figures.

The term "public interest" in the Press Council's Privacy Standards is

"defined as involving a matter capable of affecting the people at large so they might be legitimately interested in, or concerned about, what is going on, or what may happen to them or to others."

The first Privacy Standard adds the additional requirement that intrusions into the private lives of public figures must be related to their public duties or activities.

Athletes have repeatedly, and against their consent, been the subject of reports on matters unrelated to their status as athletes. In one of the least noxious examples of this, a newspaper recently published photographs of an athlete's change of residence which were taken surreptitiously and reported details of his new home and furnishings. Additional examples are reports regarding confidential medical information, romantic entanglements, family vacations, shopping sprees, tattoos, and divorce proceedings, none of which had the athletes' consent. One reporter went so far as to ignore directions that a brain-injured player be left alone published personal private details unrelated to football which had been obtained from the player at a time he lacked the mental capacity to consent to provide information. The self-regulatory process administered by the Press Council provides cold comfort to the athletes at the centre of these reports.

The procedure requires:

- the individual whose privacy has been violated must first deal with the offending publication and allow it to respond;
- if the publication's reply is not satisfactory, the individual must lodge a complaint using the form required by the Press Council;
- the Press Council's Executive Secretary reviews the complaint and may reject the complaint or attempt conciliation;
- if the Press Council's Executive Secretary finds the complaint is adequate and if conciliation is unsuccessful or not attempted, he/she then refers the complaint to the publication for comment;
- after the publication comments, the individual must submit a reply to keep the procedure active;
- the individual's reply is referred to the publication;
- the publication has a final opportunity to comment;
- a complaints committee is convened. The individual may not be represented by a lawyer or otherwise—the publication may be represented by whomever it wishes;
- the complaints committee conducts an "informal discussion" of the complaint in an attempt to reach a settlement.
- if a settlement is not reached, the Council adjudicates the matter and issues a decision.

If, after completing this cumbersome process, the decision is in the athlete's favour, the only sanction available is requiring the offending media organisation to publish the Press Council's determination against it. Given the financial benefits that flow from publishing private details of public persons, the sanction provides scant deterrence. Media organisations seem to have concluded that the commercial gains outweigh the shame (if any) of being found to have violated the Press Council's standards. For sanctions to be relevant, they must carry the financial impact necessary for deterrence.

We endorse the existing standards. However, we propose that there should be an independent procedure through which anyone, athlete or not could raise complaints regarding violations of privacy and through which media organisations that violate an individual's privacy would receive sanctions that

- 1) are proportional to the violation;
- 2) become progressively steeper as the number of violations against an organisation increase; and
- 3) are sufficient in impact to deter future violations.

#### Protection Against Commercial Exploitation of Athletes Personal Attributes/Identities

Media companies have used athletes' personal attributes and/or identities (pictures, names, etc) for commercial as opposed to news purposes. For instance, they have used athletes' photos on premiums, such as posters and advertisements, where the purpose of the use is to spur sales rather than disseminate news.

Australian law should be amended to bring it into line with the law in the rest of the developed world in protecting citizens against invasions of their personal attributes and/or

image rights. Most developed countries recognise that an individual's name, likeness, signature, mannerisms, voice, and other distinguishing features are personal to the individual and should remain within his/her control. They protect the individual's right to prevent non-consensual uses of his/her attributes other than for legitimate news/editorial purposes.

Allowing media companies to use Athlete's for commercial gain other than through legitimate news, denies athletes the opportunity to control the exploitation of themselves as individuals. Given the short careers of athletes and the efforts involved in developing their public images, it is unfair to allow media and/or other free-riders to commercially exploit athletes' images to the economic and/or social detriment of athletes.

The Australian government has expressed its intent to ensure Australia's continued elite sporting success, establishing an Independent Panel for Sports to further this aim. Elite athletes are the necessary component of elite sporting success. Refusing rights to athletes in Australia that are available to them in other developed countries is antithetic to keeping elite athletes in Australia, participating in Australian competitions, and playing for Australia national teams. It is also contrary to encouraging international athletes to train or compete in Australia.

#### Protecting of Rights and Properties of Sporting Organisations and Events

"Sports news" and "reporting of news" involve the dissemination of information regarding what occurred at a sporting event and the circumstances surrounding the event, rather the broadcast of the event itself. The right to report news should not be expanded beyond these limits.

Sporting bodies rely on the sale of broadcast rights for a substantial portion of their revenue. The sums are used not only to compensate elite athletes, they are used for programs in the community, such as to develop future players or to bring international events to Australia. Absent the revenue from the sale of broadcast rights, Australia's elite sports would be unable to finance the framework necessary to develop and compensate players. Australia's best athletes would go elsewhere. Moreover, international events normally require strong protection of broadcast rights. Allowing media companies free access in conflict with those rights would make Australia an unattractive location for events. Australia is already under increasing competition for events with countries in Asia, such as China: changing the laws to favour media over sporting bodies will only make it more difficult for Australia to compete.

Sports should not be treated less favorably than other industries. For instance, the government provides ample support for the arts, yet it would never require arts organisations to open to doors to the media to broadcast and/or publish whatever it wishes. Media is not permitted to post music from concerts performed at the MCG or to publish as many photograph of the event as it wishes. There is no reason that a sporting competition should be required to admit the media and to allow the media to compete commercially in the dissemination of actualities.

Sporting associations should have the ability to control accreditation. This will not prevent reporting by unaccredited reporters—they will simply have to enter as a member of the public. Just as a theatrical production is free to provide free entry to the reviewers it feels will be most favorable, sporting bodies should be able to accredit the media organisations that follow their rules.

New media platforms do not warrant different treatment in regard to broadcast rights. Sporting organisations should not lose their rights simply because an event is broadcast through the internet instead of regular television. They should not lose the right to the

intellectual property of their photographs simply because media organisations have the capacity and desire to use them on websites.

Finally, it comes down to a fair go for sporting bodies. Sporting bodies put considerable time, effort, and resources into developing their branding, intellectual property, goodwill, and commercial properties. The media should not be allowed a free ride on those efforts, just as it should not be permitted to free ride on similar efforts by athletes.