



Précis Paper

Understanding the 2021 World Anti-Doping Code

Abstract – What the World Anti-Doping Code means in practice is examined by sports expert and registered pharmacist Pat Howard and legal expert on the Code Sarah Bryden.

Discussion Includes

- What doping is in sport
- The Code
- Rule 1
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- Prohibited list
- Therapeutic use exemption
- Consequences of rules violations for team

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Understanding the 2021 World Anti-Doping Code

1. In this edition of BenchTV, Sarah Bryden (partner) and Pat Howard (CEO) take a practical look at the legal aspects of the World Anti-Doping Code in sport around the world.

What doping is in sport

2. Technically, doping is the use of banned substances in order to enhance performance.

The Code

3. The Code sets out unified rules for all sport around the world. Athletes adhere to the same rules regardless of the sport and where they are.
4. The Code is administered in Australia by Sport Integrity Australia, our national anti-doping body.
5. The 2021 version of the Code introduced a new rule, relating to whistleblower protection - Article 2.11.

Rule 1

6. World Anti-Doping Code 2021 art 2.1 Presence of a prohibited substance or its metabolites or markers in an athlete's sample – the benefit of the doubt position means you need a full process. It's important for the general public to understand you need a significant amount of confirmation.
7. These are not just from pharmacies, they include things you can buy over the counter at Woolworths. From a practical point of view it's very difficult for the athlete to manage.

Rule 2

8. Article 2.2 Use or attempted use of a prohibited substance or a prohibited method - An athlete doesn't have to return a positive sample under this rule and may still be liable.
9. How do you prove 'attempted use'?

Whereabouts rule

10. Article 2.4 Whereabouts failures by an athlete – Any combination of three missed tests and/or filing failures, as defined in the *International Standard for Results Management*, within a twelve-month period by an Athlete in a Registered Testing Pool.

11. Cricket and rugby are both sports that have a lot of player movements at short notice. It's a logistical nightmare. Any sports that have a strong domestic and international flavour are going to be incredibly complex on whereabouts principles.

Prohibited list

12. The prohibited list is a list of substances or methods that are prohibited. Some substances are banned at all times, some are banned in competition.
13. The simplicity of the anabolic agents, the peptides, we can all get our heads around that they're not good.
14. There are complications around things which are very easy to access.
15. Betablockers don't enhance your performance per se. We're talking about decreasing your anxiety levels and increasing your accuracy, enhancing your focus for performance under high pressure situations. For precision sports, some drugs would be performance enhancing and some detrimental.

Therapeutic use exemption

16. Having a prohibited substance or method is not a violation of the Code if a person has a therapeutic use exemption, that is, if "the Athlete establishes that the Possession is consistent with a Therapeutic Use Exemption ("TUE") granted in accordance with Article 4.4 or other acceptable justification.'
17. If in doubt, declare. Declaring is incredibly important.

Consequences of rule violations for team

18. How does it impact the team? Confidentiality processes of first strike, second strike, are normally very well respected. Processes are absolutely played out before the rest of the team are made aware.
19. The view generally is you shouldn't have done that, and as a consequence you pay the price.

BIOGRAPHY

Sarah Bryden

Partner, Holding Redlich Lawyers, Brisbane

Sarah is an experienced litigator. Her considerable commercial experience includes appearing personally for clients in Tribunals, mediations and settlement conferences as well as instructing senior and junior counsel in complex litigation in both state and federal jurisdictions. She has recently been involved in one of Queensland's longest Supreme Court trials. Sarah has also been appointed to the National Sports Tribunal Legal Assistance Panel.

Pat Howard

Chief Executive Officer, MSL Solutions, Brisbane

Pat is an experienced C-suite Executive and Director with a demonstrated history of driving change, delivering outcomes and enhancing people and business performance across a diverse portfolio including sport, entertainment, health, retail, property, industrial relations and fund management.

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