The art of ethics and the art of sports governance

Joseph Naimo

University of Notre Dame Australia, joe.naimo@nd.edu.au

Follow this and additional works at: http://researchonline.nd.edu.au/phil_conference

This conference paper was originally published as:
The Art of Ethics and the Art of Sport Governance

The Australian Football League (AFL) is the premier sporting competition in Australia in terms of capital outlay, breadth of industry associations, public consumption, and arguably cultural significance. The AFL competition is now a domain of interdisciplinary specialisations and interests, which provide vast opportunity for both sporting and non-sporting institutions seeking to utilise the game to capitalise on a society of consumption, entertainment and risk. AFL officials expect high standards of their players both on and off the field. These standards are employed in various forms in the expression of Codes and Policies. However, the AFL governance is deficient on several counts. In this paper I will focus specifically on two governance deficiencies, namely, the promotion of gambling and on the development and inconsistency of its Illicit Drug Policy (IDP). I will argue that the AFL Commission is negligent and irresponsible for allowing the promotion of gambling during the broadcasting of games and furthermore for developing an ill-conceived and inconsistent IDP. The ethical grounds central to this investigation are ‘Fairness’ and ‘Cultural Influence’.

The temptation, great as it is, for young competitors to use performance-enhancing substances, legal or otherwise, in endurance type sports, is disconcerting. Many see success as the most important goal of sports. The ultimate goal at the elite level of professional sport is winning. This attitude is infectious spreading throughout the lower ranks down to youth sports. Society rewards success in sports with celebrity, status, and favouritism¹. The pursuit of excellence in sports from amateur to professional levels is an endeavour to be admired and encouraged. To succeed in competitive sport involves obtaining an “edge” over the competition. That means maximising health to participate and compete, and gaining combative advantages over one’s opponent though ensuring that endeavour does not breach the underlying principle of fairness. Sometimes, however, the drive to succeed can be so gripping and compelling that a sportsperson can easily lose sight of what is fair and right².

Since it was revealed during the ‘blackest day in Australian sport’ press conference that organised crime is responsible for the increasing use of banned performance-enhancing drugs by multiple athletes across the major sporting codes it is the major football codes that have come under most scrutiny. It was also revealed that the heads of all the main professional and participation sports were briefed regarding the 12-month investigation, code-named Project Aperio, conducted by the Australian Crime Commission (ACC), who
reported that professional sport in Australia was “highly vulnerable to organised crime infiltration”\(^3\). Suspicion of match fixing and manipulation of betting markets is concomitant to the banned performance-enhancing drugs or anti-doping campaign.

**Background**

Australian Football is an evolving competitive zero-sum contact sport played at several levels: professional, amateur, and recreational. The Australian Football League (AFL) Commission is the governing body of the elite National Australian rules football competition. The AFL Commission, as the “keeper of the code”, is universally responsible for the administration of the competition and for the sport of Australian Football in Australia and Internationally\(^4\). The Australian Sports Anti-Doping Authority (ASADA) is a statutory agency operating to “deter athletes from using prohibited substances and methods through a comprehensive anti-doping program, encompassing deterrence, detection and enforcement”\(^5\). Ultimately ASADA’s purpose is to protect Australia’s sporting integrity by eliminating doping\(^6\). In doing so involves a rather controversial process. The endeavour to build criminal cases against an athlete involves lowering the standard of evidence required to convict the individual/s suspected of doping from ‘beyond a reasonable doubt’ to ‘comfortable satisfaction’ with the ‘strict liability’ clause denying ignorance. This is ethically problematic since it treats athletes’ unfairly.

A substance is included on the Code Prohibited List if it meets two of the three criteria defined by World Anti-Doping Authority (WADA), and when being a potential masking agent. The three criteria:

1) the substance is performance-enhancing,

2) the use of the substance carries health risks for the athlete, and

3) use of the substance violates the spirit of sport.

The condition of accepting just two of the three criteria means that the WADA Code can ban “recreational drugs” such as marijuana (despite not being performance-enhancing) but can allow the use of a drug like caffeine (even when low levels of these drugs are performance-enhancing). The WADA Code makes no distinction in relation to Anti-Doping Rule Violations between in-competition and out-of competition\(^7\). Furthermore, anti-doping laws also extend beyond positive testing for prohibited substances. Any athlete refusing to submit to testing procedures, or found tampering with samples or in possession and/or trafficking illegal substances can lead to doping infringements\(^8\). As such, refusal to supply accurate
regular information regarding whereabouts to authorities should unannounced out-of-
competition testing be required can lead to doping infringements. The onus of responsibility
lies with each player to ensure he/she does not use or administer prohibited substances or
prohibited methods, whether or not included as examples in the Code. In addition to the Code the AFL implemented its own Illicit Drug Policy (IDP) (aka Three Strike Rules or “Medical model”) in 2005 and until recently it was championed as a world leader of drugs-in-sport policy. The AFL CEO Andrew Demetriou during a press conference revealed that in 2012 the number of positive test results dramatically spiked to 26 from 1,979 tests conducted (25 stimulants and 1 mixed) compared to 6 positive results in 2011 from 1,489 tests conducted that year. Add to this number players who self-reported (approximately 25) to prevent incurring a strike against their name. The revealed drug of choice was said to be cocaine. The illicit drugs listed in the IDP, are also listed in the WADA Code. Herein lays the inconsistency with the IDP notwithstanding the fact there has been a partial redressing of the inconsistencies with changes ratified in May 2013. In sum my argument regarding the AFL governance deficiency on its IDP inconsistencies are twofold: firstly it is unfair that players are granted privileges above members of the public for illicit doping transgressions and; secondly an inconsistency regarding the three-strike rule non-disclosure component. An offending player’s positive result information is withheld from his own club till a third strike is recorded.

AFL Damage Control

Prior to these most recent changes there was no limit to the number of times a player could self-report illicit drug use to AFL medical officers thus escaping a strike (three-strike rule) against his name. Due to an increase in self-reporting it comes as no surprise that one of the changes implemented specifies that a player can only self-report illicit drug use just one time during the player’s career. Ongoing controversy surrounds the confidentiality non-disclosure clause meant to protect positive tested players. Non-disclosure of that information prevents the release of the offending player’s name to his own club until a third strike is recorded. The problem consequently is twofold: firstly, the club itself then is unable to intervene and provide assistance and support for the player. Secondly, based on fairness and cultural influence not to mention on grounds of player welfare, the offending player is contracted to the club entailing certain obligations and so depending on the severity of the drug abuse may be at-risk of becoming a liability not only to the club but more specifically for the player’s own health and career. What prevents a player using illicit drugs any number
of times and only self-reporting when suspected or asked to submit to testing. The player may be at greater risk. These points are significant because the eighteen AFL clubs each employ typically thirty or more professionals, such as health nutritionists and sport psychologists, etc. to service players, an expenditure the clubs bear. Certainly unfair in terms of the relationship players have with the employed professionals at their respective clubs whose role in part is to educate and assist the players in the endeavour to minimise risky off-field behaviour. The confidentiality clause, ethical in principle, situated within the IDP however is somewhat counterproductive relative to other AFL club structures and procedures notwithstanding Code infractions.

The AFL IDP is meant to be an out-of-competition policy to ensure a level of player integrity and due to its three-strike mechanism is a variation and part of the uniqueness of the AFL version compared to other sporting drug policies. I repeat the WADA Code makes no distinction in relation to Anti-Doping Rule Violations between in-competition and out-of competition\(^1\). AFL players are afforded discretionary non-disclosure privileges under the IDP three strikes rule, shielding them, essentially escaping criminal sanctions unfairly not extended to other members of the Australian citizenry. Add to this the perception that players are somehow above the law. Players who choose to break not only anti-doping, but also criminal laws by using illicit drugs are behaving in a manner injurious to their health. Irrespective of the fact that some States and Territories have drug diversion programs that keep drug users out of the criminal courts, the AFL is a National League and hence the inconsistency of the IDP. Players like it or not because of their celebrity status are role models whose behaviour is subject to public attention hence to considerable cultural influence.

*AFL Commission and Players Community Responsibility*

AFL football has evolved into an art form attracting an ever growing public of aficionados. The scrutiny that the AFL players come under extends far beyond on-field performance. Unfortunately some individuals within the football cohort behave in socially unacceptable ways and draw attention to themselves damaging their own reputations, that of the brand, not to mention public cost. Consumption of the game as a visual spectacle carries with it for the AFL a burden of continued image protectionism against potential damage to its marketing forces of brand image. This places the AFL as a business organisation under market scrutiny within an ethical space. In the last ten years or so the game has grown into a multi-billion dollar industry. Combined AFL Club memberships in 2013 exceed 750,000 financial members. AFL sponsored community programs extend throughout Australia and
Internationally. The influence that the AFL engenders through player celebrity due to the growth of the game as a spectacle and entertainment source, has produced not only increasing numbers of game enthusiasts as it grows and spreads geographically, but extends in terms of cultural influence through its growing network of community programs and commercial associations, which should not be underestimated. The AFL endorses several programs such as the national children football program (NAB Auskick)\(^{16}\), and AFL New Zealand Kiwi Kick. The AFL, with the assistance of the Australian Government Department of Health and Aging, uses Australian football as a vehicle to improve the quality of life in Indigenous communities, not only in sport, but also in the areas of employment, education and health outcomes. The AFL has been integral in establishing “five Indigenous Academies designed to increase school attendance, completion of year 12, and Indigenous participation in sport”\(^{17}\). Because of this broadening network of honourable associations coupled with the significant cultural influence it carries the AFL must take stock of its governance procedures and practices.

The second governance issue is the endorsement and promotion of live gambling odds through television advertising just prior to, during, and after the games. The AFL CEO Andrew Demetriou during the course of several recent media interviews has repeatedly defended the League’s continued relationship with licensed betting agencies (e.g. Tabsportsbet.com). His reasoning is summarised twofold: firstly on minimising internal to the league betting on games and, secondly, to prevent match fixing by the involvement of unscrupulous parties. Demetriou contends that the AFL is involved with betting agencies through ‘legal arrangements’ “not for the revenue” but for “the access to information” (i.e. betting transactions) because Demetriou says “that’s how we catch betting cheats who bet on football”\(^{18}\). Unpacking this Demetriou’s argument then is to endorse the promotion of gambling as an acceptable practice in order to deter or catch league players and league officials gambling on games. This reasoning is circular. At best it is a very weak argument especially when the health cost to society is so great. Plus it has the effect of sending mixed messages. Furthermore the only admonishment for anyone else exposed to the live odds gambling advertising comes pursuant to the recent added obligatory warning, “gamble responsibly!” Gambling on football by any member of the playing or coaching fraternity within or associated with the AFL is prohibited and heavily sanctioned.

Even though the AFL have made self-regulated changes to limit broadcasting with the added promise to cooperate should further future regulatory changes be required. The AFL I contend is nonetheless negligent and acting irresponsibly on this matter. Firstly it is not fair to
the children and parents who watch football on television to be exposed to the incessant barrage of gambling advertisements. Secondly, in terms of the AFL’s cultural influence on broader society it contributes to fuelling the formative attitudes that gambling is part of the game and therefore harmless and fun. Problem gambling is a serious social health problem. Gambling in its various forms is wide spread in society and access to betting agencies has never been easier than it is today via the internet and more recently immediate access using mobile phone apps. Television advertisements “portray gambling as a glamorous lifestyle, filled with excitement, promoting a sense of fantasy”\textsuperscript{19}. Sally Monaghan \textit{et al} (2008) make the point that continued exposure to gambling advertisements leads to its normalisation, to the perception that it is acceptable, harmless, and credible activity\textsuperscript{20} especially when the advertising forms part of the game commentary. Gambling is pernicious because it is “presented as an alternative to hard work and sensible investing, and instead promotes luck, instant gratification, and entertainment”\textsuperscript{21}. Research by Welte, J.W. \textit{et al} (2011) into problem gambling over the lifespan demonstrates that “gambling involvement is prevalent by middle adolescence, it increases through the 20s”\textsuperscript{22}. The findings substantiate the researchers’ recommendations that “[g]iven the persistence of frequent gambling and problem gambling through adulthood, increased prevention and intervention efforts are warranted”\textsuperscript{23}. Hence the AFL needs to act accordingly and ensure it does not foster or contribute to creating problem gambling.

In conclusion I have argued that the AFL in terms of governance responsibility is deficient regarding its IDP on twofold inconsistencies. Firstly it is unfair that players are granted privileges over and above any other member of the public for illicit doping transgressions and; secondly an inconsistency regarding the three-strike rule non-disclosure component preventing the release of that information to the offending player’s own club till a third strike is recorded. Both on grounds of unfairness and cultural influence since it obstructs club intervention to assist the player and is counter-productive to the offending player’s club expenditure and resources (i.e. professionals employed) towards minimising risky behaviour. I further argued that the AFL Commission is negligent and irresponsible for allowing the promotion of gambling during the broadcasting of games. The ethical grounds supporting this argument were also based upon ‘fairness’ and ‘cultural influence’. Firstly, since it is not fair to the children and parents who watch football on television being exposed to the incessant barrage of gambling advertisements around televised games. Secondly, because of the AFL’s cultural influence on broader society it contributes to fuelling the formative attitudes that gambling is part of the game and therefore harmless and fun.
Notes and References

2. Ibid
4. AFL Commission Available Online @ http://en.wikipedia.org/wiki/AFL_Commission#Organisation_Structure_and_Members
6. Ibid
7. Australian Football League WADA Anti-Doping Code Amended 2010
11. Ibid
15. The AFL Official Website Available Online @ http://www.afl.com.au/
17. ALF Kickstart Indigenous Programs, Australian Indigenous Health InfoNet, Available Online @ http://www.healthinfonet.ecu.edu.au/key-resources/programs-projects?pid=1662
21. Ibid. p.261
23. Ibid