

“When experience counts and you need an innovative approach, contact us”

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Welcome to the Spring edition of Legal Insight for 2010. With a Federal election only now determined and a Victorian State election scheduled for 27 November, it will be interesting to see which legislation is given priority in the new Parliaments.

## Injured During Play?

### Who is responsible?

All sports carry risks of injury that are inherent to the game. Whether it is a torn hamstring in the warm up, a broken arm in a tackle or a rolled ankle, different sports carry different risks. It is important to note that there is no automatic legal protection for injuries which occur because of an accident or injury that occurs in the normal course of a sporting event. Compensation for sporting injuries is a very complex matter. Injury cases typically fall under tort law when there has been an assault or a situation of negligence. When there has been a case of negligence or assault it can be difficult to establish who gets sued. Typically the groups of people who are liable for causing injury in a sporting contest are:

- other players in the game
- the organiser of an event
- the coach
- the occupier of the venue
- the referee/umpire
- spectators
- volunteers



For a case in negligence to be proved against another player, the person who caused the injury must have behaved outside what is expected of a reasonable

### Ancient Wisdom

**If you want happiness for an hour, take a nap.**

**If you want happiness for a day, go fishing.**

**If you want happiness for a year, inherit a fortune.**

**If you want happiness for a lifetime, help somebody.**

competitor. This typically means committing an act outside the rules of the game in which a reasonable participant would not expect to occur. An example of such an action was in an American case where a player kicked the goal keeper in soccer when he was holding the ball in the penalty area<sup>1</sup>. The goal keeper suffered permanent damage to his brain and skull. This action was seen as negligent as it clearly fell outside the rules of the game and fell below what was expected of a reasonable participant.

Coaches (including volunteer coaches) have a duty to use reasonable care to avoid foreseeable risks while athletes are under their supervision. A coach may be liable if found to have instructed or encouraged a participant to perform a negligent act. Legal issues may also arise with coaches in respect to supervision and allowing participants to use dangerous techniques. An example of such a case was in a wrestling case, when the coach did not stop one of the participants from using a dangerous hold which resulted in a participant becoming a quadriplegic<sup>2</sup>. Legal issues may also arise when coaches allow injured players to participate. Coaches owe a duty to the players more than winning and this must be taken into consideration when using injured players.

The occupier of the venue has a legal obligation to provide a safe environment for sporting events. Occupiers (typically councils) have been found to be liable if they have knowledge of unreasonably

<sup>1</sup> *Nabozny v Barnhill* 334 N.E.2d 258 (Ill. Ct. App. 1975)

<sup>2</sup> *Foscolos v Footscray Youth Club & Anor* (2002) VSC 148

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hazardous conditions. An example of such action occurred when a rugby league player successfully sued the occupier after he fell on a sprinkler in the middle of the ground and was seriously injured<sup>3</sup>.

Have you been injured playing sport and want to know your rights? Please contact Hutchinson Legal for the appropriate legal advice.

<sup>3</sup> Nowak v Waverly Municipal Council (1984) Aust Torts Reports 80-200

## Damages in Defamation

Once there is proof of a defamatory publication; the law presumes that there will be damage in all cases.

Damages for defamation are:

(1) Compensatory damages, including

- injury to reputation,
- social damage,
- injury to feelings,
- injury to health, and

(2) Aggravated compensatory damages

This damage may be increased by the conduct of the party and therefore increase the damages awarded, while other conduct could decrease the injury and therefore decrease the damages. Under section 34 of the *Defamation Act 2005 (Vic)* in determining the amount of damages to be awarded in any defamation proceedings, the court is to ensure that there is an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded.

For more information on this topic, visit: [hutchinsonlegal.com.au/dispute-info/damages-in-defamation/](http://hutchinsonlegal.com.au/dispute-info/damages-in-defamation/) to read full article.

## Trading Entities

This is just a reminder that the Personal Properties Securities legislation takes effect from May 2011. So if you supply goods on credit, or need to ensure you have security over rental/lease assets, or you are in transport or warehousing then you should have someone look at your existing procedures and documentation to ensure that you are protected as much as possible. If you have any queries, Bernie Curtin of our office is available to assist you or visit: [hutchinsonlegal.com.au/services/debt-recovery/personal-property-security-registration/](http://hutchinsonlegal.com.au/services/debt-recovery/personal-property-security-registration/) for further information about this topic.

## Legislative Changes

### 1. Paid Parental Leave Act 2010 (Cth)

This Act establishes a government funded paid parental leave scheme for 18 weeks at the national minimum wage. Employees will now have paid parental leave from 1 July 2011.

### 2. Juries Reform Amendment Bill 2010 (Vic)

Just when you think you have seen lawyers popping up in unexpected places there is now another place that is not 'lawyer-free'. Until now, lawyers could not serve on a jury but the government in their wisdom proposes to allow lawyers who have not held a practicing certificate for 5 years to be eligible for jury service.

We will need to wait and see what impact having non-practicing lawyers serve on a jury has on the dynamics of the jury system.

### 3. Civil Dispute Resolution Bill 2010 (Cth)

The aim of the Act is to encourage early resolution of civil disputes before they get to court. Clients who bring cases in the Federal Court and Federal Magistrates Court will need to set out to the Court what steps they have taken to resolve the matter. If they don't they will need to explain to the court why it wasn't possible and this will be taken into account when ordering costs.

### 4. Sex Discrimination Amendment Bill 2010 (Cth)

This Bill proposes to establish breastfeeding as a separate ground of discrimination. The Bill will also extend protection from discrimination on the ground of family responsibilities to women and men in all areas of employment. It will also clarify that the protection from sexual discrimination applies equally to men and women.

## Upcoming Events

### 23 September 2010

Seminar: How do we care for our parents?

See enclosed brochure



### 4-8 October 2010

Maroondah Business Week 2010

The Maroondah City Council has once again planned a varied and worthwhile program of events for Maroondah Business Week 2010. Whether you are new to business, or have been operating for many years, the 2010 program promises to provide an abundance of information, inspiration and networking opportunities.

For more information about events being held please visit: [www.bizmaroondah.com.au](http://www.bizmaroondah.com.au)

### 29 November 2010

2010 Client FUNction

This is the date we are aiming to have a treat in store for you.

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