

## COVID-19 AND SPORT POST-2020

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### ABSTRACT

The impact of COVID-19 has been as significant on Australian sport in 2021 as it was in 2020. Government protocols required the organisers of the Australian Open to impose quarantine and other restrictions on all tennis players. While Cricket Australia was able to complete the tests between Australia and India as scheduled, this was only achieved by likewise following government protocols, with the matches taking place in front of reduced crowds. Flexibility with scheduling was required for the winter sports, with teams being forced to move from locations where outbreaks were occurring often on only a few hours' notice. Breaches of government protocols by a number of National Rugby League (NRL) players placed the competition in potential jeopardy. The players concerned were fined and suspended by the NRL, with one player having his contract terminated by his club. The postponed 2020 Tokyo Olympic Games were successfully completed, albeit with no spectators, illustrating that major international events can take place without risk to the local population. Vaccinations are proving to be the only long-term solution to COVID-19, and an ongoing legal issue for sport will be whether proof of vaccination should, or will, be a requirement for both participation and attendance at matches.

### I INTRODUCTION

The arrival of COVID-19 into Australia in January 2020 led to nationwide lockdowns by the end of March. Sport, like all areas of society, was impacted, leading to competitions being suspended or cancelled. This resulted in contracts for broadcasting rights and player salaries having to be renegotiated, the former because sporting bodies were not able to provide the content they had contracted to deliver; the latter because of the bodies' reduced revenue.<sup>1</sup> Eventually, as Australia emerged from the lockdowns, most sporting competitions were able to resume with reduced schedules and, initially, with no crowds and, later, with restricted capacity. Despite the issues and difficulties, most competitions for 2020 were successfully completed.

In 2021 it was hoped Australia would return to operating close to normal which, amongst other things, would allow sport to be conducted as it had pre-pandemic. While there were problems with the summer sports, when the winter codes began in late March the competitions were operating close to normal. However, further outbreaks and a sluggish

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<sup>1</sup> Chris Davies, 'COVID-19 and Sport: A Question of Contracts and Management' (2020) 26 *James Cook University Law Review* 127, 139.

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vaccine roll out, led to numerous lockdowns in various states. As a result, Australian sport faced as many obstacles in 2021 as it did in 2020.

This year also saw the staging of the postponed 2020 Tokyo Olympic Games, despite growing number of cases in that city, and concerns the Games may prove to be a global super-spreader event.

The impact of the pandemic on Australian sport in 2020 had involved legal issues relating to contracts, and management issues regarding the operation of the competitions. These issues were again at the forefront of how sport had to deal with COVID-19 in 2021. This paper will examine these 2021 legal and management issues by, first, examining the situations facing Australian summer sports and then by looking at the winter codes. It will also examine how the Olympic Games were managed, and the legal issues that arose. Finally, it will discuss what the future might be for sport in regard to managing the long-term problems with COVID-19 and the surrounding legal issues.

## II AUSTRALIAN SUMMER SPORTS

### A Tennis

The first impact of COVID-19 on Australian tennis in 2021 was the postponement of the 2021 Australian Open from its usual January timeslot to February. Concerns about players potentially bringing the virus into Australia arose before any overseas players had even set foot in the country when Denis Kudla and Francisco Cerundola tested positive during a qualifying event, both being forced into immediate hotel quarantine in Doha for ten days.<sup>2</sup> Within Australia, the closure of the Victorian border in January due to the emergence of the more infectious UK variant, meant Australian players had to scramble to get down to Melbourne in order to beat the closure.<sup>3</sup>

When the 1200 overseas players and support staff finally arrived, on chartered flights operating at 25 per cent capacity, they had to go into hotel quarantine for 14 days, though players were granted an exemption to train for five hours a day. Walsh suggested that without such an exemption ‘it was likely the summer of tennis would not have proceeded as players need to be able to train to compete.’<sup>4</sup> However, 72 players were denied this opportunity to train, being forced into 14 days of isolation after passengers on a number of the chartered flights tested positive, and it was decided to force all on board these flights to isolate.<sup>5</sup> This raised integrity concerns about these players’ preparations, with one solution being the addition of an extra pre-Open women’s tournament which was restricted

<sup>2</sup> Courtney Walsh, ‘Positive test serves curveball to Open’ *The Australian*, 13 January 2021, 22.

<sup>3</sup> Courtney Walsh, ‘Davis Cup stars caught on the wrong side of the border amid chaotic Open preparations’ *The Australian*, 15 January 2021, 28.

<sup>4</sup> Courtney Walsh, ‘Australian Open faces its biggest stress as players arrive from all corners of the globe’ *The Weekend Australian*, 16 January 2021, 33.

<sup>5</sup> Courtney Walsh, ‘Advantage Australia in Open lockdown’ *The Australian*, 18 January 2021, 24; Mark McGowan, ‘Push to prune Open matches to three sets’ *The Australian*, 19 January 2021, 22.

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to those who had to do this strict quarantine.<sup>6</sup> When the Open finally did start those involved had to endure a five day, Victorian wide lockdown mid-tournament and, while the players were classified as essential workers, they were still forced into a bio-security bubble during this period.<sup>7</sup> Thus, a significant legal issue with the staging of the 2021 Australian Open was the need for all those involved to comply with government health orders.

Despite all the problems, the tournament was successfully completed, although Tennis Australia suffered economically from the outlay on chartered flights and the reduced spectator capacity. While it estimated it lost \$40m on what it normally made from running the Australian Open that reduction in operating profit would have been fair worse had the tournament not been held. Like many other sports, it was this need to fulfill sponsorship and broadcasting contracts that provided the incentive to continue with the event, despite the issues with COVID-19. Another reason, one which saw it receive the support of the Victorian Government, was the fear that if Melbourne did not stage the first of tennis's four annual Grand Slam tournaments, another city would have done so, and that move could have become permanent.

### B *Cricket*

#### 1 *The Domestic Summer*

After legal problems with its broadcasters, Channel Seven and Foxtel, about how much they should pay Cricket Australia (CA) for the rights to the 2020-21 season,<sup>8</sup> the Test series against India proceeded, though the Indian team were required to comply with Australian quarantine regulations. Predictably, CA faced problems ensuring the completion of the series, a cluster of cases in South Australia at one stage throwing doubt on whether Adelaide could stage the First Test. However, it was the growing numbers of cases in Sydney, particularly on the Northern Beaches, during December that created the most serious problem in keeping the \$300m series alive. At one stage it appeared that the sold out Third Test would have to be moved from the Sydney Cricket Ground (SCG), the most likely scenario being the scheduling of another test in Melbourne after the Second Test. That, incidentally, would have suited the broadcasting partners as they would not have had to move equipment.<sup>9</sup> Another Melbourne Cricket Ground (MCG) wicket was therefore prepared, raising the possibility that the Third Test would 'be played 305cm to the left of the Boxing Day Test pitch and not 850km to the north-east.'<sup>10</sup> CA's problem in keeping

<sup>6</sup> Courtney Walsh, 'Women's event in new-look schedule' *The Australian*, 25 January 2021, 24.

<sup>7</sup> Courtney Walsh, 'Open stars locked in a bubble' *The Weekend Australian*, 13 February 2021, 35.

<sup>8</sup> Chris Davies, 'COVID-19 and Sport: A Question of Contracts and Management' (2020) 26 *James Cook University Law Review* 127, 137.

<sup>9</sup> Peter Lalor and Ben Horne, 'Dark cloud hangs over SCG test' *The Australian*, 21 December 2020, 24.

<sup>10</sup> Sam Landsberger, 'Sydney losing its grip on Pink Test as MCG prepares feverishly to back up' *The Australian*, 28 December 2020, 24.

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the match at the SCG was needing to obtain exemptions for players, staff and broadcasters to travel up to Brisbane at a time when the NSW-Queensland border was closed.<sup>11</sup> The decision was finally made to keep the match at the SCG, with the possibility that it might also host the Fourth Test, should there have been problems getting the teams to Brisbane. When the Third Test proceeded it was with crowds capped at 25 per cent capacity with no-one from the hotspot regions of the upper Northern Beaches, or around Berala, being permitted to attend the game. The Fourth Test was subsequently held in Brisbane with the teams forced into a bio-security bubble that required them to remain in their hotels when not playing.

Thus, as it had been with the Australian Open tennis, the main legal issue for CA was ensuring compliance with government directives. Despite the problems, the success of the series resulted in record ratings for both broadcasters, Channel Seven and Foxtel, weakening Channel Seven's claim that it should pay a reduced amount under the broadcasting contract for what it perceived was a reduced product because of the impact of COVID-19.

The Australian cricket team's summer was supposed to have finished with a March tour to South Africa. CA did investigate whether the players could be vaccinated before the proposed trip, though there was no indication from the Federal Government that international sporting teams would receive such priority.<sup>12</sup> Charter planes were also planned to be used to get the players to and from South Africa, at an estimated cost of \$1m. However, with the rising COVID-19 numbers in South Africa, CA decided to cancel the tour, stating that the potential danger to players and staff was too high. It was a decision widely criticised in South Africa, and one that had serious financial ramifications as it meant Cricket South Africa (CSA) would not be able to fulfill its broadcasting contract obligations which had the potential to bankrupt the governing body.<sup>13</sup>

For some Australian players, however, the cancelled tour was not the end of COVID-19 related problems as COVID-19 was also to impact on their participation in the Indian Premier League (IPL).

## 2 *The Indian Premier League*

The IPL was formed in 2008 by creating city-based franchises for a T20 competition. It has proven to be highly successful, attracting some of the best players in the world who can receive contracts worth millions of dollars for what is a six-week competition. In 2020, the IPL was moved to Dubai due to COVID problems in India where it was successfully completed in front of no crowds. For the 2021 season, the decision was made to hold it in India, though only in a few cities, with all those involved being forced into a bio-security

<sup>11</sup> Ibid.

<sup>12</sup> Ben Horne, 'CA investigating player vaccinations' *The Weekend Australian*, 16 January 2021, 35.

<sup>13</sup> Peter Lalor, 'Covid strikes after disorganised South Africans throw Cricket Australia under the bus' *The Australian*, 12 February 2021, 28.

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bubble. However, another wave of COVID infections soon spread around India, eventually infecting some involved in the IPL. When the competition was suspended in early May until later in the year, the problem facing Australian players, commentators and support staff was that the Australia-India border was temporarily closed. Some players, such as Adam Zampa, Andrew Tye and Kane Richardson, had decided to leave earlier, managing to get on chartered flights hours before the closure.<sup>14</sup> The majority of the Australians involved in the IPL, however, decided to fly to the Maldives for 14 days before returning to Australia where they had to undertake a further 14 day hotel quarantine.

While the suspension of the competition created contract issues, insurance policies had been taken out by the IPL franchises in 2011 to cover player salaries. This meant that players who could not attend the rest of the postponed competition due to other commitments would still receive payments, despite not fulfilling their contracts.<sup>15</sup>

### III AUSTRALIAN WINTER SPORTS

#### A *Australian Football League*

For its 2021 season the AFL released a flexible fixture list with only the first six rounds having confirmed dates and times for each match. It was a move fully supported by the clubs as it was clear there would again be a need for flexibility in the scheduling. COVID-19 induced problems began almost immediately when, prior to Round 2 a mystery case in Brisbane put the Geelong-Brisbane Lions match on 26 March in doubt after the Victorian Government issued an order that anyone who had been in Brisbane since 12 March had to immediately isolate. Some fans, and a number of commentators, had to leave Geelong's GMHBA Stadium before the match commenced, and it only proceeded after the AFL obtained an exemption for the Brisbane Lions players and officials.<sup>16</sup> The Brisbane Lions were then forced to stay in Melbourne with their Round 3 match against Collingwood being moved from the Gabba to Marvel Stadium in Melbourne.<sup>17</sup>

Positive tests in Perth saw the Fremantle-North Melbourne Round 5 match played in front of no crowds, a similar decision being made in regard to the following week's local derby between Fremantle and West Coast Eagles, a decision that resulted in revenue losses

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<sup>14</sup> Peter Lalor, 'Great Escape: Zampa and Richardson flee India as debate over IPL rages' *The Australian*, 20 April 2021, 24.

<sup>15</sup> 'Aussie IPL stars to cash in despite likelihood they won't see out contracts' *The Australian* 13 May 2021, 28.

<sup>16</sup> Jon Ralph and Scott Gullin, 'Covid chaos for AFL after Brisbane case' *The Weekend Australian*, 27 March 2021, 39.

<sup>17</sup> Courtney Walsh, 'Queensland outbreak keeps AFL on edge as Gabba rubbed out' *The Australian*, 30 March 2021, 24.

estimated at over a million dollars.<sup>18</sup> The Perth outbreak also meant Fremantle had to temporarily relocate to Queensland.<sup>19</sup>

While the outbreaks in Brisbane and Perth created problems, it was nothing compared to the outbreaks in Melbourne, and later, in Sydney. During Melbourne's June outbreak, Sydney became the AFL's 'go to' location, with matches relocated to the SCG including the traditional Queen's Birthday clash between Melbourne and Collingwood. A later outbreak saw seven clubs evacuated from Melbourne as the AFL responded to the emerging number of positive tests linked to the Geelong-Carlton match played at the MCG on 10 July. The games that remained in Melbourne now had to be played in front of empty stadiums.<sup>20</sup> Further impacts from the MCG cluster impacted the AFL when it was revealed one of the MCG spectators who tested positive had also attended the Australia-France rugby union match at AAMI Park the following Tuesday. Identified close contacts from the match were forced into isolation for two weeks, including five players from the Sydney Swans and GWS Giants who were taken out of their match shortly before it commenced.<sup>21</sup> The match itself was being played on the Gold Coast as the ever-increasing outbreak in Sydney had meant both teams had earlier left that city on literally a few hours' notice, not to return until after their seasons had been completed. Meanwhile, an innocent visit to the Frank and Harri café in Melbourne meant Western Bulldogs player, Josh Dunkley, also had to isolate for two weeks after it was listed as a Tier 1 exposure site.<sup>22</sup>

State border closures, short term lockdowns in Adelaide and Brisbane, and longer term ones in Melbourne and Sydney were to dominate the AFL scheduling for the remainder of the season, with decisions about where games were to be played changing literally by the hour in some rounds. For instance, in Round 19, Port Adelaide and the Adelaide Crows were to be evacuated to Victoria as Adelaide faced COVID-19 problems, players and coaches having packed their bags. It was then proposed to relocate them to Queensland, then that they would remain in Adelaide with the clubs playing a re-scheduled match between themselves. It was finally decided that they would both move to Melbourne, Port Adelaide being forced to play its scheduled home game against Collingwood at Marvel Stadium.<sup>23</sup>

Thus, matches were played by relocating teams and creating bio-secure corridors between the states which required extensive use of charter flights. With each flight costing in the

<sup>18</sup> Courtney Walsh, 'Derby blow as empty stadium costs West Coast more millions' *The Australian*, 1 May 2021, 24.

<sup>19</sup> Courtney Walsh, 'Dockers relocate as AFL players keep a watching brief on Covid' *The Australian*, 6 May 2021, 24.

<sup>20</sup> Jon Ralph, 'AFL scrambles as seven clubs evacuate' *The Australian*, 16 July 2021, 24.

<sup>21</sup> Courtney Walsh, 'Covid stalks footy as Swans and Giants hit' *The Australian*, 19 July 2021, 24.

<sup>22</sup> Courtney Walsh, 'Café visit puts Dog in isolation' *The Australian*, 20 July 2021, 24.

<sup>23</sup> Courtney Walsh, 'Covid chaos reigns supreme as the AFL chases it tail to reschedule fixtures' *The Australian*, 21 July 2021, 24.

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region of \$100 000, this was a considerable added expense for the AFL which needed up to 14 such flights for some rounds.

### *B The National Rugby League*

After managing to complete its 2020 season, and therefore meeting its broadcasting obligations, at the beginning of the 2021 season the NRL urged the clubs to remind their players to remain vigilant, the players being ‘told to avoid putting themselves in a position where they could be at risk of exposure.’<sup>24</sup> As with the AFL, the outbreak of COVID-19 in Queensland in late March forced the NRL to change its fixture schedule, The Brisbane Broncos caught a charter flight to Sydney, and remained there for two weeks to escape the outbreak.<sup>25</sup> A later outbreak, and subsequent lockdown, in Melbourne in April forced the NRL to relocate the Melbourne Storm to the Sunshine Coast. However, it was the outbreak in Sydney during June that caused the NRL the most problems, with 12 teams being forced to relocate to Queensland hubs by mid-July where they were to remain for the rest of the season.<sup>26</sup> It was estimated that the relocation cost the NRL up to \$45m, but it was necessary to allow it to fulfill the rest of its 2021 broadcasting contract which was worth \$90m in revenue.<sup>27</sup>

As well as the logistics of moving clubs interstate, the NRL also faced legal issues arising from players breaking bio-security protocols. The most serious involved 12 St George-Illawarra players who attended a BBQ at the home of teammate Paul Vaughan in breach of community protocols set by the NSW Government. Vaughan had his contract terminated by St George as the incident was not his first biosecurity breach during the pandemic. The NRL also requested that the other St George players sign a statutory declaration which included a statement that:

[My] honest understanding and belief, based on what I saw and heard while I was present in the Vaughan Residence, and also based on what I have been reliably told by others who were present ... [is] that apart from the attendees ... no other player was present in the Vaughan Residence during the gathering apart from attending NSW Police.<sup>28</sup>

The NRL stated it would not allow the St George players back into the biosecurity bubble until they had signed the statement.<sup>29</sup> The 12 players were each suspended for one match, though these suspensions were staggered to enable St George to field a side, and therefore to ensure that the NRL could complete its broadcasting obligations.

<sup>24</sup> Brent Read, ‘NRL feud cops a Covid warning’ *The Australian*, 29 March 2021, 23.

<sup>25</sup> Brent Read, ‘Broncos forced to flee to Sydney base’ *The Australian*, 30 March 2021, 24.

<sup>26</sup> Brent Read, ‘Dozen clubs flee to Queensland hubs’ *The Australian*, 12 July 2021, 24.

<sup>27</sup> Peter Badel, ‘Queensland bubbles will cost the NRL \$45 but it’s better than no comp’ *The Australian*, 28 July 2021, 28.

<sup>28</sup> Brent Read, ‘League’s back-up plan to relocate’ *The Weekend Australian*, 10 July 2021, 33.

<sup>29</sup> *Ibid.*

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It later emerged that Api Koroisau had also broken protocols while in camp with NSW during the State of Origin series by ‘attending the hotel room of a woman.’ Koroisau was given a two-match suspension and a \$35 000 fine, the revelations occurring just after the NRL had moved its 12 NSW-based teams to Queensland because of the Sydney outbreak. The NRL was then warned that any further breaches could result in the NRL being unable to remain in its Queensland hubs.<sup>30</sup> This was tested a short time later when it was revealed that West Tigers centre, James Roberts, had also breached Queensland government directives by being out on the balcony of his Gold Coast hotel. The reason for the directive that all those in quarantine could not use their balconies was due to incidents where others in quarantine had been passing milk across them.<sup>31</sup> Roberts was subsequently fined \$7500 and suspended for one match as the breach had ‘threatened to bring down the entire NRL competition.’<sup>32</sup>

When the NRL was informed by the Queensland Government that this was its last chance, no more incidents occurred, with Queensland hosting all remaining matches. They included the Grand Final after the NSW Government, which had a 25-year contract to host the NRL Grand Final at Olympic Park, gave the NRL ‘the contractual green light’ to make the move.<sup>33</sup>

Thus, the NRL was only able to complete its season in Queensland by ensuring there were no more bio-security breaches by the players. For the NRL, like other sporting codes, one of the main legal issues in 2021 therefore was compliance with government protocols. The incidents also raised contractual issues because the players involved were in breach of their contracts which resulted in fines, suspensions and in one case, termination.

### C Rugby Union

Super Rugby in Australia and New Zealand was conducted as three competitions. Both countries completed separate national competitions before having a Trans-Tasman completion in which the five Australian franchises played the five New Zealand franchises, with the top two teams playing off in the Final. The reason for this, rather than just having a longer Trans-Tasman competition, was to ensure there would be less COVID-19 related problems arising from potential travel restrictions between the two countries.

In July, France arrived for a three test series against Australia, the team having to go into 14 day quarantine, though the French were allowed to train. The First Test was scheduled to be played at the SCG on 7 July in front of a near capacity crowd, but with growing COVID-19 infections in Sydney, it had to be hastily moved to Brisbane which was already staging the Third Test. The Second Test went ahead as scheduled at Melbourne’s AAMI

<sup>30</sup> Brent Read, ‘NRL on notice as Qld takes hard line’ *The Weekend Australian*, 24 July 2021, 40.

<sup>31</sup> Brent Read, ‘West Tigers star in risky balcony breach’, *The Australian*, 28 July 2021, 24.

<sup>32</sup> Dean Ritchie, ‘Roberts banned, fined for his balcony breach’, *The Australian*, 29 July 2021, 24.

<sup>33</sup> Peter Badel, Brent Read and Travis Meyn, ‘Expansion pitched to broadcaster’, *The Australian*, 3 September 2021, 24.



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Park on Tuesday 13 July in front of a capacity-restricted crowd. However, it later turned out that a spectator had attended the match while infectious, having caught the virus while attending the Geelong v Carlton AFL game at the MCG two days earlier. AAMI Park then became an exposure site, with a number of subsequently discovered infections forcing thousands into isolation, although no-one associated with either the Australian or French teams was affected.

The Bledisloe Cup series was also affected by COVID-19 outbreaks which required one of the two matches in New Zealand to be brought forward and with a venue change from Wellington to Auckland. The third match, scheduled to be played in Perth on 28 August, also had to be postponed to the following weekend.<sup>34</sup> The remaining Rugby Championship matches involving Australia, Argentina, South Africa and New Zealand were then all played in Queensland during September and early October.

### D *Netball*

With the outbreaks in Sydney and Melbourne Super Netball was, like the NRL, forced to move all of its teams to Queensland in order to complete what was a truncated season. The impact of COVID-19 on the competition can be seen in the fact that it was the two Sydney teams, the Giants and the Swifts, which played off in the Queensland-based Grand Final. There were no problems with bio-security protocols once the teams reached Queensland, and therefore no COVID-19 related contract issues. However, with new broadcasting rights to be negotiated, and with Netball Australia yet to finalise collective bargaining and teams' participation agreements, the sport is in the unusual situation of having all players coming off contract at the end of September.<sup>35</sup> The still ongoing COVID-19 situation in Australia will almost certainly be a factor in these negotiations.

## IV THE TOKYO OLYMPIC GAMES

### A *The Rescheduled Games*

After being postponed from its scheduled July 2020 start date, serious doubts still remained as to whether the Tokyo Olympic Games would, or should, take place. A poll of Tokyo residents had indicated that up to 80 per cent supported a cancellation, with even those within the IOC suggesting the Games should be cancelled, or at least postponed until 2024. This idea involved the scheduled 2024 host, Paris, taking over the 2028 Games from Los Angeles which, in turn, would then have hosted the 2032 Games.<sup>36</sup>

<sup>34</sup> Christy Doran and Russel Gould, 'All Blacks pull the in on Bledisloe', *The Weekend Australian*, 21 August 2021, 33.

<sup>35</sup> Emma Greenwood, 'Sydney teams' swift warning to raiders', *The Australian*, 30 August 2021, 23.

<sup>36</sup> Jessica Halloran and Julien Linden, 'How Coates saved the unsavable Games', *The Weekend Australian*, 21 August 2021, 33.

One of the problems facing the postponed 2020 Tokyo Olympic Games was ensuring athletes and teams had the opportunity to qualify during the global pandemic, a process that often required expensive hotel quarantining.<sup>37</sup> Another problem was the cost of the Games themselves, Tokyo becoming the most expensive ever with the costs reportedly rising to over \$20bn due to the logistical problems linked to the delay. A further blow to the Games' finances was the announcement in early July that no spectators at all would be allowed at the venues, it earlier having been announced that international spectators would not be allowed into Japan. The IOC however was able to call on \$2.5bn in assets to cover the financial problems.<sup>38</sup>

The question of whether Olympic athletes would be allowed to 'jump' the queue for vaccinations was an issue in Australia, and other countries, with the AOC setting up its own hubs around the country to ensure those representing Australia had the opportunity to be vaccinated.<sup>39</sup> All those arriving at Tokyo had to undergo rigorous testing, quarantining and isolation procedures as Olympic organisers made sure an Olympic bubble did not further infect the local population. A week before the Opening Ceremony it was announced that just three of more than 8000 people now involved with the Games had tested positive on their arrival.<sup>40</sup> However, some athletes never made it to Tokyo after positive tests, including Australian tennis player, Alex de Minaur, and Australian women's basketball player, Liz Cambage.<sup>41</sup> There were to be positive tests during the Games, and even by the end of the first week, 193 people involved in the Games had tested positive, including 23 athletes. Significantly, however, there was no indication infections had spread to the general population,<sup>42</sup> where the new daily cases were reaching 5000 a day.<sup>43</sup>

Despite the major problems, the 2020 Tokyo Olympic Games, and the subsequent Paralympics, were highly successful, and did not turn into the feared super-spreader event. The successful staging of the Games no doubt prevented some potential legal problems for both the IOC and the Game organisers. However, there are still ongoing legal problems involving foreign spectators who had purchased tickets and tour packages.

<sup>37</sup> Jacquelin Magnay, 'Raw end of deal for Olympic athletes', *The Weekend Australian*, 16 January 2021, 37.

<sup>38</sup> Jacquelin Magnay and Ellen Whinnett, 'IOC deep pockets to beat blowout', *The Australian*, 21 July 2021, 24.

<sup>39</sup> Jessica Halloran, 'Faster, higher, healthier...Olympians ready for jabs', *The Australian*, 6 May 2021, 22.

<sup>40</sup> Jacquelin Magnay, 'Just three positives in Tokyo arrivals', *The Australian*, 15 July 2021, 22.

<sup>41</sup> Jacquelin Magnay, Ellen Whinnett and Selina Steele, 'Australian Olympic team shaken as Covid threat strikes', *The Weekend Australian*, 17 July 2021, 33.

<sup>42</sup> Ellen Whinnett, 'Covid-19 cases restricted to the Olympic bubble', *The Australian*, 30 July 2021, 27.

<sup>43</sup> Robert Craddock, 'Olympics that saved us from our grief', *The Australian*, 9 August 2021, 28.

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### B *The Legal Issues*

Prior to the Games, Windholz had suggested that ‘the legal implications of cancelling the games would be massive, with endless compensation claims and financial implications.’<sup>44</sup> This would have involved those who had made ‘financial investment in the games in the expectation of earning a return on that investment.’ Windholz pointed out ‘that in addition to the IOC and games organisers, broadcasters, sponsors and attendees’ would have been impacted had the Games been cancelled. This would have meant the involvement of insurers who ‘would be looking for someone to blame’ with Windholz suggesting this would have had ‘all the trademarks of a lawyer’s picnic.’<sup>45</sup> Craddock likewise suggested that the Olympic Games went ahead because they simply had to, pointing out that in relation to the biggest part of the broadcasting rights, the \$4bn contract with American broadcaster, NBC, one of the terms of the contract was that NBC had to pay the money up front. That term was included to ensure the IOC had money to spend before the Games.<sup>46</sup> Thus, with a large percentage of the broadcasting money already having been spent, the 2020 Tokyo Olympic Games needed to go ahead, even if it was in mid-2021.

There is one other legal issue that remains and that involves refunds for cancelled Olympic ticket packages. It has been reported that JetSetSports, owned by US company CoSport and authorised to sell Olympic Games packages in Australia, would not make full refunds. While 80 per cent of the cost of the event tickets was refunded, the rest being kept as a handling fee, the problem for consumers was that tickets represented only around 15 per cent of the total package. The rest of money was for hotel accommodation and other services, such as hospitality and tours. Adding to the problem was that the Tokyo organisers insisted international ticket orders had to be cancelled in writing, despite spectators from overseas already being banned from attending. While CoSport was responsible for the packages it appears that it will be the Japanese suppliers of the hotel accommodation, tours and hospitality who would be the ones to decide on reimbursements, with the refunds being delayed until later in 2021.<sup>47</sup>

### V THE FUTURE FOR AUSTRALIAN SPORT

There is no doubt that COVID-19 will have long-lasting impacts on society in general, as well as on sport in particular. A question for both society and sport is whether vaccinations should be a requirement for spectators if they wish to attend certain venues and events, and whether employers can force their employees to be vaccinated.

<sup>44</sup> Eric Windholz, ‘What are the legal consequences of cancelling the Olympics?’ *Lawyers Weekly*, 9 June 2021, 1. <<https://www.lawyersweekly.com.au/biglaw>>.

<sup>45</sup> *Ibid.*, 2.

<sup>46</sup> Robert Craddock, ‘Olympics that saved us from our grief’, *The Australian*, 9 August 2021, 28.

<sup>47</sup> Jacquelin Magnay, ‘Refunds for Tokyo tickets to fall short’, *The Australian* 30 March 2021, 3.

While the NRL itself has not mandated vaccination, it has indicated that it wants players vaccinated in order to protect them, and therefore the competition, from further problems.<sup>48</sup> However, the NRL has given power to the clubs to mandate vaccination, with Canterbury being the first club to insist that all staff, including players, be vaccinated.<sup>49</sup> The NRL has also stated it would examine what the National Football League (NFL) was doing in regard to its use of different protocols for vaccinated and unvaccinated players, the former only being required to take a test once a week, the latter daily. Unvaccinated NFL players are also required to wear masks, not eat meals with their teammates and, during away games, must not leave their hotels or mix with people not connected with the team.<sup>50</sup> For a national competition like the NRL another consideration is that it appears likely the major airline carriers, Qantas and Virgin, will require proof of vaccinations for those wishing to travel interstate in 2022.<sup>51</sup>

Unlike the NRL, the AFL has introduced a 'no jab, no play' policy, one that has already had consequences with Australian Football League Women's (AFLW) player, Deni Varnhagen, refusing to be vaccinated. Varnhagen's club, the Adelaide Crows, immediately moved her to the inactive list, though she continued to be paid all her salary up until 19 November, and 25 per cent for the rest of the season.<sup>52</sup> In the AFL, Carlton player, Liam Jones, announced that he would retire, rather than have to comply with the vaccination requirement.<sup>53</sup>

The other issue for sport is whether vaccinations will be made mandatory for spectators in order for them to attend matches. This would appear to be a legitimate requirement by a venue, if it so wishes, as spectators attend sporting events on licence. This can not only be revoked at any time, but it can include pre-requisites for entry, such as proof of vaccination. The fact that two venues, the MCG and AAMI Park, were both spreader sites in 2021, indicates that such a measure may be needed.

There have also been indirect consequences associated with COVID-19. For instance, one response made by most sports in 2020 was to reduce operating costs, often by terminating, or not renewing, employee contracts in areas such as development. Lalor points out that in regard to cricket, this has resulted in a 'frightening chunk out of participation rates' in Australia, particularly in Victoria, where the contracts of many community officers were

<sup>48</sup> Brent Read, 'NRL likely to back mass player vax day plan', *The Weekend Australian*, 21 August 2021, 36.

<sup>49</sup> David Riccio and Brent Read, 'Clubs to hold fire on no-jab players' *The Australian*, 29 October 2021, 24.

<sup>50</sup> Brent Read, 'League to take NFL lead over vax policy', *The Australian*, 2 August 2021, 24.

<sup>51</sup> Brent Read, 'NRL likely to back mass player vax day plan', *The Weekend Australian*, 21 August 2021, 36.

<sup>52</sup> Liz Walsh, 'Crow on outer after refusing jab', *The Weekend Australian*, 6 November 2021, 40.

<sup>53</sup> Jon Ralph and Mitch Ryan, 'Carlton star retires to avoid jab' *The Australian*, 15 November 2021, 24.

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terminated. Overall, it was estimated that around Australia, participation levels in cricket were down 24 per cent for the 2020-21 season.<sup>54</sup>

The AFL, and its constituent clubs, had likewise responded to the 2020 outbreak by making competition-wide redundancies. This resulted in extra workloads being placed on the remaining staff<sup>55</sup> as for the 2021 season clubs were only allowed to spend \$6-7m on their football departments, down from around \$10m pre-COVID-19.<sup>56</sup> Sydney Swans coach, John Longmire, has suggested the cuts were too drastic while former Collingwood coach, Nathan Buckley, stated coaches at clubs were doing 130 to 140 per cent of the workload of recent years since six coaches were required to do the work ten had previously done.<sup>57</sup> Longmire also warned that one of the consequences of the staff cost-cutting measures was its impact on grassroots development which could leave the AFL open to growth by the NRL.<sup>58</sup> Meanwhile, cuts to medical staff at the clubs was cited by the Australian Football League Players Association (AFLPA) as a possible reason for the high level of injuries in 2021 with as many as 23 per cent of listed players being out injured at certain times of the season.<sup>59</sup> Thus, there are undoubtedly long-term financial related issues facing Australian sport from the necessary cutbacks in spending made in both 2020 and 2021.

## VI CONCLUSION

COVID-19 forced lockdowns once again dominated many parts of Australia in 2021. The greatest impact on sport was the need for governing bodies to be flexible on scheduling, to be agile in moving teams to locations where games could be played, and ensuring compliance with government COVID-19 protocols. While these management issues were similar to those that governing bodies faced in 2020, a significance difference in 2021 was that there were fewer contractual ones. The reason for this was that the major contractual issues, namely renegotiating broadcasting, player and other staff contracts, had all been dealt with in 2020. An issue for sport moving forward to 2022 is whether a requirement for vaccinations will be enforced on players as a pre-requisite for playing. From a legal perspective, this could become part of the standard player contracts. Similarly, proof of vaccination may become a requirement for entry into venues, including sporting ones, with the law relating to licence potentially being sufficient to make such a requirement a legitimate one.

<sup>54</sup> Peter Lalor, 'How Covid stumped Australian cricket', *The Australian*, 5 August 2021, 25.

<sup>55</sup> Courtney Walsh, 'Cuts to soft cap hit hard as coaches and club staff reach breaking point' *The Weekend Australian*, 24 July 2021, 40.

<sup>56</sup> Jon Ralph, 'Longmire fears aggressive NRL amid cutbacks' *The Australian*, 26 March 2021, 26.

<sup>57</sup> Courtney Walsh, 'Coaching staff being worked into the ground' *The Australian*, 11 May 2021, 22.

<sup>58</sup> Ralph (n 56) 26.

<sup>59</sup> Scott Gallen, 'AFL's big injury toll sore point for game' *The Australian*, 13 May 2021, 26.