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Email:

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PUBLIC REGISTER

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Re; N94049 Ice Hockey Australia – Exclusive Dealing Notification

To whom it may concern,

I present you with the following submission for your consideration.

I have personally had my membership with Ice Hockey Australia forfeited on suspicion of participation with a non sanctioned league, when I asked for proof of the allegation, none could be provided but my membership was still not re-instated. I was also denied the right to renew my level 1 coaching certification this year with IHNSW, this denies me the right to coach one of the kids teams which I have done over the past 2 years. This doesn't help the sport of Ice Hockey in Australia grow, it stifles it.

While it is granted that Ice Hockey Australia (IHA) has done much to develop and administer the sport of ice hockey over the years, it is our contention that granting IHA unfettered control of the running of the sport will not as they suggested grow the sport, but will in fact limit the growth opportunities for the sport.

The realities of how the sport is run (especially in NSW) are vastly different from what is presented in their submission, and there is a great deal of hypocrisy in their decision to bring this matter before The ACCC at this point in time.

The crux of the issue (from a legal standpoint) is the implementation of clause 4.22 of the IHA constitution:

4.22. An IHA Individual Member may not play against an unregistered member or unsanctioned team or in an unsanctioned event at any time. Any IHA Individual Member playing against an unregistered member or unsanctioned team or in an unsanctioned event will be subject to suspension, or forfeiture of IHA Membership, and shall remain suspended or shall forfeit IHA Membership, until dealt with by the IHA Board and its Disciplinary Committee.

There is a major legal problem with this clause in that it does not define what an "unsanctioned event" is. An unsanctioned "event" could possibly range from a tournament, to a competition, to a group of friends renting the ice to have a fun game of hockey one night, to a parent taking his kids and some friends to a rink and giving them some practice or training, to a rink running a hockey development session, in fact it could run to anything whatsoever involving a stick and puck at an ice rink.

Without a legal definition as to what "an unsanctioned event" is, any decision by IHA as to what an "unsanctioned" event" is, can only be arbitrary, and would in many instances be also considered discriminatory in its application. One of the reasons that IHA is attempting to use the ACCC process is that it is trying to do an end run around the fact that its current "legal" justification (clause 4.22) is legally inadequate to do the job.

In addition, history bears witness to the fact that over the last several years, IHA has implemented this clause on a completely arbitrary and discriminatory [redacted] basis. The fact that it implemented the clause on this basis was brought about by the fact that it has been unable over the past several years to provide adequate services and hockey programs that meet the needs of its members.

1) In the summer of 2007-2008, a seniors competition was set up that was not sanctioned by IHNSW. The competition contained both IHNSW registered members and non IHA members. Therefore according to section 4.22 of the IHA constitution every registered member of IHNSW playing in the competition was in violation of the clause and subject to suspension. IHNSW was fully aware that a number of their members were playing in this "unsanctioned" league. Referees (but not players) were at the time threatened with suspension if they were active in the competition (just this is clearly discriminatory) However, as many of the players in the competition were Australian National Team Players, and IHA they didn't want them suspended for the upcoming world championships, they refused to suspend any players, although they had clear proof they were participating in the competition and were clearly in violation of the rule.

2) In the next competition (Winter 2008) IHA had a change of mind and now chose to suspend IHNSW members playing in this same outside comp, and prohibit them from playing in the IHNSW competition. Conveniently, no national team players were playing in this competition.

3) However, IHA (through IHNSW) again proved that rules and principles were never the issue here and reversed itself during the Summer comp of 2008-2009 and chose not to suspend any players that were playing in this non-sanctioned competition. This was no surprise as several national team players were competing. However, their reasoning for their decision to not implement clause 4.22 was in an IHNSW e-mail which we are able to provide to you (note that IHNSW has over 50% of the IHA membership and is the state that has pursued these suspensions). It states:

"IHNSW has most definitely NOT sanctioned the SIHL 08/09 Summer League but does accept that several clubs/rinks to conduct in-house leagues during the summer months (per the sanctioning document I distributed for your comment/consideration last week) and as these are not competing with it for ice allocations, IHNSW will not take any action."

Ice Hockey Australia (as well as member states Queensland and IHNSW) have made long and detailed presentations to the ACCC as to the reasons why it must have sole responsibility for running ice hockey in Australia. It has passionately explained the need for the safety of the players and a comprehensive risk management program, the importance of proper refereeing, and the importance of maintaining its obligations with the IIHF.

In the summer of 08-09, when it again arbitrarily chose not to take any action against players that were clearly in violation of clause 4.22, IHNSW was not in any shape or form concerned about the safety of those players, it was not concerned with the potential lack of quality refereeing, it was not concerned with the damage this could do to its risk management program, and it was not concerned with its obligations to IIHF. The simple fact is that by its own words, "as these (unsanctioned competitions) are not competing with it (IHNSW) for ice allocations, IHNSW will not take any action", it is apparent that their motivation, and their current case before the ACCC, is solely about eliminating the competition.

As stated above, IHA (through IHNSW) has not been able to provide adequate hockey programs under its umbrella that have fully met the ice hockey requirements in the state, and therefore as a matter of convenience have discarded their principles and have chosen not to enforce clause 4.22 when it suits. That is discriminatory. The programs offered by IHA (through its State Bodies) are also inadequate to meet many of the needs of quality competitions for many of the players.

The question to be asked is why were some of Australia's top National Team men playing in an unsanctioned competition, up to a month or so before the world championships. The answer is simple, IHNSW, the official ice hockey body in NSW offered no suitable competition for these players. The only suitable competition for these players, which allowed them to remain in hockey shape for the upcoming world championships, was offered by this unsanctioned competition.

IHNSW, as do most of the other states, operates primarily a winter comp from April through September, approximately only six months of the year. The competition games only occur on the Weekend, (Saturday or Sunday). Players generally are allowed to play on only one team, on one level. So the maximum amount of time one can skate in a league is one game and maybe one practice a week, though you will only play about 20 games or so over a 26 week period. If you wish to play more than one game a week (with the exception of women), under the current administration, you can't. It's that simple. Basically IHNSW does not operate competitions at all from October through February. Last year, in response to the unsanctioned summer league, IHNSW ran a summer comp, accommodating about 60 people. The NSW league was at a much lower competitive level than its opposition. But this initiative by NSW occurred solely as a result of the competition brought about by the competitive league. The "unsanctioned" league has capitalised on an unfilled demand by IHA and IHNSW. It operates its games midweek, and offers on average three games every two weeks (more than IHNSW). Many of the players in this league are very keen on ice hockey and would be happy playing more in both this league and IHNSW as they wish to play more than once or twice a week. As opposed to other sports such as basketball, swimming etc that operate on a year round basis, Ice Hockey is unable to produce athletes that can compete in the major hockey markets due to the minimal ice time provided by IHA.

In NSW, IHNSW does not, for any practical purpose, get involved with any form of hockey development. They have left these to the clubs, or the rinks. With the rinks in control of the development, situations existed for the past 10 years of IHA registered players playing with non-registered players. As there is no definition of what an unsanctioned event is, registered playing with non-registered players would be a prima facie violation of clause 4.22. and would seriously put their risk management policies in jeopardy. Yet IHNSW has never taken any action to suspend these players.

Judging by IHNSW's apparent lack of concern for the safety of its players and the risk management issues when it refused to sanction players who were playing in an unsanctioned competition because "it (the competition) did not compete for ice time", it is clearly just paying lip service to those issues.

INSURANCE

As regards, their assertions regarding insurance, IHA makes the following claim. "If IHA is not able to satisfy the demands of its insurers by operating a comprehensive risk management program, then it is very likely that it would have to raise its membership fees to prohibitive levels to cover increased insurance costs, thereby severely affecting its ability to retain current members or attract new members to the sport."

We find this a ludicrous assertion. A competitor with a different insurance carrier has a few claims, and IHA's insurance rates will go to a prohibitive level? If Coles' warehouse burns down and they are insured with Allianz, will Woolie's, who is insured by QBE have their insurance premiums raised? Of course not.

IHA's insurance costs will be determined by their claims rates and their risk management program. Does a 50 year old driver pay the same amount of car insurance as an 18 year old P Plater? Of course not. You pay according to your risk profile. IHA will pay insurance costs based on their own risk profile. That IHA would have to raise insurance amounts to a prohibitive level, lose players, and the sport would collapse, is a far flung assertion and more scaremongering than a realistic scenario.

As a matter of record, the league from which the members were suspended by IHNSW did and do have full insurance coverage for both injury and liability, ironically through the same carrier as IHA. This insurance was obtained at an affordable price and with none of the doomsday insurance dramas as put forth by IHA.

IHA also asserts in their claim about the effect on their insurance that "these difficulties include but are not limited to situations where an IHA member, player or official is injured while involved in an unsanctioned league or where an IHA member, player or official's involvement in an unsanctioned league makes it difficult to satisfy the insurer that an injury was not caused or contributed to by an incident which occurred while that player or official was involved in an unsanctioned rather than a sanctioned league and/or event.

Again, a statement with a lot of impact, but little, if any, merit.

We concede that it could, in some cases, be difficult for an insurer to determine if an injury was not caused or contributed to by an incident which occurred in an "unsanctioned hockey event". But it would be equally difficult for an insurer to determine if an injury was not caused or contributed to by an incident that occurred in a rugby game that morning or a soccer game or a basketball game or walking down the stairs in his house that day, or in fact any one of a number of activities. As most registered players (especially junior players) play other sports such as rugby, soccer, basketball etc., it is much more likely for this situation to occur in something other than an unsanctioned hockey event.

RELATIONSHIP WITH IIHF

In regard to its relationship with IIHF, IHA claims that it is bound to not allow its members to play in unsanctioned competitions. The U.S. which is the second largest, hockey country, and one of the top ranked hockey countries in the world, operates numerous leagues, programs and tournaments outside USA Hockey. USA Hockey is very large and effective, and controls a large portion of hockey in the US. But there is also a vast amount of hockey outside of USA Hockey. To the best of my knowledge there is no systems that verify whether or not you play in a non sanctioned US Hockey "program". All school programs are outside USA Hockey. The obvious reason there are programs outside USA Hockey is that there is a demand for certain programs that cannot reasonably be filled by USA Hockey.

The same holds true here. Almost every player that went to play in the "unsanctioned" senior league was previously a member of IHA. IHA couldn't meet their hockey needs

(which included a weekday competition of 1-2 games a week.) and they established a program that was able to meet their needs. Also IHA (in particular IHNSW) for many years ceded most of their development programs to the rinks, though it was a technical violation of rule 4.22. IHNSW set up one summer program, only in direct response from the threat of the other league. The bottom line is that by conceding full authority to IHA to control all aspects of ice hockey in Australia, you will be limiting the growth of the sport and opportunities of many people to play and play the sport with greater frequency.

SUMMARY

IHA has a key role in running hockey in Australia and is very well placed to administer most of the key functions in Australian Hockey, especially National Programs, National Teams, and national championships. But there are niches in the hockey market that they are not well suited to running or not particularly interested in running.

IHNSW, the largest state (with over 50% of IHA registrations) has shown over several years that it has little interest in running summer programs (accounting for 6 months of the year), or development programs.

As a result, non sanctioned summer leagues proliferated throughout NSW (with the full knowledge of IHNSW). Many of these leagues included both IHA registered players and non registered players, and in many cases using non accredited referees. Most of these programs were run by the individual rinks.

However, two years ago, a group of approximately 100 players left IHA/IHNSW to set up their own summer competition. This now hit the pocketbook of IHNSW as it now lost almost 5% of its annual registrations (the major source of its revenues). It warned the dual members of that competition that they are in violation of rule 4.22 and if they continued to play in the competition they would be suspended from IHA. However, there were several Australian National Team Members in the competition, and with the world championships (to be held in Newcastle) a month or two away, and the Australians with a chance for Gold (which they did end up winning), now was not the time to be concerned with principles. As a result, no one was charged. The next competition (winter) had no national players in it so a number of suspensions were handed out. Finally, during the next summer competition run by this group, a number of National Team players again participated. Again, they're back to ignoring rule 4.22. So much for principles.

IHA would like you to believe that this application is about the protection of the players and the sport. They would like you to believe that it is about player safety and a comprehensive risk management program, the importance of proper refereeing, and the importance of maintaining its obligations with the IIHF.

For years and years they ignored these principles as they allowed unsanctioned summer leagues and development programs to flourish (especially in NSW). Only when it hurt them in the pocketbook, with the loss of 5% of their registration base, did these principles emerge. Even then, as important as these principles are to them (and the basis for requesting that they be given full control over the sport in Australia), they ignored them (safety of the players, their risk management program etc) because it would have weakened the national team that year. They showed the same lack of concern over their principles the next year when they again refused to suspend players, as it would weaken the National Team.

In reaching your decision you must remember there is an old adage **“What you do speaks louder than what you say”**. What they say is this is about protecting the players and the sport.

Their actions however expose their real agenda. Their decision to enforce or not enforce rule 4.22 had nothing to do with protecting players, nothing to do with insurance risk minimization, nothing to do with refereeing, nothing to do with IIHF, and everything to do with competition, and their attempt to eliminate it. In their own words: **“as these (unsanctioned competitions) are not competing with it (IHNSW) for ice allocations, IHNSW will not take any action”**

There are many niches in Australian hockey that need to be filled. Giving IHA full control of ice hockey in Australia will reduce the opportunities to fill these niches and restrict the growth of the sport in Australia.

Note: It is interesting to note that IHA has chosen not to notify the members of IHA of their request for a hearing from ACCC on this matter. These 4000 people are the people that will be most affected by this request, yet are totally unaware of this action by IHA.

Regards
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