

# Spectator Behaviour Project Legal Jurisdiction Paper



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## **1. Introduction**

Spectator behaviour at community sporting events has become an increasingly topical issue, attracting both media interest and community concern. The damage that inappropriate spectator behaviour can cause to sport is too great for the issue to be ignored. Many sports are taking steps to reduce the likelihood of inappropriate behaviour occurring but there is confusion and concern as to what sports and their clubs can legally do to deal with this issue. As a result, in many instances no action is taken at all.

Sports and their clubs have a responsibility to provide a safe environment for all those involved in the conduct of the sport – players, officials, administrators and spectators. This includes taking steps to ensure everyone is protected from physical and emotional harm that may arise as a result of the inappropriate behaviour of others.

Sports and their clubs must be proactive in implementing strategies to reduce the incidence of abusive and inappropriate behaviour from spectators at their events. Even with such strategies in place however abusive behaviour can still occur. Clubs need to be aware of what their rights and responsibilities are in dealing with this matter.

This paper will cover a number of issues including:

- Methods sports can use to maximise the jurisdiction they and their clubs have over spectators attending their events.
- Ways in which sports can alter their current structure to include more people as individual members, thereby extending their jurisdiction over larger numbers.
- The role that the hirer of the facility, in most cases local councils, plays in controlling spectators, and
- How other stakeholders such as police and state government, can assist in curbing the incidence of inappropriate spectator behaviour.

In conclusion the paper will offer recommendations to the Department of Victorian Communities in relation to actions that should be taken to help reduce the incidence and impact of inappropriate behaviour at sporting events.

## **2. Background to the project**

While it can be said that inappropriate spectator behaviour is a concern for all sports, some sports have significantly more incidents than others. For some time now a number of these sports have penalised poor spectator behaviour, without really knowing whether the action taken would withstand a legal challenge. This report offers advice on the issue of sport's jurisdiction over spectators from a legal perspective.

This project was initiated by the Department of Victorian Communities after a sport expressed concern regarding their jurisdiction over spectators at events after a non-member parent spectator challenged a tribunal decision. Having been involved in an incident with a committee member of the opposition club this non-member parent was banned by the tribunal from attending matches for 12 months. This tribunal decision was challenged and as the sport was unable to establish a clear contract binding the spectator to abide by the rules and regulations of the sport which provided them with jurisdiction over spectators, they were advised it was likely the case would not be won.

As a result of the sport raising their concern to the Minister for Sport and Recreation, the Department of Victorian Communities formed a working group of selected sports and other interested stakeholders (see Appendix 1) to discuss what could be done to maximise the jurisdiction sports have over spectators at their events.

The sports involved in the working group outlined how they were currently dealing with this issue and the extent of the problem in their sport. It was felt that further research was needed into how sports could increase their jurisdiction over spectators and whether these methods would be successful in a variety of sporting situations.

VicSport was commissioned by the Department of Victorian Communities to prepare a report on the legal aspects of this issue. A legal panel was formed (see Appendix 2) to discuss from a legal perspective ways in which sports can maximise their jurisdiction over spectators and other adults involved in junior sport.

In order to achieve this goal the legal panel:

- Examined constitutions and by-laws;
- Investigated ways in which clubs are held accountable for the behaviour of their members and non-member spectators;
- Evaluated the effectiveness of contracts for good behaviour i.e. codes of conduct.

A series of interviews were also conducted (see Appendix 3) to determine how sports, councils and other stakeholders deal with inappropriate spectator behaviour. Other strategies which could be implemented to provide a possible solution to this problem were also discussed.

### **3. The Laws of the Land**

#### **3.1 Community Standards**

As community standards have evolved, behaviours that may have been tolerated in the past are no longer acceptable. Sporting clubs have moral, ethical and legal duties to address behaviours that offend community standards in addition to those set by the sporting organisation itself.

In a society characterised by an increasing blame mentality, a person whose breach of the playing or club rules results in physical or emotional damage to another person, faces the possibility of being sued for financial compensation. Similarly, the club itself may be sued for breach of its own duty of care owed to club members, officials and visitors, by virtue of the conduct of individuals at its games or activities. Naturally, it would need to be proven that the club was negligent in its action or inaction for a breach of duty of care to be established.

Further, some types of behaviour or rules may amount to contravention of laws prohibiting discrimination and vilification of persons on the basis of attributes such as gender, age, religion or race. Breaching such "human rights laws" can result in hefty penalties for sporting clubs and associations, not to mention the damage to reputation which may result from the publicity surrounding these issues.

Finally, if the behaviour of individuals or groups at a sporting event or activity is sufficiently serious that it offends the criminal law, then formal criminal charges and legal sanctions may follow. More information on the relationship between the criminal law and sporting activities is set out below.

#### **3.2 Criminal law and Sporting Clubs**

Persons involved in grass roots sport are not immune from the criminal law just because their behaviour might occur in the context of a sporting contest. There have been instances where both on-field and off-field conduct by players, officials and spectators has attracted the attention of the criminal law.

For example, a female soccer player was recently fined \$250 after being found guilty of common assault for spitting at a referee during a women's soccer match. The

complaint was laid with the police by the female referee. Interestingly, by the time the criminal sanction was handed down, the player had already received a life suspension from the soccer association for the offence.

### **3.2.1 Criminal Assault**

Criminal assault can arise in either of two ways:

- Through behaviour that causes the victim to feel threatened by the actions of another. Words alone can never amount to an assault. There must be some act or gesture accompanying the words which together indicate an intention to assault or which a reasonable person might well understand as indicating such an intention; or
- Behaviour that results in the actual infliction of unlawful force on the body of another.

Assault offences are generally classified according to the severity of their result:

- i) Common assault is the least serious form of assault and may or may not involve physical contact (eg spitting). Common assault charges are generally treated as summary offences and often result in a fine if the offender is convicted. In order to establish an offence of common assault it is not necessary for actual bodily harm to occur.
- ii) More serious assaults include those involving actual bodily harm.

Courts have clearly demonstrated that they are not prepared to tolerate any behaviour that amounts to assault whether it be in the sporting context or otherwise.

Where a club believes that the behaviour of a spectator (or others involved in the sport) constitutes a criminal act, then the police should be notified as soon as possible. While it is lawful for club officials to apprehend a person who has either committed an offence or is in the act of committing one, until the police arrive this can only be done using reasonable force.

Given that the definition of “reasonable force” is somewhat arbitrary, and an unintentional overstepping of this boundary may leave a person attempting to do the right thing open to prosecution, it is advised that this option be used only in cases where it is deemed absolutely necessary.

## 4. Laws of the sport

### 4.1 Constitution and By-Laws

Sports either have or are able to implement rules and regulations in their constitution that influence and guide the behaviour of their members. These rules and regulations should clearly outline acceptable and unacceptable behaviour at sporting events, the process for dealing with any indiscretions and the appeals process should an offender feel aggrieved by the outcome. Rules and regulations may be supported by policies, codes of conduct and other documentation. The rules and regulations of an organisation and any supporting documentation should be clearly linked to the constitution and/or by-laws governing that organisation.

Sports such as Surf Life Saving, Netball, Softball, Canoeing, Hockey and Diving have adopted rules enabling the governing body of the sport to have jurisdiction over individual club members at up to four levels of the sport – club, association, state and national. This ensures that any member who has a role within the sport at any of these levels, including participants, coaches, officials, trainers, volunteers, and potentially parents, are bound to abide by the rules and regulations of the sport.

Surf Life Saving Australia recently altered their club constitution so that membership automatically binds the individual to the constitution and regulations governing Surf Life Saving. Section 15 of the Surf Life Saving Clubs constitution states the following:

*Members acknowledge and agree that:*

- a. This constitution constitutes a contract between each of them and the Association and that they are bound by this Constitution and Regulations, the Surf Life Saving (insert State) Constitution and Regulations and Surf Life Saving Australia Constitutions and Regulations.*
- b. They shall comply with and observe this Constitution and Regulations, and any determination, resolution or policy which may be made or passed by the Committee or any other entity with delegated authority*
- c. By submitting to this Constitution and the Regulations they are subject to the jurisdiction of the Association, Surf Life Saving (insert State) and Surf Life Saving Australia”*

The changes Surf Life Saving Australia made to their clubs' constitution has increased the number of people over which the State and National bodies have jurisdiction and enables both to bring individuals competing in their events before tribunals and penalise them according to their rules. Many other sports have also amended their clubs' constitutions to include a similar clause to ensure that the sport's governing body has jurisdiction over the individual club member.

While the legal community has recommended that all sports follow suit in making a similar change, it still does not solve the issue of jurisdiction over the non-member spectator, without using other methods of forming a contract (see Section 5).

## **4.2 Policies**

In the mid 1980's, the Victorian Amateur Football Association (VAFA) brought in an alcohol free policy at all their games. This was initiated after a violent brawl broke out amongst spectators at a B grade Grand Final and has been in place to this day. Whilst the VAFA has no records that would clearly indicate whether or not there has been a decrease in the number of spectator incidents since the ban was introduced, anecdotal evidence suggests it has had an influence.

The VAFA alcohol free policy is enforced in a number of ways.

1. Members of the executive committee in attendance at a game can direct a club(s) to take appropriate steps to deal with spectators who are consuming alcohol.

If the person drinking refuses to stop when requested by a club official, the club is encouraged to call the police who can charge a spectator for drinking in a public place. Often the threat of calling the police is enough for the offender to stop.

2. Umpires can report an incident of alcohol consumption to the VAFA who can launch an investigation into the matter. Umpires are asked to determine which club the offender(s) were supporting and the VAFA would contact that club and launch an investigation. The VAFA has the right to issue penalties to clubs ranging from a warning to fines in excess of \$500.

3. Clubs are encouraged to display signage, indicating that drinking is not permitted during the playing of games. Prominently displayed signage makes it more difficult for offenders to plead ignorance.

### **4.3 Process to support jurisdiction**

A number of sports have rules in place that allow officials to deal with inappropriate spectator behaviour. For instance, in Hockey, an umpire can stop a game if it is considered that the playing environment is unsafe for participants. This includes unruly and abusive spectator behaviour. Umpires are permitted to ask the captain of the team whose spectators are behaving inappropriately to speak to the offenders and ask them to desist. If the behaviour continues, the umpire has the right to cancel the game and Hockey Victoria's investigation tribunal decides the result.

Umpires can also report a club(s) if the spectators can be identified as belonging to one or both teams. The club is then brought before Hockey Victoria's investigation tribunal who will investigate the incident. The tribunal will ask the club to explain why their supporters were behaving in an unacceptable manner and what the club was doing to limit the occurrence of such behaviour.

The tribunal also has the power to fine clubs or deduct points from them for more serious incidents. While this does not occur often, two clubs were fined \$500 recently for poor crowd behaviour after verbal abuse was exchanged between the groups and a person was aggressively pushed. Hockey Victoria expect their clubs to provide safe environments for their participants and clubs are required to have a ground manager who is responsible for controlling the behaviour of spectators at the event.

The VAFA also has in place rules and regulations that help control inappropriate player and spectator behaviour. The VAFA by-laws (rule 15.9) clearly state that '*a free kick is to be awarded against a player who uses abusive, insulting, threatening or obscene language and/or gestures*' to either another player or an umpire.

The VAFA rules also permit a free kick to be awarded to the opposition '*in a situation where umpires are verbally abused by officials, interchange players or even supporters in the proximity of the coach's box*'. Umpires are encouraged to give a warning first to enable the offenders to correct their behaviour, however if the abuse continues, then a free kick may be awarded to the opposition. This rule only relates

to spectators that are in the vicinity of the coaches' box and does not cover spectators around the ground.

VAFAs by-laws also give the umpire the right to cancel a game if they feel either their own safety, or that of the players is being threatened, or if the behaviour of spectators is getting out of control. The decision to abandon a game is at the umpire's discretion. An investigation into the incident is made after the umpire's game report has been received.

As a result of the difficulties faced in gaining jurisdiction over the spectator other groups, such as the Victorian Soccer Federation (VSF) have started to penalise clubs for inappropriate supporter behaviour (see Section 6.2). As an example, in June 2004 umpires exerted their discretionary right to walk off the field if they believe a spectator situation becomes uncontrollable.

Umpires called off a game between Sunshine Heights and Gladstone Park after a clash between players and spectators got out of control. The Western Region Football League stripped both teams of premiership points as a result and both clubs were also fined.

The Western Region Football League executive are taking a strong stance on spectators behaving inappropriately at their games and are fully supportive of their umpires taking the decision to stop a match where warranted. Damien Phillips, the CEO of the WRFL said, *"the decision not to award match points or scores and to fine those clubs will emphasise how much undisciplined individuals can hurt their clubs"*.

Although rarely having an issue with the non-member spectator, Touch Victoria also advises their referees that they may stop the game if spectator behaviour gets out of control. Following a similar system to Hockey, the referee would approach the captain(s) whose spectators are misbehaving and ask them to attempt to control the situation. If the inappropriate spectator behaviour continues, the referee may cancel the match and the result will be determined by the competition administrator.

Netball umpires are not permitted to abandon a game due to spectator abuse however they may stop the game and request the presence of an umpire's supervisor who is present at every game if they feel spectator behaviour is a threat to on-court safety. The umpire supervisor will then make a decision to either approach

the spectators or to call the police if necessary. Netball Victoria discourages umpires from confronting angry or aggressive spectators themselves.

Hockey, the VAFA, Netball and Soccer all have specific rules relating to abuse of officials when the offender is the player. With the exception of the case where the VAFA can award a free kick for unruly spectator behaviour in the proximity of the coaches' box however, there are no specific rules that specifically relate to dealing with the behaviour of the spectator.

Umpires are given the backing of the sport to cancel a game if they feel the level of spectator abuse is of concern. While some sports support the right of the umpire or referee to use their discretion to cancel or stop a game due to unruly spectator behaviour, it is important to note that this does not indicate that spectator control should become the role of the game official. Many sports feel that the match official's role in dealing with the game and on-court behaviour is difficult enough without the additional responsibility of policing spectator behaviour as well.

## 5. Gaining Jurisdiction

### 5.1 Forming a Contract

*Incorporated terms* explain the various methods of forming a contract between two parties. The usual method of forming a contract between two parties is via the signing of a contractual document, as is the case with parents signing codes of conduct. Other methods, such as outlining conditions of entry on a ticket and displaying conditions on prominently placed signs are also used.

In these cases where there is no signing of a contractual document between parties, the usual way by which terms are incorporated is by one of the parties giving notice of the terms of the contract. It is difficult to state the legal requirements here, beyond saying that the notice must be 'reasonable' and given prior to or at the time of contract formation. That is, the party relying on the terms must show that, in the circumstances of the case, reasonable steps were taken to bring the terms to the attention of the other party, before that party became bound.

A term stated to or referred to in a document may be incorporated into it if the document was tendered and accepted prior to or contemporaneously with entry into the contract, provided:

- a. A reasonable person in the position of the person who received the document would have regarded it as contractual in nature;
- b. The person who received the document, such as a ticket, knew that there was writing on it; and
- c. The person in receipt of the document knew that the document referred to contractual terms, and
- d. The person who tendered the document took reasonable steps to bring notice of the documents contractual terms to the other party's attention.

In essence the binding strength of a "contract" that is made when one party offers a contract on terms stated or referred to in a document received by the other party, is that the recipients decision to keep the document indicates assent to a contract on the terms stated or referred to.

In such a case the terms and conditions of entry printed on the back of the ticket for example, would be considered legally binding if it is reasonable to assume that the decision to accept the ticket indicates assent to the terms and conditions listed.

If however it can be established that the person who received the document, in this case a ticket did not know that there was writing on it, the writing cannot be relied upon as incorporating contractual terms. It is imperative that it can be established that a 'reasonable' person receiving the ticket understands that there is writing on it and believes that the ticket is a contractual document for the terms and conditions listed on the ticket to be considered legally binding.

In addition, where the document contains an exclusionary term which is unusually wide for the type of contract in issue, or is not usual in the class of contract or a stringent term, the exclusionary term must be drawn to the attention of the recipient in the most explicit way. In the case of a plaintiff contesting an onerous or unusual term in the contract, such a term will not be regarded as incorporated in it in the absence of a prominent notice of the term.

To our knowledge there are no recorded legal cases that have contested the validity of tickets and conditions of entry at sporting events therefore the validity of using an issued ticket as a binding contract has not been tested. Most cases pertaining to tickets and conditions of entry concern exclusionary terms that a party seeks to rely on in order to exclude, restrict or qualify liability under the contract. While there is no real-life evidence to indicate whether or not ticket acceptance qualifies as a legally binding contract, the legal panel is confident that the terms and conditions of such a contract could be enforced if they are properly drafted.

A leading case in determining the conditions incorporating terms into contract is *Chapelton v Barry Urban District Council*. In this case the plaintiff claimed damages for negligence when he was injured after falling through one of the defendant's deck chairs. The chairs had been in a pile next to a notice stating the rate of hire and 'respectfully' requesting the public to obtain tickets from chair attendants.

The plaintiff had taken this ticket without looking at it, and therefore did not see the statement on the ticket excluding liability for 'any accident or damage arising from the hire of the chair'. The court held that, in the absence of any warning, the ticket could

not be relied upon as sufficient notice of the exclusion clause that it purported to incorporate.

The conditions identified above as incorporating terms into contract have been determined through numerous legal cases. For conditions of entry placed on tickets or signage to have the backing of the law these principles must be strictly adhered to.

## **5.2 Written Contracts**

### **5.2.1 Members**

If an individual is a member of a sporting association, league or club, enforcing rules and imposing penalties is a relatively simple process for the organisation. The constitution and rules of the incorporated club operate as a contract between the club and its members. Through signing on as a member, the person agrees to abide by the rules and regulations of the sport or club and in turn, be subject to penalties should they break these. The sport or club is free to establish its own standard of conduct and inappropriate behaviour can be dealt with accordingly.

When a club affiliates with a league or association, it is also required to comply with and enforce the rules of its governing body. As such it is important that these rules are promoted widely to all involved so that the club and its members are fully aware of them.

Examples have been given previously where sporting organisations have maximised the jurisdiction over members 'vertically' through the sport. Sports should also give consideration to maximising jurisdiction 'horizontally' at the club or association level. Increased horizontal membership has been successfully achieved by many sports via the incorporation of a 'family' or 'spectator' membership category.

However not all spectators or officials will become members of the club or sport and so additional ways of gaining jurisdiction over other persons is required. Several methods for capturing "others" indirectly involved in the sport have been successfully employed to date by a number of sports.

### **5.2.2 Codes of Conduct**

A number of sports associations and their clubs, including Hockey, Netball and Football require parents to sign a 'code of conduct' when registering their children for a program or club membership. This 'code of conduct' contains a clause to establish the jurisdiction of the sport so that by signing the code, the parent is agreeing to abide by the conditions of the code or be subject to the stated penalties.

It is important to note that this only covers the parent who signs and it is not always this parent who attends the child's sport. It also forms no agreement with other relatives or friends who may attend as a spectator.

Sports or clubs could make it compulsory for both parents (or guardians) to sign this code before allowing children to participate in their events. As it is most often parents who attend their child's sporting event, this would increase the number of spectators who are bound by the sports / clubs rules and regulations. It must be considered that allowances may have to be made for those children whose parents are separated, or where getting both signatures would take great effort.

This concept could be taken further to include other close family members, for example grandparents and siblings, who may attend a sporting event in which the child is participating. Many interviewed for this paper were however concerned that trying to capture all possible family members or friends who may attend the child's sporting event either before the season begins or on the day of an event, would place an unacceptable burden on club officials.

In addition, spectators who are not related to any participant and therefore have not signed the code of conduct, or related persons who choose not to sign the contract are still not covered under this arrangement and are therefore technically not bound to the rules of the sport. This raises the question of the lawfulness of attempting to exert control over those who have not signed an agreement.

### **5.3 Conditions of Entry**

Sports, particularly indoor sports like Basketball and netball, have begun the process of placing conditions of entry signage at the entrance to their venues. This places certain conditions on the spectator when they enter and gives the sport or their associations the right to remove a person if their behaviour is considered unacceptable.

Basketball Victoria's Conditions of Entry Signage includes the following statements

*'By entering this facility, all persons agree to be bound by the following terms and conditions:*

- *All persons must conduct themselves in a proper and reasonable manner and in accordance with Basketball Victoria's Codes of Conduct, a copy of which is available from Basketball Victoria, the association or from Basketball Victoria's internet site, [www.basketballvictoria.com.au](http://www.basketballvictoria.com.au)*
- *By entering, all persons agree to be bound by the basketball association's and Basketball Victoria's constitution, rules and by-laws and submit themselves to Basketball Victoria's Tribunal, Ethics Committee and any other disciplinary forum connected with basketball.*
- *The right to remove any person from the facility is reserved if the person's behaviour is considered dangerous or unacceptable.*

(see Appendix 4 – Basketball Victoria conditions of entry signage).

As part of Netball Victoria's Member Protection Policy, released in the first half of 2004, Netball also places signage at all its indoor and outdoor venues, stating that, *"it is a condition of entering these premises that you comply with the Netball Victoria Constitution, Regulations and Policies, including but not limited to the Netball Victoria Member Protection Regulation"*.

Netball Victoria also advises that copies of any regulations or policies referred to on any sign are available for inspection at the point of entry should the patron entering so desire.

While the legally binding strength of signage has not been tested in the courts, legal advice considers that prominently displayed signs will add weight when dealing with unruly spectator behaviour. Obviously it will be easier to prove a contract was formed by signage at an indoor or enclosed outdoor venue as there are specified entry and exit points where signs can be prominently displayed. Technically, every person entering the venue will enter via a point where conditions of entry are on display.

It is much more difficult to ensure that every person attending an outdoor venue that does not have distinct entry points passes a sign clearly outlining conditions of entry. Netball Victoria has in place a policy to provide unlimited amounts of signage to associations who utilise 'open' outdoor facilities and encourages the association to place signs in as many high traffic areas as possible.

Netball Victoria hope that by placing numerous signs around venues they will limit the ability of offenders to realistically argue that they had not seen a single sign and were unaware of the conditions of entry to the venue. It is not known how much signage would need to be placed at these 'open' outdoor venues for a contract to be binding. Ultimately it would need to be proven that the spectator was aware that there was a sign outlining conditions of entry on display, and also that the sign indicated the formation of a contract between parties.

#### **5.4 Ticketing**

Indoor sports and outdoor sports with perimeter fencing have the ability to issue tickets for entry. By printing conditions of entry information on tickets a sport can argue that the spectator by accepting the ticket, has entered into a contract with the sport and that this contract binds the spectator to comply with the rules and regulations of the sport or club, and be subject to penalties should they breach these rules and regulations.

Again, under challenge the sport may be required to provide evidence that the ticket holder was aware of the conditions of entry information printed on the ticket and that acceptance of the ticket indicates acceptance of those terms. As with signage displaying conditions of entry, sports must ensure that if the condition of entry on the ticket states that the spectator must adhere to a code of conduct or member protection policy and that they are able to view the relevant documents on request.

This means that for the condition of entry to be legally binding this information should ideally be on display, or at the least be easily accessible. If not on display a club official or person at the gate must have a copy of the relevant policy that the spectator is being asked to abide by with them should the person want to read this before agreeing to enter. The code or policy should clearly outline acceptable and unacceptable behaviour, the process for dealing with a breach and the possible penalties should the breach be proven.

## **6. Transferring responsibility**

Tennis Australia and its member associations, and the Victorian Soccer Federation have taken different approaches to dealing with inappropriate spectator behaviour. These sports recognised that without a contract with the non-member spectator, they have no legal jurisdiction over their behaviour and therefore cannot legally deal with them. In lieu of being able to discipline the spectator directly, these sports penalise the participant or club for the wrongdoings of their supporters.

### **6.1 Spectator to Participant**

In 2004 Tennis Australia introduced a National Disciplinary Policy that covers all its member States. The purpose of the policy is to:

*'Preserve the image and integrity of tennis in Australia and to promote sportsman-like conduct in all events to which this Policy applies.'*

Tennis Australia's Rules and Regulations provide a framework for dealing with event related breaches of discipline in a consistent manner and covers both the participant and spectator. Entry forms for tournaments include conditions stating that *'the tournament will be conducted in accordance with Tennis Australia Rules and Regulations and Tennis Australia may penalise or suspend players for breach of the Code of Conduct'*. Tennis Australia's rules and regulations include their National Disciplinary Policy.

The spectator interference section of Tennis Australia's National Disciplinary Policy was introduced due to concerns of an increasing number of incidents involving spectators and a belief that there was a lack of direct control over them. Having considered all their options, Tennis Australia believes this to be the most effective way for them to deal with inappropriate spectator behaviour.

Tennis Australia's National Disciplinary Policy section on spectator interference states the following:

*"Where a match is disrupted or interfered with by the action of a spectator who is part of the player's entourage (i.e. parent, family member, coach or friend), the Official shall first warn the player and the interfering spectator, including advising that any further interference by the spectator may result in (1) the match being suspended until the Referee determines that the issue is resolved and that play can continue without further interruption, or ultimately (2) the Governing Body (at a later date) refusing the player's entry into future tournaments....."*

*A violation may result in the Governing Body formally raising the matter with the interfering spectator and the player. The interfering spectator and player will be advised in writing of the inappropriate behaviour and invited to participate in a meeting with the Governing Body (via tele-conference if appropriate) to discuss the issue with the appropriate person appointed by the Governing Body's Board. The object of the meeting will be to educate and counsel the interfering spectator and to act as a final warning. In the case of further interference at future matches, the spectator will be invited to give a written undertaking not to attend future matches for a specified period.*

*If there is a failure to give, or breach of, the undertaking, a hearing pursuant to section 5 will be conducted. At the hearing the player will be given the opportunity to be heard on the issue. The only penalty available to the Governing Body is to refuse to accept the player's future Event entry form(s) for a specified period of time."*

The education and counselling session acts as a final warning and ensures the spectator is clear on what they have done wrong and how they must alter their behaviour. If the inappropriate behaviour continues, the spectator is offered the option of agreeing to not attend future matches for a specified period. Failing the spectator agreeing to this option, and only as a last resort, the player with whom the spectator is associated is refused entry to future tournaments.

This process, while ultimately penalising the participant for the spectator's behaviour, provides many opportunities to correct the situation before this ultimate penalty is actioned. While this clause only covers spectators that are part of the player's entourage or who have a clear association with the player, tennis has not had problems with other 'general' spectators in the past. Despite not having been tested in the legal courts this process is considered to be an acceptable approach to solving the problem for tennis and provides a clear framework and guidelines for all involved in the sport.

Tennis Australia considered giving the umpire the right to penalise the players through loss of points, games or the match, for the behaviour of spectators in their entourage. This option was declined as while the umpire has the right to penalise players in this way for their own inappropriate behaviour, this was not considered an appropriate penalty in the case of spectator interference.

Tennis Australia's spectator interference clause which outlines procedures for dealing with inappropriate spectator behaviour may be an appropriate tool for use by other 'individual' sports, such as badminton, squash, athletics or gymnastics. A process similar to Tennis Australia's may prove to be too problematic for implementation with team sports however.

Following the Tennis Australia process the ultimate penalty would be that either the spectator agrees to forego attendance at future events for a set period of time, or the child, or indeed the whole team is banned from competing. Penalising an entire team for the inappropriate behaviour of one supporter may be considered excessively harsh and unfair.

## 6.2 Spectator to club

The VSF takes a different approach that they feel suits their particular circumstances and has worked for their association. The members of the VSF are the clubs and leagues affiliated with VSF, rather than the individual members. As such the VSF has no direct jurisdiction over the individual members of their clubs so when an incident of inappropriate behaviour occurs, the VSF penalise the spectator's club as the club is the entity directly associated with the VSF.

The VSF makes it clear they expect all clubs to take responsibility to effectively deal with their spectators, whether those spectators are members of the club or not. The VSF Rules of Competition, Section 24 'Security at Home ground' state:

*"The home club is responsible for providing appropriate arrangements to ensure the orderly behaviour of spectators and provide for the protection of match officials, players and officials at VSF fixtures.*

*Each VSF home club is required to provide club marshals and/or security and/or police as per the Rules of Competition or as directed by the VSF.*

*The VSF Tribunal will take into account the security measures implemented by clubs, when assessing any misconduct charges that may be brought before them."*

A series of penalties for clubs whose spectators behaved in an unacceptable manner were devised in consultation with important stakeholders in the sport including clubs, players, officials and tribunal members. Currently, the VSF may fine a club; the most commonly applied penalty to date, deduct points from the team or expel a team from a competition. While there has been no research conducted to quantify the success or otherwise of this approach, the VSF believes that it has assisted them in their efforts to curb inappropriate behaviour and will continue to use fines as a method to deal with this issue.

Deducting points from clubs for the poor behaviour of its spectators has rarely been used, but according to the VSF will become a more common penalty used in conjunction with fines. The VSF believe that although fines have served a purpose, deducting points from a spectator's team is the ultimate penalty and the one penalty

that will most deter supporters from behaving badly given their passion for their clubs. VSF believes that a points deduction process is likely to have the greatest impact on the problem as not only will spectators not want to be the cause of their club losing points, but also that clubs themselves, being the ones most severely affected by this penalty, will be more likely to ensure that the spectator is dealt with accordingly and that measures are put in place to prevent incidents reoccurring.

While the VSF will offer guidance to a club in determining a suitable penalty for the spectator who is a member, the ultimate decision of how the club deals with this person is left to the club to determine. How the club chooses to deal with a supporter may however influence the severity of the penalty handed down by club itself by the VSF tribunal. If a club were seen to have dealt with the offender in a strong manner and to have taken significant action to have either prevented such behaviour occurring or recurring in the future, the tribunal would take a more lenient position.

Naturally if the spectator cannot be identified as belonging to a particular team, then an individual club could not be penalised. Of all cases reported to the VSF so far there has not been a situation whereby the offending spectators allegiance could not be confirmed, however it must also be noted that not all incidents of poor spectator behaviour are reported to the VSF.

While the VSF model works for policing the behaviour of spectators who are members of a club, the same issue of jurisdiction over non-member spectators arises if the offender is not a member of the club. In such cases the club itself has no jurisdiction over the spectator and hence cannot penalise them under their rules and regulations (unless a contract is formed in some other way – see section 5). In this case, the VSF would consider what the club had done to prevent such an incident occurring and whether they could have foreseen that a person(s) was likely to behave inappropriately when handing down a club penalty.

Preventative action may include:

- refusing entry to an individual if they are a known nuisance and entry to the venue can be monitored, such as in the case of enclosed venues.
- ensuring there is adequate ground security,
- ensuring that ground security staff are easily identifiable and therefore act as a visible presence to deter would be offenders.

All penalties handed down to clubs as a result of the inappropriate behaviour of their supporters are made known to all members of the soccer community through the VSF website. This clearly indicates to the soccer community that poor spectator behaviour will not be tolerated and will be punished.

Transferring responsibility for poor spectator behaviour to the participant or club appears to be an effective strategy when the sport does not have clear jurisdiction over the spectator. While some may consider it punitive on the individual participant or club, it is hoped that the spectator understands their actions could damage the prospects of the people they are supporting. It is also thought that this knowledge will have a greater impact in changing spectator behaviour than if the spectators were to be penalised themselves.

The VAFA and Hockey Victoria also have the right to penalise clubs for the inappropriate behaviour of their spectators. It is recommended that other sports look at invoking similar penalties amongst their memberships. Many sports have attempted to increase the number of people they have jurisdiction over through constitutional reform. The approach used by VSF and other sports to make clubs responsible, whether the spectator is a member or not is a relatively simple option that can be used in addition to constitutional reform to help control spectator behaviour.

## 7. The Role of Other Stakeholders

### 7.1 Local Government

Local Government plays a significant role in community sport through the provision of facilities and other support to clubs in their municipality. The sport and recreation departments of metropolitan local government authorities of the City of Monash, Melbourne and Casey were interviewed to ascertain what they perceived their role in controlling spectator behaviour to be, and to discover what, if anything, existed in their current by-laws that dealt with this issue.

While all agreed that it was council's responsibility to provide a safe sporting venue for their clubs, they did not feel that this extended to controlling inappropriate spectator behaviour. They believed this responsibility fell to the clubs as the hirer of the facility and while support would be offered, council's felt the clubs themselves were best placed to deal with the issue as they know what is considered acceptable to them and their sport. Councils were also clearly reluctant to take on any risks or responsibilities in addition to the numerous ones they currently deal with.

While none of these councils has specific spectator behaviour provisions in their local laws, and were unlikely to develop any due to the cost and time involved in implementing them, there were other laws that could be used to enforce behavioural expectations on spectators if needed. For example, the City of Casey have clauses under their by-laws relating to 'Alcohol' and 'Complying with signs' and which could be used to help control inappropriate behaviour.

The 'Alcohol' clause, which is included under Casey Community Local Law No.2 – Community Protection, states, *'a person must not in any public place consume any liquor or have in his or her possession any liquor in an open container except at a lawful function'*. This prevents people bringing alcohol to games and the club is only allowed to sell alcohol in the pavilion and only if they have a current liquor license.

While there is no evidence that proves this policy has reduced the intake of alcohol at clubs, anecdotal evidence suggests this is the case and this policy certainly assists in the management of alcohol intake at games. The City of Casey also believe that

incidents of abusive or physically aggressive behaviour have decreased although once again there is no evidence to support this claim.

The 'Comply with Signs' by-law enables the council to put up a sign(s) in the park providing instructions of what people can or cannot do. Users are legally bound by these signs and their restrictions are enforceable by law.

According to the Comply with Signs by-law:

*“A person must not, except with a permit, do anything contrary to any sign erected by Council at any public place which prohibits such a thing.”*

While Comply with Signs do not make provision for spectator behaviour at present, it is possible that in the future compliance could include guidelines for appropriate spectator behaviour. Obviously these signs would serve little purpose unless adequately enforced by local law officers. Councils have made it clear that this is not a role that officers currently undertake and this is unlikely to change. This, in combination with the fact that gaining support for inclusion of this by-law across all councils would be challenging, the inclusion of such compliance signs does not look like it will eventuate at any time in the near future.

In Monash, Local Law no. 3 governs what a person can and can't do in the municipality. The objectives of this Local Law are to:

- *Provide for the peace, order and good government of the municipal district;*
- *Promote a physical and social environment free from hazards to health, in which the residents of the municipal district can enjoy a quality of life that meets the general expectations of the community; and*
- *Prevent and suppress nuisances which may adversely affect the enjoyment of life within the municipal district or the health, safety and welfare of persons within the municipal district,*

And to achieve these objectives by:

- *Regulating and controlling activities within the municipal district which may be dangerous, unsafe or detrimental to the quality of life of other people in, or the environment of, the municipal district; and*

- *Providing standards and conditions for specified activities to protect the safety and the welfare of people within, and the environment of, the municipal district.*

Part 2 (Section 11) of the Local Law No. 3, goes on to state that *'a person must not, without the consent of Council or an authorised officer, act contrary to any conditions of entry applicable to the Municipal Place'*.

Amongst other provisions, Section 12 (Behaviour in Municipal Places), says a person must not:

- *Commit any nuisance in a Municipal Place;*
- *Interfere with another person's use or enjoyment of a Municipal Place;*
- *Act in a manner which endangers any other person in a Municipal Place;*
- *Use indecent, insulting, offensive or abusive language in a Municipal Place;*
- *Behave in an indecent, offensive, insulting or riotous manner in a Municipal Place; and*
- *Act in a manner contrary to any restriction or prohibition contained in the inscription on a sign at, on or in a Municipal Place.*

Section 18 (Activities Prohibited in Reserves) and Section 19 (Activities which may be permitted in Reserves) of this law specifically relates to parks and reserves and although not mentioning spectators at sporting events directly, could be altered to do so.

As is the case in all three councils, local law officers or park rangers can act on any infringement of the local laws by issuing fines to offenders and may also request that a person leave a council venue if they are creating a nuisance, however if the person refused, the police would need to be called. Under these laws sports clubs have the option of calling for assistance from local law officers if a person is in breach of a specific local law. Councils believed that few, if any clubs would be aware of this option and also noted that officers usually respond to specific complaints from residents, as opposed to patrolling spectators at sporting venues.

The suggestion of giving the hirer of the facility, in this case the sports club, the powers of the local law officer during the duration of the period of hire so that they

could deal with any incidents decisively and with legal backing was also put forward. Such an option was not however supported by any of the councils questioned.

There are currently many opinions and little clarity about what rights the club has in regards to evicting a spectator from the ground in open unenclosed parkland, unless the person commits a criminal act. While all councils understood the difficulty clubs have in relation to controlling the unruly spectator and they are prepared to offer support to clubs in their endeavours, it appears that for the time being at least, there will be no significant change from the position that it is up to the clubs to control.

Another important issue to consider when looking at local government involvement in controlling spectator behaviour is consistency across all 79 Victorian LGA's. Considering that many sports operate across most of the State's councils, State Sporting Associations would require that the same rules apply to spectators across every council in the State so that their clubs, leagues and associations deal with any incidents that arise in a consistent fashion.

## **7.2 Police**

The police are another key stakeholder in dealing with spectator behaviour and along with club officials, may be the first to deal with a conflict. Police can be called to any situation that club officials do not feel they can adequately deal with. Response time is dependent on the severity of the problem and availability of officers, however as they have a primary interest in ensuring a minor incident of poor behaviour does not escalate into something bigger, police aim to respond to any call for assistance as quickly as possible.

Swearing and abusive behaviour from a spectator that is considered offensive is sufficient for the police to respond. Depending on the severity of the incident, police would warn the spectator that if their behaviour continues they will be removed from the area or in the case of a criminal assault, the offender would be arrested and charged accordingly.

While swearing and abusive behaviour could constitute a criminal offence under the guidelines of abusive and indecent behaviour, police would rarely charge a person for such an offence given it is considered to be at the lower end of the scale

regarding crimes police are dealing with and there is a low chance of a conviction. Usually a warning is sufficient to calm the spectator and stop the inappropriate behaviour.

It should be noted that police cannot remove a person from open “public” parkland unless an offence has been committed. Police can however remove someone from an enclosed ground if the conditions of entry are clearly marked and a person is in breach of these conditions.

While police are able to charge a person with an offence, they cannot prevent a person from attending a game in open ‘public’ parkland, even if the person is convicted. This continues to be the missing link in controlling the behaviour of non-member spectators’ in the long term. There are however two conditions under which a person could be prevented from legally attending an ‘open’ venue, however to the best knowledge of the police neither have been used in the sporting setting to date.

In the first instance police can apply for a Binding Over Order to be issued under Section 120 of the Magistrates Court. This order is rarely sought in any circumstances and is purely issued to ensure that public order and the peace is kept. An example of utilising this provision would be where two families continually attend certain venues and start arguing, fighting each other, and generally fail to keep the peace. Where sufficient evidence is available and a known history of the two families exists, the police can apply to the Magistrates Court for this order.

The order would prevent both families from attending the venue and this could be applied to the spectator who regularly attends a venue and creates a nuisance. This order can be applied to open public parkland or any venue the police recommend.

The second method that could be utilised to deny a spectator access to a venue would be the issuing of a restraining order. A restraining order places restrictions on what the spectator can do and the request would need to come from a specific victim (complainant), such as a referee or official of the club. In order for the request for a restraining order to be successful, the complainant would need to establish that the abuse or threatening behaviour had been continuous and provide evidence to support their claim.

If successful in obtaining a restraining order the offender will be restricted from being within a specified distance of the complainant. If this complainant were a referee, a club official or a player it would make it difficult for the spectator to attend the event.

### **7.3 State Government**

Creating new legislation or amending existing legislation to give sports and their clubs the powers to influence spectator behaviour and penalise incidents of inappropriate behaviour is an option open to State Government. It is the opinion of the legal panel assembled for this project that while other methods of gaining jurisdiction and control over the spectator may be of use, the only way for sports to act with confidence and be certain that all situations and people are covered is for legislation to be enacted. This would provide the sports with a long-term solution to the problem of inappropriate spectator behaviour as they have the option of suspension and/or expulsion of the spectator.

Legislation would add weight to other methods used to curb and influence inappropriate spectator behaviour such as parent education sessions, member protection policies and umpire escorts. The smoke-free campaign offers an example of legislation working effectively to produce a significant change in behaviour.

Prior to legislation many attempts had been made to encourage sporting clubs to become smoke-free. While these attempts achieved limited success, legislation banning smoking indoors proved to be the catalyst that spurred on a significant change in behaviour.

This legislation enabled clubs to enforce a non-smoking policy with confidence knowing the weight of the law was behind them. The legislation itself, along with the public awareness raised around acceptable behaviour, immediately reduced the incidence of smoking at sporting clubs. It is speculated that introducing legislation to govern spectator behaviour regarding the spectator would have a similar impact on reducing the incidence of inappropriate behaviour.

Key elements for any tool that may be introduced to gain jurisdiction over spectator behaviour to be a desirable option are that it must be empowering to the sports and their clubs, and it must not create further obligations or another layer of compliance

for people who have roles in the sports industry, in particular volunteers. This is particularly important given the already increasing number of expectations being placed these people, and especially volunteers who give up their time and other resources for free.

Legislation is seen as a way of providing a simpler yet more comprehensive and effective solution to the problem of controlling spectator behaviour. The policy alternatives to legislation regarding spectator behaviour, such as the forming of contracts with non-member spectators, making constitutional changes to capture more people or asking council's or police to take on a greater role in policing spectators, particularly at smaller junior events, while they will significantly increase the workload on those working in the industry, particularly volunteers, will still not have the same clarity or legally binding strength that legislation would have.

The Legal Panel is of the opinion that one way in which greater control could be gained over spectator behaviour is through the amendment of the Fair Trading Act. It is suggested that the following statement could be inserted into Section 32N of the Act:

*“Any person, who participates in a recreational service in any capacity including playing, officiating, coaching or as spectators shall be deemed to have a contract with the supplier of those services. It shall be a term of that contract that the person shall be subject to all rules, by-laws, codes of conduct or disciplinary action for that activity that are applicable to that person.”*

Such a statement would provide sports with the legal backing to deal with spectators in all situations, through an implied contract. As the supplier of the services would most likely be the 'local host' club, it would then be a matter for the club/sport to determine whether a disciplinary issue is dealt with at the club level or higher. This addition to the Fair Trading Act could capitalise on recent amendments made to the Act in respect to providers of sport and recreational services.

While legislation is without doubt the most conclusive of the methods that could be used to control spectator behaviour, whether such a strong step is considered to be necessary will depend on the extent of the problem and the number of sports that consider inappropriate spectator behaviour an issue.

Further research into these factors needs to be considered in order to determine whether or not legislation is a necessary action. If sports and their industry bodies do not feel that inappropriate spectator behaviour poses a significant concern other approaches mentioned in this paper to maximise jurisdiction over spectators may be considered sufficient.

## **8. Maximising the jurisdiction of sport**

Methods to maximise the jurisdiction of a sport over all spectators so that they are able to deal all indiscretions is seen as the most effective way of dealing with inappropriate spectator behaviour.

Maximising the number of members over which the sport has jurisdiction by forming a contract through the organisation's constitution and by-laws and the 'membership form', ensures members are bound to abide by these rules or face the consequences. While several sports have maximised their jurisdiction both vertically and horizontally, there is still scope for others to do the same.

The difficulty lies with how sports and clubs deal with the spectator who is not a member and as such, is not bound by any contract requiring them to behave in line with specified rules and regulations.

Section 4 of this paper offered examples of a number of approaches that sports can use to form a contract with spectators. Signage at venues, ticketed entry and codes of conduct all offer some benefits to the sport and enable them to act on the problem at the time it occurs. Each of these approaches still has its limits in regards to who the sport has jurisdiction over.

Signage at venues clearly displaying conditions of entry for example may be an option for indoor or fenced outdoor facilities, however for outdoor, non-enclosed venue they are not effective as there are no specific entry points and the spectator can enter from any direction. In such conditions a sign on display would not be sufficient to imply a contract has been formed with the spectator.

Ticketed entry, like signage, is appropriate for the indoor or enclosed outdoor facility, while not applicable to the outdoor, open venue. It must also be noted that most club sporting events do not have a cost of entry and therefore no tickets would be sold or given out at these events.

Having the parent sign a code of conduct at the start of the season when registering their child is an effective method of having the parent understand acceptable behaviour and at the same time forming a contract between the parent and their

child's club or sport. Such contracts however bind only the person who has signed and not others, be they parent, other family members or friends, who may attend the sporting event.

The methods outlined above can offer sports jurisdiction over the non-member spectator if used appropriately. This alone however does not give the sport the capacity to deal with inappropriate behaviour. For a club, sport or tribunal to invoke a penalty the code or policy that the spectator agrees to abide by must outline the process for dealing with a breach and possible penalties should the breach be proven.

Transferring responsibility for the spectator's behaviour to the participant or club has been tried by a number of sports that were unable to directly punish the spectator. While not all agree that it is desirable to punish the participant or club for the wrongdoings of their spectators, these sports believe that of the current options available this is the only way they can effectively deal with the problem.

The 'gap' in sport's jurisdiction over non-member spectators at open venues has been identified. While other authorities such as Local Government and Police, have jurisdiction over these spectators, they are often not willing to enforce the Law or will only enforce it if the situation is serious.

The imposition of restraining orders may be an option to deal with the chronic offender, but the complainant would need to prove that the abuse had continued over a prolonged period of time. This would be seen by most club volunteers to be too onerous and difficult to be of value.

The extent of poor spectator behaviour in the area identified as the 'gap' is yet to be determined. Should it prove to be significant following the implementation of the policy recommendations then legislative change would be the solution.

If ultimately considered necessary, bringing in new or amending existing legislation would give jurisdiction to the sport through an implied contract. This must be done in such a way as to not create more work and compliance issues for those working in an industry that is already stretched to capacity, especially volunteers.

## 9. **Summary**

Four policy proposals and one legislative amendment were presented in this paper as options that sports clubs could use to maximise their jurisdiction over spectators at their events.

### 9.1 **Policy Options**

#### 9.1.1 **Membership**

National and State sporting bodies should aim to maximise the numbers of people over which they have jurisdiction in every possible way. As outlined previously organisations can increase membership vertically by altering their club membership forms so that all members of the club become members of their State and National body also. This means that all club members, regardless of their level of play, from social to elite, are bound by State and National rules. Similarly, clubs can also expand their membership horizontally by including new categories of membership to better cater for spectators.

#### 9.1.2 **Forming a contract**

Clubs should ensure they form a contract with as many non-member spectators as possible. Options for forming such a contract include:

- Having parents sign a “contract” to abide by the sport’s code of conduct when their child registers for the program.
- Where possible all indoor and enclosed outdoor venues should have prominently displayed at the point(s) of entry that clearly state conditions of entry.
- For ticketed events, conditions of entry should be clearly printed on the ticket in such a fashion as to be easily recognised as binding conditions of entry.
- For ‘open’ outdoor venues signage clearly outlining conditions of entry should be prominently displayed at as many entry and exit points as possible, and also in areas where people congregate. Netball have received legal advice that this should strengthen their right to enforce conditions of entry, however the strength of signage in an outdoor setting that does not have strictly defined entry and exit points is yet to be tested in the courts.

### **9.1.3 Spectators outside the sport's jurisdiction**

Where sports cannot gain jurisdiction over the spectator via methods mentioned above, consideration must be given to the option of penalising the individual participant or the club for the spectator's behaviour. This can be achieved by including in the sport's rules a clause or by-law relating to spectator behaviour. Where possible the club would be left to penalise the spectator and care must be taken to ensure that the penalty to the individual is a last resort, issued only after the spectator has been warned and counselled against such behaviour.

In addition in cases that clubs feel are beyond the control of those internal measures they may have available there are other options available. In a situation where a spectator is behaving in an abusive or threatening manner that the club official feels is beyond their control it should be standard policy to call the police. A warning from the police is usually enough to diffuse the situation however if this is not the case the offender can be charged and removed from the scene if the police deem it necessary.

If an individual spectator is repeatedly causing difficulties to a particular player, umpire or club official, the complainant could take the additional step of requesting a restraining order from the police, although this is highly unusual.

### **9.1.4 Rules of the sport**

As part of their by-laws sports should make the provision for the umpire or referee, their supervisor or other suitable club official to invoke their right to cancel a game if they feel the inappropriate behaviour of a spectator is a threat to the safety of others. This should only occur after a warning has been given to the captain(s) of the offending team.

Where the game has been cancelled due to inappropriate spectator behaviour, and that spectator can be clearly identified as a supporter of a particular team, that team should be considered in breach of the rules and regulations governing the sport and the game be awarded to the opposition. Where both teams are the cause of the trouble, both should lose their scores and no match points be awarded. Clubs should also receive an appropriate fine if found guilty of poor spectator behaviour.

In cases where sports make changes such as those mentioned above it is essential that an extensive education campaign be conducted so that all club members and spectators are clearly aware that a player, team or club can be penalised as a result of their inappropriate behaviour.

## **9.2 Amend existing legislation**

The legal panel felt that making a legislative amendment such as that set out in Section 7.3 is an option if sports have a strong view that inappropriate spectator behaviour is a problem that cannot be sufficiently controlled by other avenues available to the club.

If considering a legislative change it is suggested that a period of two years may be required to:

- Assess the effectiveness of the implementation of the policy options;
- Determine the extent of the problem in the areas identified as the 'gap'; and
- Discuss in full the ramifications for sport of amending the legislation.

## 10 Conclusion and Recommendations

This paper has outlined a number of methods sport may be able to utilise to maximise jurisdiction over spectators. Non-legislative methods that can assist in controlling spectator behaviour includes expanding membership bases to gain jurisdiction over greater numbers of people involved in the sport, and also using conditions of entry signage and ticketing as effective ways to form a contract with the non-member spectator.

Even with these measures in place however a significant gap still remains in the sporting organisations gaining jurisdiction over the non-member spectator in the 'open' public parkland setting. Due to the difficulty of placing signage at every possible entry and exit point in an open setting it is difficult to prove if challenged that a spectator was aware that there were conditions of entry. Options currently open to sports to enforce behaviour codes in such areas are limited to local government enforcing regulations in the open parkland setting, or offences being serious enough to warrant the involvement of police.

The legal panel is of the opinion that the only sure way to provide sports with jurisdiction over spectators in both closed and open venues is to enact legislation. As attempts by sporting organisations to gain jurisdiction over the non-member spectator through signage and ticketing, even in closed venues with monitored entry and exit points, are untested in the legal system the strength of these options a binding "contracts" cannot be ascertained.

At 'open' venues it is even more difficult for sport's to try and assert jurisdiction over a non-member spectator. The amendment to the legislation proposed by the legal panel would enable a contract between all spectators and the sport to be implied and therefore overcome the jurisdictional issues highlighted by this paper.

It is recommended that:

1. Clubs, leagues and associations that have not followed the membership/policy approach, are encouraged to do so as a matter of urgency.

2. An educational package be developed and implemented relating to spectator behaviour for all sporting organisations.
3. The incidence of sport rage be closely monitored over the next 24 months to determine the extent of significant issues.
4. Discussions be held with sporting organisations to assess the effectiveness of the membership/policy approach and determine their need for amendments to the legislation.
5. Existing legislation be amended if considered necessary.

## **Appendix 1: Spectator Behaviour in Sport Working Group**

- Michael Cahill, David Hobbs & Monica Fawcett (Sport and Recreation Victoria, Department for Victorian Communities)
- Kate Roffey, Julie Sarll & Tony Kiers (VicSport)
- Wayne Bird (Chair) & Gerry Glennen (Basketball Victoria)
- Mick Daniher & Paul Milo (Football Victoria)
- Anne-Marie Phippard (Netball Victoria)
- George Angelopolous (Soccer Victoria)
- Shelley Maher (VicHealth)
- Paul Donaghue (ASC)

## **Spectator Behaviour in Sport Project Steering Group**

- Michael Cahill, David Hobbs & Monica Fawcett (Sport and Recreation Victoria, Department for Victorian Communities)
- Kate Roffey, Julie Crothers, Julie Sarll & Tony Kiers (VicSport)
- Wayne Bird (Chair) (Basketball Victoria)
- Peter McDougall (Football Victoria)
- Anne-Marie Phippard (Netball Victoria)
- George Angelopolous and Damien Pagnin (Soccer Victoria)
- Shelley Maher (VicHealth)
- Paul Donaghue (ASC)

## **Appendix 2 : Spectator Behaviour in Sport – Legal Panel**

- Julie Sarll & Tony Kiers (VicSport)
- Gerry Glennen (Services Manager – Basketball Victoria)
- Matthew Finnis (Lawyer - Landers and Rogers)
- Michael Rowe (Legal Counsel – Tennis Australia)

### Observers

- David Hobbs & Monica Fawcett (Sport and Recreation Victoria, Department for Victorian Communities)

## **Appendix 3: Interviews conducted**

### State Sporting Associations:

- Football Victoria – Paul Milo
- Hockey Victoria – Annette Hatherley
- Netball Victoria – Anne-Marie Phippard
- Tennis Victoria – Andrew Austin
- Touch Victoria – Miles Davine
- Victorian Amateur Football Association – Brett Connell
- Victorian Little Athletics Association – Paul Mullarvey
- Victorian Soccer Federation – George Angelopolous
- Women’s Lacrosse Victoria – Shelley Maher

### Local Government Authorities:

- City of Casey – Philip Saikaly
- City of Melbourne – Mark Cochrane-Holley
- City of Monash – Ian Swan

### Legal Representatives:

- Gerry Glennen – Basketball Victoria
- Matthew Finnis – Landers and Rogers
- Michael Rowe – Tennis Australia

### Other Stakeholders:

- Ronald Gallagher & Trevor Ashton – Victorian Police

## Appendix 4: Basketball Victoria Conditions of Entry Signage

# CONDITIONS OF ENTRY

By entering this facility, all persons agree to be bound by the following terms and conditions

- ❖ All persons must conduct themselves in a proper and reasonable manner and in accordance with Basketball Victoria's Codes of Conduct, a copy of which is available from Basketball Victoria, the association or from Basketball Victoria's internet site, [www.basketballvictoria.com.au](http://www.basketballvictoria.com.au).
- ❖ By entering, all persons agree to be bound by the basketball association's and Basketball Victoria's constitution, rules and by-laws and submit themselves to Basketball Victoria's Tribunal, Ethics Committee and any other disciplinary forum connected with basketball.
- ❖ Mobile telephones and cameras are prohibited from use in any change room.
- ❖ Persons entering agree to comply with any reasonable direction of any official connected with basketball.
- ❖ The right to remove any person from the facility is reserved if the person's behaviour is considered dangerous or unacceptable.
- ❖ Persons under the influence of alcohol or drugs are prohibited from entering.
- ❖ Smoking is prohibited in any indoor part of the facility and any outdoor part of the facility so designated.
- ❖ Consumption of alcohol is prohibited within the facility except in designated areas (if any).

**PLEASE DO NOT REMOVE**