



## SENATOR THE HON STEPHEN CONROY

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MINISTER FOR BROADBAND, COMMUNICATIONS AND THE DIGITAL ECONOMY  
DEPUTY LEADER OF THE GOVERNMENT IN THE SENATE

# MEDIA RELEASE

## Code of Practice for Sports News Reporting

The Minister for Broadband, Communications and the Digital Economy Senator Stephen Conroy today welcomed an agreement between media and sports organisations to a voluntary Code of Practice for Sports News Reporting.

The Code of Practice outlines the rights and obligations of sporting and media organisations regarding the provision of access to sporting venues, and the collection and reporting of sports news.

Senator Conroy attended the inaugural Code Administration Committee Meeting this morning, where he congratulated all parties for their involvement and commitment to developing the Code.

“There have been issues between some sporting and media organisations and several media agencies have been unable to gain access to major sporting events for the purpose of reporting the news,” Senator Conroy said.

“The Government was concerned that these breakdowns in communication would adversely affect the Australian public’s traditional access to news reporting of sporting events.”

The Committee nominated Kevan Gosper, former Vice-President of the International Olympic Committee, as its inaugural chair and Mark Hollands, Chief Executive Officer of the Newspaper Association, as the secretary.

“I am delighted that the media and sporting organisations have become parties to a voluntary code on sports news reporting,” Mr Gosper said.

“This is very much in the interests of the sports loving public who are entitled to the fullest news and photographic coverage of sport across all technological platforms.”

Senator Conroy referred the reporting of sports news to the Senate Standing Committee on Environment, Communications and the Arts which tabled a report on 14 May 2009. He subsequently asked Mr Graeme Samuel, Chair of the ACCC, to hold roundtable meetings with the major media and sporting organisations.

“I congratulate Mr Samuel and the sporting and media organisations for using the roundtable process to develop a voluntary industry code for sports news reporting,” Senator Conroy said.

The agreement and signing of the Code will help to ensure the Australian public continues their enjoyment of sports through news reporting without the disruptions that have occurred in the past.

The signing of the new Code is great outcome for the sports and media organisations, and the general public.

Sporting Organisations represented on the initial Committee:

- Australian Football League
- Australian Rugby Union
- Cricket Australia
- National Rugby League
- Tennis Australia.

Media Organisations represented on the initial Committee:

- Fairfax Media
- News Limited
- Australian Associated Press
- Agence-France Presse
- Getty Image.

**Date: 30 March 2010**

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# Code of Practice for Sports News Reporting

## (Text, photography and data)

### 1. Objective

- 1.1 The object of the Sports News Reporting Code of Practice (the Code) is to ensure that Media Organisations are able to access sporting events for the purposes of gathering News Content for News Reporting.
- 1.2 This Code applies only to the gathering of News Content for News Reporting as they are each defined in this Code. It does not in any way apply or establish a precedent in relation to the gathering of audio, vision or audio visual content for News Reporting.

### 2. Date of effect

- 2.1 The Code commences from 30 March 2010.

### 3. Definitions

Commercial Use	<p>The sale or production or use of content for advertising or promotional or merchandising purposes, including</p> <ul style="list-style-type: none"><li>a. photographs being used by a non-Media Organisation on a website or webpage, in a publication or via some other medium for any purpose other than publishing of News Content on any technical platform including individual publications, web-pages, digital platforms or print media where that platform or medium is or will be genuinely and ordinarily used for the publication of News Content.</li><li>b. operating a statistics service.</li><li>c. photographs being used for or in any advertisements, promotional materials, for merchandise such as memorabilia, collector's cards, calendars, clothing or packaging.</li></ul> <p>Exclusions to Commercial Use are:</p> <ul style="list-style-type: none"><li>a. the sale of photographs to individuals solely for their own non-commercial private use. This is considered a service to the public.</li><li>b. publications using material collected for the purposes of News Reporting in order to promote that News Reporting. However use of such material is subject to the rights of Event participants, sports and Sporting</li></ul>
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	Organisations with respect to passing off and misleading and deceptive conduct.
Event	A sport event conducted under the auspices of a Sporting Organisation.
Media Organisation	<p>An organisation whose primary purpose is providing News Reporting by any technical platform including individual publications, news websites, digital platforms, radio and television broadcasters, print media and news agencies. Such an organisation will usually:</p> <ul style="list-style-type: none"> <li>• play a significant role in informing the mass public;</li> <li>• accept the responsibilities and ethics of journalism; and</li> <li>• employ properly trained media personnel.</li> </ul> <p>In return for their role of informing the public, these organisations are granted privileges and rights of access to sporting events.</p> <p>For the purposes of this Code, there are two classes of Media Organisation:</p> <p>(a) News Agencies: organisations whose primary business is the syndication of news, rather than its publication.</p> <p>(b) General Media: organisations whose primary business is the publication of news, rather than its syndication.</p>
News Content	<p>Content collected by a Media Organisation at a Venue that is not sold or produced or used for Commercial Use, namely:</p> <ul style="list-style-type: none"> <li>(a) <i>text</i>, such as factual articles, editorial opinion, blogs and tweets;</li> <li>(b) <i>photographs</i> including in the form of photo galleries and iconic images;</li> <li>(c) <i>data</i> in the form of scores, team lists and/or basic statistics;</li> <li>(d) a combination of two or more of the above forms.</li> </ul>
News Reporting	Reporting of News Content by a Media Organisation.
Sporting Access	Physical access to designated media areas within a Venue granted by a Sporting Organisation to a Media Organisation for the purpose of that Media Organisation providing News Reporting.
Sporting Organisation	An organisation generally recognised as being responsible for administering the affairs of a sport or of a substantial part or section of the sport in Australia. Administration includes the coordination of Events and management of media accreditations to those Events.

Venue	A venue where an Event takes place.
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#### **4. General**

- 4.1 This Code is intended to be applied in the granting of Sporting Access and to the use of content collected or produced by a Media Organisation when it is granted Sporting Access.
- 4.2 This Code does not apply to one-off major international sporting events conducted under the auspices of an international sporting agency.
- 4.3 This Code does not apply to content:
- a. used under exemptions provided by the *Copyright Act 1968*
  - b. for which an organisation has secured broadcasting rights from the Sporting Organisation
- 4.4 This Code does not provide immunity from the provisions of the *Trade Practices Act 1974* (the TPA). It is the responsibility of signatories to ensure that they abide by the TPA, in particular by the anti-competitive conduct requirements of Part IV of the TPA.
- 4.5 Each signatory to this Code agrees to endeavour in good faith to resolve disputes relating to matters set out in this Code between itself and any other signatory or signatories, through the dispute resolution mechanisms of this Code, prior to commencing litigation (except for urgent interlocutory relief), making a complaint to a regulatory authority, or resorting to any other means of dispute resolution. For the avoidance of doubt, the parties to an accreditation agreement may resolve disputes relating to matters other than those matters set out in this Code in any manner set out in that accreditation agreement.
- 4.6 It is acknowledged by the signatories that this Code is intended to govern the conduct of the signatories but is not a contract between them and is not intended to be declared as either a voluntary or mandatory code under the TPA.

#### **5. The rights and responsibilities of Media Organisations**

- 5.1 In exchange for Sporting Access, Media Organisations will provide News Reporting of the Event reflecting the spirit of this Code and embodying the following principles:
- a. Subject to clauses 5.1(b)-(g) below, Media Organisations have a right to provide News Content on any distribution platform. This includes providing text, data, and photography online or via print and mobile devices, and providing text (including scripts), photography and data on television or through radio.

- b. Unless the Media Organisation has broadcasting rights, it will not use photographic material taken from the Venue to simulate video of the Event.
- c. Media Organisations will ensure that the frequency of updates from the Venue is reasonable for the purpose of News Reporting and does not approximate live or continuous coverage for the duration or a substantial period of the Event.
- d. Photographs and data taken by a Media Organisation from the Venue will not be for Commercial Use, unless agreed with the relevant Sporting Organisation.
- e. A Media Organisation that sells photographs relating to a Sporting Organisation to individual members of the public solely for their own non-commercial private use, will also make available to that Sporting Organisation, free of charge, all photographs which have been published by the Media Organisation as News Content relating to that Sporting Organisation, for non-commercial use by that Sporting Organisation including promotion, internal reports, communication to members and use on its official website. Each particular use is subject to the approval of the Media Organisation which will not be unreasonably withheld.
- f. News Content collected at the Venue by Media Organisations may be distributed to third parties, provided the Media Organisation ensures third party use is not for Commercial Use and is consistent with the Code's principles. Third parties must be required to comply with the relevant provisions of the Media Organisation's accreditation agreement and this Code as a condition of using the News Content. The accredited Media Organisation is responsible for enforcing this provision with respect to third parties. Compliance with this provision does not extend to Media Organisations providing Sporting Organisations with client lists for vetting.
- g. Material collected by a Media Organisation at the Venue must not be used by it or a third party who receives such material (including any News Content) from a Media Organisation in a manner that creates a false impression that a person or business has a sponsorship, approval or affiliation with the sport or Sporting Organisation or the Event or any participants in the Event.

## **6. The rights and responsibilities of Sports Organisations**

- 6.1 Sporting Organisations will provide Sporting Access to Media Organisations reflecting the spirit of this Code and embodying the following principles:
- a. Subject to clauses 6.1(b) – (f) below, the Sporting Organisations will provide Sporting Access so that Media Organisations can freely provide News Reporting. This access must be in accordance with appropriate occupational health and safety guidelines.
  - b. In relation to News Content, Sports Organisations will not discriminate between Media Organisations on the basis of their distribution platform.
  - c. Sporting Organisations will not apply limits on the quantity or quality of News Content, restrictions on the timing or scheduling of News Reporting, when News Content must be taken down or how long News Content can be archived. After accreditation has been granted, any new disagreements that cannot be resolved through the normal course of negotiations must be addressed through the complaints process in the first instance.
  - d. Sporting Organisations have the right to exercise discretion in accrediting Media Organisations for Sporting Access. In exercising this discretion they should act in good faith and not discriminate between classes of Media Organisations. Factors considered in exercising this discretion may include:
    - i. safety and security concerns;
    - ii. genuine issues of space;
    - iii. the need to ensure representation across international, national and local Media Organisations; and
    - iv. appropriate consideration as to the reach of a Media Organisation's coverage, and for News Agencies, the scale of client base.
  - e. The granting of Sporting Access will have regard to the diversity of Media Organisations for domestic and international markets. Media Organisations will not be subject to discrimination on the basis of opinions they may offer or commercial arrangements they have with other entities and their subscribers who are prepared to comply with this Code.
  - f. In exploiting sources of revenue, including selling sponsorships, Sporting Organisations must not impede News Reporting carried out in accordance with and pursuant to this Code. The Code acknowledges that Sporting Organisations will enter into Broadcasting agreements that, by necessity, allow certain priority access to player interviews prior to and after matches.

## **7. The accreditation process**

- 7.1 The terms and conditions of an accreditation agreement between signatories to this Code should be consistent with this Code to the extent that there is overlap between them.
- 7.2 The accreditation process shall be conducted in good faith and expeditiously with full transparency between the parties including the provision of detailed reasons in respect of accreditation issues or refusal to provide or accept accreditation.
- 7.3 Signatories should use best endeavours to ensure that communications, responses and identification of issues are dealt with in a way that allows resolution of disputes and accreditation to be finalised a reasonable amount of time before the Event.
- 7.4 Additional negotiation rounds may occur during a sporting season.
- 7.5 Final accreditation agreements and any side letters will be made available to signatories.

## **8. Complaints and dispute resolution**

- 8.1 Wherever possible, disputes over accreditation will be resolved by the parties involved.
- 8.2 Where a mutual resolution is not possible, either party may refer the dispute to the Mediator by giving the other party, the Code Administration Committee Chair and the Mediator notice in writing.
- 8.3 Parties must participate in good faith in the mediation process.
- 8.4 Mediation should run for a period of no longer than 4 weeks.
- 8.5 Where Mediation does not resolve the dispute, parties may pursue other commercial or legal options.

## **9. Code Administration Committee**

- 9.1 The Code is to be administered by a Code Administration Committee (the Committee) comprising up to five (5) representatives from signatory Sports Organisations and up to five (5) representatives from signatory Media Organisations. Of the Committee representatives from Media Organisations, a reasonable attempt should be made to include at least two (2) representatives from News Agencies, one of which is to be an international news agency.

- 9.2 Sporting Organisations represented on the initial Committee:
- Australian Football League
  - Australian Rugby Union
  - Cricket Australia
  - National Rugby League
  - Tennis Australia
- 9.3 Media Organisation represented on the initial Committee:
- Fairfax Media
  - News Limited
  - Australian Associated Press
  - Agence-France Presse
  - Getty Images
- 9.4 Each Sporting Organisation and Media Organisation that is a member of the Committee will nominate one or more person(s) to represent them from time to time provided only one representative attends each meeting for the Sporting Organisation or Media Organisation. Representatives may be replaced at any time. Notice of change of representative/s should be provided to the Committee Chair and/or secretariat as soon as possible.
- 9.5 A Sporting Organisation or Media Organisation can resign from the Committee by providing the Committee with written notice of no less than four (4) weeks.
- 9.6 When a membership position on the Committee is vacated, the Committee must replace or hold elections to replace a resigning Committee member within six (6) weeks of their resignation, with the intention that replacements are made as soon as possible.
- 9.7 A replacement member will be selected from signatory organisations of the same type or, in the case of Media Organisations, the same class (i.e. general media or news agency). An election will be held if more than one signatory nominates to fill a vacant position. If there is more than one Committee member organisation, the Code signatories should be called on to vote for a replacement by a majority vote of the appropriate type of signatory (i.e. Media Organisations or Sporting Organisations).
- 9.8 As Code signatories change and circumstances require, the Committee should be altered to reflect these changes. While this can occur at any time, special consideration should be directed towards the Committee's membership during the triennial code review. Any changes to the total number of Committee members should be reflected in amendments to the Code following the Code review. Any change however must reflect an equal representation of Sporting Organisations and Media Organisations on the committee.
- 9.9 All decisions of the Committee must be made by a decision of at least 70 per cent of the Committee's representatives except for the following decisions which must be unanimous: the appointment of a candidate to the Chair of the

Committee, the content of the annual report, the incurring of any costs by the Committee or the appointment of a Mediator.

- 9.10 The role of the Committee will be to:
- appoint a Mediator and publicise this appointment;
  - appoint a Committee Chair
  - monitor the operation of the Code and adopt amendments to the Code, as described in section 15;
  - consider and approve or refuse applications submitted in accordance with section 16;
  - provide adequate financing for the administration of the scheme;
  - maintain a register of signatories to the Code;
  - if required, appoint a person or entity as the Code Secretariat to provide administrative support services to the Committee and, if considered appropriate, to assist the Mediator; and
  - Organise elections for new Committee members where required, or instruct the Chair and/or Code Secretariat to conduct elections.
- 9.11 If 70% of the Organisations on the Committee form the view that a signatory has committed a significant and blatant breach of the Code or a number of breaches of the Code that indicate that the signatory is not committed to the objectives of the Code, and mediation has not been able to resolve the breach(es), the Committee will report this to the Department of Broadband, Communication and the Digital Economy who may decide to notify its Minister to consider possible further action.

## **10. Appointment of a Committee Chair**

- 10.1 The Committee Chair can be elected from within the Committee. If there are no candidates, a Chair may be selected through the drawing of lots.
- 10.2 Alternatively, the Committee may by unanimous vote choose to appoint an independent person as Chair. Independent Chairs have the same responsibilities in all respects as internal Chairs, including the right to vote on Committee decisions. An Independent Chair shall disclose all holdings of any interest in these industries prior to appointment and shall also disclose any subsequent purchases or acquisitions whether for value or otherwise, of such shares, securities, or gratuities (such as free tickets, subscriptions and other gifts) to the Code Administration Committee.
- 10.3 The Committee Chair shall remain in office for a period of time to be determined by the Committee, but not exceeding three (3) years. Starting and finishing dates should be determined in such a way that each code review process is contained entirely within the term of a Chair.
- 10.4 Notwithstanding this section, the Committee may appoint the same person or organisation as the Independent Chair for successive terms.

- 10.5 Committee Chairs can be withdrawn with a 70 per cent vote by the Committee. In the event that the Chair is an existing Committee member, they retain their voting and Committee status. If the Chair is independent, they are expelled from the Committee.

## **11. The role of the Committee Chair**

- 11.1 The Chair is responsible for the basic organisational arrangements of the Committee such as arranging meetings and preparing meeting agendas. Other duties may be assigned to the Chair as the Committee considers appropriate.
- 11.2 The Committee Chair will be assisted in these duties by the Code Secretariat if one is formed.

## **12. Appointment of a Mediator**

- 12.1 The Code Administration Committee will appoint one or more independent Mediator to serve for a term and upon conditions to be set by the Committee. The Committee will have the authority to dismiss a Mediator.
- 12.2 The Mediator will be an expert mediator of recognised integrity and stature who will command respect from all Media Organisations and Sporting Organisations. The Mediator shall disclose all holdings of any interest in these industries prior to appointment and shall also disclose any subsequent purchases or acquisitions whether for value or otherwise, of such shares, securities, or gratuities (such as free tickets, subscriptions and other gifts) to the Code Administration Committee.
- 12.3 A Mediator may not mediate a dispute where they have an interest in one or more of the involved parties. In this case, another Mediator should be used.

## **13. The role of the Mediator**

- 13.1 The Mediator will seek to facilitate a negotiated agreement in which the signatories of the Code who are parties to a dispute, with the Mediator's assistance, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement.
- 13.2 The Mediator will have an advisory role on the content of the dispute and/or the outcome of its resolution, but not a determinative role. The Mediator is to act in good faith and maintain a neutral, impartial position in assisting the parties to reach an agreement on a mutually accepted solution and to facilitate the negotiation process.

- 13.3 The Mediator will discuss the specific circumstances of mediation, such as format and timing, with disputants to ensure that arrangements are suitable. This may include an exchange of submissions, teleconferences, face-to-face meetings or any other appropriate measure. Where meetings are held, those attending must have the authority to agree to a mediated solution.
- 13.4 Signatories of the Code who are parties to a dispute will supply to each other and the Mediator all reasonable information that the parties consider to be relevant to the dispute before initiation of any mediation. This may include assistance in identifying third parties that the Media Organisation has serviced but will exclude financial information.
- 13.5 Disputing parties shall not be allowed external legal representation before the Mediator.
- 13.6 The Mediator may, where the Mediator considers it to be appropriate in connection with the mediation of a dispute, express and record the Mediator's opinion as to whether or not one or more parties to the dispute has acted in good faith.
- 13.7 The disputants shall bear their own costs of the mediation. Payment of the Mediator's fee will be shared equally by the disputants. The fee should include reasonable out of pocket expenses and any other reasonable costs incidental to the mediation (such as hearing room fees), if any.

#### **14. Publicity procedures**

- 14.1 The Committee shall publicise the existence and effects of the Code and the availability of mediation to Media Organisations and Sporting Organisations.
- 14.2 The Sporting Organisation accreditation agreements should refer to the Code, and include appropriate contact details to allow potential signatories to seek further information. Additionally, Media Organisations may choose to publicise the Code through their distribution channels.
- 14.3 All signatories to the Code must ensure that their staff, contractors and agents are aware of and act in accordance with their obligations under the Code.

#### **15. Reporting procedures and Code amendments**

- 15.1 A Mediator shall report to the Committee such matters as may be specified by the Committee, including on the operation of the Code and its administration and the number and nature of complaints received and mediated. The Mediator will also provide an annual summary of issues they have dealt with.

- 15.2 The Committee shall produce an annual report on the Code and its administration, including a breakdown of the costs of Code administration, which will be made available to signatories. In addition, copies of the annual report are to be provided to the Chair of the Australian Competition and Consumer Commission, the Minister for Broadband, Communications and the Digital Economy, and the Minister for Sport.
- 15.3 The annual report must include, among any other topics deemed appropriate by the Committee:
- (a) A statement on the success or otherwise of the Code in managing complaints and any recommended changes to the Code;
  - (b) The nature of any disputes/breaches of the Code that occurred during the period;
  - (c) The number of disputes/breaches;
  - (d) An outline of how disputes were resolved;
  - (e) The progress of any disputes which were heard by the mediator but which were not able to be resolved; and
  - (f) Any opinion recorded by the Mediator in connection with the mediation of a dispute that a party was not acting in good faith.
- 15.4 In the event that the annual report recommends changes to the Code, these changes should be considered at a meeting to which all signatories have been invited, for endorsement by a majority vote of attending Sporting Organisations and a majority vote of attending Media Organisations. Notice of this meeting shall be provided at least six (6) weeks in advance. The meeting can take whatever form the Committee deems appropriate, as long as the venue (whether physical or online) is accessible to the majority of signatories.
- 15.5 Notwithstanding the consideration of changes to the Code as part of the annual report process, a formal review of the Code should be conducted every three years. The review may be conducted by the Committee or an independent organisation or person of the Committee's choice.
- 15.6 The review should consider, among such other topics as the Committee deems appropriate:
- The level of industry awareness of the Code;
  - Whether disputes have decreased on the issues the Code is designed to address;
  - The time taken to resolve disputes; and
  - The effectiveness of the dispute resolution mechanism.

## **16. Accession to the Code and Privacy Consent**

- 16.1 To become a signatory to this Code, a party (“Applicant”) must apply to become a signatory to this Code and provide written notice to the Committee that includes full contact details, information about the Applicant’s business functions, information which in the Applicant’s view establishes it fulfils the requirements of the proposed classification (ie, a Sporting Organisation, or a Media Organisation), the Applicant’s wish to become a signatory to this Code and commitment to uphold the Code in good faith.
- 16.2 The Committee shall consider an application in good faith. In deciding whether to approve or refuse an application the Committee shall apply as its primary criteria its assessment of whether the Applicant fulfils the requirements of the proposed classification and the Applicant’s commitment to uphold the Code in good faith.
- 16.3 A party may become a signatory to this Code upon receipt of written confirmation from 70% of the Organisations on the Committee that they complied with the requirements of clause 16.1 and are a signatory to this Code.
- 16.4 In the event the Committee decides to approve an application it must as soon as reasonably practical notify the Applicant in writing of its decision.
- 16.5 In the event the Committee decides to refuse an application it must as soon as reasonably practical notify the Applicant in writing of its decision and the reasons for that decision.
- 16.6 Fees and charges may be levied on signatories in order to cover general administrative costs. These charges should be clearly detailed and provided to all signatories to this Code.
- 16.7 A signatory may cease to be a signatory to this Code by written notification to the Committee.
- 16.8 A notification shall become effective upon its receipt by the Committee or upon such date as may be specified in the notification.
- 16.9 Each signatory to this Code consents to the Committee making all or any of the following information available to other signatories and in annual reports:
- the name of the signatory;
  - the address of the signatory;
  - as applicable, the telephone number, facsimile number, email address and website address of the signatory;
  - the fact that the signatory is a signatory to this Code; and
  - the classification of the signatory (Sporting Organisation, Media Organisation (and for the latter, classification as general media or news agency)).