

Rugby League's no fault rule is 'reasonably necessary' says the Federal Court

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Key issues:

- The Federal Court has concluded that the National Rugby League (**NRL**) lawfully stood down Jack de Belin under their new “no fault stand down” rule while he awaits a verdict in criminal proceedings.
- The decision of Perry J concluded that, although the rule constituted a restraint of trade, the restraint was justified because it was reasonably necessary to protect the legitimate interests of the Australian Rugby League Commission (**ARLC**) and the NRL.
- The decision highlights that the contractual arrangement surrounding NRL players means that players are “more than just employees” and can be described as “live advertising space”. Her Honour found that players’ reputations could significantly influence attendance, viewership, and by extension, the attractiveness of the game to sponsors and broadcasters.
- The Rugby League Players Association (**RLPA**) has flagged a possible appeal of the “no fault stand down rule” in a bid to have the “no fault stand down” rule overturned and de Belin reinstated.

The Federal Court recently handed down its decision in *De Belin v Australian Rugby League Commission Limited* [2019] FCA 688. The lengthy judgment of Perry J concluded that the ARLC’s and NRL’s controversial “no fault stand down” rule was lawful, and that the decision to sideline Jack de Belin while he awaits a verdict in criminal proceedings was valid pursuant to that rule.

The New Rule

Rule 22A (**New Rule**) was introduced into the NRL Rules on 11 March 2019 by the ARLC and NRL and provides that:

- players charged with a criminal offence carrying a penalty of at least 11 years will be automatically stood down from playing in the NRL competition;
- the suspension will not require any finding of fault by the player and there is no right of appeal;
- players are still able to train with their team and are entitled to be paid their full remuneration under their contracts; and
- the NRL’s CEO can use his discretion to stand down players charged with less serious criminal offences, particularly where the offence involves women and children.

The New Rule was given retrospective effect and applied to three current NRL players – Jack de Belin, Dylan Walker and Tyrone May – who were each immediately served with a stand down notice and suspended from playing until the outcome of their proceedings.

Jack de Belin commenced legal proceedings in the Federal Court contesting the validity of the New Rule given its applicability to him in the face of charges against him for aggravated sexual assault.

Key contract documents

The contractual arrangement surrounding NRL players was a key feature of her Honour's judgment.

Her Honour set out, in some detail, the terms contained in the NRL Rules. In particular, rule 2 of the NRL Rules provides that the Board of Directors can amend the provisions of the NRL Rules "*from time to time in such manner as the Board thinks fit*" provided that the precise terms of the amendment are signed by the CEO and set out on the NRL website. Rule 2(3) emphasises that the NRL Rules apply to all Clubs and persons "*however substantial*".

By virtue of entering into his Playing Contract with St George Illawarra (**the Club**) and registering as an NRL player, her Honour found that de Belin agreed to be bound by the NRL Rules "*as amended from time to time*". Further, de Belin acknowledged that he was required at all times to maintain "*a reputation for high standards of personal conduct, including a reputation of respect for women and children*".

Perry J also emphasised that the Playing Contract and Club Licence Agreement (entered into between the NRL and the Club) demonstrated that players were more than just employees. Her Honour stated that "*each player's name, photograph, likeness, image, reputation and identity is licensed intellectual property*" and that players might be described as "*live advertising space*". A key finding by Perry J was that the contractual arrangement surrounding NRL players meant that players' reputations could significantly influence attendance, viewership, and by extension, the attractiveness of the game to sponsors and broadcasters.

The central argument

Several arguments were put forward by de Belin's legal team in an attempt to have the New Rule set aside.

The first set of arguments focussed on the New Rule itself and its interaction with de Belin's NRL Playing Contract. The central argument (which ultimately formed the bulk of Perry J's decision) was whether or not the New Rule constituted a reasonable restraint of trade.

Ordinarily, the restraint of an individual's ability to trade is considered to be contrary to public policy, and therefore void. However, a restraint will be valid if the party enforcing the restraint can show that, when balanced against the interests of the public, it provides no more protection than is reasonably necessary to protect that party's legitimate interests. Her Honour also referred to s4(1) of the *Restraints of Trade Act 1976 (NSW)* which states: "*A restraint of trade is valid to the extent to which it is not against public policy, whether it is in severable terms or not*". It was not in dispute that this provision applied to the circumstances of this case. Consequently, provided that the New Rule could be enforced to an extent that was reasonable, it would be valid.

Mr de Belin argued that, given the limited window of time in which a player may play professionally at an elite national level of the game, a restriction on his ability to play in the NRL would adversely impact his playing career, including an adverse impact upon his earning capabilities for any future contracts entered with his current or another NRL club.

The ARLC and NRL accepted that the New Rule imposed a restraint on de Belin's ability to pursue a career as a professional rugby league player in Australia. However, it was argued that this restraint was objectively reasonable in the circumstances because it was "*necessary to protect their legitimate interests, notwithstanding the seriousness of the restraint imposed*" on Jack de Belin. Broadly speaking, the legitimate interests requiring protection were those contained in the "*objects*" of the

NRL Rules: which included promoting and encouraging the playing and reputation of rugby league and the NRL competition, and ensuring an inclusive and respectful game.

The second set of arguments focussed on the conduct of the NRL and ARLC. The assertion was that the NRL and ARLC's conduct was "*misleading and deceptive*" and "*unconscionable*" under the Australian Consumer Law (**ACL argument**). The thrust of the ACL argument is that the NRL and ARLC represented to the public that de Belin was guilty and that his suspension was warranted, even before the New Rule was introduced. Unconscionability was said to arise largely from a conversation de Belin had with the NRL's CEO where he was allegedly asked to "*voluntarily stand down*". Given the similarities in the relevant facts between the first and second set of arguments, and some overlap in the matters to be proved by de Belin in support of his various arguments, the arguments were said to rise and fall together.

Decision of the FCA

It was concluded that the New Rule was reasonably necessary (or adequate) for the protection of the legitimate interests of the ARLC and NRL, and that its enforcement was not against public policy. The key findings by her Honour on this issue were as follows:

- Although presumed innocent, de Belin is nonetheless clearly associated with an act of serious sexual violence against a woman as a result of the charge, and a reasonable person may think there is a reasonable basis for the charge and a subsequent risk that he is guilty.
- The extent of negative reporting against de Belin was unprecedented, which amplified the damage to the ARLC's and NRL's reputation.
- NRL players are public figures constantly under media scrutiny and in the public eye. These are important considerations when assessing the potential for damage to the ARLC's and NRL's reputation.
- The New Rule did not prevent Mr de Belin from negotiating with his current or other clubs about a further playing contract if he is acquitted of his criminal charges. Perry J was also of the view that de Belin had not proved, on the balance of probabilities, that the value of any further playing contract entered by de Belin would be significantly impacted by reason of his being stood down.
- The evidence (including the financial impact already felt by the NRL and some clubs) established that there was an immediate and significant danger to the legitimate interests of the ARLC and NRL. Consequently, the ARLC and NRL needed to take steps and be seen to take steps to repair and prevent further damage to the reputation of the NRL Competition and to public confidence in it.

Her Honour concluded that "*no measure short of a rule precluding Mr de Belin and others charged ... with offences of a similar nature and seriousness, from taking the field was likely to address the [ARLC's and NRL's] legitimate interests following the widespread dissemination of the detailed allegations against Mr de Belin*".

The ACL argument was also dismissed. Her Honour concluded that the ARLC and NRL's conduct was not misleading or deceptive and that even if such a finding could be made, de Belin failed to establish any requisite loss because of the ARLC and NRL's conduct. Any damage to his reputation was as a result of the inevitable harm caused by the fact that it was widely known and reported that he was charged with aggravated sexual assault.

Summary

The decision highlights that, where an employee's reputation is tied intrinsically with the reputation of

their employer, the employer may be justified in taking steps that may not occur in an “ordinary” employment relationship. This is particularly so where damage to an employer’s reputation will have significant financial ramifications, as was the case in this professional sporting environment. Given that the ARLC and NRL were successful in having the New Rule upheld, other high profile sporting organisations may consider adopting similar rules to protect their financial and reputational interests.

The RLPA has flagged a possible appeal of the New Rule by way of dispute resolution mechanisms contained within its collective bargaining agreement with the NRL.

Should you require any more information or advice with respect to the above decision, please contact HopgoodGanim Lawyers’ [Leisure, Sport and Entertainment](#) team.

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