

NST-E24-283223

Ellery Hulme v Hockey Australia

Determination

National Sports Tribunal

General Division

sitting in the following composition:

Panel Member/s

Mr Ian White

in the arbitration between

Ellery Hulme

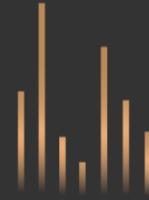
(Applicant)

And

Hockey Australia

(Respondent)

Represented by David Thompson, Chief Strategy & Major Projects
Officer and Jarrod Dowdy, Integrity & Governance Manager



PARTIES

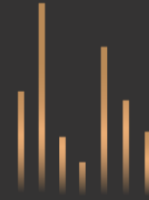
1. Ellery Hulme - Vice President of Croydon Ranges Hockey Club (prior to sanction of life ban by Hockey Australia); and
2. Hockey Australia.

INTRODUCTION

3. This is an arbitration of a decision by Hockey Australia (HA) to impose a lifetime ban on Mr Ellery Hulme (EH), the applicant, on 10 May 2024 which was communicated to him by email on that date. EH accepted the breach of HA's policies as explained to him in that email, namely:
 - (a) he is currently on the Sex Offender Registry in Victoria (the Register) and, as a result, poses a reasonable risk to children and young people in hockey (Allegation 1)
 - (b) a conviction on 3 April 2024 in the Ringwood Magistrates Court of an image-based offence against a minor and, as a result, poses a reasonable risk to children and young people in hockey (Allegation 2 – "2024 conviction")
 - (c) in his role as Vice-President of Croydon Ranges Hockey Club (the Club), he failed to hold a valid Working with Children Check (WWCC) (Allegation 3)
4. EH argued that there are sanctions less severe and more appropriate to apply to him short of his lifetime ban from all hockey activities sanctioned and/or organised by HA and Hockey Victoria (HV). EH submitted that risk minimisation strategies should be employed to allow him to be part of the hockey community in a manner that is safe and acceptable to all members of the community, including children.
5. A key submission from EH was that the club had already implemented strategies for the safety of its members, in particular, junior members, such as a Club safety officer and ensuring that EH has no part in the operations pertaining to the Club's junior members.
6. EH offered alternative sanctions to HA but they were rejected. His proposal included a lifetime ban on holding any administrative or official positions in any hockey club, a lengthy playing ban or ineligibility to play whilst on the Register, together with playing restrictions once eligible to play.

NST JURISDICTION

7. The jurisdiction of the National Sports Tribunal (NST) is engaged by sections 23(1)(a), 23(1)(b)(i) and 23(1)(c)(i) of the National Sports Tribunal Act 2019 (NST Act).
8. Clauses 7.4 and 7.5 of the Respondent's Complaints Disputes and Discipline Policy (CDDP) adopted by the Respondent in March 2022 as part of the National Integrity Framework also provides a mechanism whereby the Respondent and SIA may engage the jurisdiction of the NST to hear and determine a dispute regarding alleged breaches of the Policy when referred by the Respondent's Complaints Manager. The CDDP has been amended from time to time but the version that is dated April 2022 and which was relevant at the time of the alleged breaches of the Policy is the document under which the proposed sanctions were imposed.



9. Under section 13 of the NST Act the presiding member has been appointed by the Minister for Sport. This arbitration has been allocated to me by the NST CEO without objection of the parties. HA is a National Sporting Organisation that has been specified in the NST sporting body policy.
10. Upon indication by EH that he wished to dispute the sanction, HA referred to this matter to the NST for resolution.

FACTUAL BACKGROUND

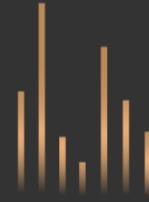
11. I have considered all the facts, allegations, arguments, and evidence submitted by the parties. In this Determination, I will refer only to the submissions and evidence I consider necessary to explain my reasoning. If I do not mention a fact or submission, it does mean I have ignored it in making a finding or my ultimate decision.
12. I shall now set out the facts in more detail.
13. EH is 33 years old. He has played hockey from the age of five. He has five children, the youngest of which was born this year. As of April 2024, EH was in a relationship. He was also Vice President of the Club. According to its President, Karina Cove, he had been “assuming various roles since 2018” at the Club.
14. In 2018, he was convicted of an offence that caused him to be placed on the Register. Although I do not have full details of this offence, he received three months imprisonment. A brief reference to this offence by EH was that “it I did not include a specific victim, this was detailed to HA during the interview, as the 15yo person I believed I was speaking with was in fact an undercover police officer” (“2018 conviction”).
15. There is more information concerning the 2024 conviction based on the Herald Sun article by Erin Constable dated 3 April 2024. This report has been reproduced fully in the materials for me. I will set out below the facts as reported by Ms Constable.
16. “A Croydon father-of-five moved seats on a bus to take an upskirt image of a teenager before a good Samaritan commuter snatched his phone out of his hand.

Ellery Hulme, 33, fronted the Ringwood Magistrates Court on Wednesday, pleading guilty to taking the inappropriate image.

Hulme, who was supported in court by his partner, caught a train replacement bus on the Belgrade line on June 9 last year.

The court heard an 18-year-old girl was sitting with her friends on the same bus. She was huddled up listening to music with a friend, sitting with her knees up and her feet on her own chair.

Hulme, who the court heard was already on the Victorian sex offenders’ registry, moved seats on the empty bus to directly across from the teenager and her friends. He sat with his back on the window and his feet pointing towards the victim. Hulme pulled up his hoodie, took out his phone and opened Snapchat.



He then proceeded to zoom into the teenager’s crotch area and up her skirt. The camera was focused on the victim’s underwear. Hulme then snapped the picture.

Another commuter observed Hulme’s suspicious behaviour and filmed the entire incident, including capturing video footage of the photo taken by Hulme. The Good Samaritan then snatched Hulme’s phone out of his hand and contacted police and public transport safety officers.

“Give me my phone back,” Hulme said.

“I’ll delete it.”

The commuter deleted the image off Hulme’s phone. When the bus came to a stop Hulme rushed off the bus to meet the officers, asking for them to get his phone back. Hulme told the officers he was trying to take his daily Snapchat streaks image of his feet and “did not know” the teenager’s underwear was in the shot.

“I understand how it looks” he said. “Can you just give me my phone back?”

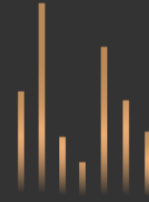
The court heard Hulme, who is an audiovisual technician, admitted taking images.

He was convicted and ordered to pay a \$1800 fine.”

PROCEEDINGS BEFORE THE NST

17. No objection was made at the outset of this arbitration to the composition of the Tribunal.
18. As already stated, this matter is before me for arbitration. By order, all submissions and materials of the parties were filed with the NST, the final of which was EH’s response to HA’s written submissions in support of their sanction.
19. EH’s final submission was filed on 30 August 2024 with the NST. The table below sets out the timetable of this hearing to date, save for this determination. Both parties agreed that no oral hearing was needed.

Document	Dated	Date Received by NST	Filed by
NST Application Form	26 June 2024	26 June 2024	Hockey Australia
Breach Offer	10 May 2024	24 June 2024	Ellery Hulme
Appeal letter	N/A	24 June 2024	Ellery Hulme
Hulme_rep6	22 May 2024	24 June 2024	Ellery Hulme
Hockey Australia – Written Submission	6 August 2024	6 August 2024	Hockey Australia
Ellery written submission	20 August 2024	20 August 2024	Ellery Hulme



Hockey Australia – Response to Mr Hulme’s Submission	29 August 2024	29 August 2024	Hockey Australia
Hockey Australia – Hockey Victoria Letter of Support	29 August 2024	29 August 2024	Hockey Australia
Clinton Batty brief resume	N/A	30 August 2024	Ellery Hulme
Updated brief CV	29 August 2024	30 August 2024	Ellery Hulme

APPLICABLE RULES

20. I confirm that this arbitration is conducted under the NST act and that all applicable rules have been complied with by the parties.

MAIN SUBMISSIONS OF THE PARTIES

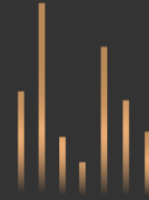
EH’s Submissions

21. EH submitted that HA’s lifetime ban on him essentially is manifestly excessive and “counter-productive to my rehabilitation and reintegration into society”. Further, this ban “would hinder my efforts to rebuild my life and contribute positively to society. Hockey has historically been a positive outlet and source of community for me.”
22. EH proposed a number of restrictive alternatives to his association with HA that I have already outlined in paragraphs 4 – 6.
23. EH submitted the expert opinion and report (dated 22 May 2024) from his treating psychologist, Mr Clinton, which supports the importance of hockey to his rehabilitation. As Mr Batty stated in his report:

“One of the main contributors to Mr Hulme (sic) rehabilitation, particularly following his discharge from prison, has been his involvement with his local hockey club. This has led to him developing a more pro-social approach to life, with him feeling positive about giving back to the community. This has had a significant and positive impact on his sense of self and has helped him to want to better himself.

Hockey has been instrumental in the progress Mr Hulme has made in managing his condition and getting his life back on track. While I understand that Hockey Australia have a responsibility to care for the well-being of their members, it may be possible to implement appropriate strategies to achieve this aim without implementing a lifetime ban on Mr Hulme.

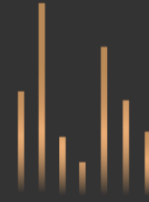
It is my professional opinion that it would be a very retrogressive step to place a ban on Mr Hulme. It is suggested that he be given special considerations to reflect the efforts he has made to get his life back on track, and to encourage him to continue to monitor his behaviour more appropriately in future.”



24. Mr Batty also reported that he had been seeing Mr Hulme since February 2012 and found him to be open and compliant in counselling sessions. Importantly, Mr Hulme had completed a sex offenders program and undergone a psycho-sexual assessment.
25. Mr Batty mentioned the need for strategies to deal with Mr Hulme's impulse control due to his ADHD condition, *"particularly when he is stressed and exhausted... These factors may have led to him making a poor decision at the time which he would normally have been able to control."* I took this as a reference to the background of the 2024 conviction.
26. EH also compared the ban to other decisions of the NST concerning this inappropriate behaviour by coaches with athletes, including children in the following cases, namely, NST-E23-329336 (Member v Sporting Body) and NST-E24-4932 (Pittman v Combat Australia) where lesser sanctions were imposed by the sporting bodies. I have read those cases and taken into account EH's submissions that sanctions were placed against coaches for actions of a sexual nature short of physical sexual contact that had limited bans and a pathway to rejoining the sporting bodies once appropriate counselling and education occurred. EH submitted that the offending occurred with athletes under the coaches care compared with him where his victim was non-existent for 2018 conviction and the victim for the 2024 conviction was not associated in any way with HA.
27. EH has encouraged me to consider the alternatives proposed by him as a fair and workable sanction in the circumstances.

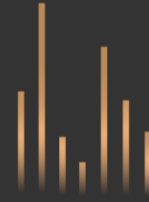
HA's Submissions

28. HA submitted it has no tolerance for criminal offending of a sexual nature, particularly against children. EH's position at the Club is untenable for a variety of reasons including that he was "unable and unwilling to obtain a valid WWCC" as required by Victorian law and HA policy to hold such a position.
29. Further, the nature of his offending on both occasions involved serious sexual misconduct that caused him to be placed on the Register until at least September 2026.
30. The nature of his disclosures to HA on 1 May 2024 revealed admissions that he is challenged and struggles to "implement appropriate impulse control strategies relating to... sexual preferences and fantasies, particularly when stressed and exhausted".
31. All of his children are under a Child Protective Services Order as his partner was found not to be capable of protecting them.
32. HA maintains that it was inconsistent for EH to be associated with them in any way given their strict protective policy of no tolerance for child abuse or harm. It also noted that the Club was impacted by the resignation of six members due to his 2024 conviction. Further, any proposed management of EH by the Club and/or HA "would place an undue burden on volunteers and officials. Given the Applicant's condition, challenges and history, effective risk mitigation measures were deemed impracticable".
33. HV supported the actions and sanction imposed by HA.



MERITS

34. I have carefully considered the arguments and materials presented by both HA and EH. I note HV supports the submissions and position of HA regarding the lifetime ban. Whilst there is limited material about the 2018 conviction, it is an offence that must have been more than momentary and revealed his desire to be involved sexually with a child. It resulted in the most serious form of sentencing options available at law, namely immediate imprisonment. The 2024 conviction revealed his behaviour was disturbing in its boldness and would have gone undetected, but for the actions of a concerned commuter. I accept the offence is against an adult, but note she was merely 18 and could still be properly regarded as a teenager. Such impulsive actions, if sought to be repeated, would be difficult for anyone to prevent in a supervisory role.
35. I have also considered the severity of the sanction by HA for a man of EH's age who has spent considerable time in a sport that is so important to him and the negative effects such a ban would create in someone who needs to be rehabilitated for the benefit of himself and society.
36. I have considered the reasonableness of other less severe options. This included a significant time ban from HA which would allow enough of an indication to the community affiliated with HA that this type of criminal behaviour and failure to meet the law and policy of eligibility to be an official in any capacity within HA's ambit will not be tolerated.
37. Based on the materials before me, I am far from confident of the rehabilitation so far by EH. I understand that linear progress cannot always be expected and that at the very least, he is liable to regress and perhaps reoffend, especially if stressed and/or exhausted.
38. I have carefully considered Mr Batty's opinion as being from a psychologist of great experience. I note the importance he placed on hockey in EH 's rehabilitation, especially once he was released from prison.
39. I also carefully considered the handling of the situation by HA in dealing with the complaint made about EH which led to his lifetime ban. I have found it was handled with great care and consideration including the provision of procedural fairness to EH. HA properly conducted the investigation of the complaint, pursuant to its Complaints, Disputes and Discipline Policy.
40. I am satisfied HA considered and applied all its relevant policies in its investigation, in particular its policies concerning the safety and well-being of children and young people.
41. I find the decision of HA to impose a lifetime ban on EH to be totally consistent with its policies. I acknowledge the effect on EH will be significant and permanently prevent him being associated with the sport that he so clearly loves. HA were justifiably concerned about the lack of care by EH to his obligations required by law to comply with disclosure duties under the Register.
42. I also believe that the fact his convictions were not directly linked to anyone associated with HA is not to the point given HA's duty is to protect its members, particularly junior members, from any prospect now and in the future, of being subject to EH's sexual behaviours.



43. I have therefore concluded that the lifetime ban on EH was justified in these circumstances. In reaching this position, I have considered the letter of support from the Club's president of 1 March 2024 given to the Ringwood Magistrates Court at the sentencing hearing of the 2024 conviction. This letter outlined his value to the Club as she perceived it.
44. However, despite the public support of the Club's president, I cannot find that this is sufficient enough of itself, nor in combination with EH's other submissions, to interfere with the sanction. I accept the submissions of HA are powerful and reasonable considering its duty to the sport it governs.
45. **THE TRIBUNAL THEREFORE DETERMINES:**
1. *The Applicant's appeal is dismissed; and*
 2. *The Respondent's sanction of a lifetime ban on the Applicant remains in effect.*

Date: 12 September 2024

Mr Ian White