



## **Submission of the Australian Athletes' Alliance Australian Sport Anti-Doping Authority Amendment Bill 2019**

We represent the athletes in Australia's elite professional sports<sup>1</sup>. This submission on the Australian Sports Anti-Doping Authority Amendment (Enhancing Australia's Anti-Doping Capability) Bill 2019 ("**Bill**") is submitted on their behalves.

Athletes have the most to lose when others use performance enhancing drugs. They can lose a place on the team, a match, a championship.

The Australian Sports Anti-Doping Authority Act 2006 ("**Act**") places a substantial burden on athletes: to protect sport from doping, they must urinate into a cup on command and in front of strangers; they must watch everything that they put in their mouths and/or touch, lest they inadvertently take one of the many common and legal substances on the prohibited list; they must tell ASADA where they will be every day, remembering to document any change, lest they not be on the spot for a surprise test. Should a contaminated substance unintentionally enter their systems and be detected, at the very least, they face the substantial costs of legal proceeding to demonstrate their degree of fault. Should their unintentional act be deemed negligent, they can be deprived of the sporting careers to which they have dedicated their lives. For athletes, the stakes are high.

We ask that this submission be considered in the context of the burdens already placed on athletes and the rights they have already been forced to waive as a price of employment in sport. We also ask that we start with the concept that athletes, and their right to competition free from corruption and cheating, is paramount. As such, we should seek to work with and protect athletes, not utilise them as a bait to catch those who seek to inappropriately influence results and fair competition.

### ***Lowering the Standard for Disclosure Notices: Bill at 46 and 47***

We strongly assert that the current standard of "reasonable belief" should not be diminished to "reasonable suspicion".

Currently the CEO may only issue a notice if they reasonably believe that a person has information (including documents and things) that may be relevant to the administration of the NAD scheme, and the ADRVP agrees that the CEO's belief is reasonable.

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<sup>1</sup> AAA is the peak body of professional athletes and comprises the AFL Players' Association, Australian Cricketers' Association, Australian Basketball Players' Association, Australian Netball Players' Association, Professional Footballers Australia, Rugby League Players' Association, and Rugby League Players' Association.

The Bill not only eliminates the check of the CEO's power provided by the ADRVP, but it lowers the standard that the CEO has to meet to issue a notice: from a reasonable belief to a "reasonable suspicion" of relevant information.

We agree with the elimination of the ADRVP; however, we object to the lowering of the standard for the issuance of disclosure notices.

The breadth of the information that can be requested in a disclosure notice is broad. Given that compliance may place a significant burden the person receiving a disclosure notice, it is reasonable to require that the CEO actually believe that the disclosure notice will yield relevant information. A suspicion, which is tantamount to a hunch, even if reasonable, is not enough to require an athlete to provide their personal data, phone, computer, bank accounts, and other private information.

It should be noted that the proponents of the Bill have not articulated any instance in which ASADA was hampered by the standard of a "reasonable belief".

Bills Digest No. 60, 2019-20 ("**Bills Digest**") states it well:

*In light of the broad responsibilities of the ASADA CEO and the width of the phrase 'relevant to the administration of the NAD scheme', there is some doubt whether a change to the threshold for issue of a disclosure notice is necessary. It may be sufficient for the ASADA CEO to fully utilise the current legislation. (p34)*

Recommendation: delete clauses 46 and 47 of the Bill, thus retaining the current language of the Act.

#### ***Changing the When a Person May Inspect a Document- Bill at 48***

Currently a person may review a document retained by the CEO "*at such times that the person would ordinarily be able to do so*". The Bill seeks to change this to "*at such times and places as the CEO thinks appropriate*".

We oppose any change that could impact on an athlete's fundamental right to review the evidence against them. Athletes' schedules vary substantially according to training, fixturing competitions and travel; it is their schedules that should determine when they review documents, rather than the convenience of the CEO.

Recommendation: delete clause 48 of the Bill, thus retaining the current language of the Act.

#### ***Abrogating the Privilege Against Self-incrimination- Bill at 50***

Our position against the abrogation of our right against self-incrimination remains constant. The privilege against self-incrimination "has been described by the High Court as a human right which protects personal freedom, privacy and dignity"<sup>2</sup>:

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<sup>2</sup> Bill Digest (p36), Citing Environment Protection Authority v Caltex Refining Co Pty Ltd [1993] HCA 74; (1993) 178 CLR 477 at 498.

Athletes should not be expected to waive this fundamental human right, nor should we add to the significant intrusions into their privacy and dignity already contained in the Act. The basis proposed for doing so -- in essence that it is more convenient for ASADA -- is simply insufficient for the abrogation of an important human right.

Recommendation: delete clause 50 of the Bill, thus retaining the current language of the Act.

### ***Protection of NSO Personnel from Civil Actions- Bill at 43***

The Bill proposes a new section to protect national sporting organisations and their employees or contractors against civil proceedings resulting from the negligence in implementing or enforcing its doping policy.

We oppose this amendment because it would deny an athlete any recourse if they suffer a loss as a result of their NSO's breach of its duty of care.

Even for an athlete who is exonerated, the ramifications of an anti-doping matter on their career, mental health, and reputation can be substantial. Accordingly, an NSO must be required to exercise due care and, if it fails to do so, an athlete should be able to hold it to account.

We note that the Bills Digest (p41) suggests that the protection proposed for NSOs might be broader than intended and suggests that NSOs have the protection enjoyed by ASADA. We oppose any amendment that protected NSOs against consequences of breaches of their duty of care, even one that offered NSOs the same protection as enjoyed by ASADA, given the high degree of trust that athletes place in their NSO and the substantial control that NSOs exert.

Recommendation: delete clause 43 of the Bill, thus retaining the current language of the Act.

### ***Education and Other Positive Measures***

#### ***(a) Positive Education***

We believe proactive and positive measures to address the challenges of doping in sport is essential and, whilst there have been improvement in the education of athletes, it still remains that the top down approach is not as effective, we believe, as peer to peer.

We seek to work with the government, government agencies and ASADA to ensure effective education is enacted as part of renewed approach to this challenge.

#### ***(b) Support, Representation and Legal Advice***

In addition, we believe the effective support, advice and representation of athletes is essential. No matter the level and sophistication of education, the vast majority of athletes who are provided with a notice by ASADA will have no experience with the process and procedure which awaits them. Furthermore, most athletes will not have the resources (or revenue) at their disposal to obtain effective advice and representation in these times.

Therefore, we believe the provision of a legal aid service within the new integrity in sport framework is essential. This service must be promoted, funded, independent and athlete focused. Ensuring all those athletes that require support, advice and representation are able to access these services effectively and efficiently.

Recommendation: that subsections (e) and (f) be added to Section 15 to provide that the NAD scheme must:

- (e) *provide an effective education program that includes yearly reporting on educational programs and results;*
- (f) *ensure that independent legal resources are available to effectively advise and represent athletes who receive notices from ASADA.*