

**Inquiry into the Australian Sports Anti-Doping Authority Amendment
(Enhancing Australia's Anti-Doping Capability) Bill 2019**

**Questions on Notice to Coalition of Major Professional and Participation
Sports (COMPPS) arising out of hearing by the Community Affairs Legislation
Committee on 14 February 2020**

1 CONSULTATION

COMPPS notes the subsequent discussion in the hearing (after COMPPS provided its evidence) relating to consultation on the Bill. COMPPS confirms that whilst it was not provided with a Consultation Draft of the Bill, there has been extensive consultation with COMPPS and its member sports throughout the process in relation to the matters addressed in the Bill – including during the Wood review, the Government's response and the implementation of the Government's response. COMPPS understands that the Department of Health will furnish details of the consultation undertaken to the Committee.

2 COMPPS MEMBERS' EXPERIENCE WITH ADRVP PROCESS.

COMPPS refers the Committee to the report of the eminent panel in the Wood Review on this aspect of the anti-doping process as well as the Government's response. The provisions of the Bill give effect to the Wood recommendations and the government response which COMPPS members support. One COMPPS member provides the description below of the ADRVP process, which description is supported by the other members. Another COMPPS member reports an experience recently where a player tested positive to a prohibited substance and immediately admitted fault. What then unfolded was a slow disciplinary process which meant the players wellbeing suffered as a result. Another COMPPS member reports that even at the end of the arduous ADRVP process the resulting "assertion" is of little assistance to the sport's Anti-Doping Tribunal which must hear the matter effectively afresh. The current process is costly and ultimately redundant.

The ADRVP process adds significant time to the process, adds nothing and in fact is often bad for athletes. In short the steps include:

- 1. ASADA advises the athlete that they may have committed an ADRV and invites a submission – give 2 weeks to respond*
- 2. ASADA then provides their position and any submission to the ADRVP to make a preliminary decision – ADRVP meet every two weeks at minimum*
- 3. The players is then asked to make a further submission – again two weeks to respond*
- 4. Submissions of ASADA and player then go back to ADRVP for another review following which the Panel makes a recommendation on whether an Infraction Notice should be issued and the penalty that should be imposed*

Issues with this procedure include:

- 1. It adds too much time to an already long process – it can add up to two months*
- 2. Why can't the CEO of ASADA be given the responsibility to determine if an Infraction Notice should be issued? This is how it works in all other jurisdictions*
- 3. The ADRVP acts like a tribunal making judgements on incomplete submissions – they do not have all the evidence and do not test the evidence so should not be making determinations, especially on potential penalty*
- 4. Often athletes do not make any submissions, waiting until a proper hearing, resulting in the ADRVP relying solely on one sided ASADA submissions – this is not fair to the athlete*
- 5. At other times, athletes have not understood the implications of making a submission without advice, resulting in a worse penalty than they should have received*

3 RELEVANT PROVISIONS OF COMPPS MEMBERS CODES IN RELATION TO SELF-INCRIMINATION

Please find below relevant extracts from the provisions of each COMPPS member's applicable rules and regulations in this area"

AUSTRALIAN FOOTBALL LEAGUE

A Person must not:

- (a) refuse or fail to attend or give evidence as directed at any inquiry, meeting hearing or appeal conducted under the AFL Rules and Regulations when requested to do so;
- (b) refuse or fail to fully co-operate with any investigation conducted by the AFL under the AFL Rules and Regulations;
- (c) obstruct, delay or hinder any investigation conducted or which may be conducted by the AFL under the AFL Rules and Regulations;
- (d) refuse or fail to produce any document, record, article or thing in the Person's possession or control that are required to be produced in accordance with the AFL Rules and Regulations;

Suspect in criminal investigation, charged or arrested for criminal offence

Notwithstanding the above a Person interviewed as a suspect in a criminal investigation, charged or arrested by a law enforcement agency in respect of a criminal offence shall not be required to give any information, give any evidence or make any statement to the AFL if they establish that to do so would breach any privilege against self-incrimination, or legal professional privilege. This Rule does not limit any other AFL Rule and Regulation.

CRICKET AUSTRALIA

7.1.6 All Persons bound by this Code must assist, cooperate, and liaise with Cricket Australia and ASADA (as applicable), or any party nominated by Cricket Australia or ASADA, in relation to any investigation into a potential Anti-Doping Rule Violation. Specifically, all Persons must cooperate with and assist ASADA, Cricket Australia or a nominated party (where relevant), including by:

- 7.1.6.1 attending an interview to fully and truthfully answer questions;
- 7.1.6.2 giving information; and
- 7.1.6.3 producing documents or things,

in an investigation being conducted by or on behalf of ASADA or Cricket Australia (where relevant), even if to do so might tend to incriminate them or expose them to a penalty, sanction or other disciplinary measure. For the avoidance of doubt, the common law privileges against self-incrimination and self-exposure to a penalty are abrogated by this Article.

FOOTBALL FEDERATION AUSTRALIA

128. All Persons bound by this ADP and the sporting administration body must assist, cooperate, and liaise with us, ASADA or another Drug Testing Authority in relation to any investigation into a potential anti-doping rule violation. Specifically, all Persons must cooperate with and assist us, ASADA or another Drug Testing Authority, including by:

- (a) attending an interview to fully and truthfully answer questions;
- (b) giving information; and
- (c) producing documents,

in an investigation being conducted by us, ASADA or another Drug Testing Authority (where relevant), even if to do so might tend to incriminate them or expose them to a penalty, sanction or other disciplinary measure. For the avoidance of doubt, the common law privileges against self-incrimination and self-exposure to a penalty are abrogated by this Rule 128.

NATIONAL RUGBY LEAGUE

Roles and Responsibilities of Athletes (WADA Code 21.1)

...

(6) To cooperate with Anti-Doping Organisations in the investigation of anti-doping rule violations.

127. Further obligations of Athletes

All Athletes to whom this ADP applies:

...

(9) must provide all reasonable assistance to WADA, ASADA and us, in the application, policing and enforcement of this ADP, including (without limitation) cooperating fully with any investigation or proceedings being conducted pursuant to this ADP in relation to any suspected ADRV;

(10) must produce documents related to any matter that is the subject of an investigation being conducted pursuant to this ADP in relation to any suspected ADRV;

(11) must provide a signed written statement containing a full and detailed account of their knowledge of matters that are the subject of an investigation being conducted pursuant to this ADP in relation to any suspected ADRV;

(12) must comply with any compulsory process issued by a National Anti-Doping Organisation in relation to any suspected ADRV;

133. Limited Privilege Against Self-Incrimination

(1) Subject to Rule 133(2) nothing in this Part or elsewhere shall be taken to permit a person bound by this ADP to refuse to comply with an obligation under the ADP (including each of the several obligations under this Part) on the ground that, to do so, would incriminate that person. [Footnote in Policy: This sub-rule expressly abrogates the common law privileges against self-incrimination. It operates subject only to sub-rule (2) which may apply where a person bound by the ADP is interviewed as a suspect in relation to or charged with a criminal offence]

(2) Notwithstanding Rule 133(1), where a person bound by this ADP:

- a. Has been interviewed as a suspect in a criminal investigation, or has been charged or arrested by a law enforcement agency in respect of a criminal offence;
- b. The proceedings for that offence have not concluded; and
- c. Compliance by that person with a particular obligation under this ADP (including each of the several obligations under this Part) would in our opinion prejudice his or her defence of the offence charged;

That person may refuse to comply with that particular obligation on the ground that, to do so, would incriminate that person in relation to the criminal proceedings.

6A.2.3 All Persons bound by this Anti-Doping Policy and Netball Australia or any Member Organisation or Authorised Netball Provider must assist, cooperate, and liaise with ASADA and Netball Australia (where applicable) in relation to any investigation into a potential anti-doping rule violation (or Netball Australia where it has approval by ASADA to conduct its own investigation or be involved in an ASADA investigation). Specifically, all Persons must cooperate with and assist ASADA or Netball Australia or any Member Organisation or Authorised Netball Provider (where relevant), including by:

- (a) attending an interview to fully and truthfully answer questions;
- (b) giving information; and
- (c) producing documents or things,

In an investigation being conducted by ASADA or Netball Australia (where relevant), even if to do so might tend to incriminate them or expose them to a penalty, sanction or other disciplinary measure.

For the avoidance of doubt, the common law privileges against self-incrimination and self-exposure to a penalty are abrogated by this Article.

RUGBY AUSTRALIA

6A.2. Roles and responsibilities of other parties

ASADA will conduct the investigation, in consultation with Rugby AU.

6.A.2.1. Where ASADA believes it is appropriate to do so, ASADA may, in its discretion, advise Rugby AU of an ASADA investigation. ASADA and Rugby AU may also consult affected or interested parties about their participation in any investigation.

6.A.2.2. Where ASADA and Rugby AU agree to Rugby AU commencing its own investigation, Rugby AU must do so in coordination with any investigation being undertaken by ASADA and seek ASADA's input into such investigation undertaken by Rugby AU;

6.A.2.3. All Persons bound by this Code and Rugby AU must assist, cooperate, and liaise with ASADA in relation to any investigation into a potential anti-doping rule violation (or Rugby AU). Specifically, all Persons must cooperate with and assist ASADA or Rugby AU (where relevant), including by:

- a) attending an interview to fully and truthfully answer questions;
- b) giving information; and
- c) producing documents or things,

in an investigation being conducted by ASADA or Rugby AU (where relevant), even if to do so might tend to incriminate them or expose them to a penalty, sanction or other disciplinary measure.

For the avoidance of doubt, the common law privileges against self-incrimination and self-exposure to a penalty are abrogated by this Article.

TENNIS AUSTRALIA

6A.2.3 All Persons bound by this Anti-Doping Policy must assist, cooperate, and liaise with ASADA (or TA in relation to any investigation into a potential anti-doping rule violation. Specifically, all Persons must cooperate with and assist ASADA or TA (where relevant), including by:

- (a) attending an interview to fully and truthfully answer questions;
- (b) giving information; and
- (c) producing documents or things

in an investigation being conducted by ASADA or TA (where relevant), even if to do so might tend to incriminate them or expose them to a penalty, sanction or other disciplinary measure.

For the avoidance of doubt, the common law privileges against self-incrimination and self-exposure to a penalty are abrogated by this Article.

ENDS