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To whom it may concern,

RE: Australian Sports Anti-Doping Authority Amendment Bill 2013

The Australian Psychological Society (APS) welcomes the opportunity to make a submission into the Senate Inquiry into the Australian Sports Anti-Doping Authority Amendment Bill 2013.

The APS is the premier professional association for psychologists in Australia, representing more than 20,000 members. Psychology is a discipline that systematically addresses the many facets of human experience and functioning at individual, family and societal levels. Psychology covers many highly specialised areas, but all psychologists share foundational training in human development and the constructs of healthy functioning. The APS Code of Ethics requires that psychologists demonstrate respect for people by acknowledging their legal and moral rights, dignity, and autonomy to make their own decisions about issues affecting their lives, and to recognise the importance of people's privacy and confidentiality, and physical and personal integrity – see <http://www.psychology.org.au/Assets/Files/APS-Code-of-Ethics.pdf>.

The APS, with funding from the Australian Government, has developed online training to support psychologists to assist athletes who have identified as having issues related to use of illicit drugs. Over 250 psychologists have undertaken this course in the past 12 months.

Our submission has been prepared with expert input from the APS College of Sport and Exercise Psychologists and the Psychology and Substance Use Interest Group. It is also based on our Review Paper and Position Statement on Substance Use which can be found at <http://www.psychology.org.au/community/public-interest/drugs-alcohol/>. These papers draw on the available evidence to provide recommendations for public policy and psychological practice aimed at enhancing individual and community-wide health and wellbeing and reducing substance-related harm.

We understand the purpose of the Bill is to amend the Australian Sports Anti-Doping Authority Act 2006 (ASADA Act) to strengthen the Australian Sports Anti-Doping Authority's (ASADA) investigation functions and to enhance information sharing arrangements with other government agencies. In

addition, the Bill clarifies certain definitions in the Act, clarifies conflict of interest provisions for members of anti-doping bodies established under the Act, and confirms the statutory period for commencing action against an athlete in relation to possible anti-doping rule violations.

The APS applauds the Government for actively addressing this issue, the social importance of which goes well beyond elite/competitive sport to impact on the broader community. The APS supports the Australian Government's efforts to remain at the forefront of anti-doping practices within sport, both for the health and wellbeing of athletes involved and in recognition of the wider community benefits of sport, to maintain the integrity of sport in society.

The APS acknowledges the harm that both illicit and licit drugs can cause, and in terms of prevention believes there needs to be a strong message and adequate laws and systems in place that mean athletes using such substances will be identified, and when they are, be firmly (but fairly) dealt with – this is the 'prevention' message that needs to go out to the population at large.

Whilst the Government initiative is commendable, the APS has some concerns about the means by which the Government is seeking to effect (necessary) change. We believe that the current proposal raises questions in two particular areas: (1) broad policy (prevention vs criminalisation/policing) and (2) ensuring the rights of athletes are upheld.

Prevention versus criminalisation

The proposed amendment to the ASADA Bill aims to enhance ASADA's investigative capacity by creating a special case of investigations (doping investigations) in which some important protections will be waived. This sends a clear message to athletes, sporting clubs and the broader community that the Government has chosen to criminalise doping offences.

While we understand the necessity to appropriately respond to instances where athletes/sporting clubs/professionals have been found to be using banned performance-enhancing substances and acknowledge the role of a 'punitive' approach in some circumstances, the APS believes that responses to substance misuse within sport should be generally based on a harm minimisation (or prevention) approach, rather than a zero tolerance (punitive) stance.

Psychological research and practice confirms that insistence on a 'one strike you're out' type of approach often exacerbates and reinforces the problematic behaviour. Rather, we need to ensure that athletes seeking support in relation to any problems with their substance use are not deterred from doing so. We also believe it is important to maintain a distinction between athletes' use of illicit 'recreational' substances, and the use of banned performance-enhancing substances, and also to remain mindful of the health and wellbeing issues relating to the use or misuse of many licit substances, such as alcohol, 'sports drinks' and prescription medication.

The APS College of Sport and Exercise Psychologists prefers a "second chance" approach balanced by strong controls within the particular sport. At an individual level we believe there needs to be acknowledgement that the best 'treatment' for individuals is to keep them engaged in their sports, and to use the positive peer pressure and motivation of their sporting involvement to change their desired behaviour.

Additionally, sport can involve intense pressures that put people at risk of substance use. The increasing pressures that individual athletes and teams face to 'succeed' or play/win at all costs place unrealistic demands on resulting performance. For example, the expectations for injured players to take measures (including substances) to resume play leave both athletes and teams pressured to take actions to speed up recovery. These expectations need to be challenged, and ethical approaches to recovery and participation need to be prioritized along with any punitive measures.

Similarly, for some elite sports people, their high profiles and celebrity treatment can make them even more vulnerable than the general population. Many athletes are young people who are at risk of drug experimentation, and also highly vulnerable to pressure from professionals working with them (e.g., from those coaching, guiding and managing them). There is a lot at stake for some of these young people – and for all parties involved.

Psychological research has also highlighted the importance of not relying on one method to detect doping behaviour – suggesting that having confidence in the validity and reliability of such data (assessment) is vital (Petróczi et al, 2011; 2010). This is unlikely to be the case when the sole method of detection is via self-report. Other studies highlight the importance of understanding performance enhancement (PE) vulnerability factors across the various stages of athlete development. This research suggests that, instead of focusing on athletes' actual engagement in prohibited PE practices, deterrence strategies are likely to be more effective if they target the influencing factors at the appropriate stage, and identify groups of athletes within their respective career stages which pose particular risks of engagement in doping practices. This enables a more effective intervention approach by targeting specific risk factors and expectancies (Petróczi & Aidman, 2008).

Ensuring the rights of athletes are upheld

We share the concerns of other peak sporting and legal bodies that the current Bill needs to ensure the human and legal rights of athletes are upheld in any changes to the Bill. While we are not in a position to comment from a legal perspective, we urge the Senate to ensure that the athlete's right not to self-incriminate is protected, and that basic privacy protections are afforded if information-sharing capabilities are extended (particularly between athletes/clients and their health professional such as a physician or psychologist). Psychologists take their commitment to client confidentiality very seriously, and while confidentiality is never absolute, psychologists disclose confidential information obtained in the course of their provision of psychological services only under very specific circumstances. Any statutory

reporting requirement to breach this commitment would risk deterring athletes from seeking the very services and support they might need to acknowledge and address any substance-related health and behavioural issues.

In addition, in recognition that these changes are likely to result in an exceptionally onerous burden on the athlete (interviewee), we recommend that legal or personal representation ought to be mandated in all investigative interviews, to ensure due process. Persons being questioned also need to be made aware (i.e. cautioned) of their rights and responsibilities and how these rights differ from the usual (for example, criminal) legal process. In particular, they have a right to be informed that evidence obtained through other agencies and then shared with ASADA may be used in criminal proceedings. Ensuring that ASADA adequately informs athletes (witnesses) about their rights and responsibilities (e.g., any implications for criminal proceedings in the future) is a safeguard that would strengthen the proposed amendment to the Bill.

While we are aware of recent public controversy surrounding this issue, we are concerned that implementation of laws and policies borne out of this political context may increase the risks to athletes' mental and physical health and welfare, as well as that of members of the public who pay close attention to the lifestyles and habits of their sporting heroes.

The APS has no interests or affiliations relating to the subject of the consultation and the representations submitted, other than our concern that the Australian Government be well-informed and effective in its strategies. We would be happy to appear as a witness and/or provide further comment on this Bill in person should you require it.

Yours sincerely,

Heather Gridley
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Australian Psychological Society

References

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