



## **Submission of Athlete Activist Australian Sport Anti-Doping Authority Amendment Bill 2019**

My name is Nikki Dryden. I am an Olympic swimmer, human rights lawyer and founder of Athlete Activist. My law review article, *Why ASADA's removal of Australian athlete's right to silence is arguably unlawful* can be found [here](#) and is also attached to this submission. The article was also quoted in the Bill Digest from November 2019 at page 40.

Athlete Activist is building an athlete-centred movement to promote human rights and create positive social change in our sport and societies. However, in order to promote positive social change through sport, athletes must first have their own human rights secured. This submission will focus on athlete due process rights in the anti-doping process.

It is important to keep in mind that this submission is made in support of Australia's Olympic athletes, in particular, those amateur Olympians and Olympic hopefuls who are children and young adults. Under the global anti-doping system athletes, including children, are subjected to a strict liability regime which means that no matter what the excuse (age, maturity, lack of knowledge, trust placed in adults, etc.) they will be penalised. This same regime does not transparently provide for legal aid or support for these same athletes, effectively curtailing their due process rights.

We agree with and support all of the recommendations made by the Australian Athletes Alliance in their submission and provide additional questions below:

### **Questions for ASADA**

1-Given that many athletes subject to the proposed "Bill" are minors, **Q**-What is ASADA's plan to protect the rights of Australian children under the proposed changes to abrogate the common law privilege against self-incrimination? The WADA Code specifically states that signatories must use the principles of proportionality and human rights. Given that the privilege against self-incrimination is universal, **Q**-How does ASADA justify this abrogation of the rights of children?

2-**Q**-What mechanism is in place to ensure that the ASADA CEO ensures due process is observed regarding timing, fairness, objectivity and impartiality? For example, throughout the ADRV process the athlete has just 10 days to respond, while ASADA has no restraint to their time. This means that an athlete who is provisionally suspended pending investigation has no



effective due process as an investigation can continue indefinitely or beyond their next competition.

*The WADA ISTI 2021 states that, “The Anti-Doping Organization shall gather and record all relevant information and documentation **as soon as possible**, in order to develop that information and documentation into admissible and reliable evidence in relation to the possible antidoping rule violation....The Anti-Doping Organization shall ensure that investigations are conducted **fairly, objectively and impartially at all times.**” The comment further notes, “It is important that information is provided to and gathered by the investigating Anti-Doping Organization **as quickly as possible** and in as much detail as possible because the longer the period between the incident and investigation, the greater the risk that certain evidence may no longer exist. Investigations should not be conducted with a closed mind, pursuing only one outcome.”*

**3-Q-**Where is athletes right to legal aid throughout the process? Under a strict liability regime there can be no effective remedy for Australian athletes if there is no right to legal aid.

4-Removing the privilege against self-incrimination is not required by the WADA Code. While the WADA Code states that athletes must “cooperate with Anti-Doping Organizations investigating anti-doping rule violations,” it also notes that “Failure to cooperate is not an anti-doping rule violation under the Code, but it may be the basis for disciplinary action under a Signatory’s rules.” Thus, ASADA does not need to abrogate the privilege against self incrimination in order to comply with the WADA Code, instead there are sufficient ways to penalise non compliance and still protect athlete human rights.

The WADA Code specifically states that signatories must use the principles of proportionality and human rights. Given that the privilege against self-incrimination is universal, **Q-**How does ASADA justify this abrogation of rights when there are alternate ways to comply with the WADA Code?

5-The WADA Code states that “No additional provision may be added to a Signatory’s rules which changes the effect of the Articles enumerated in this Article.” (see 23.2 WADA Code 2021). The comment further notes that “For example, it is critical for purposes of harmonization that all Signatories base their decisions on the same list of anti-doping rule violations, **the same burdens of proof** and impose the same Consequences for the same anti-doping rule violations.”

**Q-**Why does ASADA believe that Australian athletes should be subjected to more severe abrogation of their rights than what has been agreed upon internationally?