



**Exercise & Sports Science Australia's
response to the
Australian Sports Anti-Doping Authority Amendment
(Enhancing Australia's Anti-Doping Capability) Bill 2019**

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Introduction

Exercise & Sport Science Australia (ESSA) is recognised by the Australian Institute of Sport and Sport Australia as the peak accrediting body for athlete support personnel working in Australian sports science. ESSA accredits over 7,000 university trained exercise professionals:

- 300 of whom work as Accredited Sports Scientists (AESs) specialising in applying scientific principles and techniques to assist coaches and athletes to improve their performance, either at an individual level or within the context of a team environment and
- 50 who work as Accredited High Performance (Sports Science/ Sports Medicine) Managers (AHPMs) who have advanced knowledge and skills in leading and managing a team of sports scientists and sports medicine professionals.

ESSA's other 6,000 plus members are Accredited Exercise Physiologists (who design and deliver effective programs for people with chronic conditions, injuries or disabilities) and Accredited Exercise Scientists (who work to improve the health, fitness and well-being of the general population).

ESSA welcomes the opportunity to provide feedback on several aspects of the Bill and gives permission for this submission to be published.

ESSA also would welcome to attend an opportunity to address the Senate Community Affairs Legislation Committee in person should that opportunity be available.

Recommendations

Recommendation 1: ESSA supports extending statutory protection against civil actions to cover peak accrediting/registering bodies for athlete support personnel in relation to those acts taken or required under the national anti-doping scheme.

Recommendation 2: ESSA does not support lowering the burden of proof threshold for the issuance of disclosure notices.

Recommendation 3: ESSA supports the removal of the Anti-Doping Rule Violation Panel.

Recommendation 4: ESSA supports the removal of the right to appeal to the Administrative Appeals Tribunal.

Recommendation 5: ESSA supports the right not to self-incriminate is a basic human right and does not support removing the privilege against self-incrimination.

Recommendation 6: ESSA supports the definition for a sporting administration body be expanded in Part 1 – Introduction, Section 4 to ensure the role of accrediting/registering bodies for sports support persons is recognised and included within the *Australian Sports Anti-Doping Authority Act 2006* through the addition of the following:

- (i) an accrediting or registering body for support persons;

Issues

1. Statutory protection against civil actions in exercising of anti-doping rule violation (ADVR) functions (at item 40 of Schedule 1 to the Bill)

The Bill proposes:

“(5) A national sporting organisation of Australia, or a person performing work or services for the organisation, is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in implementing or enforcing the organisation’s anti-doping policyⁱ.”

ESSA’s response regarding statutory protection against civil actions provided after the *Review of Australia's Sports Integrity Arrangements* has not changed from asking the Government to consider:

- extending statutory protection against civil actions to cover peak accrediting bodies for athlete support personnel including ESSA, in the event sports scientists or high performance managers seek to pursue civil action against ESSA for any anti-doping sanctions and/or the loss of their accreditation and

- providing statutory protection to ESSA in relation to any information it is required to provide the Australian Sports Anti-Doping Authority regarding one of its accredited professionalsⁱⁱ.

ESSA is not a national sporting organisation, therefore it is not covered by the proposed amendment. In carrying out its role as an accrediting body for athlete support persons on behalf of the Australian Government, the ESSA Chief Executive Officer (CEO) and staff should also be afforded the same statutory protection against civil actions as CEOs and staff of national sporting organisations in relation to those acts taken or required under the national anti-doping scheme.

Recommendation 1: ESSA supports extending statutory protection against civil actions to cover peak accrediting/registering bodies for athlete support personnel in relation to those acts taken or required under the national anti-doping scheme.

2. Burden of proof threshold to issue a disclosure notice (at item 43 and 44 of Schedule 1 to the Bill)

ESSA notes the Bill proposes amendments to the penalty provisions which are different to the Attorney-General's Department Guide to Framing Offences which include the following principle:

"Infringement notice provisions should provide that an authorised person may issue an infringement notice if he or she has **reasonable grounds to believe** that a person has committed an offence that is subject to the schemeⁱⁱⁱ."

The Bill proposes lowering the burden of proof threshold for the Chief Executive Officer of the Australian Sports Anti-Doping Authority (ASADA CEO) to issue a disclosure notice from "the **CEO reasonably believes** that the person has information, documents or things that may be relevant to the administration of the NAD scheme" to "the **CEO reasonably suspects**, etc."

The Bill also removes the Anti-Doping Rule Violation Panel (ADRVP) and its role in providing an independent check on the power of the ASADA CEO to issue notices; and the right to appeal to the Administrative Appeals Tribunal (AAT).

Given there are no examples of where ASADA's functions were hindered by using the standard of a "reasonable belief" provided in the Exploratory Memorandum, and there will be no vetting by the ADRVP of the CEO's powers, ESSA supports the view outlined in the *Bills Digest No. 60, 2019-20 (Bills Digest)* that states:

"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.**"^{iv}

Recommendation 2: ESSA does not support lowering the burden of proof threshold for the issuance of disclosure notices.

Recommendation 3: ESSA supports the removal of the Anti-Doping Rule Violation Panel.

Recommendation 4: ESSA supports the removal of the right to appeal to the Administrative Appeals Tribunal.

3. Privilege against self-incrimination in relation to disclosure notices (at item 43 and 44 of Schedule 1 to the Bill)

ESSA is committed to a fair, safe and strong sport sector and an integrity system that meets and upholds both international and Australian human rights principles.

ESSA is concerned about the discrepancies between the Bill in contrast to common law and the International Covenant on Civil and Political Rights (ICCPR). Common law and the ICCPR recognise the right not to self-incriminate, however the Bill proposes removing the privilege against self-incrimination and replacing it with a protection against use of the incriminating material in court proceedings.

ESSA notes the *Bill Digest* highlights that

“the amendment would allow a person to be compelled to answer questions or give information that could then be used in evidence against them in ADRV proceedings”.

As a professional association, ESSA has an obligation to maintain and enforce a code of conduct for its members and follow natural justice and human rights principles. It has developed a *Code of Professional Conduct and Ethical Practice*^{vi} as its guiding document on the standards of professional conduct expected by its members, including Sports Scientists and High Performance Managers.

Recommendation 5: ESSA supports the right not to self-incriminate is a basic human right and does not support removing the privilege against self-incrimination.

4. Additional amendment

The current *Australian Sports Anti-Doping Authority Act 2006* includes a definition for a sporting administration body as follows which does not include the role played by ESSA as an accrediting body for athlete support persons in Part 1 - Introduction, Section 4:

“Definitions

...

sporting administration body means:

(a) the International Olympic Committee; or

(b) WADA; or

- (c) a National Anti-Doping Organization as defined in the World Anti-Doping Code; or
- (d) a foreign sporting organisation; or
- (e) a national sporting organisation; or
- (f) a sporting organisation; or
- (g) a tribunal, committee or other investigative body that is associated with a body referred to in one or more of paragraphs (a) to (f); or
- (h) the ASC;^{vii}

Recommendation 6: ESSA supports the definition for a sporting administration body be expanded in Part 1 – Introduction, Section 4 to ensure the role of accrediting/registering bodies for sports support persons is recognised and included within the *Australian Sports Anti-Doping Authority Act 2006* through the addition of the following:

- 5. an accrediting or registering body for support persons;**

ⁱ Australia, *Australian Sports Anti-Doping Authority Amendment (Enhancing Australia's Anti-Doping Capability) Bill 2019*, Accessed 15 January 2020, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6433

ⁱⁱ Exercise & Sports Science Australia, *Response to Review of Australia's Sports Integrity Arrangements – Developing a Government Response*, Brisbane, 2018. Accessed 15 January, 2020 https://www.essa.org.au/Public/Advocacy/Submissions_Lobbying/Public/Advocacy/Submissions_Lobbying.aspx?hkey=a641d3b5-9198-4a92-8869-6f4c80c08ffe

ⁱⁱⁱ Attorney-General's Department. Criminal Justice Division (2007). *A guide to framing Commonwealth offences, infringement notices and enforcement powers*, Canberra, Accessed 15 January, 2020. <https://www.ag.gov.au/Publications/Documents/GuidetoFramingCommonwealthOffencesInfringementNoticesandEnforcementPowers/A%20Guide%20to%20Framing%20Cth%20Offences.pdf>

^{iv} Elphick, K., *Bills Digest 60, 2019-20, Australian Sports Anti-Doping Authority Amendment (Enhancing Australia's Anti-Doping Capability) Bill 2019*, Parliamentary Library, Canberra, 28 November, 2019. Accessed 15 Jan 2020, https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/7051418/upload_binary/7051418.pdf

^v Ibid.

^{vi} Exercise & Sports Science Australia, *Code of Professional Conduct and Ethical Practice*, Brisbane, 2017 Accessed 15 January, 2020, https://www.essa.org.au/Public/Professional_Standards/Professional_Standards.aspx

^{vii} Australia, *Australian Sports Anti-Doping Authority Act 2006*, Accessed 15 January, 2020, <https://www.legislation.gov.au/Series/C2006A00006>