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## SENATE

ENVIRONMENT, COMMUNICATIONS, INFORMATION  
TECHNOLOGY AND THE ARTS LEGISLATION COMMITTEE

**Reference: Australian Sports Anti-Doping Authority Bill 2006**

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**SENATE**  
**ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY**  
**AND THE ARTS LEGISLATION COMMITTEE**

**Tuesday, 31 January 2006**

**Members:** Senator Eggleston (*Chair*), Senator Lundy (*Deputy Chair*), Senators Ronaldson, Santoro, Siewert and Wortley

**Participating members:** Senators Abetz, Adams, Allison, Bartlett, Boswell, Brandis, Bob Brown, George Campbell, Carr, Chapman, Colbeck, Conroy, Coonan, Crossin, Evans, Faulkner, Ferguson, Ferris, Fielding, Forshaw, Heffernan, Hogg, Humphries, Joyce, Lighfoot, Ludwig, Mason, McGauran, McLucas, Milne, Moore, Nettle, O'Brien, Ray, Siewert, Watson, Webber and Wong

**Senators in attendance:** Senators Eggleston, Lundy, Ronaldson, Siewert and Wortley

**Terms of reference for the inquiry:**

Australian Sports Anti-Doping Authority Bill 2005.

**WITNESSES**

**ESPELAND, Mr Brent, Director, Sport Performance and Development, Australian Sports Commission ..... 1**

**FULLAGAR, Mr Ian Fraser Kelsham, Partner, Lander and Rogers ..... 1**

**INGS, Mr Richard, Chief Executive Officer, Australian Sports Drug Agency..... 1**

**ISAACS, Mr Kevin, General Manager, Sport Branch, Department of Communications, Information Technology and the Arts..... 1**

**KNOWLER, Ms Kerry, Manager, Legal Policy Research, Australian Sports Drug Agency..... 1**

**LYONS, Mr Colin, Acting Chief General Manager, Arts and Sport Division, Department of Communications, Information Technology and the Arts..... 1**

**ROFE, Mr Arthur Simon Fulton, Solicitor, Australian Olympic Committee..... 1**



**Committee met at 12.32 pm****ISAACS, Mr Kevin, General Manager, Sport Branch, Department of Communications, Information Technology and the Arts****LYONS, Mr Colin, Acting Chief General Manager, Arts and Sport Division, Department of Communications, Information Technology and the Arts****INGS, Mr Richard, Chief Executive Officer, Australian Sports Drug Agency****KNOWLER, Ms Kerry, Manager, Legal Policy Research, Australian Sports Drug Agency****ESPELAND, Mr Brent, Director, Sport Performance and Development, Australian Sports Commission****FULLAGAR, Mr Ian Fraser Kelsham, Partner, Lander and Rogers****ROFE, Mr Arthur Simon Fulton, Solicitor, Australian Olympic Committee**

**CHAIR (Senator Eggleston)**—I declare open this public hearing of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee in relation to its inquiry into the Australian Sports Anti-Doping Authority Bill 2005 and the Australian Sports Anti-Doping Authority (Consequential and Transitional Provisions) Bill 2005. The reporting date for this inquiry is Tuesday, 7 February 2006. The committee has received eight submissions, which have assisted significantly.

I remind officers of the Public Service that they will not be asked to express an opinion on matters of policy and that they shall be given reasonable opportunity to refer questions asked of them to superior officers or to a minister. I remind witnesses that evidence given to the committee is protected by parliamentary privilege. I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

The committee has decided to conduct today's hearing in a roundtable format, and I do thank you all for giving us your time today. We will begin by asking each group to provide an opening statement before proceeding to questions. But I felt that, given that roundtables sometimes do not cover all issues, it would be useful to have a list of issues that might be discussed. Last night, my office prepared a document listing issues for discussion, which I think has been distributed this morning. I apologise for the fact that I only put this together last night and have not consulted all members of the committee about the issues listed. At the end of it, if there are any other issues that anybody wishes to raise, please feel free to raise them. I just thought that this list would provide some structure to today's proceedings.

I will now move to opening statements. I propose that we do those in the following order: the department, the Australian Sports Drug Agency, the Australian Sports Commission, the Australian Olympic Committee, and Lander and Rogers. We will begin with the department. The committee has received your submission as submission No. 8. Do you wish to make any amendments or alterations to your submission?

**Mr Lyons**—No, Mr Chair, but I would like to make a very brief opening statement if that would be okay.

**CHAIR**—It would be, and I now invite you to do that. We will ask everybody to make an opening statement.

**Mr Lyons**—The bill establishes the Australian Sports Anti-Doping Authority, ASADA, with powers which would bring together Australia's handling of all eight antidoping rule violations under the wider code. It will consolidate all the sports doping testing, investigation and presentation of hearing functions under the one roof, and will provide a single institutional focal point for antidoping activities, including education.

There will be antidoping rules that will apply to athletes and support persons, as well as sporting administration rules that will apply to sporting administration bodies. It is important, however, to emphasise that the bill has to be read in the context of Australia's overall antidoping strategy. The bill provides a legislative framework that works in conjunction with funding agreements that are entered into between sporting organisations and the Australian Sports Commission. The Sports Commission is Australia's principal sports funding body. Sporting organisations that are in receipt of Australian government funding will be required, as a funding condition, to submit to ASADA's antidoping jurisdiction.

Through ASC funding agreements, sporting organisations will be required to ensure that their members, including athletes and staff, fully cooperate with ASADA. The bill does not impose direct sanctions for breaches by athletes or sporting bodies of the rules that will be set out in a national antidoping scheme. Sanctions for athletes and support persons would continue to be imposed by sporting bodies in accordance with their own sporting rules. If a sporting organisation committed a violation of the antidoping rules that apply to sporting bodies this would constitute a breach of their funding agreement with the ASC.

The operational elements of the ASADA scheme will be made under a national antidoping scheme. It should be noted that that scheme is a legislative instrument and will be subject to parliamentary scrutiny and possible disallowance by either house of parliament.

The first national antidoping scheme is currently being developed. That initial scheme will contain the core functions of ASADA, to enable it to operate as an efficient and effective transition to the new authority. It will also carry over, and consolidate into a single document, the existing regulations and orders relating to ASDA's current testing functions.

DCITA will provide further information to the committee in the next few days outlining the scope and content of the regulations. We are carefully considering the comments made by the AOC and other stakeholders, and it may well be that some of the issues that have been raised—such as definitional issues—can be worked through and resolved or addressed through that national antidoping scheme.

**CHAIR**—Thank you. We will now move on to the Australian Sports Drug Agency. The committee has received your submission as submission No. 6. Do you wish to make amendments or alterations to your submission?

**Mr Ings**—We have no comments to add to our written submission.

**CHAIR**—Do you wish to make an opening statement?

**Mr Ings**—No, thank you.

**CHAIR**—We will go now to the Australian Sports Commission. The committee has received your submission as submission No. 7. Do you wish to make any amendments or alterations to your submission?

**Mr Espeland**—No, Mr Chair.

**CHAIR**—Do you wish to make an opening statement?

**Mr Espeland**—No, Mr Chair.

**CHAIR**—Thank you very much. We come to the Australian Olympic Committee. Mr Rofe, the committee has received your submission as submission No. 1. Do you wish to make any alterations or amendments to your submission?

**Mr Rofe**—No, Sir.

**CHAIR**—Do you wish to make an opening statement?

**Mr Rofe**—Sir, the AOC would like to place on the record its support for ASADA as the national antidoping agency for Australia. We believe it is definitely a step in the right direction and an improvement in Australia's antidoping stance, a stance that we believe we lead the world in—if we are not No. 1, we are in the top three and we think this is definitely going that way. That is all we wish to say.

**CHAIR**—Thank you, Mr Rofe. We come to Lander and Rogers. Mr Fullagar, the committee has received your submission as submission No. 3. Do you wish to make any amendments or alterations to your submission?

**Mr Fullagar**—No, Mr Chairman. There are no amendments and no opening comments.

**CHAIR**—Thank you very much. In that case we will proceed to questioning. What I propose to do is to go through the specific list of issues for discussion. We will begin with the concerns raised in the Australian Olympic Committee's submission. The Lander and Rogers Lawyers submission raises similar concerns. The first dot point is that the ASADA Bill does not separate the ASADA functions and powers relating to policy making, administration, investigation and prosecution. I now open the forum to senators or any other persons who wish to make any comments.

**Senator LUNDY**—Thank you, Chair. I thought I would ask this question in the following way. Given that the department appears to have had the opportunity to incorporate in its submission a response to the AOC's original concerns, I would now like the AOC to provide comment on what the department has offered up in the form of reassurances regarding the concerns specifically about this separation of powers point.

**CHAIR**—Would the AOC like to respond?

**Mr Rofe**—Yes. Senator Lundy, we have had an opportunity to meet and have discussions with the department and with the representatives of ASDA, as it currently is. We have not had the opportunity to see their formal submission to this committee. In the discussions, Mr Ings indicated to us—and if I misrepresent anything he said I am sure he can correct me today—that he was conscious of the need internally within the management and administration of ASADA to ensure that these different functions operated independently to ensure that there was a proper implementation of the different processes. This is as much a management issue

as it is a legal issue and we were very much heartened by Mr Ings's response in that regard, but clearly it is a matter that will need ongoing oversight to ensure that it is brought into effect.

**Senator LUNDY**—Are you able to point to any clause in the bill that you believe may be strengthened to serve this purpose or are you now satisfied that with an appropriate level of accountability this separation could be achieved?

**Mr Rofe**—I do not think it is something you can build into the bill itself. It is a management issue, I believe, so, yes, it falls within the structure and the ministerial oversight and the departmental oversight of how ASADA will operate.

**Senator LUNDY**—Perhaps we could throw to Mr Ings to give an explanation about how he envisages that separation operating within ASADA.

**Senator RONALDSON**—Senator Lundy, I have a question for Mr Rofe that might add to what you are saying and then Mr Ings can answer. It seems to me that the issue that takes in the ADJR Act and other aspects of this bill is the definition of prosecution. It seems the Australian Government Solicitor views prosecution as the outcome whereas the AOC seems to use the term 'prosecution' for prosecution of the case and not the outcome. There seems to be a bit that rises or falls on that particular definition right across this whole debate. Has the AOC taken legal advice in relation to the definition of prosecution or is that your interpretation, because it is at odds with the view of the AGS?

**Mr Rofe**—The position is that the AAT only has jurisdiction to review a government decision where it is given that power by legislation. That is provided in the AAT Act. Conversely, there is precedent that decisions to prosecute can be excluded from the ADJR Act. We use the term 'prosecute' in the sense of actually prosecuting an alleged antidoping rule violation. We believe that the decision to prosecute and the review of the evidence in that has to be made independently of the investigation into those offences in the same way as the review by the Director of Public Prosecutions is independent of the actual investigation by the police force.

**Senator RONALDSON**—So your definition of prosecution is prosecution of process not just prosecution of outcome. Is that right?

**Mr Rofe**—Exactly. We are concerned with the actual ADRVs. I should not say that we are not concerned with the process because we are concerned with the process in the sense that there must be an independent review within ASADA of, first, the investigative process and, second, the actual decision to prosecute. It is in that sense that we had raised our concern about independence, which Mr Ings has said he will be addressing within his management structure.

**Senator RONALDSON**—If the Australian Government Solicitor is right and prosecution is prosecution of outcome not prosecution of process in a legal sense, I would presume that would alleviate some of your concerns. If they have no prosecution of outcome power then there is a separation of processes.

**Mr Rofe**—There is a separation but it is then also tied up with our concern for the potential resource allocation that would have to be made by ASADA—and of course the cost to any athlete concerned in trying to review the process by which decisions are made as opposed to

addressing what we believe to be the key aspect, which is whether there has been an ADRV or not.

**Senator RONALDSON**—Thank you. That was of some assistance. I will hear, along with Senator Lundy, what the department has to say.

**Mr Ings**—Firstly, I am heartened by Mr Rofe's comments about the meeting we had a week ago to discuss some of the issues that were raised in the AOC's submission. From ASDA's perspective, the focus we have in developing and launching ASADA is to treat it as a start-up. It is not ASDA with a few desks in the corner; it is a start-up opportunity with new functions of investigation and prosecution that need to work in harmony and be dovetailed with the existing functions of the Australian Sports Drug Agency. As such, we are looking to put in place a new organisational structure to address the management issues that Simon Rofe has alluded to whereby there will be separations between a deterrence function, a detection function—which will be testing and investigations—and an enforcement-prosecution/presenting case-to-answer function. Another thing we are looking at—and this is something that is quite common with other antidoping agencies around the world and other international federations—is the concept of an independent review board, a board of review that can examine the preparation of the cases to answer and make a determination that they meet all the international WADA code standards before a letter of infraction is issued to the athlete.

**Senator RONALDSON**—You are looking at that now, are you?

**Mr Ings**—We are looking at all that now.

**Senator RONALDSON**—And from recollection, Mr Rofe, an independent tribunal, effectively, was part of your submission, wasn't it?

**Mr Rofe**—The decision of prosecution has to be independent of the investigation. I would say—and I do not mean to interrupt Mr Ings too much—that, if you have an independent review board, then that removes in part, if not totally, the need to have an AAT review of exactly the same decision.

**Mr Lyons**—I think Mr Ings is effectively talking about an advisory committee which would make sure of the probity of the investigation process, that the investigation process was conducted properly and that there was an independent checking mechanism in the process so that, when ASADA made its decision about whether or not there was a case to answer or an adverse finding against an athlete, there had been a check and a balance in the system and an independent external look at that process. But we would still be an advisory committee. It would be ASADA's decision to make at the end of the day. The questions of AAT appeal rights and ADJR are really about the application of the general Commonwealth principles about the rights to both review of the law and review on the merits where a statutory body's decision is likely to affect a person's legal interests.

**Senator RONALDSON**—I will read from the AOC's submission. The top of page 6 says: The AOC instead suggests that ASADA should prosecute all alleged ADRVs before an independent tribunal and only make entries in the register should the tribunal find the allegations proved or the athlete earlier admit the ADRV.

Is that what you are talking about, or are you talking about something slightly different?

**Mr Lyons**—If there was a suggestion in the AOC submission that there should be one body that does the investigations and another body that is the tribunal that makes the decisions—in other words, we should be setting up two separate statutory bodies for the investigations and then the tribunal decisions—I think it is a matter of government policy not to do that. It is not necessarily appropriate to do that. It is not unusual for statutory bodies to have a function of investigating and making findings. I think we also need to remember that, at the end of the day, what ASADA will be doing will be communicating to the athlete via the sporting body that, in its view, there is a prima facie case or a finding that the athlete has breached an antidoping rule. The athlete would then have the right to have a full hearing of that issue before the Court of Arbitration for Sport or the appropriate specialist sports tribunal.

**Senator RONALDSON**—I do not read the AOC submission as saying there should be an independent statutory group.

**Mr Rofe**—I can confirm that.

**Senator RONALDSON**—In that regard, aren't we talking about a tribunal that will have an initial view on the probity of the investigations? Aren't you really talking about the same thing, effectively?

**Mr Lyons**—I think we are. It probably just gets down to the legal niceties of the term 'tribunal'. That would normally imply a tribunal which exists as separate body. In this case, we are talking about an independent committee which would look at all the evidence that was presented and make sure that when it went forward to the board there was an independent assessment of that process and those findings—a check and a balance. I think what we might be saying is that we could achieve the same policy outcome.

**Senator RONALDSON**—That is getting pretty close to the ballpark, isn't it, from what I read of your submission?

**Mr Rofe**—It is getting close, yes.

**Mr Lyons**—I think it probably achieves the policy outcome.

**Senator LUNDY**—My understanding is that the eventual decision would be subject to AAT review anyway, which I know is the point you raised. You raised a question about that in your submission, Mr Rofe. Can we go back to Mr Ings, please.

**Mr Ings**—I had no additional information about the management structure, but we believe that that management structure, once we put it in place, will provide the checks and balances between the various functions of ASADA. There will be an independent review process with a review board, and then of course you add on top of that the automatic protections through the AAT and the final tribunal, who will make a decision on fault. It is a very high standard of burden that has been placed on ASADA to find a doping offence against an athlete. There are significant protections in there which are probably not available to athletes in other parts of the world or in other international federations that will be available in this model. Finally, there is the whole issue of the AAT. This is an existing process. This is a process that has been in place since 1990. Yes, it does add a length of time to the process and, yes, it does provide an athlete with an additional opportunity, but it does increase the burden on ASADA in

finding a doping offence against an athlete and it affords individual athletes additional protections.

**CHAIR**—Are there any other questions on this dot point?

**Senator RONALDSON**—Thank you, Mr Chair. Both Mr Fullagar and the AOC have made some comments about two bites of the cherry in relation to appeals. Clearly, under the proposed bill, there will be the ability for an athlete to challenge both the AAT and CAS. What is your issue as a matter of policy with what is proposed?

**Mr Rofe**—As a matter of policy, I think it is bad because it leads to what the lawyers call the possibility of falling between two stools—of one tribunal making one decision and another tribunal making another one that conflicts. It is not a good use of resources because you are arguing the same issue twice and you are not achieving a definite outcome with the minimum of effort and input. To have a situation—as is the current position—where ASDA relies on the sports themselves to include within their antidoping policies provisions to try to exclude this policy, seems to me to be the wrong way around.

Senators, I presume that you are aware of the National Rugby League provisions which basically say that, if a matter has been argued before the AAT or could have been argued before the AAT, the player is precluded from raising those matters before the NRL tribunal. That is it in a very simplified form. If you are going to have that sort of a provision and if you are going to have an ability to bring matters before the AAT, arguing about how the decision was arrived at within the government side of things or whether the proper procedures were followed in terms of an analytical result or an investigative process, it seems to me that the most efficient place to put such an NRL prohibition—if I can call it that—is within the actual legislation that gives the right to go to the AAT, instead of relying on it appearing in every sport's antidoping policy to try to implement or including it within an NAD scheme. Bear in mind that there will not just be one template in an AD scheme; there will in fact be a range of templates to try to fit in with the different requirements of the different sporting bodies.

**Senator RONALDSON**—Mr Ings or Mr Lyons, why is the proposed bill quite specifically legislating against the removal of the waiver?

**Mr Lyons**—I will go to the first point raised by Mr Rofe. Mr Rofe raised some arguments about why it may be inefficient to have a separate body reviewing the decision of a specialist body in the first instance. Dealing with that issue on its face, I think there are arguments to that effect, but the government's general policy is that, where a statutory body makes decisions that affect the legal interests of the people who are affected by those decisions, there should be not only a right of review under law for procedural issues but also a review on the merits of the issue. That is quite consistent with most Commonwealth legislation. It is the exception rather than the rule to oust the jurisdiction of the AAT, and you would need very strong, compelling arguments to do so.

That provides, as Richard Ings has said, a rigour on the decision making body in that they know that their decisions are going to be subject to review. That itself provides another safeguard and protection for the rights of athletes. It is true that there is a CAS hearing process, or a tribunal hearing process, under sporting bodies' rules, but the mere fact of ASADA making a decision—regardless of what the outcome is of, say, the full CAS

hearing—will affect the legal interest of an athlete. This is a decision the government had to make, balancing the interest of the athlete against the efficiency of the process et cetera.

It will affect their interests in the sense that, if the athlete who has been found by ASADA as having committed an antidoping violation is part of a sporting body that is compliant with the WADA code and receives funding from the Australian government, the automatic result of that finding will be that that athlete will be issued with an infraction notice, and the athlete will have the choice of either accepting the penalty that would apply under the WADA code or going to the expense and trouble of having a CAS hearing. In that sense, it automatically affects the legal interests of an athlete and, in that sense, it was probably the rationale for why, when the ASDA legislation was first made, provision was made for AAT appeal rights. In fact, to not provide AAT appeal rights would remove rights that athletes already have with regard to decisions by ASDA.

**Senator RONALDSON**—I find that pretty compelling. Mr Fullagar, you have made reference to the same two bites of the cherry; what is your view on that?

**Mr Fullagar**—Mr Rofe commented upon it, and I agree with Mr Lyons. I do not think the appeal to the AAT should be removed. Picking up from what Mr Rofe was saying, once the athletes appeal to the AAT against whichever decision is made, be it confirmation of a test or an investigative process that ASADA has made and they have had that appeal to the AAT, they should not then have another go in CAS—that should be excluded. That may be a matter for the legislation, as I think Simon suggested, or perhaps for the scheme itself. They should not then go to CAS and have the ability to challenge the testing result, which is the position now—it takes extra time and expense. If they have been through a Commonwealth tribunal and the decision has been upheld, they should not then go before a contractual arbitration court and argue it again; it just wastes time. Most CAS hearings are just hearings on sanction. That gives the athlete the opportunity to try to reduce the sanction with the tests available to them under the policy and the code. I am agreeing with Mr Lyons. We should certainly maintain the appeal rights that currently exist. I think the appeal rights get broader because ASADA will be making a broader range of decisions, rather than finding a test result now. The athletes should not have the ability to reproduce the arguments again in a CAS hearing. That is my point.

**Senator RONALDSON**—What is the department's view on it, Mr Fullagar?

**Mr Lyons**—It would be a policy decision for government, of course, to make such an amendment. What the government would bear in mind in making that decision is that the whole philosophy of the current legislation is not to regulate sport per se. It is creating an independent expert body providing, in effect, a service for sport and conducting investigations—standing in the shoes of sport, in some ways, to give them the independence and integrity necessary if an infraction notice needs to be issued to an athlete. But to pass legislation that overrode the contractual agreements between athletes and their sporting bodies and between sporting bodies and their wider affiliate international organisations and say that if you go to the AAT you are ousted from a Court of Arbitration for Sport hearing, I think would be a significant policy decision.

**Mr Rofe**—That is not what we are suggesting.

**Mr Lyons**—I am not saying you are.

**Mr Rofe**—What we are saying is that if you argue it before the AAT—or you could have argued it before the AAT in the NRL terms—then you are precluded from again raising those arguments in the Court of Arbitration for Sport. That is all we are suggesting there.

**Mr Lyons**—I suppose what I was saying there was that, in effect, there might be a case for sporting bodies to make that decision—that if someone has gone to the AAT they could not go to the appropriate tribunal under the sporting rules. That might be an issue that could be looked at under the NAD scheme. It would be a significant policy issue for the government to pass legislation that said, ‘If you go and take particular issues to the AAT, you are prevented from taking those issues before a sports tribunal which is operating under private contract law.’

**Senator RONALDSON**—I am just a simple former country solicitor, but what is the outcome of the proposed legislation vis-a-vis the NRL provisions at the moment? What is going to stand, or are they not mutually exclusive?

**Mr Lyons**—I think it is within the powers of the NRL to make that decision. That is an issue we would probably need to look at pretty carefully in the context of the National Anti-Doping Scheme, but I would point out that it may well be that other sporting organisations have international rules—I am not sure—that might prevent them from limiting appeals to CAS. So I think it is an issue we need to look at very carefully.

**Senator RONALDSON**—Because my simple reading of this is that this will preclude the NRL from doing it as they do it at the moment. But that is my interpretation.

**Mr Lyons**—As I understand it, Senator, I do not think the NRL rule currently says you cannot go to the AAT. I think it says, ‘If you go to the AAT then you can’t raise those same issues before us at the tribunal,’ and that is a contractual issue, arguably—except for the proviso that there is a need to make sure that what the sports come up with under their contract rules is consistent with the WADA code.

**Senator RONALDSON**—Mr Isaacs is shaking his head, and one of your departmental people is nodding his head!

**Mr Isaacs**—No, Mr Lyons has in fact summarised it correctly. The effect of the legislation, Senator, is that the jurisdiction of the AAT cannot be ousted. The effect of the legislation is not necessarily to prevent the National Rugby League from applying a process to its own internal sport tribunal processes whereby it can rule that, if you have gone to the AAT on the same sorts of facts, ‘you cannot go to our tribunal’. So the legislation says you cannot oust the AAT but rugby league can take its own decisions—based on how it wants to operate its own internal tribunals—to oust its own tribunal, as it were. So I was agreeing wholeheartedly with Mr Lyons.

**Mr Lyons**—He was shaking his head in vigorous agreement, Senator!

**Senator RONALDSON**—Mr Fullagar’s eyes have lit up, I think, at the prospect of—

**Mr Fullagar**—Senator, I hear what Kevin and Colin are saying. It is in the context of the fact that the legislation and the regulations will dictate the sporting bodies’ rules, obviously, as to where and how it goes. They know my position. As I say in my submission, I think a

number of sports are expecting and wanting, and will be requesting, ASADA to step into their shoes to prosecute matters and take over their anti-doping function. Rather than ASDA having a right, as it does now, to come to a sporting tribunal hearing or a CAS hearing and sit as an affected party, the sport would now like that right just to be a notification, and if it wants to come it can. Otherwise, ASADA will run the prosecution before CAS. And I think a number of sports will probably say: 'Well, we don't even want our tribunal to do it. It can all go to CAS, and you let us know the result.' So they are indeed seeing this as ASADA stepping into their shoes. They do not enjoy wearing these shoes a lot of the time, because of the increasing complexity of it with the World Anti-Doping Agency code and now with—again—new legislation and the new policies that will flow after that. They have finally just signed up to the most recent round of policy last year.

**Senator RONALDSON**—Is there a provision for that under the legislation?

**Mr Lyons**—Yes, in terms of the point that Mr Fullagar was making about sports being able to say to ASADA, 'We'd like you to stand in our shoes,' that is exactly what is being contemplated. At the moment, sports make findings and communicate those findings to athletes and issue an infraction notice, as I understand it, and if they want to have a full hearing before the Court of Arbitration for Sport, in the case of Olympic athletes, then it is their right to do so. What is being proposed is that ASADA would investigate the initial allegation that came to it and make a finding as to whether or not there was a breach of an anti-doping rule. If ASADA reached a view that there was after going through the internal deliberative checking processes that Mr Ings has outlined—the separation between investigation and findings, and the advisory committee et cetera—then the athlete would be issued with an infraction notice, effectively by ASADA but on behalf of the sport, and the athlete would have the right to appeal to CAS for a full hearing. Then ASADA would present the case to that hearing. It would say, 'This is the evidence we collected, this is why we reached that view.'

**Mr Fullagar**—And the sport and possibly the commission, depending on whether the athlete was a scholarship holder, may or may not seek involvement in that hearing and have a say—pretty much the reverse of what ASDA does now. I think that would be quite attractive to a number of national sporting bodies.

**Mr Lyons**—That means, first of all, that the sporting body will not have concerns that there might be complaints made about its own independence in that investigation and, secondly, it covers the cost of the investigation and the expertise involved in the investigation. All those things are covered for the sport—in effect, as a service to sport, in the public interest.

**Senator RONALDSON**—That sounds like a good outcome.

**Mr Rofe**—It was in the concept that Mr Lyons initially said: the sanctions would continue to be imposed by the NSOs, in accordance with their rules. What we have been asked to take into account here—and on a great deal of faith—is what is going to appear in the NAD scheme or schemes. We have not seen that, and much will depend on the terms of those schemes. But as with the case at the moment, I agree with what Mr Fullagar says: a lot of the Olympic national sports organisations will be looking to have ASADA prosecute the cases on their behalf. Past history has indicated that when the AOC did this in the lead-up to the

Sydney Olympic Games, the sports readily adopted it and agreed to it, and it took a lot of the burden off them and a lot of the expense as well.

What will happen there is the sports themselves will not actually impose the penalty or sanction. The penalty or sanction will be imposed by the tribunal that hears the offence. All the sports will do, and I presume ASADA will do, is recognise that finding and then adhere to it. So they will not exactly be imposing it themselves, and that recognition presumably will be a matter that will be addressed within the NAD scheme.

**Mr Lyons**—I very much take your point. When I said that the sport would be imposing the sanctions, it was a very broad phrase to try to distinguish between the fact that ASADA is not imposing sanctions and that sanctions are being imposed in accordance with sport rules. The Court of Arbitration for Sport is set up in accordance with sport rules rather than with Commonwealth legislation.

**Mr Fullagar**—All of the sanctions are dictated by the code, and that is the current approach through all NSOs in Australia—which is perhaps the fourth point on your list, Mr Chair, with regard to variances with the code. The sporting administration body rules and the anti-doping rules will be dictated largely by the code and how it operates. The NSOs and, indeed, the IFs have little room to move under current government policy and under the current IF-NSO framework.

**CHAIR**—Let us move on, and we will get down to that point. The second dot point is that the ASADA Bill does not outline the reasons for or status of the register of findings. Does anyone wish to comment or ask questions on this?

**Senator LUNDY**—I would like to hear the department's response to this concern.

**Mr Lyons**—I will leave Mr Rofe to make his own comments, but we did discuss this issue with Mr Rofe when we had discussions with him about the comments. I suppose the thing to make clear is that the reason for having the register is to have an accountable, official register of findings of ASADA, as a result of all its investigations. In this case, there is a difference between the current system and what we are proposing. This is not just a register of positive test results or a register of adverse findings against athletes. This is an official register of all findings, including no cases to answer, frivolous or vexatious, or whatever it is. Every finding that they reach will be on this register. The register forms the official basis on which ASADA has to make another set of decisions, and they relate to the publication of information that is on the register.

Certainly there is no assumption—in fact, to the contrary—that information on the register will be made public. It is a requirement of the bill that the NAD scheme must say that ASADA may only publish information that is on the register if it considers it is in the public interest to do so, or the athlete has consented, or it is in accordance with other prescribed conditions under the scheme itself. It is actually saying the presumption is: only publish where it is in the public interest or where you have met certain specified conditions. The reason for the register is to provide an official record. It also forms the basis upon which ASADA will decide what information to make public.

**Senator LUNDY**—Are you able to outline to the committee the reasoning behind that change, particularly given the way the register is operated under ASDA? For example—this is

obviously a sensitive area—is it just because of a question of expediency that the finetuning of what goes public and what does not has been pushed out to be included in the NAD scheme?

**Mr Lyons**—On the first point, I think the difference is that at the moment ASDA conducts drug tests, largely on a random basis, and where there is a positive test result that goes on its register of notifiable events, or the RNE. That will continue under ASADA, but ASADA will have another function in regard to other anti-doping rule violations relating to possession, administration, trafficking et cetera where it has received information from a source or been contacted by a sporting body to say there is a suspicion about an athlete. In that case, it will need to conduct an investigation, and it will not simply be having a test conducted by a laboratory and then making sure that the test was conducted properly; it could in some cases involve significant and complex investigations.

Even a finding of ‘no case to answer’ is a finding of public interest. In a case where there was sufficient concern or suspicion for ASADA to conduct an investigation, a finding that there was no case to answer is an important finding, and it should be accountable for that finding and it should have an official basis. It may be, for example—to take a particularly extreme case—that it is in the public interest for ASADA to publish a finding of ‘no case to answer’. It may be very unusual, but an athlete’s name may have been smeared.

**Senator LUNDY**—I have two questions following on from your response. First of all, will the way that the RNE, the register of notifiable events, operates now continue? For example, under the new scheme, will those notifiable events be made public in the way they are now without that being specified in the NAD scheme?

**Mr Lyons**—Yes. I alluded to the fact that, first of all, because it is general change we do want ASADA to make a public interest decision in most cases.

**Senator LUNDY**—Even on what previously would have gone straight onto the register of notifiable events?

**Mr Lyons**—I probably need to defer to my colleagues, but I think there already are provisions under the existing ASDA drug testing scheme in accordance with the WADA code not to include the name of an athlete on the register if that athlete has decided to go to CAS and have a full hearing, so the timing of the entry on the register is deferred until that hearing process has been extinguished. That is one of the issues we are looking at in the NAD scheme to replicate that procedure.

**Senator LUNDY**—I guess the question is: why isn’t that process replicated in the current legislation with only added provisions about the treatment of athletes involved in alleged offences of trafficking and so forth which are additional as a result of the WADA code being introduced?

**Mr Lyons**—I suppose the bill had to deal with a broader scope of issues and wanted to deal with that public interest issue. We are looking at the NAD scheme carrying over those existing ASDA type testing functions and entries on the register resulting from the testing process.

**Senator LUNDY**—That is certainly part of what I wanted to hear. I also wanted to hear about the thinking behind not just allowing direct continuity of that process through the

legislation. It appears that that has been pulled out of the legislation and put into the scheme, and that could be interpreted as a weakening of that regime, not a strengthening. This is your opportunity to provide assurances to this committee that the intention is to carry forth those strong provisions into the scheme when we see the scheme, which of course we have not yet.

**Mr Lyons**—It certainly is intended—and this is subject, of course, to government policy and approval of the regulations—as a general approach to carry over the existing ASDA provisions relating to entries on the register that relate to ASDA’s existing drug testing function.

**Senator LUNDY**—I would like to take this opportunity to place on the record a general question about similar areas that were previously legislated in the ASDA Act and will now be lifted from the act and placed in the scheme as a result of these changes. If they could be specifically itemised for the committee, they would be useful facts for us to explore in our inquiry.

**Mr Lyons**—We will take that on notice.

**Senator LUNDY**—Thank you. Perhaps I could go to the point made earlier by Mr Rofe regarding allegations and clearing athletes’ names—the question of natural justice applying to athletes. The nature of the offences is now broadened, so ASADA can investigate and indeed prosecute if appropriate. To what degree does ASADA now codify in their communication with both the sports and the associated bodies such as the AOC? It is really about the channels of communication between ASADA and the affected bodies. This is an issue that came out during the investigation involving Cycling Australia: what was communicated to whom, when and with what sense of urgency. I would just like to get a feel about that.

**Mr Lyons**—I will make a general comment and then Mr Ings might want to add to it. Certainly ASADA will need to comply with the AD(JR) Act, which codifies the Commonwealth principles of ensuring that there is procedural fairness, natural justice, a right to be heard and proper procedures. All those principles will apply to ASADA’s investigations. That would apply in terms of its communications with athletes and sporting bodies and the way in which it conducts its investigations. As I understand it, there are existing provisions in the ASDA drug testing scheme that talk about procedural rules relating to notification to athletes and they will be carried over to the new drug testing scheme. Richard may have additional comments on the process and communications with the sporting bodies and the athletes.

**Mr Ings**—I might defer to my colleague, Kerry, who is focusing on the legal aspect of this. There are aspects of the existing ASADA legislation being carrying forward, but there are also requirements under the World Anti-Doping Agency code.

**Ms Knowler**—Certainly under the current act and regulations it is prescribed as to whom we can provide information to. We will certainly be carrying forward a lot of those provisions as part of the results management procedure which will govern the management of results—not just the adverse analytical findings, which are the positive test results, but also the non-analytical results that are subject to investigation. So we are certainly looking to include the ability to notify an athlete of an initial finding, to provide them with the opportunity to give us information or evidence before we actually make a final decision and then notify them of that

final decision. At that time, in accordance with the code requirements, we would also be looking to notify other relevant bodies of the information. As part of an investigation, if it is required that we cooperate with a sport or other persons then we would certainly be looking to do that, but ensuring that privacy requirements and disclosure requirements are met under the legislation and in accordance with the code and other Commonwealth legislation.

**Senator LUNDY**—So, at the point when an investigation is taking place and no finding has been made, it could well be possible for ASADA to be in formal communication with the sporting organisation and perhaps other bodies as well?

**Ms Knowler**—Yes, certainly. At the moment, there may be occasions when we are working with Customs or the AFP as part of an investigation process. Certainly, if it were a serious matter that they were looking at first, we would allow them to run through their procedures and then we would be involved, as appropriate, under their legislation and also under the ASADA legislation.

**Senator LUNDY**—Thank you for that. I want to make a point for the committee's benefit before I forget. Concern has been expressed by the AFL Players Association. They say, also on behalf of other associations, that they were not able to make a submission to the inquiry. They were not contacted specifically about the inquiry. They do have some views, primarily in relation to the ASADA power to amend the NAD scheme, but they have not had time to look at it. I just wanted to place on the record now that that will be an issue for the committee—we will be able to seek their views and presumably build that into our deliberations and the writing of our report.

**CHAIR**—Thank you, Senator Lundy—

**Senator LUNDY**—Obviously, the view of the athletes and players associations is an important one that we need to take into account. Sorry, Chair, did you want to say something?

**CHAIR**—No, I was just thanking you for your comment. If that deals with the register, we might move on to the next item.

**Mr Rofe**—Mr Chair, may I make a comment on the register. It seems, in the discussion today, that we have not addressed the details that will go on the register and the extent to which they will identify any athlete or player, particularly at the early stage, or the extent to which they will identify a sport, because even the allegation that a drug offence—a doping offence, an ADRV—has occurred in a sport can, as we saw from the cycling experience of last year, have a detrimental effect on that sport, particularly if there happens to be a rash of such allegations. Whilst accepting that the actual details might be an issue for an NAD scheme to address, what I would also like to suggest to the committee is that, in effect, I believe the right of privacy of what is on the register in the terms that Mr Lyons was addressing—and he was addressing it as being included within the NAD scheme—is so important, including to the athletes, the players and the sports themselves, that it should be enshrined within the legislation. It is a key, fundamental point from where we view the issue.

**Senator RONALDSON**—Mr Rofe, I take it that this is in the context of what you perceive as an extension of 'proven' or 'established' to 'possible'. Is that the context in which you are talking?

**Mr Rofe**—Yes. The mere fact of publication of an allegation has the potential to create a McCarthyist type situation. Whilst I mean no disrespect to ex-Senator Black, I am sure all of us will remember that, during the Black inquiry in 1990, there were a lot of allegations made about drugs used in Australian sport and about drug supply, but the persons affected only got the right to respond to that some months later and, in my opinion, their responses did not achieve anywhere near the same degree of media exposure as the initial allegations.

**Mr Lyons**—I would like to make a comment on Simon Rofe's views on those issues. It may be a technical point, but I think it is probably important to again distinguish that the register is not a public document. There is a requirement for the official functions of ASADA to make entries on the register. There is a completely separate process whereby ASADA has to make a decision about what information it publishes. As I understand them, Mr Rofe's concerns are about the publication of details on the register. The bill contains provisions which effectively require ASADA to publish information only where ASADA believes that publication is in the public interest or the athlete or support person has consented and other prescribed conditions are satisfied.

In terms of the decision about what should or should not be published, it really came down to a decision as to whether you set prescriptive rules that would cover all circumstances that say when you can or cannot publish. One prescriptive rule that currently applies to ASDA's entry on the register, which we are looking at including in the regulations, is a rule about the timing of the public: you wait until the appeal process has been extinguished before you publish anything that is on the register.

Otherwise, the general principle is that ASADA should be considering the public interest and balancing those competing issues. If I take the example that Simon Rofe raised about perhaps naming a sport on the register, that might affect the interests and the reputation of the sport. That would be an issue that would be very heavily weighed up by ASADA in some particular circumstances before it decided to publish the name of that sport. Under the act it would also be required to weigh up the other competing public interests—the public interest in the disclosure of the fact that there had been a number of serious findings in relation to a particular sport. I am not saying that they are very easy issues to resolve; I am saying that, the way the legislation is drafted, they are issues appropriately resolved by ASADA as a public interest body.

**Senator RONALDSON**—Mr Rofe, if that was a carryover from ASDA in relation to the end of an appeal process, I think that would certainly alleviate your concerns.

**Mr Rofe**—Yes, it would.

**Senator SIEWERT**—I have a question going back to what Senator Ronaldson just said. My understanding is that it is the finding that will be on the register, not the allegation?

**Mr Lyons**—The finding will be on the register, that is right. The finding that is reached as a result of its investigation will be on the register, but that register will not be a public document in itself.

**Mr Rofe**—That finding will not necessarily be a determinant of whether an ADRV has occurred.

**Mr Lyons**—No. It will be a finding about whether, in the view of ASADA, there has been a breach of an antidoping rule. That finding has no direct legal consequences. When ASADA makes such a finding, for compliance sports which are funded by the Australian Sports Commission, the practical effect would be that the athlete would be notified of that view and issued with an infraction notice and given the chance to have a full hearing.

**Senator RONALDSON**—Would that be post the involvement of the non-statutory independent review committee?

**Mr Lyons**—Yes. In fact, the finding would only reach the register following an ASADA decision and that ASADA decision would flow through the processes that Mr Ings has outlined, including the independent advisory committee.

**Senator LUNDY**—Just for the sake of completion, once the finding was placed on the register—and, at that point, it is not a public document—it would then be open to the athlete to pursue any contention they had with that finding through CAS or, indeed, the AAT?

**Mr Lyons**—That is right.

**Senator RONALDSON**—Mr Rofe, I actually shared some of your concerns, but I have to say that the process that has been outlined by Mr Lyons today alleviates my concerns, if the NADS has that in place.

**Mr Rofe**—My concern in part is that, at the end of the day, we are being asked to take a lot on trust as to what is going to be in the NAD Scheme.

**Senator RONALDSON**—Subject to—

**Mr Rofe**—I am not suggesting that there is any impropriety, ill will or ill intent in this process, but I am a lawyer and, unfortunately, when people say, 'Trust me,' I do not.

**Senator LUNDY**—We do have on the record certainly that there will be a direct transfer of all of the public scrutiny associated with the existing RNE; that is certainly the intention. Like you, the opposition has expressed concerns about the 'trust me' approach of the NAD Scheme, which of course we are yet to see. I note that the committee hopes to see some more detail of the NAD Scheme, and perhaps this is a useful time for the department to brief the committee on the timing of the detail of the NAD Scheme, for that to be made available, to allow for at least some parliamentary scrutiny before we are asked to deliberate in the chamber on these bills.

**CHAIR**—Senator Lundy, with respect, the NAD Scheme is further down the agenda, so perhaps we could deal with that then and we will just continue with our dot points for the moment.

**Senator LUNDY**—Okay. I have a question in relation to this current dot point. I know it was mentioned by Mr Rofe as a concern of the AOC that it is possible for ASADA to find an allegation not proven but that does not extend to finding someone innocent of an unfair allegation. Can either the department or Mr Ings, on behalf of ASDA, detail the reasoning behind that distinction? It is obviously a technical legal point, but I think it is important for the sake of athletes who never have the opportunity to find themselves found innocent, once an allegation has been raised.

**Mr Lyons**—The bill requires that the NAD Scheme must authorise ASADA to make findings relating to its investigations. It does not prescribe that a finding has to be that there was simply no case to answer. In effect, what ASADA is going to be deciding is whether, in its view, there has or has not been a breach of an antidoping rule. So, to the extent that ASADA reaches a finding that there has not been a breach of an antidoping rule, that would be the finding that it would reach. It would not necessarily be a decision that ‘it is not proven and we have not made up our minds yet’. It would be a decision about whether or not, in its view, it was a breach.

**Senator LUNDY**—Mr Rofe, do you have a comment on that?

**Mr Rofe**—Only that human nature being what it is, and given that this will be a public register, if the allegation is that an ADRV has occurred and you investigate it and are unable to say that it has occurred, the answer that you would put in—because you would protect your own position—would be: on the evidence currently available we are unable to find that it has occurred. It is not a finding of innocent. It is like the traditional magistrates court findings of guilty, not guilty and not proven. You hang in that middle ground in limbo, and that is a safe position for decision makers to arrive at because they cannot be criticised if, later, further evidence comes up that finds that there was in fact an ADRV at the time. I am not suggesting that there is any improper motive in this, but human nature will be to make a middle-ground decision rather than a complete exoneration.

**Mr Lyons**—We can look at the issue that Mr Rofe is raising in relation to the way things are framed in the NAD Scheme. Again, for the record, it is probably worth while repeating that the register is not a public document and that the question is a separate question about whether or not to disclose or publish information on the register.

**CHAIR**—The committee will move on to the next dot point now, which is that the ASADA Bill does not provide ASADA with the necessary and appropriate powers of investigation.

**Senator LUNDY**—Mr Rofe, what are the AOC’s views specifically with respect to what they think are the necessary and appropriate powers of investigation that are lacking in the current bill?

**Mr Rofe**—We know this is a policy decision, and it is most probably, if you like, a touchy policy decision; it obviously involves issues of personal liberty and the like. The problem we see is that if you do not have the power to compel the production of evidence then an investigation can be doomed to fail from the start simply by a refusal to provide that evidence. To compare it to the present situation, presently you have the power to compel, through the issue of subpoenas under the Commercial Arbitration Act, the provision of evidence to CAS. You also, by various rules of sports, have the power to compel the people involved in sport to cooperate with your investigations; that is quite common in the various sports. As it currently stands, ASADA will not have the power of those sports, although it would have the power under the Commercial Arbitration Act, if it were to prosecute for doping offences before CAS, to issue subpoenas for the production of evidence. But if it has that power to compel the production of documents at that stage, common legal sense would tell you that you want the information before you make a decision to go to, rather than when you are in front of, CAS.

**Senator LUNDY**—I take the point. Can you advise me on the legal point of evidence not collected in the preparation of the original finding by ASADA. Can that further evidence be introduced by way of subpoena during a CAS hearing?

**Mr Rofe**—It can be introduced before CAS, but you are forgetting that there is going to be—

**Senator LUNDY**—I am not forgetting; I am asking about the technical point.

**Mr Rofe**—There is a first stage review process, which is the AAT, where the AAT would be looking at a decision based on different evidence than CAS heard.

**Senator LUNDY**—That was my next question. If it can be brought forward during a CAS hearing, could it also, under the AAT powers, be brought forward to substantiate the case or to build up the evidence before the AAT?

**Mr Rofe**—We would like that.

**Senator LUNDY**—Is that possible?

**Mr Lyons**—I will probably have to take that question on notice, but as far as I am aware there is no provision in the AAT legislation which prevents it from only considering the evidence that was considered by the original body. I think there have been provisions in the telecommunications parts of the trade practices legislation which have for particular policy reasons said that you are restricted to the evidence that was looked at by the originating body, but that is not the case with the AAT. If the question was: would the AAT be able to look at evidence—

**Senator LUNDY**—Compel the production of evidence necessary to assist the prosecution before the tribunal.

**Mr Lyons**—I think there are two issues there. One is that it can again look at evidence that might have been brought up before CAS, if something goes to the AAT. On your second question, I think it is true to say that, because it is a general omnibus piece of legislation, the AAT does have powers in relation to summoning witnesses to appear and to provide documents.

**Senator LUNDY**—Going back to the substance of the complaint, my next question is: if those powers to compel do exist in a CAS hearing or, indeed, in an AAT hearing, my understanding of the concern is that those powers are not available to ASADA during the initial investigation and establishment of their original finding. To what degree does that weaken ASADA's capability in coming to a finding which sets off the whole process anyway?

**Mr Lyons**—As part of the funding agreements between the ASC and the sporting bodies, they will be required, as a condition of their funding, to cooperate, to have rules in place which require their athletes, their staff and themselves to cooperate with ASADA in its investigations. As Mr Rofe said, this is something the sports can do themselves.

**Senator LUNDY**—But it is a good faith arrangement, isn't it? Because there is no way that ASADA could compel those boards to help them prosecute one of their athletes.

**Mr Lyons**—There is in a sense. It is perhaps more than good faith in the sense that the bodies that refuse to cooperate will lose all funding from the government.

**Senator LUNDY**—But how will the government know that they have refused to cooperate?

**Mr Lyons**—Because ASADA will be going to those sporting bodies and athletes and asking for their cooperation, and if they refuse to cooperate ASADA will know.

**Senator LUNDY**—What is ASADA's mechanism for providing some accountability for that sport that refused to cooperate? Does that go on the register?

**Mr Lyons**—There are provisions in the bill for ASADA to report, which is one of its functions, to the Australian Sports Commission on those issues and to make recommendations in relation to action that the ASC may take under its funding agreements.

**Senator LUNDY**—Very importantly, you said 'the Sports Commission'. What about the department and the minister, given that has previously been an issue?

**Mr Lyons**—At the end of the day, the Sports Commission is the body that has the funding agreements with the sporting bodies, so it will have to legally be the body that makes those decisions.

**Senator LUNDY**—I know. With due respect, I know for one that I have suggested that there is a potential conflict of interest there for the Sports Commission. So what I am looking for is an accountability pathway between ASADA and sporting bodies that goes beyond the Australian Sports Commission because of the potential for perceived conflict of interest.

**Mr Lyons**—ASADA will be accountable for the reports that it has provided to the Australian Sports Commission in its annual report process. The minister is accountable for the operations of the Australian Sports Commission. The minister can issue directions to the Australian Sports Commission. So we are talking about extreme potential cases in which the minister would have the power to issue directions to the AOC on the policies and procedures it was applying.

**Senator LUNDY**—What about placing on the register—remembering that the register is not a public document; it is a register of all sorts of things—events of noncooperation with sports where ASADA has approached a sport and there has been no cooperation. That way there would be some sort of record within ASADA of the fact that there was no cooperation. I do not know whether that is possible, but it may be one way to introduce a greater level of accountability.

**Mr Lyons**—I have just been reminded of a particular provision. I am being well reminded here that the scheme must contain rules. As we said at the outset, it is not only anti-doping rules for athletes but also rules for sporting bodies. Authorise ASADA to monitor compliance, authorise ASADA to notify the AOC about the extent of compliance and authorise ASADA to publish reports about the extent of compliance. All I am saying, I suppose, is that the register we had in mind was about anti-doping rule violations by athletes. This is an accountable system for reports on sporting bodies.

**Senator LUNDY**—So ASADA could also decide that it is in the public interest that, if an event goes on the register about noncompliance of a sport, they could make that public—they could make that determination. But that is all yet to be resolved in the NAD Scheme.

**Mr Lyons**—Just as a technical point, it would not go on the register because the register is about athletes. It would be given a power to publish reports about the extent of compliance by sporting bodies. I think it would be accountable for what it published and for exercising that power.

**Senator LUNDY**—I think this would be a very important point.

**Senator RONALDSON**—We are really getting into policy areas now. I would just make the comment that we are talking about a body that does not have the right to prosecute in an outcome sense. These compulsion powers would represent a very, very significant increase in power. Whether we end up there in 12 months time, who knows, but my understanding is that WADA certainly does not support compulsion powers at this stage. My understanding is that the US and others do not have similar compulsion powers. I think it is a policy matter. I personally would have great concerns about a body that has no right of effective outcome prosecution having very extensive compulsion rights, I have to say. I think it is a policy matter.

**Mr Lyons**—You are right: it is a policy matter. You are right that those are the very issues that the government was considering when it made its decision.

**Senator LUNDY**—I am very pleased that Senator Ronaldson continues to concur with government policy on these matters.

**CHAIR**—Shall we move on to the next dot point? It is that the ASDA Bill has adopted definitions at variance with those in the world anti-doping code and in the UNESCO anti-doping conventions. Does anybody wish to comment on those points?

**Mr Rofe**—When we met with the department and with Mr Ings, we pointed out that we had raised these points in our submission in an attempt to assist the drafting of the document. I would like to think—and it is the way we talked about it a couple of weeks ago—that this was a matter that the draftsmen could take notice of and look at the drafting of the document, rather than it necessarily being a matter that should take up this committee's time.

**Mr Lyons**—The only comment I make from the department's perspective is that the definition of athletes is a technical drafting issue that we are discussing with the drafter. The other proviso I would make is that, for example, the definition of which athletes will be subject to the NADS is at the end of the day determined by NADS itself. Even if one were to adopt definitions entirely consistent with the WADA code there would be a certain circularity in doing so because the provisions would say that the athletes included any other athletes determined by the national anti-doping organisation, in this case, ASADA. So doing that would not provide an enormous amount of certainty.

Given that the NADS can define which class of athletes is going to be subject to ASADA's jurisdiction, we are looking at the issues that have been raised by the AOC: what technical amendments to the bill might be possible and, more particularly, what we might do to the NADS to cover off those issues and to provide certainty, perhaps even based on the current ASDA definitions. That will then allow ASADA to go through a more detailed consultation process if it wanted to vary the scheme.

**Senator LUNDY**—A couple of questions are raised there that I would like to pursue. Is there time to do that?

**CHAIR**—We have scheduled about two hours so I think there is time.

**Senator LUNDY**—Thank you. I am glad Mr Rofe made that point because it is well acknowledged that this has been prepared in some haste. I would presume that the government is open to making technical amendments necessary to sharpen up this bill. Sometimes it is not possible for the committee to go through the technical wording of the bill from start to finish as part of our deliberations, but we would presume that if the drafters of the bill found flaws that could be removed they would do so and that would form part of government amendments come consideration of this bill in the chamber. The committee would expect that these issues are being looked at—that these technical amendments would be fully considered and if deemed worthy we will see them in the chamber.

**Mr Lyons**—Yes.

**Senator LUNDY**—Thank you.

**CHAIR**—If that concludes the discussion of the specific concerns raised by the AOC we can move on to the functions of ASADA. There is a list of functions. I do not propose to go through them individually but perhaps if witnesses or senators have general concerns or specific points they would like to make they could do so.

**Senator LUNDY**—Does Senator Wortley have any questions before we move on? I also have a couple of questions I would like to put to Mr Fullagar.

**CHAIR**—Senator Wortley has not indicated that she wishes to ask a question at this stage, but I presume she is there.

**Senator WORTLEY**—I am. Every now and then the sound does drop out and that is making it difficult to know whether some of the questions have been asked. I cannot always hear the response that people are giving.

**CHAIR**—That is unfortunate. Are you on a video link or a telephone conference call?

**Senator WORTLEY**—I am on a telephone conference call. I am not able to hear some of the other senators' questions.

**CHAIR**—If you wish to ask a question you are welcome to do so. I ask my colleagues to speak up so that Senator Wortley can hear you. We can now move on to the functions of ASADA. Would anybody like to make any general comments?

**Senator LUNDY**—Before we do, I have a couple of questions to Mr Fullagar, who has raised some issues on behalf of some NSOs. Can I do that before we move on?

**CHAIR**—Are they in relation to the AOC issues? There is a section at the end of this agenda for other business. What I would like to do is complete the agenda and then we can go to other issues if that is possible.

**Senator LUNDY**—That is fine, Chair. There are a couple of points specifically raised in the submission that I would like to pursue, and we should have time at the end, so I will do that then.

**CHAIR**—Let us deal with the functions of ASADA. Does anybody have any comments on the proposed functions of this body that they would like to put before the committee? Are you

satisfied with the list of functions? Do you think there should be added functions, or is the scope too wide?

**Senator LUNDY**—Chair, I placed on the record earlier a question to the department about what functions have been extracted from the ASDA Act for determination under the NAD Scheme. The answer to that question would give me a lot of guidance to explore the detail. So, as the opposition has said previously, it is very difficult to get to the heart asking an open question like ‘What should be included?’ when we have not been specifically advised what will be included under the NAD Scheme. I do not profess to be an expert at law in these areas, and I know my colleagues do not either, so it is unrealistic to think that we would be able to cherry-pick the issues. I would prefer to take guidance from those who have, given the short time, found concerns of their own and again note to the committee that there are some bodies representing various organisations, including athletes and players, who would have preferred that detail in order to prepare more comprehensive comments. It is difficult. I am happy to muddle through this, but I would not want my lack of questions interpreted as my not being interested in that detail. It is very difficult for the committee to ask questions about something we have not seen.

**CHAIR**—I remind the committee that the NAD Scheme is the next item on the agenda. Right now we are dealing with the functions of ASADA. Could we have comments on the functions of ASADA; then we will move to the NAD scheme. Senator Ronaldson, do you have any questions or comments?

**Senator RONALDSON**—No. I will go straight to the NAD Scheme if nobody else has any queries.

**Senator LUNDY**—I did raise some questions previously.

**CHAIR**—Senator Wortley, do you have any questions?

**Senator WORTLEY**—No, I do not have any questions at this stage.

**CHAIR**—Senator Siewert?

**Senator SIEWERT**—I do not know if my question is appropriate here, but it relates back to the issue of the independent review being nonstatutory. Is it best to ask it here or at the end?

**CHAIR**—Probably at the end.

**Senator SIEWERT**—I will ask it at the end.

**CHAIR**—It is a fair comment to say that the committee accepts the list of functions of ASADA without comment. We now move on to the national anti-doping scheme.

**Mr Ings**—I want to make a very brief comment on the functions. I point out to the committee that it is a significant list of functions. This is a significant change from the functions of ASDA. The new powers of prosecution and investigation bring a whole new focus to the authority going forward. As I reiterated earlier, the focus that we have going through is to treat this as a start-up—not just having a couple of desks in the corner but looking at all of these new functions and building an integrated, holistic approach to anti-doping. Our goal with ASADA is to develop an authority which will really effectively drive pure performance in Australian sport. We are looking to inspire confidence in athletes and the public with the outcomes that we achieve.

**Senator LUNDY**—I would also like to make a comment on the list of functions.

**CHAIR**—Please proceed.

**Senator LUNDY**—I wanted to note for the sake of the committee's investigations that the expansion of the powers of ASDA—now ASADA—upon the passage of this bill arises as a result of an ongoing perceived lack of power of ASDA to be able to conduct investigations. This was certainly brought to a head by the Anderson investigation of the Cycling Australia matter. I am pleased to see that this expansion of powers does in fact address some of the concerns the Labor opposition have previously raised in our policies—indeed, that the AOC has raised for some time now—and that the government is responding with this bill.

**CHAIR**—Thank you. The government will take note of your comments. We will move on to the National Anti-Doping Scheme—that is the next heading. I invite comment on that from the department first.

**Mr Lyons**—I appreciate some of the concerns that have been raised today at the committee about taking things on trust and the NAD Scheme, and I do not diminish from those issues that people have raised, but it is probably worth while reiterating that the bill itself—or the act as it is proposed—does set out what must be in the NAD Scheme. It sets out all the core elements of the NAD Scheme. I think the question then becomes: would you want all the things that should be dealt with under this legislation in the primary act? If you look, for example, at the detailed rules that ASADA has under its drug-testing scheme, there are many pages. You would have a very large and inflexible piece of primary legislation which would require constant amendment. That is the rationale for having a scheme and a piece of legislation that says what must be in it, what powers must be in it and what functions must be performed under it.

The intention, as I said before, is to get the core elements of the scheme in place and to carry over the existing ASDA drug-testing provisions. Then ASADA would undertake a process of full public consultation before any modifications were made to the scheme and look at issues like fleshing out the details of the scheme and working with the sporting bodies to flesh those details out. The government's intention is to establish ASADA as soon as possible, and this provides a mechanism by which that can happen.

**Senator LUNDY**—Thank you for that. Can I ask you specifically about the transition arrangements and also to go back to the question I asked earlier, which was not answered in full, about the timing of the detail of this scheme? Because these bills establish the framework, there will be some overlap, if my understanding is correct. Could you step the committee through the timing and then address the issue of the transition process?

**Senator RONALDSON**—There was not an answer because the chair put it over to the section.

**Senator LUNDY**—That is right.

**Mr Lyons**—I do not think that the regulations will be fully drafted and available to the committee before it reports on 7 February. We will be able to provide information to the committee about what will be contained in the regulation, but it is a drafting issue. Some of the technicality comes about by having to modify the existing ASDA scheme provisions and place them in the context of the new National Anti-Doping Scheme—this new framework—

and replace references et cetera. There is a lot of technical drafting involved, and I could not say that a draft would be available for the committee before it reports. What I have said I will do is look at providing you with as much information as we can about what will be in the scheme and what sorts of issues will be covered.

If I may be bold and assume, for the sake of the timetable, passage of the bill through both houses of parliament, then the steps of transition that would follow that would be that royal assent would be sought for the bill from the Governor-General, at which time the bill would become an act. At the time the bill became an act, the effect of the transitional provisions, as I understand them in the legislation, is that ASDA would continue to survive as a body for the purpose of administering the current ASDA legislation.

The appointments could be made for the chair and the remaining members of the board of ASADA and the regulations could be made under that act, in which case we are talking the NAD Scheme itself. It could be made as soon as the bill receives royal assent. Then a date would need to be set by proclamation. My understanding is that as soon as the date is proclaimed for the full operations of ASADA, then ASADA would effectively exist and subsume all the existing functions of ASDA.

There is a series of fairly complex transitional provisions which effectively enable ASADA to continue ASDA's functions in relation to matters which started before proclamation and before commencement. If, for example, someone had been tested before commencement, then ASADA would act as ASDA for the purpose of continuing those old procedures. There are a series of other provisions which enable the smooth transition between ASDA and ASADA.

**Senator LUNDY**—Is there a date for proclamation in the bill?

**Mr Lyons**—The effective operational provisions of the bill will come into place on a date to be proclaimed. If that date is not proclaimed within six months then, in accordance with the usual standard drafting, it will come into place anyway. In terms of the date of proclamation, the government wants to establish ASADA as soon as possible. I think the minister has indicated he would like it to be established before the Commonwealth Games. The exact date for the operation of ASADA will have to be a decision made by the government and by the minister.

**Senator RONALDSON**—I appreciate you will not be able to give us a detailed list before we report, but it would be useful I think to have some indication about the department's and the minister's views of the matters we have discussed here today where there has been some general agreement about possible outcomes. Could you also take up Senator Lundy's point about what might be in and what might be out from an ASDA point of view. I know it is an exhaustive list, but I think that should be a starting point when you come back to the committee.

**Mr Lyons**—I agree. That is certainly what we had in mind. We need to go to the minister on some of these issues.

**Senator LUNDY**—There is a list in the bill that the scheme must cover. Are you able to advise the committee, of those issues, which are to be determined by the existing WADA code and which are to be determined by government policy?

**Mr Lyons**—The scheme has to be made for the purposes of implementing the international convention. The way the bill was drafted, it happened to be that the only international convention that was binding and had been entered into was I think the Council of Europe convention. Australia has since ratified the UNESCO Anti-Doping Convention. It has lodged its ratification, but the convention only comes into force when 30 countries have done so. I have not received any notice yet that that trigger has been met, although it is expected to be met imminently.

**Mr Isaacs**—We have six ratifications from countries at the moment, so we have 24 to go before the convention comes into force.

**Mr Lyons**—We do have general statements by a lot of countries that they intend to ratify—going through their own formal processes is what is causing the delay. The government's intention is that the NAD Scheme be consistent with this UNESCO convention. The UNESCO convention commits Australia—and Australia has ratified it; it is just not in force yet—to implementing the WADA code. The government's policy—in fact, its soon to be binding international legal obligation, at least—is to have a National Anti-Doping Scheme that will be consistent with this framework about what must be in there, but the details will be consistent with the WADA code.

**Senator LUNDY**—Sorry—I took that for granted. My question goes more to the sorts of issues that we have been discussing today. The WADA code makes a need for the provisions as they are described in the bill, but the detail surrounding the application or the working model of those roles and powers is really what I am asking about. Have you identified a group of those that does require a policy decision from government or has the government indeed made a policy decision on some of that detail that you are able to advise the committee on in anticipation of the details of the NAD scheme?

**Mr Lyons**—To be honest, I am not sure that I really understand your question.

**Senator LUNDY**—I am really asking if there have been any specific government decisions that add the detail to the requirements of the NAD scheme that you are able to use this time to tell us about.

**Mr Lyons**—To a large extent, the national anti-doping scheme, subject to the minister's approval, would carry over a lot of the existing ASDA material, as I said. The core elements of this would be put in place in a way that is consistent with the WADA code. We do not see a lot of big, high-level policy issues that would need to be resolved for the NAD scheme to be put in place. That is not to say that there are not a lot of detailed issues that the sporting bodies themselves would not want to raise with ASDA. They may say, 'Let's sit down, work all of these details through and flesh out more details, procedures and protocols et cetera.' But the basic rules, we think, will be in the NAD scheme. Some of the issues that people have raised which would require a policy decision by government and which could possibly be addressed in the NAD scheme include issues like the definition of 'athlete' and conditions on the public disclosure of information.

**Senator RONALDSON**—There are no government policies that you are aware of that are not reflected in the draft bill—is that right?

**Mr Lyons**—That is right.

**Senator SIEWERT**—I have two questions. One of them is around timing. You said that the idea would be to get ASADA in place before the Commonwealth Games. But surely the scheme will not be in place before that given the requirement for consultation?

**Mr Lyons**—The bill has been drafted in a way which would allow that to happen. In the way the bill is drafted, the first scheme—the national anti-doping scheme—initially would be made by regulations by the Governor-General on the advice of the minister. The capacity to make those regulations would exist as soon as the act receives royal assent. It is completely a matter for the government to decide on the timing of those regulations, but they could be made at any time legally after the bill gets royal assent. The regulations could be made and the NAD scheme could be made. What the bill then envisages is that these core elements of the scheme would be put in place and the existing ASADA stuff would be carried over, then ASADA would carry out a more detailed process of consultation with stakeholders to flesh out the details of the scheme. In doing that, ASADA would be obliged to enter into an extensive consultation process.

**Senator SIEWERT**—So what you are saying is that the first scheme will be done purely by regulation with no consultation with anybody and then after that there will be a consultation process?

**Mr Lyons**—Yes. There have been some general discussions with sporting bodies about what is likely to be contained in the initial scheme and a commitment to more extensive consultation in fleshing out the details of the scheme, but there is no statutory requirement for consultation before the initial scheme is made—you are right.

**Senator SIEWERT**—You say in your submission that ASADA will be required to publish a draft instrument and invite submissions et cetera. That is in the second dot point on page 8. But what you are saying is that that kicks in after the first round?

**Mr Lyons**—That is right. That statement has to be read in the context that ASADA has the power to vary the scheme but before it can vary the scheme it needs to go through an extensive public consultation process. That sentence you read out was in the context of an ASADA power to vary the scheme.

**Mr Rofe**—Australian sport has a lot riding on the NAD scheme. I would like to suggest that discussion with at least the key personnel in Australian sport around this area for quite a number of years could assist ASADA and the draftsmen in getting the NAD scheme right—or as right as it possibly can be, given the time constraints—before it is introduced.

**Mr Lyons**—And that is certainly an issue that would be considered.

**Senator SIEWERT**—I must say that that is a concern of mine. By rushing this, there is the potential that we will entrench some problems that will be hard to overcome, given the legislative process that will take place after that.

**Senator RONALDSON**—It is a disallowable instrument, so there will be some opportunities—

**Mr Lyons**—It is a disallowable instrument and it will be subject to parliamentary scrutiny, but we do take the point about the offer from Mr Rofe. We will raise the issue of what consultation we can have to achieve that outcome.

**CHAIR**—Any other comments?

**Senator RONALDSON**—Given that it is a quarter past two, I am reluctant to open this up, but I feel obligated to. Who is right in relation to the post-regulation regime for the powers of the organisation? The AOC alleges that it is an unfettered power under part 10, and I think the department says that under part 11 of the bill it is not unfettered; it has to be full consultation. Who is right?

**CHAIR**—Is your question in reference to the NAD scheme?

**Senator RONALDSON**—I suppose, in a subtle way, it is.

**CHAIR**—Let us be a little bit subtle too, and deal with the Australian Sports Drug Medical Advisory Committee quickly. Then we can come back to your question. Are there any points anybody wishes to make about ASDMAC?

**Senator LUNDY**—Can you outline the transition arrangements for the role of ASDMAC?

**Mr Isaacs**—The role of ASDMAC as it currently exists would continue to be carried out under the umbrella of ASADA, so ASDMAC comes over to ASADA as a going concern with its existing role, its existing appointees and its existing powers and functions.

**Senator LUNDY**—So any work being conducted by ASDMAC will also continue to be considered in the transition arrangements that were described earlier?

**Mr Isaacs**—Yes. As I understand it, they are transition arrangements similar to the work of ASDA. Where ASDMAC has started a matter, it is able to continue under ASADA.

**Senator LUNDY**—What are the differences, in the appointment and terms of members of that committee, between the ASDMAC legislation and the ASADA legislation?

**Mr Isaacs**—From recollection, there is no difference in the terms of appointment of committee members. As I say, we just carried it over as a going concern.

**Mr Lyons**—There is an automatic transition of their appointment term from the old to the new.

**Senator LUNDY**—And that is in the bill, not in the scheme?

**Mr Isaacs**—That is probably in the consequential and transitional provisions bill.

**Mr Lyons**—Clause 11, schedule 2 of the consequential and transitional provisions bill provides for the automatic reappointment of ASDMAC members and the automatic reappointment of the ASDMAC chair, with the terms of their residual appointment which would otherwise have been the case.

**Senator LUNDY**—Their employment technically ceases, but they are immediately reappointed under the provisions of the act?

**Mr Lyons**—Yes.

**Senator RONALDSON**—I alluded to the fact that the AOC was concerned about ASADA's consultation, or lack thereof, in a post-regulation regime—that is on page 2 of the submission at point (1). The department has said under clause 11 that there will still be full requirements for changes. I do not know whether Mr Rofe or the AOC were talking about the

regs. I understood from his submission that it was the post-regulation regime. It just seems to be a bit at odds. Mr Lyons, if you have a response to that, I would be grateful.

**Mr Lyons**—I am trying to identify the particular concern raised by—

**Senator RONALDSON**—It is on page 2. Do you have a copy of the AOC's submission?

**Mr Lyons**—Yes, I have.

**Senator RONALDSON**—It is on page 2, where it says, 'I now address each of these points.' The second paragraph of point (1) says:

While the initial NAD Scheme is by way of regulations, when regard is had to section 10(1) of the Legislative Instruments Act 2003, it is apparent that ASADA will have the power to itself amend the NAD Scheme. Consequently, ASADA will have the power and ability to itself determine its own functions with the only limitation being a legal challenge that its interpretation ... is outside the perimeters ...

You address that in your submission—

**Mr Lyons**—Yes, and I am happy to comment on it.

**Senator RONALDSON**—at the top of page 6.

**Mr Lyons**—There are perhaps a couple of points to make. My understanding is that that provision was put in there to avoid legal doubt, so that when ASADA got around to making the details of the NAD scheme, there was not some technical legal argument that said, 'This NAD scheme includes things that are not specifically mentioned in the list of functions of ASADA, and therefore you are acting outside the functions of ASADA.' It was recognised that the details of the scheme would need to include operational and procedural issues which could be seen to be functions of ASADA.

ASADA definitely has a power to vary the scheme and it is definitely true to say that the way the bill has been drafted allows, at least at a technical level, functions to be conferred under the scheme. However, in any legal sense that ASADA might be seen to have conferred additional functions, it firstly needs to be kept in mind that those variations to the NAD scheme not only have to go through a public consultation process, but more particularly are subject to parliamentary disallowance. Secondly, the fundamental limitation on the scope of the NAD scheme and the functions that could be conferred on ASADA under a NAD scheme, is that the scheme has to be made for the purpose of implementing an international anti-doping convention. In this case it is the UNESCO convention that the government has bound itself to internationally. So it has to be for the purpose of implementing the UNESCO convention, which is in turn a commitment to implement the WADA code.

**Senator RONALDSON**—So are you saying that, whatever the circuitous route might be, it will end up back having some legislative oversight?

**Mr Lyons**—Yes, there will be legislative oversight of the scheme through parliamentary scrutiny, and there will be a legal limit and safeguard on the extent of what can be included in the NAD scheme, because, at the end of the day, it is going to have to be consistent with the wider code.

**Mr Rofe**—I can only go back to the section in question. It does talk of—and we have acknowledged this in the submission—the implementation of the two conventions, but it then

goes on to talk of ancillary or incidental matters. I do not pretend to be an expert in government procedures and the like, but I am aware that under the act there will be the power for the Attorney-General, if I remember correctly, to disallow any of the instruments that are made. But my concern is that that is a bit like shutting the barn door after the horse has bolted. The amendment is made and then it is declared to be excessive or to contravene any supervisory rules, rather than making sure that it complies with them before you have the review.

**Mr Lyons**—Certainly, it does need to be there for the record that this scheme is a legislative instrument and is subject to tabling and to disallowance, so there is no doubt that ASADA, after going through the statutory public consultation process, must arrange for the scheme to be tabled and to be subject to disallowance.

**Senator RONALDSON**—I was concerned, having read the AOC submission. I assumed from what you had said that it was ending up back here. If that is where it is at then perhaps, Mr Rofe, your legal advisers have a different view?

**Mr Rofe**—I think you are looking at him, Senator.

**Senator RONALDSON**—It is the old saying that a person who acts for themselves has a fool for a client, is it?

**Mr Rofe**—You were a solicitor, weren't you, Senator?

**Senator RONALDSON**—I was indeed. I rarely acted for myself. That is a very important point. If you still have some concerns about that after further discussions with the department then I think the committee would—and I certainly would—want to hear them.

**Mr Rofe**—I will have a look at this and I will have a talk within the AOC too. If we do have further concerns, we will communicate with Mr Lyons and Mr Isaacs and, of course, with the committee.

**Senator LUNDY**—I make the point that, as far as process in the chamber with respect to a disallowable instrument, that process does not permit specific amendments to that instrument. It provides, if there is concern about that instrument—unless the government believes that the whole instrument should be removed, restarted and re-amended to fix some small but important problems in the whole document—for that to be done, but it prevents the chamber from making the sorts of amendments that we could make to the bill upon its passage. That issue of process through the chamber is one that the opposition is extremely conscious of. We do not get the same opportunity to finetune and pursue specific amendments through the committee stage et cetera to a disallowable instrument that we have the opportunity to with the bill itself. That is of concern to us. We have expressed that concern previously and we express it again.

**Senator SIEWERT**—I concur with Senator Lundy on that. I would like to go back to the issue of the regulations and seek some assurance for the committee that the department will provide an outline of the consultation process that will be undertaken with the initial regulations. They seem to me to be critical, and we need an assurance that there will be adequate consultation with the relevant people because, outside of that, they will not go through the legislative process, even the disallowable instrument process. So there will be no way that the community, through the parliament, can have any say on those regulations.

**Mr Lyons**—We will certainly take that on notice, Senator.

**Senator LUNDY**—Could you also take on notice that the reality of the situation is that, when the scheme is presented to the parliament as a regulation and, therefore, laid on the table to permit disallowance, any flaws, any delay or any disallowance of that new scheme would result in a substantive delay in the introduction of the new scheme. That is something that concerns me very greatly. There is a great deal of weight, of responsibility, on the government to come up with a scheme that is widely consulted. I know every senator on this committee would like far greater opportunity to be involved and to express a view. As I mentioned before, there are various players' associations, particularly the AFL Players Association, which I would nominate now as an organisation worthy of close consultation in the preparation of that scheme. It is very clear to me that when we are presented with this scheme with the minister's stated objective of having at least these bills and an ASADA operation, if not the new scheme, by the Commonwealth Games, there is every compelling reason in the world just to push it through and not disallow it. That places a great weight on the Howard government to get this right the first time around. I think my colleagues Senators Siewert and Wortley are very conscious of this fact.

**Mr Lyons**—Thank you.

**Senator WORTLEY**—I support what Senator Lundy has just said. It is crucial that that is taken into consideration.

**Senator RONALDSON**—I am very pleased that the point I have raised has been taken up with such passion by the opposition.

**Senator LUNDY**—Needless to say, it is not the first time, Senator Ronaldson. If you had listened to estimates previously—

**Senator RONALDSON**—But I would ask the question anyway. Good outcome!

**Senator LUNDY**—This is a consistent concern, particularly in relation to the timing of this bill. We have always felt that the recommendations coming from the Anderson inquiry that had led to the drafting were belated, and we have called on the government prior to this point to hurry up with the government policy.

**Senator RONALDSON**—Come on; don't worry about a political speech. Let's get on with it.

**Senator LUNDY**—You opened the door, Senator. I do have a couple of questions for Mr Fullagar. First of all, just going back to your submission, can I ask you: have your concerns about definitions of athletes as participants and of sporting competitions and sporting events been addressed, or do those concerns still stand?

**Mr Fullagar**—They are similar to the AOC's concerns, in terms of tying it back with the definitions in the code and the convention. I think the department has answered that: they are being reviewed by the parliamentary draftsmen and we will revisit those definitions when we get some feedback on that.

**Senator LUNDY**—Thank you for that. You also raised questions about who can represent a sporting organisation. We have seen in the past some crossovers between international and national sporting organisations and their roles in the implementation of the WADA code, or

indeed the sport's own sanctions. Can you comment on how you think the bill addresses the issues of national sporting organisation representation in a CAS hearing or an investigation by ASADA? Are they separate legal entities or can an NSO—perhaps to give you a working example—effectively represent the international sporting organisation in an investigation or a hearing?

**Mr Fullagar**—I think the answer to that is yes, if the international federation directs or asks the NSO to do so. It would be subject to the national federation's rules. Our position is, as I put it before, that if the NSOs authorise or delegate their anti-doping function to ASADA, I think the bill—and I think the AOC also made this point—is deficient in that it does not recognise the position of IFs and how that may impact on NSOs and how their rule framework operates. Currently, the policy framework in Australia recognises the interplay with international federation rules because it all sits under the WADA code. I think the bill and the scheme will reflect the code more clearly. Certainly, the sporting body administration rules, as I said in my submission, should be very short and just recognise the key principles of the code. We do not need a 160-clause policy—the current policy is long enough and the NSOs struggle with it—but with a 160-plus clause policy they will be pushing it to ASADA in droves.

**Senator LUNDY**—Are national sporting organisations—or at least the ones that you represent—hoping that this will clarify to a large extent the application of the WADA code and tidy up their own administration of the code and the associated laws? Are they optimistic about that, or are they concerned?

**Mr Fullagar**—I think they are concerned that there is going to be a whole new policy framework being imposed on them again. As I said, just over the last year they have at last finalised coming on board with the WADA code under the commission's policy position. So that is a concern. But, as I said in my submission, I think a number of NSOs will be more than happy to relinquish their anti-doping function to ASADA. There will be some—as I think the NRL expressed and the AFL will probably similarly express—that will fight tooth and nail and not want to give away any control over their anti-doping functions. There will be specific sporting administration body rules to address those organisations. As Mr Rofe said, there will probably be a number of templates, unfortunately, which will only create confusion. So they want clarity, but hopefully clarity will be that they can give away that function and not have to run with it anymore.

**Senator LUNDY**—I was concerned to see in your submission that you are concerned that this compulsion to provide information during an investigation by ASADA might impose a financial burden on national sporting organisations. You expressed concern about that. Surely that is part of the organisation's responsibilities in fulfilling its requirements under the WADA code?

**Mr Fullagar**—There is a section in the bill that empowers ASADA to charge fees for its services. I would have thought that, if an NSO delegates its anti-doping function to ASADA and ASADA investigates, prosecutes and runs a matter before CAS and the NSO simply comes along and watches or puts in its own submission before CAS, it should not be charged anything for that. Again, this is an opportunity for sport. I think, as Simon mentioned earlier, it is an expense upon sport to participate in these things at the direction of government. If

government is willing to assume those functions on sport, that then frees up sports dollars to focus on sport.

**Senator LUNDY**—Could Mr Ings or the department take on notice a response to that point.

**Mr Ings**—We will take that question on notice.

**CHAIR**—As there are no more questions, I thank the witnesses for appearing. I thank Hansard, the committee secretariat and the senators for being involved in this hearing today.

**Committee adjourned at 2.36 pm**