

# Chapter 3

## The duty of care and ethical obligations of sports scientists

*Athletes do utilise sports science and it does benefit their performance and aid in their ability to reach their optimum as high-performing athletes. But they also deserve the protection against those who might seek to put other interests ahead of the welfare of those athletes.<sup>1</sup>*

### Introduction

3.1 The previous chapter identified the protection of athlete health and welfare as the overriding priority in the pursuit of improved sporting performance. Up to a point, there will be a strong correlation between the two: an athlete's wellbeing will contribute to high performance; and high performance will in turn provide health benefits for the athlete. There is, however, a point at which the pursuit of high performance through 'cutting-edge' practices can compromise an athlete's health. This chapter discusses the duty of care that sports scientists have to athletes, and the ethical obligations they have to protect and promote the spirit of sport.

### Duty of care of sports scientists to athletes

3.2 Government bodies, sporting organisations, player associations, professional membership bodies and academics are all united in their view that athlete health and welfare must be the overriding priority in the pursuit of high performance. However, their arguments in reaching and interpreting this position differed somewhat.

3.3 The Australian Olympic Committee argued that it is 'imperative that sports scientists have a duty of care to the athletes they work with' in order to protect the health and welfare of athletes.<sup>2</sup>

3.4 The Australian Sports Commission (ASC) submitted that the Australian Institute of Sport (one of the ASC's divisions) 'prides itself on placing athlete welfare above all other considerations and all its sports scientists have a duty of care to athletes'.<sup>3</sup>

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1 Mr Matthew Finnis, Director, Australian Athletes' Alliance, *Proof Committee Hansard*, 12 June 2013, p. 61.

2 Australian Olympic Committee, *Submission 12*, p. 4.

3 Australian Sports Commission, *Submission 17*, p. 4.

3.5 The Australasian College of Sports Physicians (ACSP) submitted that 'all sports scientists involved in the health and wellbeing of athletes have a duty of care to those athletes'. The College saw this duty of care as ensuring that:

- any research using athletes conforms with accepted standards of scientific and ethical rigour;
- athletes are not used as experimental models for untested practices or substances;
- any methods or substances which expose the athlete to the possibility of an anti-doping rule violation are avoided; and
- any dietary or nutritional supplements provided or prescribed are safe and efficacious.<sup>4</sup>

3.6 The Australian Athletes' Alliance (AAA), which represents the various player associations, argued that people who are in positions of responsibility within clubs have a duty to players. Mr Matthew Finnis, Director of the AAA, told the committee that players place trust in clubs 'to do not only what is right by the players in terms of the rules but also what is actually best for the players in terms of their broader health and wellbeing'.<sup>5</sup> In its submission to this inquiry, the AAA referred to the principle that:

Athletes want workplaces that protect player health and safety, while affording them access to the best practices of qualified sports scientists working within strict professional and ethical guidelines.<sup>6</sup>

3.7 Following the release of the Australian Crime Commission's (ACC) report in February 2013, the AAA issued a statement expressing alarm at:

... the finding that, in some instances, athletes have inadvertently become scientific guinea pigs. Those responsible for threatening the health and careers of players in this way must be held to the highest standards of the law.<sup>7</sup>

3.8 Academics have pointed to the ACC report as the basis for reforms to re-establish the central tenet of duty of care to athletes. Dr Jason Mazanov from the University of New South Wales, Canberra, argued in his submission that the ACC report 'has pointed to the very real human element to sports production. In essence, the

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4 Australasian College of Sports Physicians, *Submission 10*, p. 3.

5 Mr Matthew Finnis, Director, Australian Athletes' Alliance, *Proof Committee Hansard*, 12 June 2013, p. 62.

6 Australian Athletes' Alliance, *Submission 18*, p. 1.

7 Australian Athletes' Alliance, Media Release: 'Australia's Players' Associations Respond to Organised Crime and Drugs in Sport Report', 7 February 2013, <http://www.athletesalliance.org.au/files/AAA%20Media%20Release%20Org%20Crime%20in%20Sport%207%20Feb%202013.pdf> (accessed 29 May 2013).

ACC report points to the need for Australian sport to evolve'.<sup>8</sup> Arguing for athlete health and welfare to be the primary concern, he elaborated:

Sport only functions as a positive force in society when those who participate find value, whether athletes, administrators, trainers, scientists or fans. It is incumbent upon Australians to value the people who make sport happen.<sup>9</sup>

3.9 Dr Robin J Willcourt, a sports scientist, wrote in his submission:

No player should be put at risk. Furthermore, no player should have to [bear] the consequences of rogue behaviour of its medical team, as is the current case. It is preposterous that we insist that each player be responsible for his/her 'treatments'. That is not expected of any patient/doctor interaction elsewhere and it should not be here.<sup>10</sup>

3.10 On this point, the National Rugby League (NRL) was somewhat guarded:

Where a sports scientist provides services to players at the direction of an employer club, there is plainly a duty of care owed to the players in connection with those services by the employer. The professional nature of the services being provided also raises a real issue as to whether the sports scientist owes a separate duty of care to the athletes, in the same way as a medical practitioner does. The NRL believes that focusing on this, and making sure that sports scientists are appropriately insured, will be an important factor in raising professional standards.<sup>11</sup>

Ultimately, the NRL considered that the duty of care is the responsibility of clubs as employers.<sup>12</sup>

3.11 Exercise & Sport Science Australia (ESSA) offered the following, broader context in which a sports scientist's duty of care should be considered:

In today's sporting landscape most player contracts have provisions permitting termination of a contract for reasons relating to player conduct and bringing the club, game and sponsors into disrepute. It is also much more likely that a club/player will suffer significant reputational damage if they are in any way linked to or at least suspected of unethical conduct, such as the taking of illegal performance enhancing substances.

Any sport scientist who plays a role in administering such a program may well be seen to be breaching his or her duty of care to an athlete or club in

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8 Dr Jason Mazanov, *Submission 1*, p. 10.

9 Dr Jason Mazanov, *Submission 1*, p. 10.

10 Dr Robin J Willcourt, *Submission 1*, p. 2.

11 National Rugby League, *Submission 15*, p. 5.

12 National Rugby League, *Submission 15*, p. 5.

such matters where they do so without any or any proper informed consent or direction.

Given that the playing careers of most professional footballers in Australia is not much greater than 10 years, the reputation of the player is a priority concern to the players, officials and fans alike because any loss of reputation is likely to mean a drop of value in what is already a very competitive marketplace.<sup>13</sup>

3.12 Accordingly, ESSA argued that 'while the duty of care owed by sports scientist to athletes exists, more is required to positively promote ethical practice'.<sup>14</sup>

### *The ESSA Code*

3.13 Membership of ESSA requires acceptance of the ESSA Code of Professional Conduct and Ethical Practice (the ESSA Code). The code is a key document in promoting the health and welfare of athletes in a sports science context. It states:

Clients must not be subjected to undue risk prior to, during and following testing procedures, exercise or treatments prescribed by an exercise and sports science professional.<sup>15</sup>

3.14 According to the ESSA Code, ESSA's members are expected to:

... maintain professional objectivity and integrity; to apply professional knowledge and skills to all work undertaken; to actively seek the objective of advancement of knowledge; and to respect the cultural environment in which they work.<sup>16</sup>

3.15 In a media release dated 22 March 2013, ESSA stated that:

... sport scientists who are a member of ESSA are bound by a code of ethics, and the protection of a client's welfare is central to that code. The notion of 'do no harm' that governs medical practice, also governs the practices of a sport scientist. ESSA would be very pleased to work with the AFL (and other sports) to ensure that this code of ethics meets the rapidly-change sporting landscape.<sup>17</sup>

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13 Exercise & Sports Science Australia, *Submission 7*, p. 12.

14 Exercise & Sports Science Australia, *Submission 7*, p. 12.

15 Exercise & Sports Science Australia, *Code of Professional Conduct and Ethical Practice*, Version 2, p. 8.

16 Exercise & Sports Science Australia, *Code of Professional Conduct and Ethical Practice*, Version 2, p. 6.

17 Exercise & Sports Science Australia, Media Release: 'ESSA's response to the role of sport scientists in the AFL', 22 March 2012, <http://www.essa.org.au/for-media/essa-in-the-media/?cpid=7557> (accessed 23 March 2013).

3.16 In 2013, ESSA reviewed its Code and the scope of practice to ensure that the work of sports scientists was adequately covered.<sup>18</sup> ESSA released Version 2 of its Code shortly before this inquiry's public hearing.

3.17 Sports Medicine Australia (SMA)—an umbrella body which brings together several groups including ESSA—identified the ESSA Code as 'the most relevant code for sport scientists currently operating within the industry'.<sup>19</sup> SMA noted, however, that:

What has become apparent in a number of the recent incidents involving questionable athlete performance enhancement methods by purported sport scientists, has been the lack of accountability to such a code which may have provided some reference point for employers, athletes and the practitioners involved.<sup>20</sup>

3.18 As chapter 3 of this report notes, the voluntary nature of ESSA membership for individuals operating as sports scientists means that no mandated duty of care currently exists for sports scientists. Dr Michael Burke, Senior Lecturer, School of Sport and Exercise Science at Victoria University, noted:

Medical doctors have legal duties and responsibilities to assist their decision making. But for sports scientists, accreditation with their peak body [ESSA] is voluntary and not a requirement for paid work with elite sporting clubs.<sup>21</sup>

3.19 Dr Brian Morton, Chairman of the Australian Medical Association's Council of General Practice, has also drawn a parallel to the ethical professional standards of doctors and medical staff. It would not be acceptable, he said, 'if the patient is not fully aware of what they're taking'.<sup>22</sup>

3.20 The Coalition of Major Professional & Participation Sports (COMPPS) supported the 'formulation of a duty of care for sports scientists, using ESSA's Code as a guide which recognises the paramountcy of athlete welfare'.<sup>23</sup>

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18 Exercise & Sports Science Australia, *Annual Report 2012*, p. 15, <http://www.essa.org.au/wp/wp-content/uploads/Annual-Report-2012-low-res.pdf> (accessed 21 May 2013).

19 Sports Medicine Australia, *Submission 5*, p. 4.

20 Sports Medicine Australia, *Submission 5*, p. 4.

21 Dr Michael Burke, 'Embedded sports scientists and doctors walk an ethical tightrope', *The Conversation*, 9 February 2013.

22 Mr Rick Morton, "'Dodgy" scientists outside the rules', *The Australian*, 8 February 2013.

23 Coalition of Major Professional & Participation Sports, *Submission 9*, p. 10.

## **Ethical obligations of sports scientists in relation to protecting and promoting the spirit of sport**

### *The spirit of sport*

3.21 COMPPS submitted that the 'spirit of sport' is a difficult concept to define.<sup>24</sup> However, it noted that at the fundamental level the spirit of sport 'seeks to identify sport at its best and use that as a standard for all participants'.<sup>25</sup>

3.22 The National Institute Network (NIN) submitted that:

Sport scientists work with their athletes' conflicting priorities (eg. winning, making money, entertaining, health and wellbeing, fair play) in their effort to promote the spirit of sport. In the NIN, concepts such as long term athlete development, health and wellbeing, and the health of the sport are primary concerns of sport scientists, and balanced carefully against other values and outcomes such as winning.<sup>26</sup>

3.23 The World Anti-Doping Agency (WADA) refers to the spirit of sport as being what is intrinsically valuable about sport:

... it is the essence of Olympism; it is how we play true. The spirit of sport is the celebration of the human spirit, body and mind.<sup>27</sup>

3.24 WADA lists 11 values in its 'Spirit of Sport' statement:

- ethics, fair play and honesty;
- health;
- excellence in performance;
- character and education;
- fun and joy;
- teamwork;
- dedication and commitment;
- respect for rules and laws;
- respect for self and other Participants;
- courage; and
- community and solidarity.<sup>28</sup>

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24 Coalition of Major Professional & Participation Sports, *Submission 9*, p. 10.

25 Coalition of Major Professional & Participation Sports, *Submission 9*, p. 10.

26 National Institute Network, *Submission 14*, p. 5.

27 World Anti-Doping Authority, *World Anti-Doping Code*, 2009, p. 14, [http://www.wada-ama.org/Documents/World\\_Anti-Doping\\_Program/WADP-The-Code/WADA\\_Anti-Doping\\_CODE\\_2009\\_EN.pdf](http://www.wada-ama.org/Documents/World_Anti-Doping_Program/WADP-The-Code/WADA_Anti-Doping_CODE_2009_EN.pdf) (accessed 3 June 2013).

3.25 Dr Mazanov noted that that the statement has been criticised for being ambiguous and open to 'creative' interpretation and reinterpretation.<sup>29</sup> He submitted that there is therefore:

... no coherent set of well defined principles that establishes expectations or guides behaviour within the Australian sporting sector. Sports ethics then reflect the cocktail of individual beliefs, and interests across the corporate, public health and government sectors.<sup>30</sup>

3.26 Dr Mazanov submitted that 'an Australian sports ethic needs to recognise the multiple stakeholders and realities of modern sport rather than relying on outdated and romanticised notions of sport'.<sup>31</sup> To this end, he suggested that the ASC or the National Integrity of Sport Unit could deploy resources towards developing a 'more vibrant ethics of Australian sport'. Dr Mazanov submitted that this could include:

... helping Australian sporting organisations implement those ethics as part of professional and athlete development. It may also be useful to exploit existing government funding for sports health science, such as establishing philosophy and ethics of sports health science as part of the Anti-Doping Research Program.<sup>32</sup>

3.27 The objective would be:

... a set of well-defined values that guide decision making and can be used as a reference point in other contexts. This would be a 'living document' as evolution in sports health science and sports science more generally compels re-evaluation of what might be considered 'right' for Australian sport.<sup>33</sup>

3.28 The committee supports Dr Mazanov's view that a statement of ethics should be established and agrees that this should be a 'living document' which reflects the changing values and expectations resulting from evolving technologies and scientific advancements.

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28 World Anti-Doping Authority, *World Anti-Doping Code*, 2009, p. 14, [http://www.wada-ama.org/Documents/World\\_Anti-Doping\\_Program/WADP-The-Code/WADA\\_Anti-Doping\\_CODE\\_2009\\_EN.pdf](http://www.wada-ama.org/Documents/World_Anti-Doping_Program/WADP-The-Code/WADA_Anti-Doping_CODE_2009_EN.pdf) (accessed 3 June 2013).

29 Dr Jason Mazanov, *Submission 1*, p. 7.

30 Dr Jason Mazanov, *Submission 1*, p. 7.

31 Dr Jason Mazanov, *Submission 1*, p. 8.

32 Dr Jason Mazanov, *Submission 1*, p. 8.

33 Dr Jason Mazanov, *Submission 1*, p. 10.

## Recommendation 1

**3.29 The committee recommends that the federal government consider developing a statement of ethics that would apply to all Australian participants in sports.**

### *Ethical obligations of sports scientists*

3.30 COMPPS submitted that sports scientists have an ethical obligation to maintain a 'level playing field' by ensuring that all practices are compliant with the WADA code:

In many Australian sporting codes, sports scientists have gained increasing influence over decision making within the club. Given this influence, sports scientists have an ethical obligation to promote and encourage training and competition in a doping-free sporting environment. This will help to protect and promote the spirit of sport not only among the athletes that they work with, but also among young athletes who are influenced by the practices of their sporting heroes.<sup>34</sup>

3.31 ACSP submitted that sports scientists have ethical obligations to maintain the integrity of sport, which involves 'maintaining standards of ethical and professional behaviour to ensure there is no danger of sport being brought into disrepute'.<sup>35</sup> It noted that adoption of the ASC's *AIS Sport Science/Sports Medicine Best Practice Principles*—discussed in chapter 6 of this report—would assist with this.<sup>36</sup>

3.32 Dr Hugh Seward, Chief Executive of the Australian Football League Medical Officers Association suggested to the committee that sports science courses in tertiary institutions should:

... include ethics training, as found in courses for medical disciplines, to assist undergraduates in their understanding of the responsibilities and limitations before venturing into the practice of managing athletes. In particular, regard for the overall wellbeing and health of the athlete, both in the short and the long term, must be considered in relation to the short-term performance outcomes.<sup>37</sup>

3.33 ASCP suggested that all athletes entering professional and/or high-performance sports programs should undertake a mandatory education course:

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34 Coalition of Major Professional & Participation Sports, *Submission 9*, p. 11.

35 Australasian College of Sports Physicians, *Submission 10*, p. 3.

36 Australasian College of Sports Physicians, *Submission 10*, p. 3–4.

37 Dr Hugh Seward, Chief Executive Officer, Australian Football League Medical Officers Association, *Proof Committee Hansard*, 12 June 2013, p. 52.



The athletes would be provided with comprehensive education on matters related to integrity in sport, including but not limited to: doping, nutrition, use of supplements, illicit drugs and involvement in sports research.<sup>38</sup>

3.34 Dr Peter Larkins suggested a publicity campaign:

... using some of our really high-profile, successful role model athletes talking about how they made it to the top and did not cheat and used genuine things. I think there is a real opportunity for the sporting alliance groups to involve athletes, such as one of our Socceroos from last night or people like Pat Rafter, Michael Klim and Cadel Evans—those sorts of people who currently have a profile in the minds of young athletes—and to use these people to show that they can reach the top by the hard work and God-given talent that people have. I think that is a really powerful message that we need to put out as a country.<sup>39</sup>

### **Committee's view**

3.35 The committee notes concerns that performance may be prioritised above athlete health and welfare by sports scientists, coaches, teams, sporting organisations and athletes themselves. The committee is of the strong view that athlete health and welfare must be paramount in all decision making related to performance, recovery and ability to play/compete. The committee also notes that protecting athlete health and welfare and pursuing high performance may often be compatible goals.

### **Recommendation 2**

**3.36 The committee recommends that tertiary institutions offering sports science courses include topics on ethics, which should refer to the duty of care of sports scientists to athletes and the importance of protecting athlete health and welfare.**

3.37 The committee also believes that coaches, teams and sporting organisations have a responsibility to educate athletes—especially young athletes who are particularly vulnerable—about the importance of protecting their long-term health and welfare. While the committee notes that athletes may choose to engage in reckless and harmful behaviour, such as the use of illicit substances, the committee believes that they should be encouraged at every opportunity to recognise the long-term implications of their choices.

3.38 An improved integrity culture also needs to be promoted within sports that recognises the long-term implications for engaging in practices that bring teams, codes and sport in general into disrepute. Younger players in professional sports and amateur competitions need to be educated about their rights and responsibilities in

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38 Australasian College of Sports Physicians, *Submission 10*, p. 5.

39 Dr Peter Larkins, *Proof Committee Hansard*, 12 June 2013, p. 75.

terms of upholding the spirit of sport and protecting their long-term health and welfare.

3.39 The committee is of the view that education of athletes on the topics suggested by ASCP should be implemented by all sporting clubs and organisations in Australia. The committee recommends that the Australian Sports Integrity Network, established by the National Integrity of Sport Unit, be utilised to develop an education program that can be delivered at both the elite and the grassroots level by sporting bodies.

### **Recommendation 3**

**3.40 The committee recommends that sporting organisations and/or clubs provide all athletes entering professional and/or high-performance sports programs with specific training on sports ethics, integrity issues and their rights and responsibilities in relation to their long-term health and welfare.**