

Chapter 6

Regulatory options to enhance the oversight of sports scientists in Australia

It is not the role of government to legislate morality. But it is only government that can play the central role required to establishing a framework within which all sports science sports medicine personnel must operate. In so doing, it will provide greater safeguards against immoral and unethical conduct and thereby encourage appropriate choices.¹

Introduction

6.1 Unlike other members of high-performance teams, such as the doctors, physiotherapists and dieticians employed by professional sporting clubs, there are no minimum standards or qualifications for sports scientists. This also means that while athletes can face bans, for instance as a result of Australian Sports Anti-Doping Authority (ASADA) investigations, unaccredited sports scientists cannot be banned from operating in Australia.²

6.2 Contributors to this inquiry were unanimous in the view that action needs to be taken in relation to the practice of sports science in Australia. The previous chapter noted broad support for a national system of accreditation that has the strong support of employers. In addition to establishing an accreditation system for sports scientists, many submitters and witnesses to this inquiry also supported a mix of regulatory measures to tighten standards and processes for entering and practicing in the profession. These measures include:

- a registration or licencing scheme;
- a national, enforceable code of conduct;
- an independent external oversight body;
- an Ombudsman for Sport;
- legislated protection of athlete health and welfare;
- use of pre-employment/engagement statutory declarations; and
- a return to the principle of informed consent.

1 Australian Olympic Committee, *Submission 12*, p. 5.

2 Elise Scott, 'Sports scientists can avoid ASADA penalty', *Brisbane Times*, 13 March 2013. As noted previously, the Australian Sports Anti-Doping Authority Amendment Bill 2013 would give ASADA broader powers in relation to sports scientists.

6.3 This chapter discusses each of these options in turn.

The current framework to regulate sports in Australia

6.4 In its submission to this inquiry, the Australasian College of Sports Physicians (ACSP) submitted that the Government:

... through its extensive funding of sport in Australia, both as an insurer for patient care and provider of funds for sport programs, and the monitoring of thereof, has a legitimate role in the regulation of the practice and principles of sports science.³

6.5 A list of the national sporting organisations recognised by the Australian Sports Commission (ASC), and the grants and allocations provided by the ASC to some of these organisations, are included in Appendix 2.

National Integrity of Sport Unit

6.6 In November 2012, the federal government announced the establishment of the National Integrity of Sport Unit (NISU) (see Diagram 5.1). The NISU provides:

... national oversight, monitoring and coordination of efforts to protect the integrity of sport in Australia from threats of doping, match-fixing and other forms of corruption.⁴

6.7 The NISU was endorsed by all Australian state and territory governments. In announcing the Unit, the Minister for Sport, Senator the Hon. Kate Lundy, explained:

Sport is central to the Australian way of life and the new unit will ensure fans can have confidence in our sporting codes ... The NISU will work with stakeholders to ensure spectators can have trust in the honesty and integrity of sport in Australia.⁵

6.8 The Government has subsequently provided additional funding to expand the capacity of the NISU.⁶ The NISU's remit includes:

- coordinating outcomes with jurisdictions to ensure a consistent national approach to match-fixing;

3 Australasian College of Sports Physicians, *Submission 10*, p. 1.

4 Department of Regional Australia, Local Government, Arts and Sport, National Integrity of Sport Unit, http://www.regional.gov.au/sport/national_integrity/index.aspx (accessed 24 May 2013).

5 Senator the Hon. Kate Lundy, Minister for Sport, 'New unit to protect the integrity of sport', *Media Release*, 7 November 2012.

6 Department of Regional Australia, Local Government, Arts and Sport, *Submission 11*, p. 1.

- leading the government response at Commonwealth and national level to address concerns arising from the Australian Crime Commission's report *Organised Crime and Drugs in Sport*;
- building the capacity of all sports to identify, address and manage sport integrity threats; and
- developing intelligence monitoring, and management protocols and expanding networks between all stakeholders.⁷

Registration

6.9 The previous chapter discussed the merits of a system of accreditation. Accreditation is self-regulatory: it does not have the force of law. To be effective, it requires the unanimous support of employers to ensure national coverage across the profession (see recommendation 5). However, accreditation can also provide a solid foundation for a mandatory registration scheme established by legislation.

6.10 As noted earlier in this report, many contributors to this inquiry have expressed concern that the title of 'sports scientist' and the practice of sports science in Australia are ill-defined. Several submitters suggested that registration could present a long-term solution to these problems.

6.11 Registration establishes minimum standards, provides 'protection of title' and creates mechanisms for complaint resolution. A system of registering sports scientists may thereby provide greater protection against 'code-hopping' by rogue individuals than an accreditation scheme (see below). However, establishing a registration scheme would be costly and would require legislative reform.

6.12 The Department of Regional Australia, Local Government, Arts and Sport (DRALGAS) noted that:

... [registration] provides a clear system for dealing with individuals who have failed to meet their professional requirements, whether in terms of skill levels or code of conduct type issues. Generally the legislation sets up a hierarchy of responses following such a failure, from adding conditions to registration (such as reporting or additional continuing professional education) to deregistration.⁸

Preventing 'code-hopping'

6.13 Several commentators and submitters to this inquiry expressed concern that, currently, individuals who have been investigated or sanctioned for unethical practices are able to be hired within other sporting codes. Exercise & Sports Science Australia (ESSA) has also suggested a sports scientist fired from one club could move to a

7 Department of Regional Australia, Local Government, Arts and Sport, *Submission 11*, pp 1–2.

8 Department of Regional Australia, Local Government, Arts and Sport, *Submission 11*, p. 5.

different club or code with little accountability and that a sports scientist banned overseas could continue to operate in Australia.⁹

6.14 The National Rugby League (NRL) put the 'strong view' that in the context of an accreditation regime, an appropriate mechanism is required that would:

... stop 'rogue' sports scientists and/or members that have been sanctioned under their Code of Conduct, or that of another sport, to move from one sporting code to another.¹⁰

6.15 While the NRL and the Australian Football League are considering establishing central registers of sports staff in their organisations, a national registration system across sports may prevent or minimise opportunities for 'code-hopping'.¹¹ Senator Richard Di Natale notes this may also be achieved, to some extent, through a national accreditation scheme that has the support of employers.

Australian Health Practitioner Regulation Agency: the National Registration and Accreditation Scheme

6.16 The Australian Health Practitioner Regulation Agency (AHPRA) is the organisation responsible for implementing the National Registration and Accreditation Scheme (the National Scheme). AHPRA currently provides registration for professionals in 14 practice areas, which are listed in Table 6.1 below. Its operations are governed by the Health Practitioner Regulation National Law (the National Law), which is in force in each state and territory. It is not a commonwealth law. The nationally consistent legislation came into effect in July and October 2010.

6.17 The objectives of the National Scheme are to:

- help keep the public safe by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered;
- facilitate workforce mobility for health practitioners;
- facilitate provision of high-quality education and training for practitioners;
- facilitate the assessment of overseas qualified practitioners;
- facilitate access to health practitioners; and
- enable the continuous development of a flexible Australian health workforce.¹²

9 Elise Scott, 'Sports scientists can avoid ASADA penalty', *Brisbane Times*, 13 March 2013.

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

11 National Rugby League, *Submission 15*, p. 3.

12 Australian Health Practitioner Regulation Agency, *About the National Scheme*, <http://www.ahpra.gov.au/~link.aspx?id=D4E5EF420D3C4EAB8B247FDB72CA6E0A&z=z> (accessed 6 June 2013).

6.18 National boards set registration standards that practitioners must meet in order to register under the National Scheme. There is a board for each of the professions. Registration by the National Boards is on an annual basis and practitioners must continue to meet the standards set by the boards.

6.19 For example, under the National Law, the Australian Medical Council (AMC) is responsible for developing accreditation standards for the approval of the Medical Board of Australia (MBA). The MBA have approved standards for medical school and specialist medical education accreditation. These standards:

... are used to assess whether a program of study, and the education provider that provides the program of study, provide persons who complete the program with the knowledge, skills and professional attributes to practise the profession.¹³

6.20 The AMC undertakes regular reviews of accreditation standards and undertakes wide-ranging consultation in developing or revising them.¹⁴

6.21 AHPRA informed the committee that there are around 580 000 registered health practitioners within the professional groups in the National Scheme.¹⁵ Mr Martin Fletcher, Chief Executive of AHPRA, noted that:

Information about every one of those practitioners is available through a national, online register, including information about any restrictions on their registration as a result of concerns about their conduct, performance or health.¹⁶

'Protection of title'

6.22 DRALGAS noted that registration schemes in Australia also generally provide 'protection of title':

... which provides that only appropriately registered professionals are able to describe themselves as being a member of that profession. This would significantly clarify the current terminology around the sport scientist profession.¹⁷

13 Medical Board of Australia, *Accreditation*, <http://www.medicalboard.gov.au/Accreditation.aspx> (accessed 6 June 2013).

14 Medical Board of Australia, *Accreditation*, <http://www.medicalboard.gov.au/Accreditation.aspx> (accessed 6 June 2013).

15 Mr Martin Fletcher, Chief Executive Officer, Australian Health Practitioner Regulation Agency, *Proof Committee Hansard*, 12 June 2013, p. 46.

16 Mr Martin Fletcher, Chief Executive Officer, Australian Health Practitioner Regulation Agency, *Proof Committee Hansard*, 12 June 2013, p. 46.

17 Department of Regional Australia, Local Government, Arts and Sport, *Submission 11*, p. 5.

6.23 The Council of Heads of Exercise, Sport and Movement Sciences advocates protection of the titles 'sport scientist' and/or 'exercise and sports scientist' 'through legislation to prevent misuse in Australia and facilitate legal recourse in cases where people use the title without the right or adequate training/experience'.¹⁸ A legislated definition of 'sports scientist' or relevant disciplinary titles may be a solution to the definitional problems discussed in chapter 2 of this report.

6.24 'Protected titles' are enshrined in the National Law. From AHPRA's website:

Anyone who called themselves any of the 'protected titles' in the National Law, such as 'chiropractor', 'medical practitioner', 'midwife' or 'psychologist', must be registered with the corresponding National Board.

It is an offence to call yourself one of the protected titles, and it is also an offence to hold yourself out to be a registered practitioner when you are not, or use symbols or language that may lead a reasonable person to believe that you are registered.¹⁹

6.25 Mr Fletcher of AHPRA informed the committee that the focus of the National Scheme is on title protection rather than scope of practice. He explained that 'the legislation sets out what it is that people have to do in order to have the title of registered practitioner'.²⁰

18 Council of Heads of Exercise, Sport and Movement Sciences, *Submission 13*, p. 4.

19 Australian Health Practitioner Regulation Agency, *About the National Scheme*, <http://www.ahpra.gov.au/~link.aspx?id=D4E5EF420D3C4EAB8B247FDB72CA6E0A&z=z> (accessed 6 June 2013).

20 Mr Martin Fletcher, Chief Executive Officer, Australian Health Practitioner Regulation Agency, *Proof Committee Hansard*, 12 June 2013, p. 47.

Table 6.1: Titles protected under the National Law

<i>Profession</i>	<i>Protected title(s)</i>
Aboriginal and Torres Strait Islander Health Practice	<ul style="list-style-type: none"> • Aboriginal and Torres Strait Islander health practitioner • Aboriginal health practitioner • Torres Strait Islander health practitioner
Chinese Medicine	<ul style="list-style-type: none"> • Chinese medicine practitioner • Chinese herbal dispenser • Chinese herbal medicine practitioner • Oriental medicine practitioner • Acupuncturist
Chiropractic	<ul style="list-style-type: none"> • Chiropractor
Dental	<ul style="list-style-type: none"> • Dentist • Dental therapist • Dental hygienist • Dental prosthetist • Oral health therapist
Medical	<ul style="list-style-type: none"> • Medical practitioner
Medical Radiation Practice	<ul style="list-style-type: none"> • Medical radiation practitioner • Diagnostic radiographer • Medical imaging technologist • Radiographer • Nuclear medicine scientist • Nuclear medicine technologist • Radiation therapist
Nursing and Midwifery	<ul style="list-style-type: none"> • Nurse • Registered nurse • Nurse practitioner • Enrolled nurse • Midwife • Midwife practitioner
Occupational Therapy	<ul style="list-style-type: none"> • Occupational therapist
Optometry	<ul style="list-style-type: none"> • Optometrist • Optician
Osteopathy	<ul style="list-style-type: none"> • Osteopath
Pharmacy	<ul style="list-style-type: none"> • Pharmacist • Pharmaceutical chemist
Physiotherapy	<ul style="list-style-type: none"> • Physiotherapist • Physical therapist
Podiatry	<ul style="list-style-type: none"> • Podiatrist • Chiropodist
Psychology	<ul style="list-style-type: none"> • Psychologist

Source: Australian Health Practitioner Regulation Agency, *About the National Scheme*, <http://www.ahpra.gov.au/~link.aspx?id=D4E5EF420D3C4EAB8B247FDB72CA6E0A&z=z> (accessed 6 June 2013).

Complaints process

6.26 A benefit of the AHPRA scheme is the framework it provides for the resolution of complaints about health practitioners. As Mr Fletcher told the committee:

If there is a question of a risk to the public, a board could, for example, put restrictions on the registration of the practitioner. That might require them to undertake additional education or it might require them to have additional supervision or it might require them to only practise with a particular cohort of patients until the issues of concern have been addressed. In the more extreme cases a board could apply to a tribunal for the cancellation of the registration of that practitioner. Then, if there are a set of issues, for example, around the health or impairment of the practitioner, the board could initiate a health assessment and then appropriate action could be taken on the basis of the assessment.²¹

Support for AHPRA registration of sports scientists

6.27 DRALGAS, ACSP and Dr Jason Mazanov all support a registration scheme within the existing framework of the AHPRA system.²² Dr Mazanov explained that a benefit of AHPRA registration would be that professionals would need to register if they work in areas that have sports health science implications:

For example, the biochemist would have to register as a sports health professional to work with a sports club. This prevents sports organisations shifting a job title from 'sport scientist' to 'biochemist' to get around registration. Registration means sports health scientists who fail to act in the interests of athlete health and welfare can be more closely monitored, investigated and sanctioned.²³

6.28 In order for sports scientists to be included in the National Scheme, DRALGAS submitted that several changes would be necessary, including:

- amendments to the Queensland Act flow-on to state and territory legislation, except in Western Australia which will also need to amend its legislation;
- additional infrastructure will be required within AHPRA to support the registration functions; and
- a national course accreditation process will need to be endorsed.²⁴

21 Mr Martin Fletcher, Chief Executive Officer, Australian Health Practitioner Regulation Agency, *Proof Committee Hansard*, 12 June 2013, p. 50.

22 Department of Regional Australia, Local Government, Arts and Sport, *Submission 11*, p. 5; Australasian College of Sports Physicians, *Submission 10*, p. 4; and Dr Jason Mazanov, *Submission 1*, p. 4.

23 Dr Jason Mazanov, *Submission 1*, p. 4.

24 Department of Regional Australia, Local Government, Arts and Sport, *Submission 11*, p. 6.

6.29 Mr Fletcher told the committee that the decision of whether to bring the sports science profession under the National Scheme is not for AHPRA to make: it 'would be a matter for health ministers'.²⁵ He indicated that the primary consideration is whether there is a risk to the public posed by the practice of sports science that would require regulation through the National Scheme and this would need to be decided by the ministerial council.²⁶ Mr Fletcher suggested that among other things, the process would involve public consultation and consideration of the regulatory impact.²⁷

6.30 The Chinese Medicine, Occupational Therapy, Medical Radiation Practice and Aboriginal and Torres Strait Islander Health Practice professions joined the National Scheme in July 2012. AHPRA told the committee that there was an existing state-based registration process for each of these professions in at least one jurisdiction.²⁸ The committee notes that there is no existing registration scheme for sports scientists in any jurisdiction in Australia and so the addition of sports scientists to the National Scheme would be a novel arrangement.

6.31 DRALGAS suggested that because cross-portfolio agreement between all jurisdictions needs to be obtained, establishing a registration scheme is a lengthy process. It also noted that registration schemes 'have significant costs for government or the practitioners or both, depending on the particular arrangements for cost recovery'.²⁹ It therefore submitted that registration should be considered a longer-term solution, with the best option being 'strengthening professional self-regulation' in the meantime.³⁰

NISU central register

6.32 NISU noted that it is:

... currently discussing with national sporting organisations whether there is value in establishing a central register across all sports in Australia to be held by the NISU. Sporting organisations seeking to employ or contract new support staff would be able, under this proposal, [to] check which organisations an individual may have worked with, and therefore, conduct the appropriate reference checking.³¹

25 Mr Martin Fletcher, Chief Executive Officer, Australian Health Practitioner Regulation Agency, *Proof Committee Hansard*, 12 June 2013, p. 47.

26 Mr Martin Fletcher, Chief Executive Officer, Australian Health Practitioner Regulation Agency, *Proof Committee Hansard*, 12 June 2013, p. 48.

27 Mr Martin Fletcher, Chief Executive Officer, Australian Health Practitioner Regulation Agency, *Proof Committee Hansard*, 12 June 2013, p. 50.

28 Mr Martin Fletcher, Chief Executive Officer, Australian Health Practitioner Regulation Agency, *Proof Committee Hansard*, 12 June 2013, p. 49.

29 Department of Regional Australia, Local Government, Arts and Sport, *Submission 11*, p. 5.

30 Department of Regional Australia, Local Government, Arts and Sport, *Submission 11*, p. 7.

31 Department of Regional Australia, Local Government, Arts and Sport, *Submission 11*, p. 7.

6.33 While ESSA supports NISU's leadership in 'bringing the industry together', its strong view is that:

... an accreditation and regulation system should be professionally led and in line with that of other established professions that contribute to sport such as the Physiotherapy Board of Australia.³²

Senator Di Natale's view on registration

6.34 Senator Di Natale recognises the value of the National Scheme administered by AHPRA in:

- protecting the public by ensuring that only suitably trained and qualified practitioners are registered;
- facilitating workforce mobility across Australia; and
- enabling continuous development of a flexible, responsive and sustainable Australian health workforce.³³

6.35 Senator Di Natale also recognises that the National Scheme provides valuable 'protection of title'. The Senator is of the view that consideration should be given to including the sports science profession in the National Scheme.

6.36 Senator Di Natale notes, however, that due to the varied nature of the practice of sports science, not all areas of practice may satisfy the criteria for inclusion into the National Scheme. Accordingly, the Senator believes that once a tiered system of sports science accreditation is in place in Australia—one which provides for specialised accreditation in specific sports science disciplines—consideration should be given to including the accredited disciplines that have a strong health component in the National Scheme. For instance, the terms 'exercise physiologist' and 'biomechanist' could be considered for inclusion as 'protected titles' in the National Law. This would mean that it would be an offence for an individual to use one of these titles or to hold themselves out as a registered practitioner if they are not entitled to do so.

6.37 The committee also notes the evidence from DRALGAS and AHPRA that including new professionals in the National Scheme involves significant consultation, time and costs. However, Senator Di Natale views the threat posed by rogue individuals to the health and welfare of athletes, and to the reputation and integrity of sports in Australia, as warranting that serious consideration be given to including relevant disciplines of the sports science profession in the National Scheme.

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

33 Department of Health and Ageing, *National Registration and Accreditation Scheme*, <http://www.health.gov.au/internet/main/publishing.nsf/Content/work-nras> (accessed 13 June 2013).

Recommendation 7

6.38 **Senator Di Natale recommends that, following the establishment of a widespread, tiered system of accreditation for sports scientists in Australia, the government should consider including relevant sports science disciplines in the National Registration and Accreditation Scheme.**

Negative licencing schemes

6.39 A negative licencing scheme enforces a code of conduct on individuals who practice outside of a registration scheme established by legislation. DRALGAS explained that this type of scheme enables individuals or organisations to:

... make a complaint that a sports scientist has failed to comply with the code of conduct. Following an investigation of the allegations by a relevant statutory agency, which could be either state based or a national body, if the sports scientist is found to have breached the code of conduct, and the breach is serious enough, an order could be made prohibiting the sports scientist from continuing to provide services, or conditions could be attached to their practice. A register of prohibition orders could be publicly accessible.³⁴

6.40 Mr Fletcher of AHPRA referred to the negative licencing schemes in place in New South Wales (NSW) and South Australia (SA) that provide for a code of conduct for unregistered health practitioners.³⁵ In the case of the scheme administered by the NSW Health Care Complaints Commission (the NSW HCCC), Mr Fletcher explained:

If there is a concern about an unregistered health practitioner, the commissioner does have powers to issue prohibition orders or to place conditions on the practice of that practitioner found to be in breach of the code. That will have a similar effect in terms of prohibiting a practitioner from practising for a limited period of time, or permanently, or placing conditions on their practice.³⁶

6.41 DRALGAS submitted that this type of arrangement provides a clear legislative mechanism for 'prohibiting individuals who do not abide by relevant codes of conduct from continuing to practice in that profession'.³⁷

34 Department of Regional Australia, Local Government, Arts and Sport, *Submission 11*, p. 6.

35 Mr Martin Fletcher, Chief Executive Officer, Australian Health Practitioner Regulation Agency, *Proof Committee Hansard*, 12 June 2013, p. 50.

36 Mr Martin Fletcher, Chief Executive Officer, Australian Health Practitioner Regulation Agency, *Proof Committee Hansard*, 12 June 2013, p. 50.

37 Department of Regional Australia, Local Government, Arts and Sport, *Submission 11*, p. 6.

6.42 For instance, complaints may be made to the NSW HCCC about any health provider in NSW, including:

- practitioners such as doctors, nurses, dentists, pharmacists, psychologists, chiropractors, podiatrists and others, regarding the clinical care and treatment of a patient, or their professional conduct;
- health service organisations, such as public or private hospitals, clinics, medical centres, day surgery centres, the Ambulance Service and others, affecting the clinical care or treatment of a patient; and
- health practitioners who currently do not require registration to practise in NSW, such as naturopaths, psychotherapists, dieticians, massage therapists and others.³⁸

6.43 The downside to this type of regulatory scheme is that there is no minimum legal standard for entry to the profession, and there is no legislated protection for use of the title 'sports scientist'.³⁹ While Senator Di Natale notes that negative licencing schemes may be useful to prohibit rogue individuals from practising, these schemes are currently only in operation in NSW and SA. Establishing these schemes nationally would require significant legislative reform, time and cost.

Senator Di Natale's view

6.44 Senator Di Natale believes that a framework based on national accreditation and registration, whereby individuals must actively demonstrate their qualifications to practice and to use protected titles, is preferable to a negative licencing system.

An advisory group

6.45 Senator Di Natale is concerned that, currently, athletes may not have ready access to independent advice about supplements and other aspects of their training and rehabilitation. The Senator notes the important role that is currently performed by the Australian Sports Drug Medical Advisory Committee (ASDMAC) in advising athletes, support personnel and national sporting organisations about anti-doping issues and the wellbeing of athletes.⁴⁰

6.46 However, ASDMAC, given its close connection and support role to the investigative body ASADA, may not be seen by athletes as offering the type of independent advice that they may need. ASADA's role in prosecuting breaches of the

38 New South Wales Health Care Complaints Commission, *How to make a complaint*, <http://www.hccc.nsw.gov.au/Complaints/How-to-make-a-complaint/Default> (accessed 22 June 2013).

39 Department of Regional Australia, Local Government, Arts and Sport, *Submission 11*, p. 6.

40 Australian Sports Drug Medical Advisory Committee, <http://www.asdmac.gov.au/about/index.html> (accessed 1 July 2013).

World Anti-Doping Agency Code may deter athletes from approaching ASDMAC with their concerns or to obtain information.

6.47 Dr Peter Larkins put the case for a multidisciplinary advisory group to be established that can:

... work independently of ASADA to provide day-to-day advice and information where that is readily available. The members of that committee therefore would have to have a pretty intricate knowledge of the WADA code. They would need to have backgrounds in medicine, sports science and nutrition.⁴¹

6.48 Dr Larkins said that he thought ASADA had been 'overwhelmed'.⁴² Specifically, he identified:

... a real gulf in the information supply for people ... My knowledge of the athletes and the frustration they have with ASADA in terms of getting information, and even some professional colleagues getting information through WADA and therefore through ASADA, means that there is an opportunity to establish an advisory body that would be at a national level. There could be people of experience on that body to assist with a number of these issues.⁴³

6.49 Dr Mazanov argued the need for an 'independent athlete advocate that can investigate and assess whether due process with regards to athlete health and welfare has been followed'.⁴⁴ He submitted:

The power relationships in sport that give rise to exploitation mean athletes often have nowhere to turn. While athlete and player associations have had rising influence, advocacy on athlete health and welfare has been less prominent in this rise.⁴⁵

6.50 Dr Mazanov added that:

... athletes need to have a third party they can go to for guidance or more formal inquiry in relation to their treatment by sporting organisations. Sporting organisations can benefit from processes and procedures being legitimised under impartial assessment without resorting to legal proceedings.⁴⁶

41 Dr Peter Larkins, *Proof Committee Hansard*, 12 June 2013, p. 74.

42 Dr Peter Larkins, *Proof Committee Hansard*, 12 June 2013, p. 74.

43 Dr Peter Larkins, *Proof Committee Hansard*, 12 June 2013, p. 74.

44 Dr Jason Mazanov, *Submission 1*, p. 5.

45 Dr Jason Mazanov, *Submission 1*, p. 5.

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

Senator Di Natale's view

6.51 Senator Di Natale believes there is merit in providing the athlete and a range of other stakeholders with a source of advice relating to the legitimacy of substances and practices, and their potential long-term impact on the athlete. The Senator recommends that DRALGAS consider forming and promoting an independent advisory group for the benefit of a broad range of stakeholders, including practitioners, athletes, parents, coaches and administrators.

Recommendation 8

6.52 Senator Di Natale recognises the need for publicly accessible information about substances and practices impacting on athlete health and welfare. The Senator recommends that the Department of Regional Australia, Local Government, Arts and Sport consider forming and promoting an independent advisory group. The utility of an independent source of advice would be to provide up-to-date, independent information to athletes, parents, sporting organisations, peak bodies, coaching staff and other stakeholders.

External oversight body

6.53 Another regulatory option is to establish a regulatory oversight body for sports science. This was suggested by Athletics Australia (AA), which envisaged that:

... an appropriate group would be a group of experts formed from representatives of the [Australian Institute of Sport], ASADA, academia and Head Coaches and/or Performance Directors from the major [national sporting organisations].⁴⁷

6.54 AA submitted that the body would be responsible for establishing national guidelines and suggested that existing Australian Institute of Sport documents could be amended for this purpose relatively quickly and easily.⁴⁸

6.55 Applied Scientists of Queensland argued in its submission that a 'regulatory body is necessary to provide oversight and apply personal professional expectations across the sport science industry'.⁴⁹ It submitted that the creation of a regulatory body 'should involve consultation with major state institutes, academies and related stakeholders to ensure their needs are met'.⁵⁰

47 Athletics Australia, *Submission 4*, p. 2.

48 Athletics Australia, *Submission 4*, p. 2.

49 Applied Scientists of Queensland, *Submission 16*, p. 11.

50 Applied Scientists of Queensland, *Submission 16*, p. 11.

6.56 Dr Robin J Willcourt—a sports scientist—put the view that if a governing body is established, it should include sports scientists and medical personnel.⁵¹

Senator Di Natale's view

6.57 This chapter has discussed the national registration scheme administered by AHPRA. In Senator Di Natale's view, inclusion of relevant sports science disciplines in the National Scheme following the establishment of a widespread accreditation system is the most appropriate regulatory model. While the committee does not support the creation of an external oversight or governing body outside of this framework, Senator Di Natale emphasises the importance of establishing an independent advisory group (see recommendation 8).

Informed consent

6.58 Mr Michael Burke of Victoria University has argued that accreditation would not be enough to protect players from unscrupulous doctors and scientists 'because there will always be people who ignore their ethical and legal responsibilities'.⁵² Mr Burke supports a return to the principle of informed consent:

Simply put, this means that it would become the responsibility of the scientist or doctor that athletes have any intervention (including, but not limited to, supplement use) explained to them in a clearly understood way that outlines the risks, benefits and alternatives to the suggested intervention.

Athletes should expect this as the minimal requirement before any intervention, and not as a legal instrument used by the club or individual support staff to avoid liability. This involves an ethical commitment to the underpinnings of informed consent and increasing the opportunity and capacity for athletes to make independent informed decisions in the future. Equally important is the idea that a person can withdraw their consent at any time without fear of damage to themselves.⁵³

6.59 Mr Burke describes two issues with the idea of informed consent in Australian and international cases: 'the athletes didn't fully understand what was being suggested and they were not in a situation where they were entirely comfortable with withdrawing their consent'.⁵⁴

51 Dr Robin J Willcourt, *Submission 6*, p. 2.

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

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

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

6.60 In the revised ESSA Code, ESSA refers to the principle of informed consent under the heading 'Client care':

An exercise and sports science professional should ensure that the client is aware, in plain language, [of] the aims, benefits, procedures, risks and safeguards with exercise through the process of informed consent, and aware of their clients rights to withdraw from such interaction without penalty (at any time).⁵⁵

6.61 While Mr Burke acknowledged this reference in the ESSA Code, he is concerned that:

... many sporting clubs and coaches may not see performance benefits in fully informing their athletes of the risks, benefits and alternatives of any practice in a language that's easily understood by all players. They may need to be dragged kicking and screaming into the world of normal health practice.⁵⁶

Committee view

6.62 The committee recognises the importance of the principle of informed consent. The committee also notes the concerns raised by Mr Michael Burke that sports science professionals may breach their ethical and legal responsibilities. However, Senator Di Natale believes that the accreditation and registration framework, as proposed in chapter 5 of this report, will provide mechanisms for action to be taken against individuals operating outside of ethical and legal boundaries.

Legislated protection of athlete health and welfare

6.63 A further regulatory option for the profession of sports science is to establish, in law, an obligation for practitioners to act in the best interests of athletes. The committee notes that recently, the federal government legislated a 'best interests duty' for financial planners and advisers. This is a statutory duty for Australian financial services licensees, authorised representatives and advice providers to act in the best interests of the client. The rationale for establishing this duty in law is as follows:

The underlying objective of the reforms is to improve the quality of financial advice while building trust and confidence in the financial advice industry through enhanced standards which align the interests of the adviser with the client and reduce conflicts of interest. The reforms also focus on

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

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

facilitating access to financial advice, through the provision of simple or limited advice.⁵⁷

6.64 This issue of statutory duty for sports scientists to act in the best interests of their clients was not specifically discussed during this inquiry. Dr Mazanov did note that legislation enabling prosecution and penalties for failing to protect athlete health and welfare could be an option to ensure better accountability:

There needs to be clear consequences for placing athlete health and welfare as secondary or tertiary considerations. For organisations, these consequences might be in terms of fines or suspension of trading rights. Legislation might be introduced that makes individuals personally liable for their actions within an organisation (like the Workplace Health and Safety Acts). This creates a set of organisational incentives. For example, managers will care a lot more about what is happening in their 'sports science' departments if they can be held personally liable for an athlete being told their contract is contingent on their substance use.⁵⁸

6.65 The committee believes that a statutory best interests duty is not appropriate for sports scientists at this point in time. The immediate focus should be on establishing an accreditation scheme that is national in scope with widespread take-up by employers.

Pre-employment/engagement statutory declarations

6.66 The Australian Olympic Committee has suggested that widespread adoption of statutory declarations as a pre-condition to employment/engagement of any sporting association may 'rapidly and significantly' reduce or eliminate 'safe-havens' for the unethical practice of sports science.⁵⁹ The AOC provides its own document as an example.⁶⁰ The AOC declaration, however, is focused specifically on anti-doping matters and is not an example of a declaration relating to the practice of sports science generally.

Conclusion

6.67 This chapter has discussed a range of regulatory options to enhance the oversight of sports science in Australia. Two of these have warranted particular attention and form the basis of the recommendations by Senator Di Natale:

- The first is the National Scheme for health practitioners, administered by AHPRA. Senator Di Natale noted the benefits that this scheme provides in

57 Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011, Explanatory Memorandum.

58 Dr Jason Mazanov, *Submission 1*, p. 6.

59 Australian Olympic Committee, *Submission 12*, p. 5.

60 Australian Olympic Committee, *Submission 12*, Appendix.

setting registration standards and establishing 'protection of title'. The Senator has recommend that the government should consider including relevant sports science disciplines in the National Scheme. While negative licencing schemes have some appeal, Senator Di Natale's view is that these do not provide an ideal framework.

- The second option is establishing a source of independent advice for athletes. Senator Di Natale has recommended that DRALGAS consider forming and promoting an independent advisory group to assist a range of stakeholders.