

Chapter 7

The role of boards and management in the oversight of sports scientists

Every AFL board would have been suddenly asking this specific question: what policies do we have in place to make sure this does not happen in our club? Talk about a wake-up call. It is massive. Out of bad has to come some good.¹

Introduction

7.1 This chapter discusses the role of boards and management in sporting organisations and clubs to ensure that appropriate ethical governance arrangements are in place. It summarises some of the steps taken by the Australian Football League (AFL) and the National Rugby League (NRL) following the Australian Crime Commission's (ACC) report released in February 2013. The chapter examines the following issues:

- ethical governance within teams;
- ethical governance within sporting codes;
- a principles-based approach to effective corporate governance;
- football in Australia;
- Olympic sports; and
- the influence of professional sports on grassroots sports.

Ethical governance within teams

7.2 Submitters and witnesses to this inquiry referred to the responsibility of boards and management to ensure that appropriate governance and integrity measures are in place within sporting clubs. They argued that as the employers of sports scientists, club administrators have a duty to be informed about the practices being carried out by their staff.

7.3 Dr Hugh Seward, Chief Executive of the AFL Medical Officers Association argued:

1 Dr Hugh Seward, Chief Executive Officer, Australian Football League Medical Officers Association, *Proof Committee Hansard*, 12 June 2013, p. 57.

I think that clubs need to understand the very essence of integrity, and I think that the clubs and the personnel at high levels in clubs need to rise above that desire of 'win at all costs' and understand that your desperate efforts to win must still be within wise, considered, broader ethical guidelines.²

An informed board

7.4 It is an established feature of the common law in Australia that a director of a company is unable to hide behind ignorance of a company's affairs. The Australasian College of Sports Physicians (ACSP) has argued that as a principle, the boards and management of sporting organisations 'must be obliged to inform themselves of sports science practices, definition and regulations relevant to their organisation'.³ The noted sports journalist, Mr Tim Lane, has claimed that if any group should be criticised over the recent scandal in Australian sport:

... it is not sports scientists. It is a much more specific group: one with names and faces. It is the club's administrative and football managers. And to that should be added the senior players who failed to recognise the danger of what was upon them as they were taken away from the club for treatment outside the norm.⁴

7.5 In order to protect the interests of athletes, several submitters referred to the need for leadership by the boards and management of sporting clubs. The need for accountability was a recurring theme. The Australian Olympic Committee (AOC) submitted:

In our experience, the sports scientists working with athletes more often than not carry the weight of the authority of the club or organisation to which the athlete belongs. They will come with the tacit support and implied imprimatur of the coaching and technical staff, and the club/organisation. Athletes will rely on and trust their judgement – sometimes erroneously.⁵

7.6 The National Institute Network (NIN) put the view that:

... communication processes and clear lines of accountability are essential to prevent adverse behaviour and to minimise risks to athletes, coaches and, in the larger context to the organisation as a whole.⁶

2 Dr Hugh Seward, Chief Executive Officer, Australian Football League Medical Officers Association, *Proof Committee Hansard*, 12 June 2013, p. 57.

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

4 Mr Tim Lane, 'Sports science has its place', *Sunday Age*, 10 February 2013.

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

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

7.7 However, Applied Scientists of Queensland identified that—in terms of decision making within the structure of sporting organisations—a significant limitation is the lack of:

... responsibility to respond to complaints and issues from external and internal staff, or the existence of an official complaint process. For example, if a sport scientist finds a directive or practice from their manager against their professional judgement there is no channel to officially note their concern, and alternatively if management disagrees with a scientific approach they are unable to argue on a scientific level due to [the] discipline and research specific nature of the knowledge involved. An informal board made up of senior scientists and management could exist as a facilitator within sporting organisations for concerns to be aired, presenting a mediation style setting to allow the group to move forward with the best interests of the athlete and group as their primary concern.⁷

Reporting lines

7.8 The governance structures within sporting clubs are fundamentally important to ensuring that the ethical standards of sports scientists are met. The Coalition of Major Professional and Participation Sports (COMPPS) noted in its submission that:

... the position of the sports scientists in the organisation chart and the reporting lines that flow from this vary from one organisation or club to the next. This depends on the experience and status of the individuals who make up the team.⁸

7.9 COMPPS described the structures in sporting organisations as follows:

While there are no hard and fast rules, the high-performance team is usually in the third or fourth level of management.

The CEO is at the first level. Several general managers or directors form the next level and report directly to the CEO. The head of the high-performance team usually reports to one of these general managers or directors who is responsible for the operational side of the entity, often entitled “General Manager Operations” or “Director of Operations”.

In some sports entities, the head of the high-performance team will report to a head coach or director of coaching who will in turn report to a general manager, placing the sports scientist at the fourth level of management.

In some organisations, the head of the high-performance team will report directly to the CEO, placing him or her at the second level of management.⁹

7 Applied Scientists of Queensland, *Submission 16*, p. 5.

8 Coalition of Major Professional and Participation Sports, *Submission 9*, p. 7.

9 Coalition of Major Professional and Participation Sports, *Submission 9*, pp. 7–8.

7.10 In COMPPS's view, organisations should be left to form their own organisational charts and 'put in place the controls, systems and processes that minimise risk'.¹⁰ However, its Executive Director, Mr Malcolm Speed, cautioned:

A key issue in the governance side of this is that there needs to be a process to enable the escalation of serious issues to the chief executive and to the board, and we have seen some failings in that respect.¹¹

7.11 Mr Speed argued that in the 'large majority of clubs', there already exists a culture that does not tolerate practices that put the health of athletes at risk. He suggested:

I think the culture stems from the people who are employed within the clubs, right from the board down to the sports science practitioners and the people who report to them. We need to put processes in place where the board empowers the chief executive to make sure that that culture is not one of win at all costs, if that involves stepping across the line. Sporting bodies know where that line is. There needs to be a culture there that goes right through the organisation that depends on the people who are employed within the organisation holding each other accountable and making sure that those processes are followed, and if they are not followed there is an effective reporting mechanism that is able to escalate the issues and make sure it gets to the right level.¹²

Employment processes

7.12 The Department of Regional Australia, Local Government, Arts and Sport (DRALGAS) submitted that sporting clubs should 'adequately reference check new employees and contractors'.¹³ As chapter 5 discussed, however, the absence of a compulsory accreditation scheme for sports scientists means that employers do not have a formal way of determining whether individuals are appropriately qualified. A proposal by DRALGAS to assist employer organisations to conduct reference checking, particularly in cross-code employment situations, was discussed in chapter 5.

7.13 Acknowledging the challenges currently facing boards and management teams within sporting organisations, the Council of Heads of Exercise, Sport and Movement Sciences noted that a more regulated and defined scope of practice for sports science would enable administrators to:

10 Coalition of Major Professional and Participation Sports, *Submission 9*, p. 8.

11 Mr Malcolm Speed, Executive Director, Coalition of Major Professional and Participation Sports, *Proof Committee Hansard*, 12 June 2013, p. 14.

12 Mr Malcolm Speed, Executive Director, Coalition of Major Professional and Participation Sports, *Proof Committee Hansard*, 12 June 2013, p. 17.

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

... have a better understanding of the role description and the essential qualifications of a sports scientist prior to employing such staff. The current undefined 'space' in which a sports scientist operates is difficult for any organisation to manage given that the individual is usually working independently of any code of practice, ethical guidelines or requirements for continuing professional development.¹⁴

7.14 The AOC stressed the importance of adequate employment practices:

Unless the employment process is sufficiently rigorous and there are effective policies and procedures in place [to] continuously monitor the work of a sports scientist, there will not be effective safeguards in place to deal with the pressure of achieving a 'performance edge' and the financial rewards for doing so. Safeguards are needed to ensure the same controls are placed on 'freelance' sports scientists as within the more structured sporting institutions.¹⁵

7.15 Assistant Professor Annette Greenhow claimed in her submission to the committee that governing bodies have a role to play in:

- recognising an accreditation regime and reviewing procurement policies to establish accreditation as an eligibility requirement for contractors and consultants; and
- 'establishing and maintaining a central register of contractors, detailing qualifications, accreditation, and treatments provided'.¹⁶

Ethical governance within sporting codes

7.16 Dr David Hughes, Chief Medical Officer at the Australian Institute of Sport (AIS), referred to the role played by national sporting organisations (NSOs)¹⁷, the academies and institutes that make up the NIN and the Australian Sports Commission (ASC) as 'guardians' of ethical behaviour within Australian sport.¹⁸

7.17 Assistant Professor Greenhow submitted that in terms of oversight of sports scientists, the current regulatory arrangement appears to rest solely with sporting clubs, 'with little or no involvement' from governing bodies such as the AFL and NRL.¹⁹ She suggested that this reflects 'a lack of oversight and governance' on the part

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

15 Australian Olympic Committee, *Submission 12*, p. 3.

16 Assistant Professor Annette Greenhow, *Submission 8*, p. 10.

17 A list of NSOs recognised by the Australian Sports Commission is available on its website: Australian Sports Commission, *Australian Sports Directory*, http://www.ausport.gov.au/about/australian_sport_directory (accessed 19 June 2013).

18 Dr David Hughes, Chief Medical Officer, Australian Institute of Sport, Australian Sports Commission, *Proof Committee Hansard*, 12 June 2013, p. 5.

19 Assistant Professor Annette Greenhow, *Submission 8*, p. 5.

of governing bodies, which, as administrators, organisers and regulators of national competitions, are in a position of 'power and influence both in a practical and legal sense'.²⁰

7.18 In Assistant Professor Greenhow's view, there is scope for governing bodies to 'take the lead role and co-ordinate a reconfiguration of the regulatory arena to achieve a transparent, robust and effective regulatory framework for sports scientists in professional sport'.²¹ She noted that:

In professional football, the governing body is the dominant actor in the regulatory space and has the capacity to control and influence [the] behaviour of others. Examples can be found in the control over funding, salaries, collective bargaining agreements and player contracts, and the development, implementation and enforcement of policies designed to promote the public interest in areas such as anti-doping, behavioural standards and codes of conduct.²²

7.19 The ASC argued that 'improved supervision by sports over sports science practices is necessary'.²³ The committee heard evidence that code-wide oversight is necessary to prevent rogue or unethical individuals from moving between clubs. As Dr Hughes from the AIS argued:

I think the revelations of the ACC report have largely been interpreted—through the media—as showing great deficiencies in the profession of sports science. I think it is very arguable that what they have actually shown is great deficiencies in the internal governance of some sporting organisations, which makes those sporting organisations vulnerable to unethical individuals. I am not aware of the ongoing ASADA investigations into these matters and I am not privy to all the details, but what I am privy to—from reading the ACC report which has been released—is that there appear to have been one or two individuals who have wandered around from organisation to organisation and who have had undue influence within those organisations without being bound to the code of conduct of those organisations. That is a reflection of poor governance of sporting organisations, not a reflection of the behaviour of sports science as a profession.²⁴

7.20 Dr Jason Mazanov told the committee that there is a lack of clarity around ethical practices:

20 Assistant Professor Annette Greenhow, *Submission 8*, p. 6.

21 Assistant Professor Annette Greenhow, *Submission 8*, p. 11.

22 Assistant Professor Annette Greenhow, *Submission 8*, p. 6.

23 Australian Sports Commission, *Submission 17*, p. 1.

24 Dr David Hughes, Chief Medical Officer, Australian Institute of Sport, Australian Sports Commission, *Proof Committee Hansard*, 12 June 2013, p. 3.

I still haven't heard anyone articulate what 'ethics' [means]—what is right. We have heard platitudes and assurances: 'We will do what is right.' But what is that? No-one has actually articulated to my satisfaction what is the right set of behaviour around the practice of enhancing performance in sport.²⁵

A principles-based approach to effective corporate governance

7.21 In addition to clear lines of reporting and an informed board, effective corporate governance at both the code and club level will be aided by a set of sport governance principles. The following section sets out the committee's evidence on the principles proposed by the ASC and the AIS.

ASC's Sport Governance Principles

7.22 In 2012, the ASC revised its *Sport Governance Principles* (the ASC Principles). They are reproduced at Appendix 3.

7.23 The ASC Principles have historically contained guidelines within which the ASC believes a sporting organisation's Board members should operate and enact their role. The ASC states on its website:

It is uncontested that governance structures significantly affect the performance of sporting organisations. Where they are present, ineffective governance practices not only impact on the sport, but also undermine confidence in the Australian sports industry as a whole.²⁶

7.24 While the ASC Principles were promoted as guidelines and NSOs were encouraged to comply with them, the ASC announced in March 2013 that some of the principles are now mandatory. This followed the ASC's High Performance Strategy, *Australia's Winning Edge*, released in November 2012. The ASC will assess the current governance arrangements of NSOs and develop implementation plans, which will be reflected in the funding agreements that the ASC has with the NSOs.²⁷ Twenty per cent of the funding provided by the ASC to the top seven funded sports in Australia will be contingent on the sports demonstrating compliance with the ASC principles on at least an annual basis.²⁸

7.25 One of the key planks of the strategy is to ensure that NSOs:

25 Dr Jason Mazanov, *Proof Committee Hansard*, 12 June 2013, p. 32.

26 Australian Sports Commission, *Mandatory Sports Governance Principles*, March 2013, http://www.ausport.gov.au/ais/australias_winning_edge/mandatory_sports_governance_principles (accessed 24 May 2013).

27 Australian Sports Commission, *Mandatory Sports Governance Principles*, March 2013, p. 1.

28 Mr Phil Borgeaud, Acting Director, Australian Institute of Sport, Australian Sports Commission, *Proof Committee Hansard*, 12 June 2013, p. 11.

... have the structure, workforce and leadership capacity to develop successful programs to achieve competitive results and to spend taxpayer funding effectively.²⁹

7.26 The ASC called for a new level of accountability from NSOs:

Confidence in the leadership capacity and capability of sports—particularly in relation to management, governance, internal controls and business systems—is acknowledged as being critical. Sports will be required to demonstrate good leadership, governance and administration as part of the annual investment and review process.³⁰

7.27 The ASC also introduced new requirements to ensure appropriate integrity safeguards in NSOs are in place. These safeguards stipulate that:

- boards should adopt and observe the Sports Science Best Practice Principles to be promulgated shortly by the Australian Institute of Sport (the largest employer of sports scientists in Australia);³¹ and
- boards should have in place proper investigation, supervision and reporting practices in relation to the sports science practices in use in their sport. These should be either direct to the Board or through no other person than the CEO. ‘Don’t ask, don’t tell’ will not be a satisfactory position for Boards to adopt; they will have a positive obligation to inform themselves about sports science practices and to supervise them in a manner consistent with ASADA, ASC and Australian Government policies.³²

7.28 The AOC 'applauds and supports' the requirement for NSOs to sign up to ASC integrity principles.³³ Exercise & Sports Science Australia (ESSA) welcomed the reform for supporting 'the implementation of systems and accountability of organisational activities'.³⁴

29 Australian Sports Commission, *Mandatory Sports Governance Principles*, March 2013, http://www.ausport.gov.au/ais/australias_winning_edge/mandatory_sports_governance_principles (accessed 24 May 2013).

30 Australian Sports Commission, *Mandatory Sports Governance Principles*, March 2013, http://www.ausport.gov.au/ais/australias_winning_edge/mandatory_sports_governance_principles (accessed 24 May 2013).

31 The *AIS Sport Science/Sports Medicine Best Practice Principles* were subsequently released on 29 May 2013.

32 Australian Sports Commission, *Mandatory Sports Governance Principles*, March 2013, http://www.ausport.gov.au/ais/australias_winning_edge/mandatory_sports_governance_principles (accessed 24 May 2013).

33 Australian Olympic Committee, *Submission 12*, p. 3.

34 Exercise & Sports Science Australia, *Submission 7*, p. 9.

AIS Principles

7.29 The ASC released the *AIS Sport Science/Sports Medicine Best Practice Principles* (the AIS Principles) on 29 May 2013. In announcing the release, the Minister for Sport explained:

These new principles will further ensure that sports science at the AIS continues to be pursued within appropriate ethical boundaries and with strong governance arrangements ... The principles have rightly placed athlete health and welfare as paramount ... Importantly, other sporting organisations will now be able to look to the AIS principles as a guide for developing their own policies and procedures.³⁵

7.30 The release of the AIS Principles has been described as a move by the ASC to 'inject some leadership over the issue of governance and sports science'.³⁶ The ASC submitted that the principles:

... outline the AIS' approach to sports science policies and practices and should assist sports to ensure that appropriate governance protocols and processes lead the implementation of integrity based sports science activities.³⁷

7.31 It was also reported that the AIS will brief all 60 sports that receive funding from the ASC on the new guidelines.³⁸ Dr Hughes of the AIS referred to a 'great willingness across Australian sport' to ensure that internal governance, reporting and organisational structural reforms are taken on board.³⁹ He referred to confidence at the ASC and the National Integrity of Sport Unit (NISU) that the reforms being introduced by the Government will:

... have a profound effect by improving governance and removing some of the behaviours that have been witnessed. We are optimistic that we can make a great and very beneficial change for Australian sport.⁴⁰

7.32 Dr Hughes described five key areas of focus contained in the AIS Principles:

... firstly, ensuring that sports scientists are qualified and supervised; two, having policies in place that guide all sorts of science activities; three, educating athletes ... coaches and staff [about] policies and appropriate

35 Senator the Hon. Kate Lundy, Minister for Sport, 'New AIS Sports Science and Sports Medicine Principles Welcomed', Media release, 29 May 2013.

36 Mr Patrick Smith, 'Blueprint for safe sports science', *The Australian*, 29 May 2013.

37 Australian Sports Commission, *Submission 17*, p.1.

38 Mr Patrick Smith, 'Blueprint for safe sports science', *The Australian*, 29 May 2013.

39 Dr David Hughes, Chief Medical Officer, Australian Institute of Sport, Australian Sports Commission, *Proof Committee Hansard*, 12 June 2013, p. 4.

40 Dr David Hughes, Chief Medical Officer, Australian Institute of Sport, Australian Sports Commission, *Proof Committee Hansard*, 12 June 2013, p. 4.

behaviour; four, undertaking detection and enforcing sanctions [where] appropriate; and five ... a reporting framework that ensures that boards and senior managers are kept informed about all sports science activities taking place in the organisation. So the idea is to have a cyclical reporting framework whereby boards are informed at all times about sports science activities taking place in the organisation.⁴¹

7.33 COMPPS noted that the AIS Principles seek to put in place a more comprehensive process in relation to the Board of Directors in sporting organisations than is current practice.⁴² In particular, COMPPS referred to the obligation for Boards to:

... inform themselves as to [sports science and sports medicine] practices of the organisation, to ensure that they are best practice, promote a culture of integrity and to comply with legislative and regulatory requirements.⁴³

7.34 While COMPPS acknowledged that the AIS Principles are comprehensive, it submitted that 'the professional sports have not yet had the opportunity to assess, discuss and evaluate the proposed principles'.⁴⁴ Mr Malcolm Speed, Executive Director at COMPPS, noted that the AIS Principles:

... place a high onus on the board—perhaps a variation of the normal role we see for the board to deal primarily with strategic and high-level issues. There are detailed reporting requirements in those guidelines. Ultimately, it will be for the sports to address as to whether they wish to adopt them and whether the clubs wish to adopt them. My personal view is that they are entirely reasonable, and that they would fit well into the structure of most professional sporting clubs within the professional leagues.⁴⁵

7.35 The NIN described the AIS Principles as a 'valuable addition to the tools and guidance available to the NIN and National Organisations'.⁴⁶

7.36 The AOC supported the oversight and reporting framework recommended in the AIS Principles:

The AOC firmly believes that Boards should have in place proper investigation, supervision and reporting practices in relation to the sports

41 Dr David Hughes, Chief Medical Officer, Australian Institute of Sport, Australian Sports Commission, *Proof Committee Hansard*, 12 June 2013, pp 10–11.

42 Coalition of Major Professional & Participation Sports, *Submission 9*, p. 8.

43 Coalition of Major Professional & Participation Sports, *Submission 9*, p. 8.

44 Coalition of Major Professional & Participation Sports, *Submission 9*, p. 8.

45 Mr Malcolm Speed, Executive Director, Coalition of Major Professional and Participation Sports, *Proof Committee Hansard*, 12 June 2013, p. 14.

46 National Institute Network, *Submission 14*, p. 4.

science practices within their sport/club. A “don’t ask, don’t tell” mentality should never be a satisfactory position for Boards to adopt.⁴⁷

7.37 The ACSP also recommended the adoption of the AIS Principles. It submitted that 'all sporting organisations must have a clear policy framework which provides parameters for sport science activities within the organisation'.⁴⁸ It also believes that there should be a structured and cyclical reporting process, whereby boards are informed of:

- new staff employed in the sports science department;
- appropriate induction processes and background checks on new employees;
- any change to sports science and sports medicine protocols over the reporting period; and
- any breaches of Code of Conduct during the reporting period.⁴⁹

7.38 ESSA commended the accountable framework established by the AIS Principles:

Its strength is that it does mandate that the boards have a responsibility to ensure that appropriately qualified and accredited personnel are in place. If the board have done that, and that is one of many responsibilities of the board as part of their monitoring role, and something goes wrong, then you would argue that perhaps the board are in the right. But if the board have not adhered to that guideline and they have recruited a non-accredited sports scientist and something goes wrong, then yes, the board needs to be accountable.⁵⁰

7.39 The Australian Athletes' Alliance (AAA)—the peak body for Australia's eight elite players' associations—submitted that while the AIS Principles contain 'many sound ideas', they 'go beyond what is warranted for elite professional athletes'.⁵¹

47 Australian Olympic Committee, *Submission 12*, p. 3.

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

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

50 Associate Professor Christopher Askew, President, Exercise & Sports Science Australia, *Proof Committee Hansard*, 12 June 2013, p. 44.

51 Australian Athletes' Alliance, *Submission 18*, p. 1. The AAA was established in 2007 by the AFL Players' Association, Australian Cricketers' Association, Professional Footballers' Association, Australian Swimmers Association, Netballers' Association, Rugby League Players' Association, and Rugby Union Players' Association. The National Basketball League Players' Association joined the AAA in 2012. Its member organisations represent over 3000 professional sportspeople. See: Australian Athletes' Alliance, Webpage, <http://www.athletesalliance.org.au/> (accessed 29 May 2013).

The AAA expressed particular reservations about the Medication Policy principle.⁵² This principle recommends that sporting organisations:

should have a written Medication Policy, approved by the organisation's advising medical practitioner, which governs the use of prescription and over-the-counter medication by athletes.⁵³

7.40 The principle suggests that the Medication Policy should include requirements that athletes only 'use medication as directed by the organisation's medical practitioner' and to 'report to the organisation's medical practitioner when they have obtained or used medication from sources other than the organisation's medical practitioner'.⁵⁴ Mr Matthew Finnis, Director of the AAA, told the committee that this may represent an unwarranted intrusion into the privacy of athletes, for instance requiring them to provide information to the club's medical practitioner about matters relating to mental illness, sexual health and contraception.⁵⁵

7.41 Mr Finnis said the concern that the AAA has:

... on behalf of the athletes is to ensure that as this focus is on the practice of sports scientists we need to make sure that the regulatory framework or lens is aimed at this space and not seeking to impose further regulatory obligation on the athletes themselves, who are already the subject of that. We also must ensure that we preserve key principles, such as doctor-patient privilege, and we must continue to support this overriding public interest that we encourage people to seek medical advice and treatment if they have a concern as to their health.⁵⁶

Senator Richard Di Natale 's view

7.42 Senator Richard Di Natale is of the view that any regulation of the sports science profession must be accompanied by improvements in the cultures of employer sporting bodies. This is essential in order for athlete health and welfare and the integrity of sport to be protected. The Senator views strengthening governance arrangements—both within clubs and among sporting codes—and promoting best practice as central pillars of a robust framework in which behaviours and integrity measures can be improved.

52 Australian Athletes' Alliance, *Submission 18*, p. 2.

53 Australian Sports Commission, *AIS Sports Science/Sports Medicine Best Practice Principles*, May 2013, p. 5.

54 Australian Sports Commission, *AIS Sports Science/Sports Medicine Best Practice Principles*, May 2013, p. 5.

55 Mr Matthew Finnis, Director, Australian Athletes' Alliance, *Proof Committee Hansard*, 12 June 2013, p. 65.

56 Mr Matthew Finnis, Director, Australian Athletes' Alliance, *Proof Committee Hansard*, 12 June 2013, p. 65.

7.43 Senator Di Natale commends the efforts of the ASC to improve governance and sports science practice principles as represented by the ASC and AIS Principles. The Senator views the ASC Principles as practical measures to improve accountability within NSOs and to promote appropriate integrity safeguards. Senator Di Natale supports making the principles mandatory.

7.44 Senator Di Natale also recognises the leadership exhibited by the ASC in promoting the AIS Principles and the AIS as a centre of excellence. The Senator recommends that the principles be recognised as promoting best practice principles and be adopted and adhered to by NSOs.

7.45 Senator Di Natale notes the concerns raised by the AAA about the practical consequences for athletes of some of the AIS Principles, particularly those dealing with medical reporting. The Senator is sympathetic to the view that a framework designed to ensure the integrity of the practice of sports science should not place onerous or unreasonable burdens on athletes, particularly in relation to unnecessary intrusions into their privacy. Senator Di Natale therefore recommends that the ASC periodically engage in a consultative review of both the ASC Principles the AIS Principles to ensure that they strike the right balance between strengthening integrity and respecting the rights and best interests of athletes.

Recommendation 9

7.46 Senator Di Natale recommends that the Australian Sports Commission's *Sports Governance Principles* and *AIS Sports Science/Sports Medicine Best Practice Principles* be:

- **recognised as promoting best practice principles;**
- **adopted and adhered to by Australian sporting organisations; and**
- **periodically reviewed to ensure that they strike the right balance between strengthening integrity measures and respecting the rights and best interests of athletes.**

Australian Sports Integrity Network

7.47 In May 2013, the then Minister for Sport, Senator the Hon. Kate Lundy, announced that the NISU had established the Australian Sports Integrity Network (ASIN), a group 'comprising the integrity heads from about 20 of Australia's top sports'.⁵⁷ Mr Richard Eccles, Deputy Secretary of DRALGAS, informed the committee that the NISU has received a significant level of support 'from across all sports'.⁵⁸

57 Senator the Hon. Kate Lundy, Minister for Sport, 'Expanded National Integrity of Sport Unit takes shape', *Media Release*, 30 May 2013.

58 Mr Richard Eccles, Deputy Secretary, Department of Regional Australia, Local Government, Arts and Sport, *Proof Committee Hansard*, 12 June 2013, p. 3.

7.48 Further information about the ASIN, however, including its role, composition and progress to date, is not currently available. Senator Di Natale queries why this is so given the time that has elapsed since the Minister for Sport's announcement.

Recommendation 10

7.49 Senator Di Natale recommends that the federal Minister for Sport make publicly available information about the role, composition and progress of the Australian Sports Integrity Network.

Football in Australia

7.50 Clubs in two major football codes in Australia—the AFL and the NRL—are currently the subject of the Australian Sports Anti-Doping Authority's formal investigation into drugs in sport. The committee was therefore very disappointed that representatives from both codes failed to attend the inquiry's public hearing. The AFL and NRL instead opted for Mr Malcolm Speed, Executive Director at COMPPS, to appear on their behalf. The committee felt that these organisations missed an opportunity to assist the committee in its consideration of avenues of reform. The committee notes that neither body would have been required to answer questions relating to the specifics of ASADA's investigation.

7.51 The recent experiences of the AFL and NRL indicate the importance of good governance practices that are built on creating structures based on key principles: promoting transparency and protecting athlete health and welfare.

Australian Football League

7.52 The AFL receives annual grants from the ASC for a number of activities, including for sport development (coaching, umpiring and community club programs), as well as the AIS/AFL Academy.⁵⁹ As an NSO, the AFL is subject to the ASC Principles.

7.53 The AFL has said that hiring decisions for sports scientists are the responsibility of individual clubs.⁶⁰ However, in March 2012 it was reported that the AFL had unofficially declared war on high-performance managers due to frustration at their growing influence within clubs.⁶¹ The AFL had become concerned that in some cases doctors were deferring to high-performance staff. AFL football operations head Adrian Anderson was quoted as saying:

59 Australian Football League, Government Partners, <http://www.afl.com.au/afl-hq/partners/government-partners> (accessed 24 May 2013).

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

61 Mrs Caroline Wilson, 'AFL's war with sports scientists', *Sydney Morning Herald*, 13 March 2012.

Sports scientists, high performance managers, whatever you want to call them, have a very legitimate and important role to play in the game ... But we need to make it clear that doctors are the only ones qualified to be making medical decisions ... We're talking about issues such as when a player can return from injury, what sort of treatment occurs, diagnostics. It is very important to make this clear from a medical perspective where the players' safety and welfare are concerned and also for medical legal reasons. We'd hate to have a situation where a decision was made on a player's medical condition by someone who wasn't a doctor and that player decided to take legal action quite apart from his welfare.⁶²

7.54 In the same article, Mr Andrew Demetriou, the Chief Executive of the AFL, was quoted as saying: 'It should be very clear at all clubs that where there is a medical issue the doctor has the final say'.⁶³ Demetriou referred to sports science and fitness personnel as 'phys-edders', saying 'Phys-edders don't overrule doctors'.⁶⁴

7.55 These comments prompted criticism from Professor David Bishop, a board member of ESSA, who said:

Given the integral role of sport scientists in high-performance departments, it is disappointing to see the recent disparaging comments emanating from the AFL in this regard ... In particular, the reference by AFL CEO, Andrew Demetriou to sport scientists as 'phys-edders' reflects that either the AFL's thinking is 30 years out of date, or that there is a deliberate lack of respect for the many highly-qualified and highly respected sport scientists who work in the AFL.⁶⁵

7.56 In September 2012, it was reported that AFL clubs were spending twice the amount on key training personnel that they had two seasons previously, with half of the AFL's 18 clubs paying their key fitness coaches more than \$300 000 a year.⁶⁶ In response to criticism, an advisory board for club performance managers was

62 Mrs Caroline Wilson, 'AFL's war with sports scientists', *Sydney Morning Herald*, 13 March 2012.

63 Mrs Caroline Wilson, 'AFL's war with sports scientists', *Sydney Morning Herald*, 13 March 2012.

64 'Demetriou warns club on "phys-edders"', *AAP*, 15 March 2012.

65 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).

66 Caroline Wilson, 'AFL rails at fitness as a growth industry', *Brisbane Times*, 15 September 2012.

restructured to form the AFL Sports Science Association.⁶⁷ The new body has been described, however, as an informal organisation that does not self-regulate.⁶⁸

7.57 Only weeks before the ACC report was released and ASADA's investigation was announced, the AFL Sports Science Association claimed that 'isolated problems between fitness and conditioning personnel and club doctors had been resolved'.⁶⁹ The association's head, Mr Rob Aughey, said that trouble was not expected in the 2013 season and referred to 'isolated instances' of issues regarding how sports science and 'medical and physio staff' had worked together.⁷⁰

7.58 On 25 March 2013, however, Mr Demetriou conceded that the AFL should have acted earlier on concerns about the growing influence of sports scientists at some clubs:

... there were certain things going on, certain practices, particularly with marginalising our club doctors, which was unacceptable.⁷¹

7.59 By then the practice of sports science had become a major issue for the AFL and Australian sport generally.

Switkowski report

7.60 On 27 February 2013, Mr David Evans, Chairman of the Essendon Football Club, announced an independent review of governance and processes at the club.⁷² Dr Ziggy Switkowski was appointed by the board of Essendon to lead the review and his report was released on 6 May 2013.

7.61 According to the report, the period of interest for the review began with:

... recruitment of new personnel and leaders for the High Performance team at the end of the 2011 season. This new group of experts in player strength and conditioning was given considerable space within which to operate and found little early resistance to their sometimes unconventional ideas.

67 Caroline Wilson, 'AFL rails at fitness as a growth industry', *Brisbane Times*, 15 September 2012.

68 Adam Cooper, 'Sports science body wants greater regulation', *The Age*, 8 February 2013.

69 Jon Pierik, 'Teamwork bridges AFL fitness, health divide', *The Age*, 22 January 2013.

70 Jon Pierik, 'Teamwork bridges AFL fitness, health divide', *The Age*, 22 January 2013.

71 'Demetriou admits regret over sports scientists', *AAP*, 25 March 2013.

72 Essendon Football Club, Evans announces independent review, <http://www.essendonfc.com.au/news/2013-02-27/evans-announces-independent-review> (accessed 29 May 2013).

The arrival of confident, opinionated staff was not accompanied by a simultaneous strengthening of the processes within Football Operations, or by extra vigilance by senior management.⁷³

7.62 The report noted that sports scientists have gained influence at most AFL clubs, but that where it works well 'these professionals partner with the medical staff to develop bespoke programs for each player, and rarely consider use of unconventional supplements or treatments'.⁷⁴

7.63 However, in the case of Essendon, Dr Switkowski identified a number of management processes that 'broke down, failed or were short-circuited', including: the management of contractors; the hierarchy of decision making in the club's Football Department and administrative processes.⁷⁵ The report blamed poor internal processes and improvised fixes on a climate in the club that created conflicts.

7.64 Dr Switkowski recommended that:

... a clear framework of accountability and authority must be established and complied with. In general, the club doctor should be expected to be the signing authority for all medicines, supplements, diagnostic tests and therapeutic treatments.⁷⁶

7.65 Senator Di Natale reiterates the committee's view, expressed in chapter 1, that the protection of athlete health and welfare must always be the highest priority and overriding consideration in the pursuit of improved performance. The Senator believes that club doctors or medical professionals must be consulted where a decision affects an athlete's health and welfare.

7.66 The failings of governance at Essendon, and the demonstrated need for clear accountability, serve as timely lessons for other sports clubs and organisations.

73 Dr Ziggy Switkowski, Report, 6 May 2013, <http://www.essendonfc.com.au/news/2013-05-06/dr-ziggy-switkowski-report> (accessed 29 May 2013).

74 Dr Ziggy Switkowski, Report, 6 May 2013, <http://www.essendonfc.com.au/news/2013-05-06/dr-ziggy-switkowski-report> (accessed 29 May 2013).

75 Dr Ziggy Switkowski, Report, 6 May 2013, <http://www.essendonfc.com.au/news/2013-05-06/dr-ziggy-switkowski-report> (accessed 29 May 2013).

76 Dr Ziggy Switkowski, Report, 6 May 2013, <http://www.essendonfc.com.au/news/2013-05-06/dr-ziggy-switkowski-report> (accessed 29 May 2013).

National Rugby League

Sports scientists in the NRL

7.67 The NRL announced on 7 February 2013 that accountancy firm Deloitte had been appointed to audit the sports science department of one of the league's teams.⁷⁷ The NRL also announced that it had appointed a former Federal Court judge, the Hon. Tony Whitlam QC, to establish a permanent NRL Integrity and Compliance Unit.⁷⁸ In announcing the unit, the NRL said that it was committed to 'requiring team doctors to review any instance where supplements, substances or other procedures may have been administered without the prior approval of the team doctor'.⁷⁹

7.68 On 21 February 2013, an NRL spokesman said clubs had promised to be transparent about the sports science they use and the staff they employ.⁸⁰ News Limited journalist Mr Patrick Smith wrote that one club, the Cronulla Sharks:

... was quick to remove four staff but was roundly criticised by the league community for its decision. Such has been the angst, the club is now into its third chairman since the dismissals and coach Shane Flanagan has been recalled.⁸¹

7.69 This illustrates the doubt in a number of teams—across sporting codes—while the ASADA investigation is ongoing.

7.70 Like the AFL, the NRL does not have specific requirements for its sports scientists to have accredited qualifications.⁸² However, the NRL submitted that it is 'currently examining registration and accreditation practices for all football support staff including sports scientists working in NRL Clubs' and this work is being undertaken by the Integrity and Compliance Unit.⁸³

77 Adrian Prosenko, 'Manly sports science unit investigated as NRL confirms clubs and players under scrutiny', *Sydney Morning Herald*, 7 February 2013.

78 National Rugby League, 'NRL announces Integrity Unit', 7 February 2013, <http://www.nrl.com/nrl-announces-integrity-unit/tabid/10874/newsid/70697/default.aspx> (accessed 27 May 2013).

79 National Rugby League, 'NRL announces Integrity Unit', 7 February 2013, <http://www.nrl.com/nrl-announces-integrity-unit/tabid/10874/newsid/70697/default.aspx> (accessed 27 May 2013).

80 Andrew Webster, 'NRL clubs agree to be totally transparent about the sports science they use', *Daily Telegraph*, 21 February 2013.

81 Patrick Smith, 'Blueprint for safe sports science', *The Australian*, 29 May 2013.

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

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

Governance

7.71 Recognising the leadership role to be played by the Chief Executive Officer, the NRL summarised its position on governance and sports scientists as follows:

... as with any role or position within an organisation or club, the NRL supports proper oversights and best-practice governance. Unqualified persons and unethical behaviour has no role in any organisation and it is our view that overview of staff within a club environment ultimately rests with the CEO. Whilst a Board will set the strategic direction and oversee club activities, implementation including staff appointments and clear reporting lines rightfully rest with a CEO. Therefore, in terms of the appointment and role of sports scientists within a club environment the NRL views the club CEO as the appropriate level of management to ultimately oversee the role. Whilst sport scientists are most likely to sit within football departments and/or high performance teams their day-to-day activities should be monitored by the club doctor or chief medical officer within a football/coaching/high performance team environment with ultimate oversight resting with the Club CEO.⁸⁴

Olympic sports

7.72 The AOC referred in its submission to differences between the frameworks in the NIN and those in place in NSOs such as the AFL and NRL:

... 'freelance' sports scientists largely working with professional sporting codes tend to operate outside of any institutionalised regulatory framework. Government funding of sporting organisations or the heavy reliance by sporting organisations on the provision of services by institute employed sports scientists tends to result in a stronger regulatory framework being in place. The same cannot necessarily be said for sporting codes where government or statutory entities such as the AIS tend to be less influential.⁸⁵

7.73 In comparison to professional sporting codes, the AOC submitted that in the NIN:

Employment processes tend to ensure that individuals have appropriate qualifications for the services required and that their work practices are heavily monitored and regulated by the institutes themselves. In addition, these institutions tend to have government style management practices in place in the form of Risk Management, Ethics and Supplements Committees, with responsibility for reviewing and ensuring adherence to policies and procedures developed in areas such as supplements. Further, these institutes tend to follow system wide quality assurance standards

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

85 Australian Olympic Committee, *Submission 12*, pp 2–3.

including laboratory accreditation thereby providing some safeguards against unethical or inappropriate practices.⁸⁶

7.74 While Athletics Australia (AA) established that the ACC report did not contain specific evidence relating to athletics, it nonetheless announced that it was fast-tracking the formation of a new Ethics and Integrity Unit.⁸⁷ Chief Executive Mr Dallas O'Brien said that the unit would keep watch over sports science practices and its governance regulations only needed 'tweaking' to comply with the ASC's integrity requirements.⁸⁸ This followed the ASC's announcement—discussed earlier in this chapter—that Olympic sports, including swimming, athletics, cycling, sailing, rowing, hockey and basketball, could face funding cuts of up to 20 per cent if they failed to comply with its new governance principles.

7.75 AA submitted that while it has an oversight mechanism for sports science in place through an electronic reporting system and 'interdisciplinary case conferences', this does not apply where athletes and/or their advisors set up personal arrangements.⁸⁹

Professional vs grassroots sports

7.76 Submitters and witnesses to this inquiry largely focused on sport at the elite level. However, several references were made to the increasing influence of sports science at sub-elite levels, including amateur and junior competitions.

7.77 Dr Jason Mazanov argued that sports science is increasingly entering junior competitions:

We need to do more than just protect those people at the top of the game, who are vulnerable but still adults. We need to protect those at the bottom of the game, who are incredibly vulnerable, even to their parents.⁹⁰

7.78 Dr Mazanov was also concerned that the emphasis placed in elite sports on high performance would affect the focus of amateur and junior sport. He submitted:

At the federal level the focus of the sports academy and institute system in Australia is to use sports health science to provide a competitive advantage through enhanced performance (e.g. world records). The need to prioritise athlete health and welfare has been lost in pursuit of Olympic medals ...

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

87 Athletics Australia, *Athletics Australia to fast-track Ethics & Integrity Unit*, 22 February 2013, http://www.athletics.com.au/home/news/news/2013/february/athletics_australia_to_fast-tr (accessed 24 May 2013).

88 Nicole Jeffery, 'ASC threat of funding cut comes with \$5m carrot for good sports', *The Australian*, 20 March 2013.

89 Athletics Australia, *Submission 12*, pp 1–2.

90 Dr Jason Mazanov, *Proof Committee Hansard*, 12 June 2013, p. 29.

Given the Australian pyramid model for sport, this change must come from the top. How Australia prioritises health and welfare among the elite becomes the model for how club and junior sport prioritises health and welfare for the rest of Australia.⁹¹

7.79 Dr Peter Larkins also emphasised the need for standards and frameworks to filter down to all levels of sport.⁹²

7.80 ESSA advised the committee that individuals working as sports scientists below the elite level 'typically either have an undergraduate degree or [are] working towards an undergraduate degree'.⁹³ After obtaining postgraduate qualifications these individuals tend to migrate to employment at the elite level.⁹⁴ However, ESSA indicated that students and relatively junior professionals are working with teams in under-18 competitions and in private schools.⁹⁵

7.81 Professional sporting organisations have a vested interest in the success of sports at the grassroots level. The NRL referred to 1.4 million playing participants in rugby league across Australia and said that it 'works to foster, develop and grow the game by bringing people together and enriching their lives through rugby league'.⁹⁶

7.82 COMPPS noted that its member sports provide a large portion of their revenue to enhancing, promoting and developing sports at the grassroots level in addition to national competitions.⁹⁷ Dr David Hughes, Chief Medical Officer at the AIS, referred to school-run football programs as 'nurseries' for the AFL and NRL.

Senator Di Natale's view

7.83 At sub-elite levels, a 'win at all costs' mentality may not be present, or may only have a marginal influence. Without the financial incentives and pressures that apply in the professional sporting arena, the opportunities and the rationale for sports scientists to push ethical and legal boundaries are diminished.

91 Dr Jason Mazanov, *Submission 1*, p. 3.

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

93 Professor David Bishop, Director, Sports Science, Exercise & Sports Science Australia, *Proof Committee Hansard*, 12 June 2013, p. 39.

94 Professor David Bishop, Director, Sports Science, Exercise & Sports Science Australia, *Proof Committee Hansard*, 12 June 2013, p. 39.

95 Professor David Bishop, Director, Sports Science, Exercise & Sports Science Australia, *Proof Committee Hansard*, 12 June 2013, p. 39.

96 National Rugby League, *Submission 12*, p. 2.

97 Coalition of Major Professional & Participation Sports, *Submission 9*, p. 7.

7.84 Without the financial resources of professional clubs, there is also a significant disparity between the ability of sub-elite teams to implement effective governance arrangements compared to those in the AFL and NRL.

7.85 Senator Di Natale recognises that any proposed reforms—particularly in relation to government arrangements and responsibilities—may impact disproportionately on amateur sporting organisations.

Conclusion

7.86 There have been several important recent developments with the responsible Government bodies and peak football codes establishing governance principles and integrity units. Senator Di Natale believes that overarching sport governance principles have an important role to play in terms of ensuring that sports scientists act ethically. The Senator believes that these principles should be mandatory.

7.87 Senator Di Natale also believes there is a need for clubs to adopt governance structures that reflect these broad principles. Specifically, professional sporting bodies must ensure transparency and prioritise the health and welfare of athletes.

7.88 To this end, Senator Di Natale has identified three key governance practices that should be established by all professional sporting clubs with the assistance and endorsement of the peak body. They are:

- regular reporting of the activities of sports scientists to the CEO and the board;
- the primacy of medical advice and direction over the decisions of sports scientists, such that sports scientists must seek endorsement from club doctors where decisions affect athlete health and welfare; and
- the importance of ensuring that while the CEO and the board are kept informed of the activities of sports scientists, the privacy of athletes and the protection of personal medical information are ensured.

Recommendation 11

7.89 Senator Di Natale recommends that where a qualified medical practitioner is employed by a sporting organisation or team, the medical practitioner be required to approve any decision relating to athlete health and welfare including the use of supplements. Further, a sport scientist should be required to consult with an organisation or team’s medical officer regarding supplements as appropriate.