



Australian Government

Department of Health

**Submission to the Senate
Community Affairs Legislation Committee:**

**Inquiry into the
Australian Sports Anti-Doping Authority Amendment
(Sport Integrity Australia) Bill 2019**

17 January 2020

Introduction

The Department of Health welcomes the opportunity to provide this submission to the Senate Community Affairs Legislation Committee for the inquiry into the Australian Sports Anti-Doping Authority (Sport Integrity Australia) Bill 2019 (Sport Integrity Australia Bill). The Department of Health has worked together with the Australian Sports Anti-Doping Authority (ASADA) to provide this joint submission, which reflects the views of both organisations.

The Sport Integrity Australia Bill establishes Sport Integrity Australia as a new Government agency to prevent and address threats to sport integrity. In order to do this, Sport Integrity Australia will bring together the existing functions of ASADA and the National Integrity of Sport Unit (NISU), as well as the nationally focussed sports integrity functions of Sport Australia (SA).

Once established, it is anticipated Sport Integrity Australia will expand to include enhanced match-fixing detection and suspicious wagering alert capabilities, a whistle-blower scheme and the promotion of national collaboration on sports wagering-related integrity frameworks (the Australian Sports Wagering Scheme).

Sport Integrity Australia will manage Australia's international sports integrity related obligations including the UNESCO International Convention against Doping in Sport and the Council of Europe Convention on the Manipulation of Sports Competitions (Macolin Convention).

Sport Integrity Australia will draw together and enhance existing sports integrity capabilities, knowledge and expertise, while nationally coordinating all elements of the sports integrity threat response, including prevention, monitoring and detection, investigation and enforcement. Sport Integrity Australia will be a world-first approach to sports integrity matters, maintaining Australia's innovative approach to the protection of sport, and sports participants, events and competitions.

Background

On 5 August 2017, the then Minister for Sport, the Hon. Greg Hunt MP, [announced a review of Australia's sports integrity arrangements](#) (Wood Review) to be led by the Hon. James Wood AO QC. The Wood Review was part of the development of the National Sport Plan – Sport 2030. The terms of reference for the Wood Review requested the review panel to:

- examine the current national and international sports integrity threat environment and foreseeable future challenges
- examine the adequacy of Australia's current sports integrity capability against this current environment, with particular attention to:
 - the capability of ASADA and Australia's sport sector to address contemporary doping threats, including the anti-doping rule violation process, and opportunities for improvement

- the effectiveness of the 2011 National Policy on Match-Fixing, including consideration of the merits of becoming a signatory to Macolin Convention; and the case for national match-fixing laws
- the merits of establishing a formal national platform for effective ongoing detection of and response to betting-related sports corruption
- the merits of establishing a national sports integrity tribunal, as a single independent body to hear anti-doping rule violations and other sports integrity matters
- consider options for structural changes to current sports integrity arrangements, including the merits or otherwise of establishing a dedicated national sports integrity commission or similar entity
- consult widely with stakeholders on the above matters to ensure a comprehensive capture of views and insights to aid the review, and
- make recommendations on the above for Government consideration.

The former Minister for Sport, Senator the Hon. Bridget McKenzie, publicly released the report of the Wood Review in August 2018. The Wood Review is the most comprehensive examination of sports integrity arrangements ever undertaken in Australia. In presenting 52 recommendations for consideration by Government, the Wood Review found Australian sport faced a number of real and increasing threats to its integrity.

The sports integrity threat environment

The Wood Review provided an informed commentary on the current sports integrity threat environment, noting sports are challenged by a range of mounting integrity threats, including the increasing sophistication and incidence of doping; the globalisation of sports wagering - particularly through rapidly growing illegal online gambling markets; the infiltration and exploitation of the sports sector by organised crime; corruption in sports administration; and growing participant protection issues – particularly the sexual abuse of minors in sporting environments.

The Wood Review also found the integrity of global sport has become a dominating concern in recent years, with successive revelations of systematic competition manipulation, doping, illicit drug use, corruption scandals and other compromises placing at risk public confidence in sports at all levels. Sports integrity matters are now complex, globalised, interconnected and beyond the control of any single stakeholder. Together they form a complicated threat matrix, exposing vulnerabilities requiring a sophisticated and coordinated response across sports, governments, regulators, the wagering industry, law enforcement and other stakeholders.

The Wood Review noted ‘without the presence of a comprehensive, effective and nationally coordinated response capability, the hard earned reputation of sport in this country risks being tarnished, along with a potential reduction in participation rates and a diminution in the social, cultural, and economic value of Australia’s significant investment in sport.’

The importance of safeguarding the integrity of Australian sport

Sport plays a significant part in the Australian way of life and economy. As highlighted by the Boston Consulting Group's Intergenerational Review of Australian Sport (2017), each year 14 million Australians participate in some form of sporting activity and sport generates \$35-47 billion of economic activity (2-3 per cent of GDP, equivalent to the agriculture sector). Each year the Australian Government invests more than \$300 million to support high performance sport and encourage greater participation.

Australians have no tolerance for the corruption of sport. The Wood Review warned, beyond the immediate impact of corrupt conduct of the kind identified, public loss of confidence in the sporting contest has direct consequences for the health, economic, social and cultural benefits sports generates and undermines significant investment in sport.

The Wood Review identified a critical leadership role for the Australian Government by supporting the integrity efforts of sporting organisations in the evolving threat environment, particularly those sports with fewer resources. This is also expressed in the National Sport Plan – Sport 2030, with 'Safeguarding the Integrity of Sport' one of four key pillars.

Government response

In releasing its [response to the Wood Review](#) in February 2019, the Government agreed with 22 of the recommendations, agreed in-principle with 12 and a further 15 were agreed in-principle for further consideration. Two recommendations were agreed in part and one was noted.

The Government has opted for a phased approach to the recommendations, whereby immediate important responses will be realised in Stage-One, while allowing further consideration of options for the more complex recommendations in an anticipated Stage-Two.

A key recommendation of the Wood Review is the Australian Government establish a National Sports Integrity Commission (since named as Sport Integrity Australia) to 'cohesively draw together and develop existing sports integrity capabilities, knowledge and expertise, and nationally coordinate all elements of the sports integrity threat response including prevention, monitoring and detection, investigation, and enforcement'.

This recommendation addresses Australia's vulnerability to further and future compromise, which is currently exacerbated by the absence of nationally consistent legislative measures and other protections and the lack of a coherent, single point of reference coordinating the response across the continuum of integrity threats. The Wood Review found no existing entity in Australia has the capability or power to obtain the information and intelligence necessary to understand and address the Australian sports integrity threat environment.

A National Sports Integrity Commission – Sport Integrity Australia

Unification is the critical first step toward a stronger response

Sport Integrity Australia will unite existing national sport integrity functions and capabilities across the Commonwealth (ASADA, NISU and SA) – to create a single, capable body for the administration and coordination of sports integrity in Australia.

All functions and ongoing resourcing of ASADA, NISU and the nationally focussed sports integrity functions within SA will merge into Sport Integrity Australia effective from 1 July 2020. Sport Integrity Australia will also perform the functions of Australia’s National Anti-Doping Organisation (NADO), thereby creating a single point of expertise for, and enhanced coordination of, all sports integrity matters.

Sport Integrity Australia will be established with ongoing resourcing and perform existing sports integrity functions currently spread across different bodies, including:

- policy and program delivery on all sports integrity matters
- education and outreach on all sports integrity matters
- the existing oversight of the implementation of, and adherence to, sports integrity policies and programs by National Sport Organisations (NSO)
- anti-doping monitoring, intelligence collection and investigations currently performed by ASADA
- international engagement, including being the formal ‘National Platform’ for the purposes of the Macolin Convention.

The role of sport

It is critical NSOs continue to take responsibility for maintaining integrity across their codes. Many larger sports continue to operate well-resourced and highly capable integrity units, and their current efforts in this regard are valued. Sport Integrity Australia will reinforce integrity capabilities where they exist, as well as help smaller sports which lack the resources required to provide robust integrity protections in the current the deteriorating sports integrity threat environment.

NSOs, administrators, support personnel, athletes and officials will all benefit from a single point of contact on sport integrity matters, reducing the current regulatory burden in dealing across separate government entities.

Stage-Two to deliver new and enhanced sport integrity capabilities

While Sport Integrity Australia will be established in Stage-One through the amalgamation of current and ongoing functions, it is anticipated in Stage-Two the agency will seek Government authority to establish the mechanisms agreed in-principle to achieve the full suite of sports integrity capabilities envisaged by the Wood Review, including the Australian Sports Wagering Scheme (ASWS) and the enhanced anti-match fixing capabilities those outcomes will support, including:

- a Joint Investigations and Intelligence Unit (JIU) of law enforcement secondees, with a view to ensuring all potential criminality detected by Sport Integrity Australia is promptly and efficiently provided to the relevant law enforcement agency for consideration of response
- formalising and enhancing a Strategic Analysis Unit (SAU) – building on the threat monitoring and assessment functions of the NISU transferred to Sport Integrity Australia in Stage-One
- the transfer of the sports wagering data monitoring and alert functions of the Sports Betting Integrity Unit (SBIU) from the Australian Criminal Intelligence Commission (ACIC) to Sport Integrity Australia, allowing the ACIC to focus resources on high-end sports criminal intelligence capability in collaboration with the JIU.

Stage-Two of this proposed response - delivering new and enhanced sport integrity capabilities within Sport Integrity Australia - will not commence unless ongoing additional funding is secured and policy authority provided by Government.

Overview of Key Legislative Amendments

This Bill makes amendments to the *Australian Sports Anti-Doping Authority Act 2006* (ASADA Act) and other related legislation to establish Sport Integrity Australia and appropriately implement the Government response to the Wood Review. Specifically it:

- amends the ASADA Act to abolish ASADA and create Sport Integrity Australia, including renaming the Act to the *Sport Integrity Australia Act 2020*
- expands the functions of the new CEO of Sport Integrity Australia to include functions related to broader sport integrity issues
- creates an Advisory Council to advise both the CEO of Sport Integrity Australia and the Minister in respect of strategic and governance matters
- amends the *Freedom of Information Act 1982* (FOI Act) and *Privacy Act 1988* (Privacy Act) to ensure Sport Integrity Australia's ability to receive and disseminate information as required.

A version of this Bill was introduced in the previous Parliament; however, it was not passed prior to the election being called. While this Bill remains largely unchanged from the first, minor updates following consultation with stakeholders include amendments to the object and CEO's functions and powers to better reflect the role and remit of the new agency, amendments to provide for better information sharing by and with Sport Integrity Australia and consequential amendments to harmonise operation with the Australian Sports Anti-Doping Authority Amendment (Enhancing Australia's Anti-doping Capability) Bill 2019.

Establishing Sport Integrity Australia

The Bill amends the ASADA Act by removing references to ASADA and replacing them with Sport Integrity Australia. The Bill also includes a new section 3A, providing the object of the Act to be to establish Sport Integrity Australia to prevent and address threats to sports

integrity and to coordinate a national approach to matters relating to sports integrity in Australia, with a view to:

- achieving fair and honest sporting performances and outcomes
- promoting positive conduct by athletes, administrators, officials, supporters and other stakeholders, on and off the sporting arena
- achieving a safe, fair and inclusive sporting environment at all levels
- enhancing the reputation and standing of sporting contests and of sport overall.

The Bill (Item 24) repeals the existing functions of the CEO of ASADA and replaces them with functions related to the new role of the CEO of Sport Integrity Australia including those performed by the NISU in the Australian Government Department of Health and the nationally-focussed sports integrity functions of SA.

Establishing the Sport Integrity Australia Advisory Council

The Bill establishes an Advisory Council, appointed by the Minister to provide external expert advice in relation to strategic and governance matters. The Advisory Council's role consists of two advisory functions – providing advice to the CEO, and providing advice to the Minister.

The Bill provides for advice from the Advisory Council to be of a general nature in relation to strategic and governance matters only and must not relate to operational matters, including in relation to a particular individual or investigation. Sport Integrity Australia, as the NADO for Australia, will be subject to World Anti-Doping Code compliance requirements. This includes the Government will respect the operational autonomy of Sport Integrity Australia and will not to interfere in its operational decisions and activities.

Privacy and Sport Integrity Australia's designation as an enforcement body

The Sport Integrity Australia Bill contains a consequential amendment to the *Privacy Act 1988* (Privacy Act), which includes Sport Integrity Australia within the definition of an enforcement body for the purposes of the Privacy Act. For the purposes of this Act, an enforcement body is a body undertaking 'enforcement related activity', which, among other things, includes 'the prevention, detection, investigation, prosecution or punishment of...criminal offences or...breaches of a law imposing a penalty or sanction'.

Sport Integrity Australia will be involved in the prevention, detection, and referral of potential cases of match-fixing to law enforcement for investigation under existing state and territory legislation and, as announced by the Government in its response to the Wood Review, eventual Commonwealth match-fixing legislation. It will also provide a single national platform for working with domestic and overseas regulators and law enforcement in relation to matters connected with fraud in sports-betting. Further, the need to do more to address child abuse in sport, highlighted in the report of the Royal Commission into Institutional Responses to Child Sexual Abuse, will require Sport Integrity Australia to play a critical role contributing to the protection of children within sporting environments.

Sport Integrity Australia will retain the existing enforcement powers available to ASADA for anti-doping matters, which include powers to issue disclosure notices and to enforce breaches through the issuing of infringement notices or through instituting civil penalty proceedings. Under the ASADA Act, if the ASADA CEO has formed a reasonable belief¹ the person has information, documents or things may be relevant to the National Anti-Doping (NAD) Scheme he or she may issue a disclosure notice to require a person to do one or more of the following things:

- attend an interview and answer questions
- give information of a kind specified in the notice
- produce documents or things.

Where warranted these powers are currently exercised by the ASADA CEO and, on establishment of Sport Integrity Australia, will be exercised by Sport Integrity Australia CEO. In practice, a disclosure notice, once issued by the CEO, will be served to the individual by a member of ASADA's investigations team, as part of the investigative process in accordance with the requirements of the NAD Scheme and investigative best practice as outlined in the Australian Government Investigations Standards.

It is critical to note no enforcement powers, over and above those currently existing for anti-doping, will be afforded to Sport Integrity Australia through the passage of this Bill. Sport Integrity Australia's designation as an enforcement body for the purposes of the Privacy Act *relates only* to the facilitation of information sharing, deemed crucial to the success of the new agency.

It is fundamental to Sport Integrity Australia's role it work side by side with law enforcement bodies, sports betting regulators, sports controlling bodies and others, and will need the capacity to exchange information with those bodies. While Sport Integrity Australia will not directly enforce criminal laws, it will provide support and assistance to law enforcement agencies relevant to sports integrity matters. For example, to coordinate the fight against the manipulation of sports competitions, Sport Integrity Australia will be responsible for receiving, centralising and analysing information of irregular and suspicious bets placed on sports competitions to better detect potential manipulation, abuse of inside information, and/or match-fixing. It will act as an information 'hub' and be responsible for alerting other national and international enforcement agencies to potential match-fixing events where appropriate.

If Sport Integrity Australia is not designated as a law enforcement body for the purposes of such information exchange, law enforcement agencies may be reluctant to entrust critical information relevant to sports integrity matters to it, which will undermine the ability of Sport Integrity Australia to achieve its fundamental purpose. It will also hinder efforts of those law enforcement agencies and regulators to detect and prosecute criminal behaviour associated with sport.

¹ A proposed amendment in the Australian Sports Anti-Doping Authority Amendment (Enhancing Australia's Anti-Doping Capability) Bill 2019 will lower this threshold from 'reasonable belief' to 'reasonable suspicion' and this amendment is discussed in the Departments submission to the inquiry the relevant Bill.

To ensure the appropriate flow of information to Sport Integrity Australia, an additional provision has been included authorising by law disclosure of information to Sport Integrity Australia, where related to Sport Integrity Australia's broader sports integrity functions, and allowing it to be provided in accordance with the Australian Privacy Principles. The proposed provision would provide assurance to organisations willing to pass information to Sport Integrity Australia – critical if the proposed model, whereby Sport Integrity Australia works collaboratively with Commonwealth, State and private sector organisations, is to function effectively.

Amendments to the Freedom of Information Act 1982 (FOI Act)

These proposed amendments serve to exempt documents or information from release under the FOI Act which otherwise would be illegal to release or make public under those secrecy provisions. The *Sport Integrity Australia Act 2020* (when passed) will impose strict secrecy provisions preventing the release of protected information, including to a court or tribunal (these provisions already being in place the *Australian Sports Anti-Doping Authority Act 2006*).

The offence provisions will cover all members of Sport Integrity Australia staff and the Sport Integrity Australia CEO. However, when responding to an FOI request Sport Integrity Australia would be currently unable to rely on these secrecy provisions to prevent the release of material. This exposes the potential release of information obtained in the course of Sport Integrity Australia's anti-doping and other functions to third parties. This may include health and medical information of a highly personal or sensitive nature. The effect of the proposed amendment to the FOI Act would be to make clear information or documents adversely impacting an individual or other parties (for example health and medical records) and it would otherwise be an offence for a entrusted person to disclose, are not subject to inappropriate disclosure.

Conclusion

Australians have no tolerance for the corruption of sport. It damages public confidence in the sporting contest and impinges on the safety and rights of sports participants. To effectively identify and react to escalating integrity risks in sport, it is essential a cohesive and well-resourced national level capability is in place.

Establishing Sport Integrity Australia will represent an important milestone in the Government's ongoing efforts to protect the integrity of Australian Sport. Sport Integrity Australia responds to the inadequacies and weaknesses of the current sports integrity framework in Australia against the deteriorating global threat environment as outlined in the Wood review, and will ensure Australia retains its reputation as a world leader in sports integrity.

This Bill ensures the new agency is provided with the key elements required to deliver on the high expectations placed on it by all stakeholders and, in turn, ensure Australian sport at all levels is safe, fair and inclusive.