

THE SENATE
STANDING COMMITTEE ON COMMUNITY AFFAIRS
Legislation Committee

Inquiry into the Australian Sports Anti-Doping Authority Amendment Bill 2014

SUBMISSION FROM ATHLETICS AUSTRALIA

Background

Athletics Australia (AA) is the governing body for all forms of athletics in Australia and is recognised as such by the International Association of Athletics Federations (IAAF), the Australian Government through the Australian Sports Commission (ASC), the Australian Olympic Committee (AOC) and the Australian Commonwealth Games Association (ACGA).

In accordance with its Anti-Doping Policy, which currently essentially follows the standard ASC provided format, AA delegates most of its functional powers and responsibility there under to the Australian Sports Anti-Doping Agency (ASADA).

Outline of Submission

AA's submission to the Inquiry covers four principal areas:

- (a) AA's relationship with ASADA and with the other bodies to whom it has compliance obligations in terms of anti-doping
- (b) its view that ASADA remains under-funded in terms of human resources and funding to carry out its responsibilities both generally and specifically in terms of athletics;
- (c) ASADA's approach to whereabouts and filing failure violations and in particular the legislation which fetters its ability to be more flexible in that regard and reflect appropriate processes elsewhere in the World;
- (d) the timeliness and cost of resolving infractions of the AA Anti-Doping Policy.

In addition AA will provide a submission in terms of a related area – the quality control of supplements available to athletes in Australia.

(a) AA's relationship with ASADA and the other bodies to whom it has compliance obligations in terms of anti-doping

AA currently has an effective working relationship with ASADA – although this has not always been the case.

In September 2013, AA found it appropriate and necessary for its Chief Executive Officer (Dallas O'Brien) and Manager – Ethics and Integrity (Brian Roe) to meet with the senior staff of ASADA in Canberra to discuss the relationship between the two bodies in general. The concerns related to two main areas – the tardiness and inaction in relationship to several outstanding cases and the level of information sharing which had considerably reduced over the previous five or so years. A further meeting with the then recently elected AA President (David Grace) and Brian Roe took place in January 2014.

Both initially between the two meetings and even more so since, both communication and efficiency have improved considerably to the point where AA takes the view that they are at a far more satisfactory level.

However AA must also comply with the expectations in terms of anti-doping with other organisations with which it is affiliated - principally the IAAF and to a lesser degree with the AOC. The IAAF has expressed its general dissatisfaction with the time it is taking to resolve athletics anti-doping matters within AA's jurisdiction. These issues are more specifically dealt with below.

Compliance and expectation is further increased and complicated through the occasional forays by the AOC into the area of anti-doping, such as the ban of use of stillnox during the team period of the 2012 Olympic Games. Whilst AA acknowledges the right of the AOC to do so and to determine who is eligible to be a member of its teams, it is observed that on these occasions confusion and extra compliance measures and expectations arise.

Having several masters becomes a challenge for national federations. AA had hoped with the advent of WADA and the World Anti-Doping Code such conflicts and expectations would disappear.

(b) AA's view that ASADA is under-funded in terms of human resources and funding to carry out its responsibilities both generally and specifically in terms of athletics;

Contrary to some public, media and politic views expressed, AA is, in the light of its experiences, of the opinion that ASADA is under resourced and under-funded. AA is happy to discuss with the Committee directly the details of some specific examples of where it believes matters could have been avoided or dealt with more expediently or efficiently.

AA acknowledges that athletics is a sport at risk and that its contacts with ASADA will be more prevalent than is the case with other sports – both in terms of prevention and policing and case resolution.

The designation of an ASADA liaison officer for AA in October 2013 assisted greatly in improving the situation. AA's strong position is that this role must be maintained and would if not currently the case also be a wise move for other at risk sports.

Whilst the speed at which some outstanding matters have been dealt with has greatly increased during 2014, AA would expect that should any further matters arise that they would be dealt with equally quickly. The IAAF has a considerably greater expectation in terms of timeliness and has requested that AA do whatever is can to further speed up the resolution of cases beyond that being currently experienced.

AA would prefer that additional funding support would be available through ASADA's education and research arms to undertake more awareness and education programs through its own Integrity Unit, which now includes a part time Manager and a part time Education Officer.

AA would also prefer that additional funding was made available for in and out of competition testing in athletics and other sports – particularly compatible cross-over sports. AA would prefer that the ability to have additional in-competition tests was not dependent on the national federation's or event organiser's capacity to pay. These matters also go to credibility and integrity of all sports in Australia.

(c) ASADA's approach to whereabouts and filing failure violations and in particular the legislation which fetters their ability to be more flexible in that regard and reflect appropriate processes elsewhere in the World;

AA's only significant divergence of opinion from ASADA relates to "whereabouts" testing – missed tests and filing failures. The IAAF is of the view that Australia has amongst the strictest approaches in the world.

Whilst the harshness of the situation will decrease globally from 1 January 2015 when the new WADA Code comes into operation, Australia will still have a much stronger approach than most other comparable countries unless its governing regulations are changed.

In many other countries, national anti-doping agencies are permitted to make some attempts during the designated hour in which they seek and athlete for an out of competition test beyond "knocking on the door". The most common and effective being a provision during the last five minutes of the hour to call an athlete on any or all provided numbers to ascertain whether they are in fact present at the stated address on their whereabouts filing.

Australian athletes are not accorded this opportunity leading not only to equity issues in terms of treatment but bizarre examples when at locations for overseas competitions where they are simultaneously treated differently from competition rivals from other countries.

AA is also concerned in terms of equity of treatment and public perception that its athletes have a far greater obligation in terms of whereabouts filing and compliance than those in other sports – particularly team sports, where significantly different arrangements, obligations and ramifications apply.

(d) the timeliness and cost of resolving infractions of the AA Anti-Doping Policy

In addition to the concerns of the IAAF, AA is also dissatisfied with the cost and time involved in resolving anti-doping matters.

Whilst AA fully acknowledges and appreciates that under current arrangements ASADA carries the cost and resourcing on AA's behalf for the majority of resolutions and disputes in this area, the current blueprint creates a heavy cost and time burden on athletes disputing matters and is further hampered by the designation of CAS as the sole tribunal option.

CAS has become extremely slow in administering, hearing and resolving the majority of cases and almost invariably senior counsel are involved in hearing the matters and representing the parties.

The original tenets of CAS – that it would be expeditious, inexpensive and informal, are no longer evident in most cases.

AA is considering an alternative method to be incorporated within its new Anti-Doping Policy which will come into effect on 1 January 2015 but inevitably either on appeal or in some cases in first instance there will still be a reliance on CAS or a similar public tribunal. AA requests the Inquiry to seriously consider this important and fundamental area.

In closing - the quality control of supplements available to athletes in Australia

Whilst not directly the responsibility of ASADA the quality control of regularly used supplements by elite sports people in Australia is a significant issue.

AA has dealt with several cases of athletes testing positive to allegedly contaminated supplements. Like many sports in Australia, AA has responded in the current climate with the adoption of a Supplements Policy which strongly discourages the use of supplements – even including common products which many Australians use on a regular basis.

Whilst there is a divergence of view amongst the experts on whether any non performance enhancing supplements are of any benefit to health and resilience and the avoidance of common illness, it is difficult to convince Australian athletes that they should not do so when they see their overseas rivals doing so.

In many situations it is accepted that certain supplements should or can be taken safely and without infringing the rules – but only if there is certainty that they are not contaminated, a very common problem in today's world.

A government controlled batch testing and safe direct distribution system would provide both relief and satisfaction to many Australian athletes currently concerned that they are unreasonably and unfairly not on a level playing field.

Athletics Australia looks forward to having the opportunity to expand on its submission before the Inquiry.

*Submission prepared by Brian Roe, Manager – Ethics and Integrity
For and on behalf of Athletics Australia*