National LGBTI Health Alliance
lesbian, gay, bisexual, transgender, and intersex people and other
sexuality and gender diverse (LGBTI) people and communities
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Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Sent via email to community.affairs.sen@aph.gov.au

Dear Committee Secretary

RE: Australian Sports Anti-Doping Authority Amendment Bill 2014

The National LGBTI Health Alliance is pleased to make a submission to the Senate Standing Committees on Community Affairs regarding the *Australian Sports Anti-Doping Authority Amendment Bill 2014.* We will focus on five key issues: Therapeutic use exemptions (TUEs) for athletes using testosterone; inclusive, evidence-based policy on women athletes; detrimental health effects of sport exclusion; privacy and protection from unwanted disclosure; and the need for all Australian Sports Anti-Doping Authority (ASADA) and Anti-Doping Rule Violation Panel (ADRVP) representatives to have specific training in LGBTI-inclusive practice.

About the National LGBTI Health Alliance

The Alliance is the national peak health organisation for organisations and individuals from across Australia that work together to improve the health and wellbeing of lesbian, gay, bisexual, transgender, and intersex people and other sexuality and gender diverse (LGBTI) people. We support measures which contribute to improved health and wellbeing for all LGBTI people in Australia.

Formed in 2007, the Alliance includes the major providers of services for LGBTI people in Australia, with Members drawn from each State and Territory. The Alliance provides a representative national voice to: develop policy and to support LGBTI health issues; seek increased commitment to services for LGBTI people; develop the capacities of LGBTI organisations; and support evidence-based decision-making through improved data collection covering sexuality, gender identity, and intersex status.

Therapeutic Use Exemptions (TUEs)

The *Australian Sports Anti-Doping Authority Amendment Bill 2014* repeatedly refers to provisions of the World Anti-Doping Code. The World Anti-Doping Code bans the use of testosterone. Men who are assigned female often require lifetime administration of testosterone as part of gender affirmation. People with intersex bodies may also require therapeutic testosterone. Athletes living with illnesses that can involve muscle atrophy, hypogonadism, and other symptoms (e.g., HIV) may require testosterone to maintain optimal health. Social exclusion from sport participation contributes to negative health outcomes for these individuals. We recommend that Therapeutic Use Exemptions (TUEs) be provided for those who can provide a physician letter attesting to the therapeutic purpose of their testosterone use.

This standard use of testosterone by these populations involves substantially lower amounts than typically used by those seeking hypernormal testosterone levels intended to boost performance.

Inclusive, evidence-based policy on women athletes

The assumption that women with higher than expected serum androgen levels have unfair performance advantages is often used to justify exclusionary sport policies toward women athletes, including but not limited to women athletes with intersex bodies and women athletes of trans experience (those who were assigned as 'male'). This assumption is based on gender stereotypes rather than empirical evidence. In original research published earlier this year in the *Journal of Clinical Endocrinology & Metabolism,* Bermon et al. (2014) commented on "an independent expert medical panel recommending that the athlete is not eligible to compete in women's competition if she has normal androgen sensitivity and serum T [testosterone] levels above the lower normal male range (10 nmol/L)" (p. 7). Bermon et al. noted that "this arbitrary definition was chosen in the absence of normative statistics of androgen levels in a high-level athlete female population" (p. 7).

This lack of normative statistics based on conclusive, replicated evidence is a crucial consideration in determining fair and inclusive sport policy. The need for inclusive, evidence-based policy is further supported by research findings that physical activity can cause fluctuations in testosterone levels. For example, Copeland et al. (2002) conducted a randomized, balanced design study that analysed changes in the biochemical profiles of thirty cross-trained, female subjects between 19 and 69 years old who completed endurance exercise, resistance exercise, and no exercise. Participants were measured before and after exercise, and again after 30 minutes of recovery. One finding from this study was a statistically significant absolute change in baseline testosterone, was significantly higher in the endurance exercise and resistance exercise groups than in the no exercise control group. Based on their results, Copeland et al. concluded that "an acute bout of exercise can increase concentrations of anabolic hormones in females across a wide age range" (p. 158). Other researchers have found similar changes in anabolic hormone levels due to exercise.

We also wish to recommend against the use of the Athlete Biological Passport (ABP) as an alternative to drug testing, as there are not empirically valid biological standards available for use with elite women athletes. In the absence of such standards, the use of biological profiles to justify sport exclusion is very likely to result in unfair discrimination against a variety of women athletes.

Detrimental health effects of sport exclusion

Discriminatory sport exclusion can increase social isolation and stigma, which are known contributing factors to negative mental health outcomes. Sport exclusion can also result in decreased physical fitness and consequently increased risks of cardiovascular disease, diabetes, and obesity.

As noted in a joint statement on sport discrimination issued by two of our Member Organisations, Transgender Victoria (TGV) and Organisation Intersex International (OII) Australia, "these issues are important to our communities, and we look forward to working with sporting and human rights organisations to ensure equality of access to sport."

In this joint statement, OII Australia President Morgan Carpenter said: "Intersex people can sometimes face homophobia and exclusion when playing or competing as their birth and legal sex. Athletes such as Caster Semenya, suspected of being intersex, have faced heightened scrutiny, humiliation, and questions

about their womanliness and their genitals. Intersex people need sport just as much as other members of the community, and we warmly welcome an opportunity to improve access."

Karkazis et al. (2012) note reports that Semenya's experience was damaging to her mental health and that she required trauma counselling after the ordeal she faced as an athlete suspected of being intersex.

In the aforementioned joint statement, TGV Spokesperson Sally Goldner said: "TGV welcomes any move to ensure trans and gender diverse people are able to be involved in sport on their merits rather than being excluded based on inaccurate generalisations. We would welcome the opportunity to meet as soon as possible with Bingham Cup organisers – or any sporting body for that matter."

In addition to stigma and exclusion, "gender verification" policies mean that women athletes suspected of having intersex bodies continue to be subjected to medically unnecessary and irreversible interventions. These interventions include the removal of healthy tissue such as partial clitoridectomy (removal of clitoral tissue), gonadectomy (removal of gonads), and feminising vaginoplasty (surgical construction and/or reconstruction of vagina), as well as oestrogen replacement therapy. As documented by Fénichel et al. (2013) in the *Journal of Clinical Endocrinology & Metabolism*, sports authorities required several women with intersex bodies to undergo these invasive procedures before permitting them to compete as women. Because these women were forced to have "normalising" medical intervention to continue sport participation, they could not actually give voluntary consent:

> …our 4 athletes wished to maintain their female identity and had many questions about menstruation, sexual activity, and child-bearing. Although leaving male gonads in SDRD5A2 patients carries no health risk, each athlete was informed that gonadectomy would most likely decrease their performance level but allow them to continue elite sport in the female category. We thus proposed a partial clitoridectomy with a bilateral gonadectomy, followed by a deferred feminizing vaginoplasty and estrogen replacement therapy, to which the 4 athletes agreed after informed consent on surgical and medical procedures. Sports authorities then allowed them to continue competing in the female category 1 year after gonadectomy (p. E1057).

That Fénichel et al. could describe these athletes as having given "informed consent" under overtly coercive conditions demonstrates the lack of adequate safeguards to protect intersex women athletes from medical abuse and coercion. Based on similar ethical concerns, Karkazis et al. (2012) recommended that "gender verification" policies in sport be withdrawn. Karkazis et al. discussed how gender verification policies can lead to the kinds of coerced and unwanted "normalising" medical interventions documented by Fénichel et al. (2013) and discussed in the Senate Community Affairs References Committee Report on the Involuntary or coerced sterilisation of intersex people in Australia. Karkazis et al. also raised concerns about the lack of sufficient medical evidence to support "gender verification" policies, the difficulty of establishing standardised policy that acknowledges the range of human biological diversity, and how such policies inhibit the fair and ethical treatment of women athletes.

Privacy and Protection from Unwanted Disclosure

As noted in the aforementioned joint statement, athletes with intersex bodies have been subjected to heightened scrutiny can experience humiliation, invasive questions, and unwanted disclosure of their privacy. Athletes of trans experience and those living with stigmatised health conditions such as HIV also have particular privacy needs. Unwanted disclosure could lead to permanent loss of employment and discrimination in daily life. A privacy policy that merely prohibits unwanted disclosure outside of ASADA will not sufficiently address the needs of these populations. We recommend broader privacy protection for athletes to ensure that information about gender history, medical gender affirmation history, intersex status, HIV status, and similarly sensitive information is available only on a limited basis and only to specifically designated individuals within ASADA. We advise that these individuals should be Registered Medical Practitioners and that the privacy policy should specify immediate reporting to relevant professional bodies in the event of unwanted disclosure, including to individuals within ASADA.

Training in LGBTI-inclusive practice for CEO, ASADA staff, and ADRVP members

To safeguard the welfare of athletes with intersex bodies, athletes of trans experience, and athletes living with stigmatised health conditions such as HIV, we recommend that the ASADA CEO, all ASADA staff, and all ADRVP members receive LGBTI-specific training in inclusive practice. This training should address the particular needs and privacy concerns of athletes with intersex bodies, athletes of trans experience, and athletes living with stigmatised health conditions such as HIV. Without the requirement to address this information, we believe that athletes will continue to experience negative health outcomes as a direct result of sport exclusion and discrimination.

Conclusion

We appreciate this opportunity to raise our concerns about the need for therapeutic use exemptions (TUEs) for athletes using testosterone; the need for inclusive, evidence-based policy on women athletes; the detrimental health effects of sport exclusion; the need for privacy and protection from unwanted disclosure; and the need for all Australian Sports Anti-Doping Authority (ASADA) and Anti-Doping Rule Violation Panel (ADRVP) representatives to have specific training in LGBTI-inclusive practice.

As the peak LGBTI health organisation in Australia, we thank you for taking the time to consider this submission. We encourage you to contact the Alliance's Research and Policy Manager, Dr Gávi Ansara, to discuss the issues identified in this submission.

Yours sincerely

Rebecca Reynolds
EXECUTIVE DIRECTOR

SEE REFERENCES OVERLEAF

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