



## **WORKING WITH ASADA TO PROTECT CLEAN ATHLETES**

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### **A**

#### **SUBMISSION**

#### **SUPPORTING THE**

### **AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY AMENDMENT BILL**

#### **Executive Summary**

- 1 The Australian Olympic Committee (AOC) welcomes the introduction of the Australian Sports Anti-Doping Authority Amendment Bill 2014 (the Bill).
- 2 The World Anti-Doping Code 2015 (the Code) with which the Bill seeks to align the Australian Sports Anti-Doping Authority Act 2006 (the ASADA Act) is paramount to the protection of clean athletes and their fundamental right to participate in doping free sport and thus promote health, fairness and equality for athletes.
- 3 The AOC is wholly supportive of the proposed amendments in the Bill and in particular targeting Athlete Support Personnel who are involved in doping through the introduction of the Anti-Doping Rule Violation (ADRV) relating to Prohibited Association; the imposition of longer periods of ineligibility for serious cheats; and, the additional emphasis on information management to accommodate greater use of investigation and information gathering intelligence.
- 4 The AOC acknowledges the critical role of the World Anti-Doping Agency (WADA) and National Anti-doping Organisations (NADOs), such as the Australian Sports Anti-Doping Authority (ASADA), in ensuring harmonised, coordinated and effective anti-doping programs at the international and national level.
- 5 Justice Middleton in *Essendon v Chief Executive Officer of the Australian Sports Anti-Doping Authority (ASADA)* [2014] recently highlighted ASADA's critical international and national functions in the fight against doping.

- 6 The AOC, as the exclusive authority for the representation of Australia in the Olympic Games and within its wider mission to develop, promote and protect the Olympic Movement in this country, is committed to continue working with ASADA in the fight against doping.

### **Role of the AOC in Anti-Doping**

- 7 The AOC has a longstanding history of advocating and campaigning for doping free sport.
- 8 Since as far back as 2000 the AOC has identified the need for ASADA to be properly empowered to gather intelligence and investigate possible anti-doping violations.
- 9 The AOC became a signatory to the Copenhagen Declaration on Anti-Doping in Sport on 5 March 2003 and has always fully co-operated with ASADA.
- 10 The AOC has its own specific roles and responsibilities, as the National Olympic Committee (NOC) in Australia, under Article 20.4.1-13 of the Code including:
- 20.4.1 To ensure that their anti-doping rules and policies conform with the Code.
  - 20.4.2 To require as a condition of membership or recognition that National Federations' (NFs) anti-doping rules and policies are in compliance with the applicable provisions of the Code.
  - 20.4.3 To respect the autonomy of the NADO in its country (ASADA) and not to interfere in its operational decisions and activities.

### **Role of the International Olympic Committee (IOC) in Anti-Doping**

- 11 Just as the AOC has led the fight against doping in sport amongst Australian sporting bodies, the IOC has long led the fight against doping in world sport and was instrumental in the creation of the WADA.
- 12 The IOC contributes one-half of WADA's annual budgetary requirements (USD14 million) with the other half coming from governments throughout the world, including the Australian Government.
- 13 On top of its annual contribution, in December 2013 the IOC created a USD10 million fund for better scientific research in the field of anti-doping. If this amount is matched by governments the total fund of USD20 million will be available for use under WADA's current research policies. The IOC believes this will make a real and significant difference in the fight against doping by creating a major stimulus to research into novel and more effective testing. If the governments' contributions do not match the USD10 million, the IOC will nevertheless commit its USD10 million to projects it will conduct on its own initiative in close consultation with WADA.

As a lead, the Chinese Government recently committed USD1million and the Turkish Government USD250,000 to the matching fund.

### **Australian Government Obligations: International Conventions and Instruments**

- 14 The *General Anti-Doping Convention 1994* entered into force for Australia on 1 December 1994 and addressed concerns of governments worldwide around the growth of doping in sport and their commitment to take further and stronger co-operative action aimed at the reduction and eventual elimination of doping.
- 15 The Australian Government became a signatory to the Copenhagen Declaration on Anti-Doping in Sport of 3 March 2003.
- 16 On 17 January 2006 the Australian Government reaffirmed this commitment to support the fight against doping by ratifying the *UNESCO International Convention Against Doping in Sport* (the UNESCO Convention).
- 17 The UNESCO Convention harmonises national anti-doping laws for global coordination, and provides the current 176 signatories with a practical tool to address the use of performance enhancing substances and methods in sport within their domestic framework and to align with the Code.
- 18 The UNESCO Convention outlines clear obligations required of governments. Of note are:

#### *Article 4 – Relationship of the Convention to the Code*

1. *In order to coordinate the implementation, at the national and international levels, of the fight against doping in sport, State Parties commit themselves to the principles of the Code as the basis for the measures provided for in Article 5 of this Convention. Nothing in this Convention prevents State Parties from adopting additional measures complementary to the Code.*

#### *Article 9 – Measures against athlete support personnel*

*State Parties shall themselves take measures to encourage sports organizations and anti-doping organizations to adopt measures, including sanctions or penalties, aimed at athlete support personnel who commit an anti-doping rule violation or other offence connected with doping in sport.*

### *III. International Cooperation*

#### *Article 13 – Cooperation between anti-doping organizations and sports organizations*

*State Parties shall encourage cooperation between anti-doping organizations, public authorities and sports organizations within their jurisdiction and those within*

*the jurisdiction of other State Parties in order to achieve, at the international level, the purpose of this Convention.*

*Article 14 – Supporting the mission of the World Anti-Doping Agency*

*State Parties shall undertake to support the important mission of the World Anti-Doping Agency in the international fight against doping.*

- 19 The Australian Government obligations under the UNESCO Convention are given effect through the ASADA Act, Regulations and the National Anti-Doping Scheme (NAD Scheme).

**Compliance Framework**

- 20 WADA, the IOC, International Federations (IFs), the International Paralympic Committee, NOCs, National Paralympic Committees, Major Event Organisations and NADOs are Signatories accepting the Code. Other sports organisations that may not be under the control of a Signatory may, upon WADA's invitation, also become a Signatory by accepting the Code.
- 21 While the economic significance of major sporting events hosted in Australia is self-evident, the value of sport to Australia goes well beyond the direct contribution to the economy. There is an intangible value that comes from international sporting events being held in Australia.
- 22 The Australian Department of Health has affirmed the Australian Government's commitment to supporting sport in Australia, including staging world class major sporting events. In order to continue this longstanding commitment, any staging of future Olympic Games, World Championships and other major international events in Australia, such as the Asian Football Cup in January 2015 and the Commonwealth Games in 2018, must be Code compliant.
- 23 Through the framework of compliance requirements in the Code and its Model Rules, Australian NFs are required to comply with their IFs and, if members of the AOC, the AOC's anti-doping rules and policies in addition to the NAD Scheme.

**AOC Anti-Doping By-Law**

- 24 On 7 August 2014 the AOC adopted "in principle" amendments to the AOC Anti-Doping By-Law (Attachment 1) to come into effect on 1 January 2015. The By-Law is planned to be finally approved at the AOC Executive Meeting on 21 November 2014. This two-stage approval process was necessary to address any additional requirements under the NAD Scheme, the subject of this Bill, which the AOC may not have contemplated, however there does not appear to be anything missed.

- 25 All of the AOC's member NFs are required, as a condition of membership, to comply with this By-Law and the Code in their anti-doping rules and policies by 1 January 2015.
- 26 The AOC Anti-Doping By-Law adopts all of the changes in the Code and WADA's Model Rules for NOCs.
- 27 In addition to what is required of NOCs by WADA under the Code, the AOC Anti-Doping By-Law addresses the vacuum in the "coercive powers" inserted in the 2013 Amendment to the ASADA Act by maintaining the following more expansive "coercive powers" by contract that the AOC Executive inserted in the AOC Anti-Doping By-Law on 3 May 2013:-

### **3. OBLIGATIONS**

#### **3.1. All Athletes must:**

- (1) *be knowledgeable of and comply with all applicable anti-doping policies and rules, namely the Code, this By-Law and the policies and rules of Anti-Doping Organisations and their National Federation or International Federation;*
- (2) *co-operate with and assist ASADA, including by:*
  - (a) *attending an interview to fully and truthfully answer questions;*
  - (b) *giving information; and*
  - (c) *producing documents,**in an investigation being conducted by ASADA, even if to do so might tend to incriminate them or expose them to a penalty, sanction or other disciplinary measure;*
- (3) *be available for Sample collection conducted according to the Code at all times;*
- (4) *take responsibility, in the context of anti-doping, for what they ingest and Use;*
- (5) *inform medical personnel of their obligation not to Use Prohibited Substances and Prohibited Methods and to take responsibility to make sure that any medical treatment received does not violate the anti-doping policies and rules applicable to them.*

#### **3.3. All Athlete Support Personnel must:**

- (1) *be knowledgeable of and comply with all anti-doping policies and rules applicable to them or Athletes whom they support, namely the Code, this By-Law and the policies and rules of Anti-Doping Organisations and their National Federation;*
- (2) *co-operate with and assist ASADA, including by:*
  - (a) *attending an interview to fully and truthfully answer questions;*
  - (b) *giving information; and*

(c) *producing documents,*

*in an investigation being conducted by ASADA, even if to do so might tend to incriminate them or expose them to a penalty, sanction or other disciplinary measure.*

(3) *co-operate with the Athlete Testing programme;*

(4) *use their influence on Athlete values and behaviour to foster anti-doping attitudes;*

28 Under relevant contractual frameworks, all Athletes and Athlete Support Personnel within the Australian Olympic movement are required to comply with these provisions by virtue of participation in an activity under the authority of their NF, or registration as a competitor (however described) or Athlete Support Personnel within their sport.

29 The AOC will continue to urge each of its member NFs under their relevant contractual frameworks to include the same “coercive powers” as the AOC has in its AOC Anti-Doping By-Law. The AOC Anti-Doping By-Law and any such measure taken by NFs will have the effect of assisting ASADA to protect clean athletes.

30 If up for it, the Australian Sports Commission and Australian and State Institutes and Academies of Sport can also assist ASADA to ensure no Athlete or Athlete Support Personnel they support or employ falls through the cracks by including the same “coercive powers” as the AOC in their anti-doping rules and policies.

### **Prohibited Association**

31 Under the existing legislation, ASADA has the power to investigate and determine ADRVs relating to specified classes of Support Personnel.

32 Under the Code, IFs and NOCs must require member NFs to establish rules requiring each Athlete Support Person who participates in their activities to agree to be bound by their anti-doping rules and their NADOs (ASADA) results management authority in conformity with the Code as a condition of such participation. IFs and NADOs must vigorously pursue all potential ADRVs within their jurisdiction including investigation into whether Athlete Support Personnel or other Persons may have been involved in doping, to ensure proper enforcement of the consequences under the Code, and to conduct an automatic investigation of Athlete Support Personnel in the case of any ADRV involving a Minor or Athlete Support Person who has provided support to more than one Athlete found to have committed an ADRV. Obviously this is important.

33 These provisions set the framework for addressing the culpability of Athlete Support Personnel in doping activities. They are complimented by the new ADRV of ‘Prohibited Association’.

- 34 Association by an Athlete or other Person in a professional or sport-related capacity with any Athlete Support Person who is serving a period of Ineligibility or has been convicted or found in a criminal, disciplinary or professional proceeding to have engaged in conduct which would have constituted a violation of anti-doping rules if Code compliant rules had been applicable to such Person is now an ADRV.
- 35 In February 2013, the Australian Crime Commission (ACC) in its *Organised Crime and Drugs in Sport Report* ('ACC Report') concluded that "specific high-performance staff, sports scientists and coaches... have condoned and/or orchestrated the administration of prohibited substances, and substances not yet approved for human consumption, to players. In some cases, peptides and other substances were administered to players without them understanding the nature of the substances, and without the knowledge of the team doctor or club medical staff."
- 36 The ACC Report further noted that: "The apparent willingness of some high-performance coaches, trainers and sports scientists to administer WADA-prohibited and experimental drugs in their advocacy of off-label substance use, raises concerns over the welfare of players who are being administered these substances and broader issues for sports administrators in Australia".
- 37 The ability to investigate and enforce penalties under the Code against individuals previously outside the jurisdiction of anti-doping organisations due to the absence of contractual frameworks, directly addresses these concerns of the ACC and their further concerns about the increasing influence of organised crime on sport.
- 38 The ACC Report concluded that the presence of organised crime identities and groups in the Australian performance and image enhancing drugs market presents a threat to the integrity of Australian sport as a direct consequence of increased interaction between such criminal identities and athletes, and the potential exploitation of these commercial or professional relationships for criminal purposes.
- 39 The AOC very much hopes that the ADRV of 'Prohibited Association' will severely restrict the ability for unethical individuals such as those identified in the ACC Report to continue to professionally operate in the Australian sporting landscape.
- 40 The AOC recently highlighted its support of the inclusion of the 'Prohibited Association' ADRV provision in the Code in the excerpt from my President's Address to the May 2014 AOC AGM (Attachment 2) and in a Media Release concerning the amendments to the AOC Anti-Doping By-Law (Attachment 3).

### **Compatibility with International Law and Human Rights**

- 41 The compatibility of the significant changes to the Code with recognized principles of international law and human rights was confirmed in the legal opinion provided by expert and former President of the European Court of Human Rights, Jean-Paul Costa (Attachment 4).

This legal opinion was in addition to the 315 separate submissions received by WADA as part of its Code consultation process. This consultation process provided an opportunity for all stakeholders and interested parties, including Athletes' Commissions and Players' Associations, to express any concerns, recommendations or support they may have had for the Code, including in person at the November 2013 WADA Conference in Johannesburg under then WADA Chair, the Hon John Fahey AC.

- 42 In addition to Mr Fahey, who was nominated for the position of Chair of WADA by the Australian Government, the Australian Government was represented at the Conference by Mr Andrew Godkin of the Department of Health. Mr Godkin spoke on behalf of the Australian Government in his attached intervention (Attachment 5) and provided the Australian Government's support for the proposed revisions to the Code and International Standards. I was present in my capacities of President of the AOC and Vice President of the IOC. My intervention is attached (Attachment 6).
- 43 Prominent athlete representatives also provided interventions on the Code during the Conference. They were:
- (a) Felipe Contepomi, WADA Athlete Committee Member (Attachment 7);
  - (b) Todd Nicholson, International Paralympic Committee (IPC) Athletes' Council Chair (Attachment 8);
  - (c) Matthew Dunn, Australian Olympian (Barcelona 1992, Atlanta 1996, Sydney 2000), WADA Athlete Committee Member and Fédération Internationale de Natation (FINA) Bureau Member (International Federation for the five Aquatic disciplines of Swimming, Diving, Water Polo, Synchronised Swimming and Open Water Swimming) (Attachment 9);
  - (d) Claudia Bokel, Member IOC and IOC Athletes' Commission Chair (Attachment 10);
  - (e) Beckie Scott, WADA Executive and Foundation Board Member, WADA Athlete Committee Member, Member IOC and IOC Athletes' Commission (Attachment 11); and
  - (f) Cydonie Mothersill, WADA Athlete Committee Member (Attachment 12).
- 44 Following the WADA Congress, the revised Code was unanimously approved by the WADA Foundation Board, also meeting in Johannesburg on 15 November 2013, again under the Chair of the Hon John Fahey AC and with Mr Andrew Godkin representing the Australian Government. While the AOC acknowledges that Australian courts are not bound by European Union Conventions, it suggests that Honourable Senators can take comfort from the attached pages from the paper by former Australian High Court Justice the Hon Michael Kirby AC titled "Australia and the European Court of Human Rights" presented at The Australian National



University on 14 February 2011 (Attachment 13). A full version of the paper is available at <http://ces.anu.edu.au/>.

- 45 AOC Athletes' Commission Chair and dual Olympian Kim Crow (Beijing 2008, London 2012) appeared as a witness before the Senate Rural and Regional Affairs and Transport References Committee supporting the ASADA Amendment Bill 2013. Ms Crow supports all proposed amendments in this Bill, as indicated in her attached submission (Attachment 14).

### **Conclusion**

- 46 The AOC is wholly supportive of the proposed amendments in the Bill.
- 47 These amendments are critical to protecting clean athletes and ensuring the Australian Government's continued commitment to the Code as a signatory to the Copenhagen Declaration on Anti-Doping in Sport and its ratification of the UNESCO Convention.
- 48 The AOC has already taken the first step to implement the Code through its "in-principle" adoption of amendments to the AOC Anti-Doping By-Law which will be finally adopted on 21 November 2014.
- 49 All Australian NFs must comply with the Code, the amended ASADA Act and the anti-doping rules and policies of their IFs and, if members of the AOC, the AOC by 1 January 2015. But before then they require the certainty of knowing that the amendments to the ASADA Act have been passed and align with the Code.
- 50 The AOC reiterates its commitment to continue working with ASADA to protect clean athletes.

### **Public Hearing**

49. The AOC very much appreciates the opportunity to make this Submission and appear as a witness before the Senate Community Affairs Legislation Committee.

**2 October 2014**

**John Coates AC  
President, Australian Olympic Committee**