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Senate Standing Committees on Community Affairs

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COMPPS Submission – Australian Sports Anti-Doping Authority Amendment (Sport Integrity Australia) Bill 2019

The Coalition of Major Professional and Participation Sports (**COMPPS**) and its members appreciate the opportunity to make a submission in relation to the *Australian Sports Anti-Doping Authority Amendment (Sport Integrity Australia) Bill 2019 (the Bill)*.

1 INTRODUCTION

COMPPS consists of the following member organisations:

- (a) Australian Football League;
- (b) Cricket Australia;
- (c) Football Federation Australia;
- (d) National Rugby League;
- (e) Netball Australia;
- (f) Rugby Australia; and
- (g) Tennis Australia.

Each member of COMPPS is the governing body and custodian of a major professional and participation sport in Australia. COMPPS members play a large role in developing, promoting and presenting their sport from the grass roots through to the international level. They are not-for-profit bodies and are responsible for the long-term development and sustainability of their sports.

COMPPS members provide a wide range of public benefits through a self-funding business model. A large portion of the revenue of COMPPS members is devoted to enhancing, promoting and developing sport for all Australians. One of COMPPS' roles is to facilitate a response to public inquiries and consultations on behalf of its member sports.

2 BACKGROUND

Each of the COMPPS members has invested significantly in recent years in enhancing and strengthening their own integrity capability, including through dedicated integrity resourcing and establishing solid and collaborative relationships with relevant government agencies, law enforcement and wagering service providers.



In 2017 COMPPS was an active participant and contributor to the Review of Australia's Sports Integrity Arrangements led by Justice Wood and welcomed its report as well as the Government's response to the report and its recommendations.

3 COMPPS POSITION IN RELATION TO THE BILL

Contextual framework

In its extensive submission to the Wood review and in its dealing with Government generally, COMPPS has consistently advocated for the right balance and necessary clarity between the roles and responsibilities of government and of sporting bodies in relation to the protection of integrity in Australian sport. This balance, COMPPS submits, must be founded on mutual recognition of the appropriate division of such roles and responsibility with the starting point being:

- that the integrity of each of the individual sports is primarily, as with any corporate body in Australian business and society, a matter that falls to the responsibility of that body itself, within the general legal framework of the country and the rules of the relevant body, including where applicable the over-arching rules of individual sports' international federations; and
- the primary role of government in this area is to support, assist and work with Sports in protecting their integrity, and where applicable, with law enforcement if a matter involves (criminal) conduct beyond the jurisdiction of the sport involved.

With responsibility and accountability must also come control. In sport in Australia, arguably as much if not more than any other industry, integrity is a major part of reputation. A sport cannot be the *custodian* of its sport without control of the matters that may affect its reputation. The fundamental principle of the governance model of Australian sport is that it is the sport's board, appointed by its members, who should govern the sport. Like directors of other businesses in corporate Australia, members of the board are subject to directors' duties and liabilities under the Corporations Act and ASIC regulation. The board has the responsibility and is held accountable by members who have the right to vote to remove a director or board. If boards are required to carry the responsibility of governing their sport, they also have to be enabled and empowered. There is no greater responsibility for a sport's governing body than to protect and promote the reputation and integrity of its sport. Given the potential impact on its business of not doing so (loss of broadcast partners, sponsors, fans, players, reputation and associated revenue) there is no greater risk than that represented by not managing its integrity functions.

Given the above position, COMPPS submits that the relationship between Sport and Government in this area should be one of cooperation not coercion and this should be a governing principle informing the development of the legislative framework.

Observations on the Bill

COMPPS makes the following key observations on the Bill:

Clarity and certainty regarding roles and responsibilities

Having regard to the factors and principles outlined above, COMPPS is concerned that the Bill does not present the level of clarity and delineation required in this area.

Whilst COMPPS recognises the need and reasons for a reasonably broad scope of operation for SIA, COMPPS submits that it is imperative that in the grant and exercise of its precise functions there be a clear and understood division of responsibility between what Government does and what is within the remit of individual sports.

This concern manifests itself in particular in relation to the broad and wide definition of “*threats to sports integrity*” in the Bill as follows:

threats to sports integrity include:

- (a) the manipulation of sporting competitions; and*
- (b) the use of drugs or doping methods in sport; and*
- (c) the abuse of children and other persons in a sporting environment; and*
- (d) the failure to protect members of sporting organisations, and other persons in a sporting environment, from bullying, intimidation, discrimination or harassment.*

This concern is particularly acute when combined with the extensive list of the SIA CEO functions in the amended section 21(1). By taking the existing framework previously only applicable to the highly specialised and confined area of anti-doping and extending and adopting these functions in relation to the much more broadly and widely defined category of “*threats to sports integrity*” COMPPS is concerned that this may inadvertently lead to giving to the SIA CEO functions that have always, and should continue to reside with, the individual sports themselves. Whilst COMPPS appreciates that its members have constructive and collaborative relationships with ASADA (and expect to continue these with SIA), the theoretical availability of such powers or functions could in practice lead to challenging issues, expectations and even pressure on the CEO to enter territory that is rightly reserved for sports in relation to handling specific integrity matters.

Each of the COMPPS sports have detailed, tested and sport-specific regulatory frameworks for the management of threats to their sport’s integrity. Much of these are the outcome of extensive contractual negotiations with players’ unions, reflected in respective collective bargaining agreements and other supporting documents that have been honed over many years. For a number of the sports, there is also the additional layer of mandatory regulation imposed by their regional and/or international governing federations which can have a material impact in such areas as information control, use and sharing and responsibility for case management of integrity related matters. It would present a serious issue for the management of COMPPS members’ integrity and the governance of their individual sports for there to be the potential, let alone actuality, of some parallel investigative and/or enforcement process to operate under the authority of the SIA CEO. COMPPS does not believe that this is the intention of government and encourages a detailed review of the Bill to ensure that this potential is not left open.

Of particular note in this regard is proposed new section 75 which gives the SIA CEO the authority to “*request information or documents from any person or body about*

matters relating to sports integrity” and proposed amended section 21(1)(jac) which provides for one of the SIA CEO’s functions:

“to investigate threats to sports integrity and to collect, analyse, interpret and disseminate information about matters relating to sports integrity, including threats to sports integrity”.

COMPPS considers that the language of this section 21(1)(jac) should be refined to preserve the position whereby in relation to matters that fall within the jurisdiction of a sport, it is the role of sports to manage this aspect of integrity protection with the support and assistance of relevant agencies. Naturally sports recognise that law enforcement and government are the relevant bodies with respect to criminal investigations or matters outside a sport’s jurisdiction. Additionally, COMPPS is concerned at the broad authority granted to the SIA CEO by s75. Given the breadth of *“matters related to sports integrity”*, its potential scope extends well beyond the proper authority that should apply for the purposes of complying with the WADA Code. It would not be appropriate for this broadly drafted authority to be used in integrity related matters (which can be highly sensitive, personal and confidential) where such matter falls within the jurisdiction of the sport and is being or has been dealt with by the sport. COMPPS seeks amendment of the section to address this concern and as a minimum, express clarification that a sport’s response to any such requests will be at the discretion of the sport.

Information sharing

It has been a firm and long-standing position of COMPPS that there be enhanced information sharing capacity between government and law enforcement agencies and sports. This was a feature of COMPPS submission to the Wood review¹ (and we understand of many other stakeholders) and was rightly addressed as a key priority in the Wood report and recommendations.

COMPPS understands that this is also a shared objective and key priority of Government and that there will be a range of inter-related measures to achieve this, including the entry into the Macolin Convention, the establishment of the national platform and introduction of related legislative instruments.

COMPPS is concerned that the measures in this Bill do not appear to provide the level of enhancement required in this area. It is the common and repeated experience of COMPPS’ members, and a source of immense frustration, that Government/law enforcement agencies are prevented, incapable or unwilling to share with sports information that is vital to protecting sports’ integrity. One sport has

¹ See for example COMPPS submission calling for “An improved information sharing network between sport, law enforcement and sports betting providers through a national intelligence platform, whether as contemplated by Article 13 of the Macolin Convention or through establishment of a dedicated pan-sport intelligence unit (within ACIC or the proposed through a central betting authority)... The intelligence platform should have wide scope to share information with sports and agencies (such as ASADA) on topics such as anti-doping, salary cap cheating, organised criminal infiltration, player eligibility etc.”.

even experienced the situation where an agency's refusal to share relevant information in and of itself generated a threat to that sport's integrity.

COMPPS does not perceive that the Bill provides the level of clear and express authorisation to SIA to share information with sports and to provide it in such a way that enables the sports to use it in their own investigative and disciplinary capacities. The function of the CEO contained in proposed section 21(1)(jac), namely "*to collect, analyse, interpret and disseminate information about matters relating to sports integrity, including threats to sports integrity*" is noted but would not appear sufficient to enable the type of information-sharing that the COMPPS members have long advocated for and which would significantly impact the protection of Australian sports' integrity. If COMPPS is mistaken regarding the existence of such information-sharing provisions, or if they are intended for another legislative instrument, we would welcome being so advised.

4 CONTACT DETAILS

Should there be any questions in relation to this submission or require any further information from COMPPS or its members please contact Jo Setright

Yours sincerely

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