

CHAPTER 3

MR WATSON'S POSITIVE DRUG TEST AND ITS CONSEQUENCES IN AUSTRALIA

The Positive Drug Test: 21 September 1988

3.1 Mr Alex Watson's participation as a pentathlete in the Seoul Olympics began on 18 September 1988. On 19 September after a day-long series of fencing bouts, he was (randomly) selected for a urinary test by the Medical Commission of the IOC; the urine provided was divided into A and B samples. The result of testing both samples was not known until 21 September, by which time Mr Watson had competed in two further pentathlon events: swimming on 20 September and shooting on 21 September. Mr Coates advised the Committee that, while he had been told of the positive result on the A Sample at 1.20 am on 21 September, he did not inform Mr Watson as he had to compete later that day. Mr Coates did not want Mr Watson's performance adversely affected by something that could prove to be of no effect and he decided to await the result of the test on the B sample. (*Evidence*, p. 158)

3.2 During the afternoon of 21 September Mr Coates and Dr Sando attended the unsealing of the B sample and were advised for the first time, that the proscribed substance was Caffeine and of the level of Caffeine detected in the A sample. At the completion of Mr Watson's event that afternoon he was told by his coach Mr Barrie that he had returned a positive drug test; however, Mr Barrie did not advise Mr Watson about the type of drug detected. At approximately 6.00 pm that evening Mr Coates and other AOF officials met with Mr Watson and Mr Barrie; they were advised that Mr Watson had tested positive to Caffeine. It was during that meeting that Mr Coates was informed by the IOC Medical Commission that the testing of the B sample had confirmed the A sample result.

3.3 Mr Watson's urine samples had revealed a concentration of Caffeine higher than 14 micrograms per millilitre (mcgs/ml); the IOC limit is 12 mcgs/ml. Following the B Sample's confirmation of the IOC positive drug test, the issue was acted upon without delay. The AOF complied with the IOC procedures which required Mr Watson to appear before the IOC Medical Commission; this occurred at 10.00 pm on the evening of 21 September 1988. At that hearing Mr Watson appeared in the company of Messrs Coates, Barrie and Dr Sando (*Evidence*, p. 90). The meeting comprised some 20 people made up of the IOC Medical Commission and UIPMB officials who were seated around a rectangle of tables; interpreting microphones were used. Mr Coates provided a character reference: he said he had known Mr Watson and that in Australia Mr Watson had been active in Olympic fund raising, and that he was reliable. (*Evidence*, pp. 16-17)

3.4 Mr Watson's hearing before the IOC Medical Commission contrasted with that of the British athlete, Mr Linford Christie. Mr Christie had tested positive for pseudoephedrine but appealed on the grounds of inadvertent use. Mr Christie's appeal was upheld. Unlike Mr Christie's IOC hearing at Seoul in 1988, where he was accompanied by a legally qualified advocate (who was Honorary Treasurer of the British Olympic Association), Mr Watson did not have access to an advocate. While being legally qualified, Mr Coates was present as the Australian Chef de Mission rather than as an advocate for Mr Watson.

3.5 According to the IOC *List of Doping Classes and Methods*, '...the presence of the [proscribed] drug in the urine constitutes an offence, irrespective of the route of administration'. Therefore, in line with Rule 29 of the Olympic Charter, the IOC Executive Board banned Mr Watson from further participation in the Seoul Olympics. (He thus became the first member of an Australian Olympic Team ever to be disqualified from an Olympiad for a drug-related offence.) Accordingly, in keeping with section 6.3.9 of the revised IOC *List of Doping Classes and Methods*, issued in December 1987, the IOC Executive Board advised Mr Coates as Chef de Mission of the Australian Olympic Team (at the time he was also Vice-President of

the Australian Olympic Federation), of this decision. The AOF, as a constituent chapter of the IOC, was:

... bound to observe and comply with decisions of the IOC and its Commissions, including the IOC Medical Commission. (*Evidence*, p. 98)

The disqualification was applicable automatically to Mr Watson and he was directed by Mr Coates to return to Australia. Mr Coates has advised that:

... the IOC accredits and disaccredits athletes. The minute they are disaccredited, they are out of the village. There is nothing that the AOC can do about that. It is our policy, under our agreements with officials and athletes, that if that happens the athlete returns home forthwith. (*Evidence*, p. 157)

Mr Coates has stated further that in directing Mr Watson to return immediately to Australia, his concern at the time was for the team as a whole. The good sense of such a concern is demonstrated by the adverse effect on the Canadian team following the disqualification of Mr Ben Johnson who tested positive for anabolic steroids at the Seoul Olympics. Mr Coates confirmed:

Also, when you have a responsibility for the other 400 members of your team, you have a responsibility so far as they are concerned that all of the emphasis and the focus of the team - the administration, the medical section - is on those athletes still competing. I do not think it is fair to them that someone who has breached the doping rules of the IOC should then be the centre of media and other attention. (*Evidence*, pp. 157-158)

3.6 Following Mr Watson's disqualification by the IOC, the AOF chose to apply its own ban. At the time the AOF 'doping' policy provided that:

Any athlete who is found ... to have taken or used drugs or stimulants ... prohibited by ... the IOC ... will be

ineligible for life for selection in any Australian Olympic Team or to hold any position on the AOF. (AOF, *Doping Policy*, 1987)

The ban, though not confirmed in writing, was regarded nevertheless as a *fait accompli* by the AOF.

Aftermath of the Drug Test: 22-24 September 1988

3.7 With Mr Watson disqualified, there were no Australian pentathletes with events to contest. Accordingly, early in the morning of 22 September 1988 Mr Watson and the rest of the Australian pentathlon section left Seoul to return to Australia via Hong Kong. In evidence Mr Coates stated that the Assistant General Manager and the Transport Director were made available to accompany Mr Watson to the airport and were with him until he left. (*Evidence*, pp. 162-163)

3.8 Reacting rather precipitately to the swift developments of the twelve hours preceding his departure from Korea, Mr Watson then made a number of decisions which contributed to the development of a rift with the AOF. He telephoned Mr B. Walsh of Channel Ten from Hong Kong to arrange for a press conference to be held in Seoul at which he could present his case. He returned to Seoul on 24 September. Mr Watson claimed that the penalty imposed by the IOC was unjustified. Going somewhat further, he alleged that he was the victim of foul play, and also possibly of a smear campaign. (*Mr A. Watson, Media Statement, Seoul, 24 September 1988, Schedule 4.2 to AOC Submission No 48B; Evidence*, pp. 58-62). The press conference, which gave rise to considerable publicity, soon brought forth statements by various medical experts in support of Mr Watson's assertion that the amount of coffee he had ingested was sufficient to reveal a high concentration without intake of the drug in concentrated form.

Simulated Drug Test in Australia: 29 October 1988

3.9 In October 1988 the Australian Modern Pentathlon Union sought the assistance of the Australian Institute of Sport (AIS) in conducting a simulation of the Seoul test on Mr Watson. That assistance was denied because of the AIS policy not to assist any athlete who had returned a positive test. On 29 October 1988 Mr Watson took part in the simulation at a gymnasium in Sydney. It was sponsored by Channel Ten.

3.10 Professor D. Birkett, of the Department of Clinical Pharmacology, Flinders University, was asked by the Channel Ten *Page One* television program and Mr Watson to assist in advising on a sampling schedule. Professor Birkett and his colleague, Dr J. Miners prepared a suggested sampling schedule for urine, blood samples and the caffeine-containing drinks. The study protocol that Professor Birkett suggested was, he explained, essentially a simple one starting at the time of waking up and continuing to the final sample collection at the time the Seoul urine sample was taken. It was based on periodic urine collections over periods of four hours with a blood sample at the mid point of urine collection to allow correlations to be made between blood and urine concentrations.

3.11 Professor Birkett has stated that at all times he remained in possession of the samples collected and believed that the chance that any of the samples were tampered with was extremely slight. The samples were under his supervision for most of the time and the results from the samples are entirely consistent with what he would have expected. He has stated that it would be an extremely difficult task to 'spike' such samples in a way that was pharmacologically credible. Nevertheless, Professor Birkett has also stated that he was not in the room the whole day and that it is just possible that Mr Watson could have taken tablets by sleight of hand or in some other way. Professor Birkett, however, believed this to be unlikely:

I do not believe that any caffeine was consumed other than that in the coffee and coca-cola that he ingested as the urine and blood concentrations measured were

entirely consistent with the intake in the coffee and coca-cola. (*Prof. D. Birkett, Statement to the AOF Executive Board, Schedule 4.2 to AOC Submission No 48B, p. 13*)

3.12 During the simulated test, Professor Birkett collected spot samples of all the "non-caffeine" drinks consumed by Mr Watson and they were analysed to determine whether there was Caffeine in them. Caffeine-containing drinks were measured by a specific and precise high pressure liquid chromatography method employed previously in Professor Birkett's laboratory. All samples were analysed in duplicate, a standard curve was run each day and high and low quality control samples were included in each analytical run. The co-efficient of variation of this method is in the order of 2 to 5.6%. Professor Birkett stated that the method used is essentially the same as that reported by him and his co-authors in an article in *Clinical Pharmacology and Therapeutics* (39), 1986, pp. 54-59. Professor Birkett noted that:

The caffeine concentrations in the drinks that were consumed were in the upper range of caffeine concentrations for brewed coffee and I would regard the coffee as being unusually strong. The concentrations coupled with the volumes of the drinks resulted in a total caffeine intake over the 16 hour period of close to *1500 milligrams* or 1.5 grams. This is a very high caffeine intake ...

The average caffeine intake I have measured in a group of 18 moderate to heavy coffee drinkers was 463 milligrams per day with a range of about 180 to 850 milligrams per day.

The intake by Alex Watson on the study occasion was nearly twice the upper end of that range and his blood and urine caffeine levels were also nearly twice the range referred to in paragraph 32 [That is, in the order of 6.7 to 11 milligrams per litre] ...

The plasma concentrations were as expected from the caffeine intake starting at 4.5 milligrams per litre in the first sample which was blood taken after the first cups of coffee in the morning and increasing through the day to

reach a peak level of 22.4 milligrams per litre in the last sample ...

Urine concentrations began at 2.35 milligrams per litre in the overnight urine and increased to 13.7 milligrams per litre in the urine collected over the period to 5.00 pm at which time 1260.1 milligrams of caffeine had been consumed and reached a peak concentration in the urine taken at about 9.50 pm of 28.1 milligrams per litre... (*Prof. D. Birkett, Statement to the AOF Executive Board, Schedule 4.2 to AOC Submission No 48B*, pp. 13-15).

3.13 Professor Birkett concluded that:

The caffeine intake was unusually high mainly because of the strength of the coffee used. It was not possible to know the caffeine concentration in the coffee provided in Seoul, but one would assume that it was lower than that used in Sydney.

The plasma and urine concentrations are consistent with the intake of caffeine in the coffee and coca-cola consumed by Alex Watson during the day. The results are also consistent with what we would have expected from the known pharmacokinetics of caffeine that I referred to in paragraph 17 and with data in the literature obtained by both ourselves and the workers. (*Prof. D. Birkett, Statement to the AOF Executive Board, Schedule 4.2 to AOC Submission No 48B*, p. 15)

Paragraph 17 referred to above reads as follows:

My recollection also is that it was stated in the Australian press and by Olympic officials that Alex Watson could only achieve urine concentration [sic] of 14 milligrams per litre if he had taken caffeine in tablet form or suppository form. At that time I calculated that, based on the information on caffeine pharmacokinetics readily available in scientific literature (both our own work and others), the urine concentration set by the International Olympic Committee could easily be achieved by moderate coffee intake in the order of 5-10 cups per day. (*Prof. D. Birkett, Statement to the AOF Executive Board, Schedule 4.2 to AOC Submission No 48B*, pp. 4-5)

3.14 Professor Birkett went on to conclude:

It seems clear from this study of one individual and other studies with greater numbers of subjects that *it would be possible to reach the 12 milligram [sic] per litre urine concentration with a caffeine intake contained in 5 to 10 cups of brewed coffee over the course of the day.*

This is in fact the situation with Alex Watson who reached a level of 13.7 milligrams per litre at a time when he had taken approximately 11 cups of brewed coffee and 2 cans of coca-cola. Should he have consumed similar amounts of coffee or more in Seoul it is highly likely that his urine concentration would have been as [sic] measured *solely* on the basis of the caffeine content of the coffee and coca-cola consumed. (*Prof D. Birkett, Statement to the AOF Executive Board, Schedule 4.2 to AOC Submission No 48B, p. 15*)

3.15 The Caffeine concentrations of the plasma and urine samples obtained by Mr Watson during the fencing re-enactment analysed at Professor Birkett's laboratory at Flinders University were analysed by Dr John Miners. The principal conclusion arrived at by Dr Miners is:

... that urine caffeine concentrations far in excess of the permissible Olympic level can be obtained from the drinking of caffeine containing beverages and that a high urine caffeine concentration does not necessarily imply the use of illicit caffeine preparations. The view that caffeine concentrations in excess of 12 mg/l cannot be obtained from the consumption of caffeine containing beverages is incorrect. In addition our results suggest that if Alex Watson had consumed 8 to 10 cups of average strength coffee and 2 cups of coca cola on the day of the Seoul fencing event, his urine caffeine concentration would have been expected to be in the region of that measured by the Olympic authorities (assuming equivalence of conditions) ie. the urine caffeine concentration measured in Seoul could well be explained solely on the basis of his caffeine intake from the coffee and coca cola. (*Letter from Blake Dawson Waldron, to R.K. Gosper, 16 April 1992*)

3.16 It is important to note that the test was not conducted and controlled by Professor Birkett but rather with his assistance and advice. The simulation was not conducted with the rigor of a scientific study. As Dr E. Maslen, Director of the Crystallography Centre at the University of Western Australia has observed:

The simulation did not reproduce the original conditions as closely as an expert scientist would consider desirable. The simulation would be less helpful to those trying to set limits on caffeine concentrations than better conducted experiments.

Nevertheless ...

...

Its blemishes should not obscure the fact that the results of the Page One simulation were essentially correct, and drew public attention to Birkett's work. (*Dr E. Maslen, Letter to Senator N. Crichton-Browne, 9 April 1992*)

3.17 The simulated test may be described as a demonstration and it would be wrong to regard it as a re-enactment which reproduced in identical detail the events in Seoul. According to Professor Birkett, however, the test did demonstrate, that it is possible to reach a urine caffeine concentration level of 12 milligrams/litre by the consumption of five to ten cups of coffee in the course of a day.

Drugs in Sport - Senate Hearing: 21 November 1988

3.18 At the time of the events in Seoul, the Senate Standing Committee was conducting an inquiry into Drugs in Sport. On 21 November 1988, in evidence to that inquiry, Mr J. Coates and Dr B. Corrigan of the AOF pointed out that in the simulated drug test Mr Watson was given 1500 milligrams of Caffeine and that the specific gravity of his sample had not been recorded; without a specific gravity reading it is not possible to gauge the extent of dehydration. Even if the specific gravity of the sample had been recorded, however, some experts consider that

dehydration is not a factor affecting concentration levels in urine. In evidence to the Committee, Professor Birkett stated:

...neither dehydration or water loading really affect the concentration of caffeine in urine. (*Evidence*, p. 208)

Drugs in Sport - Senate Hearing: 30 November 1988

3.19 On 30 November 1988 Mr Watson appeared before the Drugs in Sport inquiry; he advised the Committee that he no longer believed that his drinks in Seoul had been tampered with. (This earlier claim would not have assisted Mr Watson's credibility.) At the 30 November hearing, Mr Watson outlined complaints which fall into two categories - those against the AOF (from May 1990, the AOC), and other complaints that centre on the legitimacy of testing for Caffeine. Many of these complaints were repeated at the Mr Alex Watson Inquiry hearing on 10 May 1991.

Complaints Against the AOF

3.20 Mr Watson's main complaints against the AOF on 30 November 1988, and 10 May 1991, were as follows:

- . He had been misinformed by the AOF doctors about the amount of coffee he could drink without running the risk of returning a positive drug test.
- . He had been separated by the AOF from other members of the Australian Olympic team prior to his appearance before the IOC Medical Commission, which placed him at a disadvantage in preparing his case.
- . He had been prevented by the AOF in Seoul from contacting his parents in Australia.

- . He had not been told immediately to which drug he had tested positive, which put him at a disadvantage when he came to appear before the Medical Commission of the IOC.
- . No proper relationship existed between the alleged offence and the AOF penalty.
- . He had been deprived of a fair hearing because no appeal mechanism existed for challenging the findings of the IOC.
- . Officials of the AOF had refused to have any contact with him after his return from Seoul - they did not return his telephone calls nor attend the test simulation in Sydney.
- . The AOF denied Mr Watson the use of AIS facilities to conduct the test simulation, and that the use of Cumberland College facilities was refused through AOF and AIS intervention.
- . He had been the subject of a smear campaign by certain AOF officials. (*Drugs in Sport Evidence*, pp. 496, 502, 507, 508, 512-514; *Alex Watson Evidence*, pp. 7, 18, 19, 25, 42, 48, 58, 59 and 90)

Complaints About Caffeine Testing

3.21 Further, Mr Watson made the following major claims and complaints about testing for Caffeine:

- . The level of Caffeine concentration set by the IOC was changed prior to Seoul; since it had been 15 mcgs/ml at the Los Angeles Olympics in 1984, had he been tested then he would have been under the limit.
- . His enforced separation from other athletes between the time he allegedly returned a positive drug test and his appearance before the IOC Medical Commission had prevented him from seeking professional or other advice and hindered his attempts to prepare his case.
- . Medical opinion supported his arguments regarding the Caffeine concentration which can be reached through social drinking without recourse to concentrated forms of the substance.

- . Prior to the Seoul Games he had been led to believe and was convinced that the number of cups of coffee he drank could not give rise to the reading obtained.
- . The Caffeine test was unreliable and its use should be reviewed. (*Drugs in Sport Evidence*, pp. 495-497, 502 and 510)

3.22 An analysis of Mr Watson's complaints regarding the AOF and Caffeine testing are provided in this chapter and Chapter 5 respectively.

Mr Watson's Appeal Against the AOF Ban: 11 May 1989

3.23 By virtue of its position as a constituent chapter of the IOC, the AOF was obliged to implement IOC policies on drugs. The AOC Counsel, Mr S. Rofe has remarked that the AOC is bound to observe and comply with the decisions of the IOC and its Commissions, including the Medical Commission. (*Evidence*, p. 78)

3.24 The 1987 AOF drug testing policy, in operation at the time of the Seoul Olympics, was a one-page document expressing succinctly what constituted an offence, the penalties involved, the responsibilities of athletes in regard to drug controls, the procedures governing the analysis of samples and the obligations of the AOF in administering the policy. While the drug testing policy of the IOC remained the same as that in force at Seoul, the AOF revised its policy on 3 February 1989, conferring on the AOF Executive Board a discretionary power with regard to penalties, and refining definitions in the policy.

3.25 On 11 May 1989 Mr Watson appealed to the AOF Executive Board against the AOF ban imposed at Seoul. In view of the somewhat fragile relations between Mr Watson and the AOF since the events in Seoul, which had deteriorated during his attempts to appeal his case, a deed of agreement for the conduct of the hearing was signed prior to the hearing.

3.26 It was a particularly low point for sport in Australia in May 1989 when the AOC and Mr Watson entered into this Deed which was considered necessary before Mr Watson's appeal to the AOC could proceed. The Deed read in part:

Watson hereby releases and forever discharges the AOF, the members of its Executive Board, its legal advisers and any witnesses called by or on behalf of the AOF from and against all and any liability arising out of or in respect of submissions made, evidence given and comments made during the hearing and in respect of the official announcement made by the AOF and its Executive Board as to the outcome thereof. (*Deed of Agreement: Mr A. Watson and the AOF Executive Board, 11 May 1989, Schedule 4.1 to AOC Submission No 48B, p. 2*)

The AOF gave similar undertakings. Such was the state of the relationship.

3.27 Mr Watson's return to Seoul at which point he breached the provisions of his undertakings contained in the AOF Competitor's Agreement, notwithstanding that he notified Mr Coates of his intention to do so, no doubt added to the difficulties of the relationship. The AOF showed no inclination to review Mr Watson's penalty or to amend its own rules so as to expedite such a process until the Channel Ten *Page One* Program was screened. The degree to which the relationship between Mr Watson and the AOC had deteriorated is reflected in Mr Coates' evidence to the Committee:

... Alex had placed this matter in the hands of his lawyers, and the AOC did likewise. Dawsons were acting for him. It was very adversarial. (*Evidence, p. 182*)

Mr Rofe disagreed with Mr Coates, though any sensible examination of circumstances leading up to that point clearly demonstrates that the relationship had thoroughly degenerated.

3.28 In presenting his case Mr Watson summarised the basis for his appeal to the AOF:

- . Very real doubts existed about the usefulness of urine samples as an index of the content of Caffeine consumed by an athlete.
- . The excess recorded in this case was perfectly consistent with the amount of coffee and Coca-Cola consumed by Mr Watson on the day.
- . Mr Watson never intended to exceed the limit, or to derive unfair advantage.
- . Mr Watson was a dedicated athlete whose whole life had been devoted to athletics, and to the enhancement of his chosen sport.
- . The imposition of a life ban in these circumstances was an extremely heavy penalty.
- . There is reason to doubt whether Mr Watson deliberately exceeded the set limit. Indeed, there was very strong reason to suggest that Mr Watson exceeded the limit 'innocently', not intending to do so, and not hoping to derive an unfair advantage.
- . Mr Watson had already undergone substantial penalty. He was disqualified from his event in Seoul and sent home in disgrace. (*Mr A. Watson, Summary of Submissions to the AOF Executive Board, Schedule 4.2 to AOC Submission No 48B, p. 4*)

And Mr Rofe opened Mr Watson's appeal proceedings as follows:

The issue is quite clear, Mr President, that it is the question of the review of the penalty to be imposed upon Alex Watson, he having been found by the IOC to have exceeded the prescribed urinary caffeine concentration of 12 micrograms per millilitre at the Seoul Games. (*Mr S. Rofe, AOF Appeal Hearing Transcript, Schedule 4.4 to AOC Submission No 48B, p. 2*)

3.29 The Executive Board considered Mr Watson's case, his concern for fair testing of all athletes as much as for himself, and his longstanding involvement in

the pentathlon as well as the conflicting statements made by himself and other witnesses. While the AOF Executive Board hearing relied in part on Mr Watson's evidence (and therefore his credibility was important) the attempts by the AOF at the appeal hearing to cast aspersions on Mr Watson's character were unseemly. After hearing Mr Watson's appeal the Executive Board, through its Chairman, Mr K Gosper, informed Mr Watson of its decision:

So we have decided to not apply a life ban in this first case. That means that you will be free to make yourself available to compete in the next Olympic Games. But what we will do is that we will comply with the penalty that has been handed down by the UIPMB in parity, in such a way that if by any review that is adjusted to your benefit, we will move in line with that. (*Mr K. Gosper, AOF Appeal Hearing Transcript, Schedule 4.4 to AOC Submission No 48B, p. 223*)

An AOF suspension, following the two-year ban imposed by the UIPMB, was to remain in force.

3.30 The AOF review of Mr Watson's case was capable of denying him natural justice because his case was being reviewed by precisely the same Executive Board members who imposed the life penalty. At least two of those members had expressed strong views publicly about Mr Watson's guilt. This is not to suggest that Mr Watson's hearing or the subsequent determination was in any way prejudiced by the presence or contributions of either of these members.

3.31 Our understanding is that Mr Watson's case was the first to be reviewed by the AOF under its revised doping policy of 3 February 1989. To deal with similar cases which may arise in future, the AOC has established an independent Tribunal, comprising a minimum of three persons. Notwithstanding this development, it was only after a great deal of public debate and private agitation, including costly legal representation, that Mr Watson appeared in May 1989 before the same men who had banned him some eight months previously. As Dr E. Maslen has observed:

The importance of the Page One experiment was that it established the answer to that question in the public eye with a force that the erudition and excellent science of Prof Birkett was not able to command. (*Dr E. Maslen, Letter to Senator N. Crichton-Browne, 9 April 1992*)

It says more about Mr Watson's tenacity and determination than the willing co-operation of the AOF that he managed to persuade the AOF to review his case. We acknowledge that since the Seoul games, by reforms to its doping policy of February 1989 and March 1991, the AOC has established an appeals process. Mr Coates and the AOC are to be commended for the steps they have taken since the Watson case to ensure that athletes have access to a proper appeals process.

3.32 We acknowledge particularly the work Mr Coates has undertaken to have an Oceanic Division of the Court of Arbitration for Sport (CAS) established in Australia. It is our understanding that the amendments required to the Statutes and Regulations of the CAS and the Operating Plan and Budget were submitted to the CAS for approval on 1 April 1992. We further understand that the amendments, if approved by the CAS will be submitted to the IOC Executive Board at its meeting in May 1992 and then to the IOC Session in Barcelona for adoption. We very much support this initiative which will greatly improve the arbitration and dispute settling process for drug positives.

Further Senate Hearings

3.33 On 21 December 1988 Mr Watson provided the Senate Standing Committee with documentation on the events in Seoul; it was received as Submission No. 48 to the Drugs in Sport inquiry. The Committee's *Interim Report on Drugs in Sport* very briefly considered Mr Watson's positive drug test. That report was finalised prior to Mr Watson's appeal to the AOF, which was heard on 11 May 1989. Consequently the report, tabled on 14 June 1989, advised:

The Committee has noted that, at the time of writing, the matter of Mr Watson's ban as a result of caffeine use is

being considered by the AOF appeals committee. It is possible that this issue may require further investigation in later deliberations of the Committee. (*Interim Report of the Senate Standing Committee on Environment, Recreation and the Arts on Drugs in Sport, 1989*, p. 117)

3.34 Mr Watson subsequently wrote to the then Chairman of the Committee, Senator J. Black, on 13 December 1989 stating that his case had been presented fully at the Drugs in Sport inquiry hearings on 30 November 1988, and requesting that the Committee provide a 'determination' of the issue. On 24 April 1990 Mr Watson wrote again to Senator Black asking 'that you please inform me what you are able to do in resolving this matter'. Senator Black replied on 18 May 1990 that 'any relevant decision in relation to your ban lies with the international sporting body'. Mr Watson confirmed on 23 May 1990, however, that he still wished 'to have the Committee make an objective assessment' of his case. On 18 September 1990, the Committee resolved to inquire into the circumstances surrounding the positive drug test on Mr Watson.

3.35 On 21 September 1990, the UIPMB two-year ban on Mr Watson expired, and on 4 December 1990 the Committee wrote to Mr Watson inviting any further evidence he wished to present. On 4 February 1991, Mr Watson notified the Committee that he had no further evidence to present given his previous appearance before the Committee, and that he wished the Committee inquiry to proceed. He wrote to the Committee on 22 April 1991, however, outlining a case he would be presenting at the 10 May 1991 hearing; this letter was received as Submission No 48A. In it Mr Watson wrote: 'I implore the Committee to see that the truth of this case is exposed and that justice is done.'

Senate Hearing: 10 May 1991

3.36 At the public hearing on 10 May 1991 when Mr Watson again presented his case to the Committee, Mr J. Coates (President of the AOC) and the AOC Counsel, Mr S. Rofe, also attended and gave evidence. The Committee was

presented with a submission from the AOC relating to Mr Watson's positive drug test; due to the extensive attachments and its late receipt, the Committee was unable to consider those documents at that hearing.

Senate Hearing: 4 November 1991

3.37 The Committee invited the AOC to attend a further public hearing to respond to the views put by Mr Watson. At that hearing on 4 November 1991 the Committee incorporated two submissions from the AOC: Submission No 48B (presented on 10 May 1991), and Submission No 48C (dated 20 June 1991).

Senate Hearing: 5 December 1991

3.38 In order to receive expert advice about Caffeine, its effects and urine testing, the Committee heard evidence on 5 December 1991 from Professor D. Birkett, Head of the Department of Clinical Pharmacology at Flinders University.

Findings About the Role of the AOF

Complaints Against the AOF

3.39 Mr Watson has claimed with some credibility that the following AOF actions were unfair:

- . He had been separated from other members of the Australian Olympic team prior to his appearance before the IOC Medical Commission, which placed him at a disadvantage in preparing his case.
- . He was not permitted to contact his parents before leaving Seoul.
- . Officials of the AOF had refused to have any contact with him after his return from Seoul - they did not return his telephone calls nor attend the test simulation in Sydney.

During his appeal hearing before the AOF on 11 May 1989, the AOF had raised a number of character issues that were of questionable relevance. (*Drugs in Sport Evidence*, p. 496; *Alex Watson Evidence*, pp. 18-19, 25, 58-62)

With respect to these assertions, Mr Coates advised the Committee that his concern in Seoul was for the team as a whole. (*Evidence*, pp. 157-158) Further, Mr Coates stated that he had wanted to protect Mr Watson from the media. (*Evidence*, p. 164) He believed that any communications by Mr Watson prior to his departure from Seoul were likely to alert the media to his positive drug test and subsequent Olympic ban. Mr Coates stated also that following Mr Watson's decision to put the matter in the hands of his solicitors, the situation needed to be dealt with through lawyers. (*Evidence*, p. 182)

Origin of the AOF Attitude

3.40 Following examination of all the documentation available to the Committee, questions remain about the attitude and conduct of the AOF in this case. The attitude of the AOF probably originated in the immediate aftermath of the positive test in Seoul. Mr Coates had been assured by officials in Seoul that Mr Watson could not have exceeded the IOC Caffeine limit simply by drinking coffee. He (Mr Coates) advised the Committee:

I asked the question of Dr Park, who was the head of that laboratory, 'Is it possible to reach this level from normal consumption of coffee?', and he said, 'No. It is impossible. You would reach that level only from taking suppositories or tablets'. (*Evidence*, p. 155)

Mr Rofe informed the Committee:

... the initial advice that the IOC received in Seoul, for example, was that for Alex Watson to have recorded his level of 14.45 he must have taken tablets or suppositories. (*Evidence*, p. 154)

Mr Rofe also stated that:

Dr Fitch's view was that to exceed the limit from caffeine consumption you would have to take tablets or suppositories. If you tried to do it from coffee consumption, he thought that you would almost become physically ill, if not physically ill. (*Evidence*, p. 148)

Perhaps the attitude of the AOF towards Mr Watson is best summed up by Mr K. Murton, Transport Director for the Australian team and a member of the Team Executive when he said to Mr Watson on the way to the car pool to travel to the airport words to the effect, 'I am very disappointed in you Alex. I thought I knew you better than to get involved in this sort of business'. (*Evidence*, p. 125)

3.41 In some respects Mr Watson's complaints about the attitude and the conduct of the AOF towards him derive from his perceptions while in others they are matters of dispute. Undoubtedly the conduct and attitude of Mr Coates and the AOF in Seoul and subsequently were influenced by their judgment that Mr Watson had cheated. (*Evidence*, pp. 158, 169, 170, 174-175) It may be reasonably asserted that there is substance in some of Mr Watson's objections to the manner in which the AOF dealt with this matter.

Timing of Advice about Positive Test

3.42 Mr Watson has claimed that he was not told immediately to which drug he had tested positive, which put him at a disadvantage when he came to appear

before the Medical Commission of the IOC. This matter has been dealt with already at some length at 3.1.

3.43 The evidence of Mr Watson and Mr Coates appears to agree on the timing of Mr Watson's advice as to the substance for which he tested positive. Mr Watson stated that the completion of the shooting events on day four of the games Mr Barrie advised Mr Watson that he had tested positive in a drug test.

3.44 Mr Watson, Mr Barrie and it appears Mr Stephen Paul the fencing coach returned to the AOF headquarters at the Olympic village where they met John Coates, John Boulton, Dr Brian Sando and Bill Hoffmann. Mr Watson states that 'I was asked what I had eaten and drunk on the day of the fencing. I replied as per my statement in paragraph 19, namely that I had consumed 10 to 12 cups of coffee and several cans of Coca-Cola. Coates did most of the talking and after some questioning, I was told that I had been found positive to caffeine above the allowable limit. I said that this was ridiculous, as I had only consumed coffee and Coca-Cola. I was then asked whether I had taken caffeine pills or a suppository. I answered definitely no, and stated my innocence to any drug consumption. During this time Dr Sando picked up the telephone in the room and phoned the IOC drug testing laboratory. He spoke to Dr Park who confirmed that the second, or B, sample was positive to caffeine at a level of 14.24 micrograms'. (*Evidence*, pp. 15,16)

3.45 The AOC submission to the Committee states:

... at 7.15 a.m. that day, Mr Coates advised Mr R.G. Barrie the Pentathlon Section Manager of the Team, of the receipt of the letter and the nature of its contents. Mr Coates further advised that, unless and until the "B" sample testing confirmed the "A" sample result, there was no problem for Watson. Mr Coates was of the view that Watson should not be informed as he was competing that day in the shooting event of the Pentathlon. Mr Coates did not want Mr Watson's performance adversely affected by something that could prove to be of no effect.

Mr Coates and Dr Sando attended the unsealing of the "B" sample and at that time were advised, for the first time, that the proscribed substance was caffeine and the level of caffeine detected in the "A" sample.

At approximately 6.00 p.m. that evening, Mr Coates was joined by Watson and Mr Barrie. Also present were Messrs. Boulton and Hoffmann and Dr Sando. Approximately 15 minutes later, Mr Coates telephoned [sic] the IOC Medical Commission and was advised that the testing of the "B" sample had confirmed that of the "A" sample. In consequence discussions with Messrs. Coates and Barrie, Watson was unable to give any explanation of these test results, other than his consumption of coffee and coca cola during 19 September, 1988. (*Evidence*, p 90)

3.46 It is our view that Mr Coates' conduct in dealing with the timing of notifying Mr Watson of his positive test and the relevant substance was in the circumstances sensible and proper.

Separation from the Team

3.47 Mr Watson stated that he had been separated by the AOF from other members of the Australian Olympic Team prior to his appearance before the IOC Medical Commission, which placed him at a disadvantage in preparing his case. (*Drugs in Sport Evidence*, p. 496; *Alex Watson Evidence*, p. 16) It seems in fact that Mr Watson is referring to Team members and officials other than those in the Pentathlon Section. Presumably Mr Watson had it in his mind that other Team members may have been able to offer advice. It could be that he envisaged finding an advocate amongst them. Whether access to the rest of the Team would have assisted Mr Watson when he appeared before the IOC Medical Commission is a matter of conjecture. The facts of the matter are, however, that Mr Watson was denied what he perceives as that advantage. Due to the possible detrimental effects on the other members of the Team, Mr Coates requested that Mr Watson not speak to Team members, with the exception of those in the Pentathlon Section. (*Evidence*, pp. 90, 164-165)

3.48 We have considerable sympathy for Mr Coates' course of action and underlying motives. However isolating Mr Watson at a time of his very considerable anxiety and anguish was particularly harsh. In respect to the particular matter of this quarantine denying Mr Watson his best advantage before the IOC Medical Commission, the AOC's proposal to provide athletes at future Olympic Games with an independent and legally qualified advocate will overcome for the future that dilemma.

Denial of Contacting Parents

3.49 Mr Watson stated that in Seoul he had been prevented by the AOF from contacting his parents in Australia. (*Evidence*, pp. 18-19) Mr Coates stated in evidence to the Committee:

There was no restriction once he got to the airport. At the airport there was agreement that he could stop off in Hong Kong. I do not know whether he made phone calls from the airport...(*Evidence*, p. 164)

It is clear from Mr Watson's evidence that his understanding from Dr Sando was that he was banned from telephoning Australia prior to his departure from the Seoul airport. (*Evidence*, pp. 18-19) While a persuasive case can be made for AOF officials ensuring that publicity surrounding a disqualified or expelled athlete does not detrimentally affect the performance or the morale of the rest of the team, it is unacceptable that athletes are unable to communicate with their immediate family prior to their departure. For the families of disqualified athletes to learn of such matters through the media is intolerable. A number of options are available to the AOC to ensure that these matters are dealt with in a reasonable and sensitive way in the future.

3.50 In Mr Watson's case the AOF could have undertaken to telephone his family after he left the airport or following his departure from the village. There seems no sensible reason why Mr Watson's family could not have been contacted at

the very latest after he passed through the immigration barrier at the airport. Certainly they should have been contacted prior to the daily press conference of the AOF at 8.00 am. Having said that, however, we believe that arrangements should be made for disqualified athletes to speak to their families at the earliest practical time which will not interfere with the interests of the rest of the team. Without wishing to categorise various offences there is a distinction between steroid use, the inadvertent use of pseudoephedrine, and exceeding a proscribed level of Caffeine or alcohol. We do no more than draw the distinction while suggesting that each case may need to be treated differently. We acknowledge the evidence of the AOC that Mr Watson was the first Australian athlete to have failed a drug test at an Olympic Games and that the AOF officials were not experienced in dealing with such matters. No doubt much was learnt from this unfortunate experience and that the AOC better understand the need to treat Australian athletes with sensitivity and fairness while managing the competing interests of the rest of the Team. Given also the very young age of some Olympic competitors it is essential that a protocol be designed to deal with potential future incidents.

Lack of Contact with AOF

3.51 Mr Watson complained that officials of the AOF had refused to have any contact with him after his return from Seoul - they did not return his telephone calls nor attend the test simulation in Sydney. This matter has been dealt with elsewhere in the report, along with a number of other complaints. For the sake of completeness, however, we note that Mr Watson stated he had telephoned Mr Coates on sixteen occasions for the purpose of prosecuting his case for a review of his adverse finding and penalty by the AOF. In response to this claim the AOC stated:

Following Watson's return from Seoul, he engaged Solicitors to act on his behalf. Following this engagement, I [Mr J. Coates] and AOC representatives regularly communicated with these Solicitors. It may be that individual AOC representatives declined to talk with Watson, although that is a matter of their prerogative. (*Evidence*, p. 108)

There is little doubt that the disinterest and intransigence demonstrated by the IOC in the matter of Mr Watson's requests for a review of his case and the belief of the IOC Medical Commission that Mr Watson had deliberately cheated, percolated through the AOF, and influenced the attitude of those AOF officials and Australian IOC officials who had been in Seoul at the time of Mr Watson's positive test.

3.52 Given that Mr Coates and the AOC were clearly convinced that Mr Watson had cheated in Seoul presumably other than going through the formal process they believed no good purpose would be achieved by communicating with Mr Watson either informally or on a personal basis. No doubt Mr Watson's return to Seoul had further soured the relationship.

Access to Facilities for Test Simulation

3.53 The AOC has disputed Mr Watson's claims that the AOF was at least in part, responsible for the denial of facilities at the AIS and Cumberland College for the test simulation. The AOC has claimed that the AIS acted on its own behalf in refusing access by Mr Watson; the AIS has a policy to ban from the facility those athletes who have tested positive to drugs. The AOC further pointed out that Professor Birkett had informed the AOF that Cumberland College considered that it needed ethical committee approval, and as a consequence was unwilling to be involved. (*Evidence*, p. 107)

Letter to Mr Roh

3.54 In appearing before the Committee on 10 May 1991 Mr Watson complained of a letter from Mr Coates to the President of the Republic of Korea (and Chairman of the Seoul Olympics Organising Committee) Mr Roh Tae Woo, at the time of Mr Watson's return to Seoul to conduct a press conference about his expulsion from the Seoul Games. (*Evidence*, p. 63) A copy of that letter dated 24 September 1988 has been provided by the AOC as part of its Submission No 48C. (*Evidence*, p.133) In the letter Mr Coates advised Mr Roh that Mr Watson had been

disqualified by the IOC and that he (Mr Coates) had subsequently expelled Mr Watson 'from the Australian Olympic Team, the Olympic Village and the country of Korea'. Mr Coates noted that Mr Watson had left the country on 22 September 1988. In these aspects Mr Coates' letter was consistent with the powers of the General Manager as acknowledged by Mr Watson in the Competitor's Agreement that he signed on 2 May 1988.

3.55 Nevertheless, Mr Coates went considerably further in his letter to Mr Roh. Mr Coates requested that:

- . Mr Watson be denied entry to the Republic of Korea on 24 September 1988;
- . Mr Watson be kept in transit at the airport 'under full supervision';
- . Mr Watson not be permitted to make any telephone calls; and
- . Mr Watson 'be put on the first 'plane back to Hong Kong'.

In writing to Mr Roh in this manner it is accepted that Mr Coates considered that he was acting properly and in the best interests of the Australian Team. This action by Mr Coates, however, was the cause of very considerable inconvenience to Mr Watson, who has testified that he was detained for several hours at Seoul Airport while being questioned by security police. (*Evidence*, p. 64) Although Mr Coates had the authority to send Mr Watson home, Mr Coates' action in writing to Mr Roh in the terms that he did was most ill-advised; it is not an initiative to be emulated by Australian sports officials.

Lack of Advocate

3.56 Further, Mr Watson felt inadequately prepared for his appearance before the IOC Medical Commission. He has stated that, by preventing him from communicating with other athletes, the AOF hampered his efforts at preparing a defence before the IOC Medical Commission. (*Drugs in Sport Evidence*, p.496) Mr Watson drew the Committee's attention to two British athletes in the pentathlon

team at Seoul who tested positive for sedatives and who were represented by a barrister; Mr Watson also referred to the Linford Christie case. (*Evidence*, pp. 24-25) The facts are that at Seoul, one UK athlete admitted his wrongdoing, and another three British athletes were successful before the IOC Medical Commission. The Honorary Treasurer of the British Olympic Association, a barrister, assisted in each of these cases (see Appendix 3). In conceding the merit of having an advocate present, the AOC Counsel, Mr S. Rofe stated to the Committee:

There is no doubt that to be called in before a doping inquiry - as the IOC Medical Commission was - when you are half way through an event, your mind is on other things, you would be absolutely shot to pieces and your ability to present a well-founded, dispassionate argument would be next to zero. (*Evidence*, p. 172)

Mr Coates observed:

If we had an advocate there, the advocate would obviously have sat there with him for six hours and with his manager and would have had the opportunity to put far more time and expert preparation into the appearance at 10 o'clock before the IOC than I was able to do or did. I am just a bush-lawyer, not an advocate. (*Evidence*, p. 179)

Mr Rofe noted:

Obviously, any advocate is going to be bound by the facts as he is told by the athlete, but at least he can make sure that those facts are properly presented to the IOC Medical Commission. In addition, having got to that stage, and this is of course what appears to have happened with the British Olympic team, the IOC Medical Commission could take a different view on how it interprets those facts. (*Evidence*, p. 172)

Mr Rofe concluded:

... if an advocate were to present material on behalf of Alex Watson, it might have been and almost definitely would have been presented in a slightly different way than Alex presented it himself. (*Evidence*, p. 179)

Mr Coates advised the Committee that he had spoken to the Australian New Zealand Sports Law Association about the issue of the appointment of an advocate. (*Evidence*, p. 184) He made it clear he thought it important that some body other than the AOC should nominate the advocate and that the advocate ought to remain independent of the AOC. An advocate has subsequently been appointed for the Barcelona Games.

3.57 We are now advised that the AOC have appointed Mr John Winneke QC of the Melbourne bar as athletes advocate for the Australian Olympic Team for the 1992 games in Barcelona. Mr Winneke was nominated by the Australian New Zealand Sports Law Association Inc. Mr Winneke's role will be to advise and represent any members and officials of the team in relation to doping offences at the games.

3.58 However, we are attracted to the British Olympic Committee proposal to also have a legal adviser who can assist by ensuring that the proper documentation is available and that the correct legal procedures are observed.

3.59 Many of Mr Watson's problems and those of the AOC stem not only from the fact that Mr Watson did not have access to a qualified advocate in Seoul, but that there was a poor knowledge of the effects and consequences of consuming caffeine.

3.60 Given the technical nature of the matters relating to doping tests and the results, we believe Australian athletes and officials should be provided with the assistance of an independent technical expert at the Olympic Games.

Appropriateness of AOF Penalty

3.61 Mr Watson has claimed that no proper relationship existed between the alleged offence and the AOF penalty. The relationship between an offence and a penalty can always be disputed, however the AOF penalty imposed on Mr Watson was the maximum that could be imposed upon an athlete. Mr Coates stated in a Channel Nine television interview:

The AOF has a strong doping policy which we brought in last November 1987 and our position is that anyone who breaks the doping provisions where we're satisfied it's not inadvertent or where there might be some other extenuating circumstance is liable to an automatic life ban from Olympic competition and that's the position now for Alex.

This statement was made against the background of Mr Coates' earlier statements that Mr Watson's conduct was unacceptable. In a Channel Nine interview, Mr Coates stated:

... the IOC Medical Commission has reached the conclusion on the basis of the analysis of both the first and a second sample, that there was no possibility of that having been reached through a normal consumption of coffee or the amount of consumption of coffee that Alex Watson in appearing before them, stated that he had consumed.

...

The medical advice from our team doctors, and there were some fifteen doctors or professors of medicine present at the meeting last night from the IOC, their conclusion is that, you couldn't reach it unless you took a concentration of caffeine in some other form by way of tablet or suppository.

Clearly Mr Coates is implying that had the AOF been satisfied that Mr Watson had reached the proscribed level inadvertently or that there were extenuating circumstances, the AOF could have imposed no penalty or a lesser penalty.

3.62 A sensible interpretation of Mr Coates' words is that Mr Watson had taken either Caffeine tablets or a suppository and therefore the drug was not taken inadvertently. There were no extenuating circumstances and hence the automatic life ban. Had the circumstances been different so may have been the penalty.

3.63 The route of ingestion was very much a matter of concern to Mr Coates who undoubtedly believed that the AOF had a measure of discretion, the IOC mandatory penalty having been applied. This is supported by the AOC Submission which states that:

Whilst, as this Senate Committee has noted, there was no express statement in that policy as to discretion, the AOC interpreted that policy as allowing it some discretion to impose a lesser penalty than life. (*Evidence*, p. 93)

3.64 Mr Rofe subsequently advised Senator Crichton-Browne that:

Although the policy adopted on 6 November 1987 did not expressly provide for any appeal or review of penalty, it was the view of the AOC that it was at liberty to impose a lesser penalty than life for any breach. (*Letter to Senator Crichton-Browne, 24 April 1992*)

3.65 A reading of the Australian Olympic Federation's Doping Policy as at 6 November 1987 discloses no such discretion. Rule 7 of the policy stated:

Samples taken by the AOF Medical Commission shall be analysed by a laboratory accredited by the IOC. Two samples shall be taken and upon being informed by the laboratory that the analysis of the first sample reveals a breach of the doping provisions, the Chairman of the AOF Medical Commission will authorise the analysis of

the second sample. Upon being informed that the analysis of the second sample confirms the breach of the doping provisions, the President or Secretary-General of the AOF will notify the athlete and any coach, official or medical officer involved that he or she is or they are ineligible for life for selection in any Australian Olympic Team or to hold any position on the AOF and, if a member of an Olympic Team, is immediately removed from that Team. (*AOF Doping Policy 1987, Schedule 1.2 to AOC Submission No 48B*)

As noted earlier, the AOF Doping Policy was revised and a new policy was adopted on 3 February 1989. Rule 7 of the revised doping policy read as follows:

Subject to Rule 8 of this policy:

- (1) Any athlete who is found by a responsible authority to have taken or used drugs or stimulants or participated in other related doping practices prohibited by that responsible authority (all of which are hereinafter called "doping provisions") will be ineligible for life for selection in any Australian Olympic Team or to hold any position on the AOF.
- (2) Any official or other person who aids, abets, counsels or procures or is knowingly involved in an athlete's breach of a responsible authority's doping provisions will be ineligible for life for selection in any Australian Olympic Team or to hold any position on the AOF.
- (3) If already selected in an Australian Olympic Team or holding an AOF position, the athlete and/or official will be immediately removed from that Team or position upon any breach of the doping provisions. (*AOF Doping Policy, 1989, Schedule 1.3 to AOC Submission No 48B*)

Rule 8 read:

Upon receipt of notification pursuant to Rule 5, or upon being notified by any responsible authority that there has

been a breach of that authority's doping provisions, the Secretary-General shall notify in writing the athlete or official or other person concerned of the finding of the responsible authority and stating that such person shall have the opportunity to be heard by the Executive Board of the AOF at the meeting stated in such notice and present any relevant material as to why he or she should not be subject to the penalties prescribed by Rule 7. Any decision of the Executive Board of the AOF to impose a lesser penalty than prescribed in Rule 7 shall be in its sole and absolute discretion. (AOF Doping Policy, 1989, Schedule 1.3 to AOC Submission No 48B)

3.66 A new doping policy was adopted by the AOC on 15 March 1991. On the subject of sanctions the policy read in part:

9. *Sanctions*

9.1 Any person to whom this policy applies who is found to have breached this doping policy shall be ineligible for membership of or selection in any Australian Olympic team, or to receive funding from or to hold any position on the AOC as follows:

9.1.1 a two year suspension for the first offence;

9.1.2 life ban for the second offence.

PROVIDED THAT the AOC may in its discretion impose a suspension for a period of three months for a breach of this doping policy where the analysis of the sample reveals the presence of a drug prohibited by the IOC taken orally as a cough suppressant, pain killer or decongestant and the AOC is satisfied that it was not taken for the purpose of enhancing sporting performance.

BUT the AOC shall not impose a suspension for a lesser period than any sanction imposed by the IOC. (AOC Doping Policy, 1991, Schedule 1.4 to AOC Submission No 48B)

This further amendment enshrines in the doping policy for the first time a particular reference to inadvertency. The clause covers a circumstance where a

banned substance is taken for reasons other than for the purpose of enhancing sporting performance.

3.67 The 1991 policy provides an appeals mechanism for the first time:

8. *Appeals*

8.1 A person or member body who is dissatisfied with a decision made in relation to them under this doping policy may within 14 days of receiving written notification of the sanction imposed write to the Secretary-General and request that an appeal be conducted in relation to:

8.1.1 the determination that a breach of this doping policy has occurred and the imposition of the sanction; or

8.1.2 the sanction that has been imposed. (*AOC Doping Policy, 1991, Schedule 1.4 to AOC Submission No 48B*)

3.68 Another avenue of appeal is now available under clause 11:

11. *Review of Sanction*

11.1 Where a person or member body to which a sanction has been applied under this doping policy has new and relevant information concerning the breach he or she or it may make written application to the Secretary-General setting out the grounds for a possible review of that sanction. The AOC may consider the application and determine in its sole and absolute discretion whether to review any sanction imposed under this doping policy and may alter a decision made previously including a reduction or withdrawal of the sanction. (*AOC Doping Policy, 1991, Schedule 1.4 to AOC Submission No 48B*)

Although Mr Watson's appeal was heard in May 1989, no such provision existed in the AOC doping policy until 1991.

3.69 The fact that the AOC reduced Mr Watson's penalty from a life ban to a two year suspension in May 1989 gives substance to Mr Watson's claim that the original penalty was too severe. This view is endorsed by the findings of the AOF Executive Board as stated by its Chairman, Mr K. Gosper:

The Board determined that Alex Watson's evidence throughout has been consistent and that it could see no evidence of consumption of caffeine other than by his drinking coffee. The Board took into consideration his character and his contribution to sport, particularly in Modern Pentathlon.

We were also conscious of the fact that the drug which has been involved is caffeine, which was a stimulant, and a banned drug, is socially accepted and is used widely throughout the world by athletes and the general public, the matter of drinking coffee.

Whilst in no way detracting from the seriousness of this breach, caffeine should not be considered, in our opinion, in the same light as other more damaging drugs such as anabolic steroids. Having considered all the matters, the Board considers that Alex Watson's disqualification by the International Olympic Committee in Seoul, was in itself severe punishment. Since then, the necessary drawn-out processes added to the personal anguish that he has clearly suffered. I should say to you these processes have had to be gone through, but he had to put up with that. Accordingly, today we decided not to apply a life ban, which leaves Alex Watson to be considered for selection in future Australian Olympic teams. However, for so long as he is subject to any penalty from the UIPMB - that is the Modern Pentathlon International Federation, he will receive no funding from the AOF, nor be able to hold any office with the AOF. Finally, I want to say to you that this decision, which is a threshold decision for us, does not detract from the AOF's doping policy and the Federation re-affirms its life ban for breaches of this policy. (*Mr K. Gosper, AOF Appeal Hearing Transcript, Schedule 4.4 to AOC Submission No 48B, pp. 232-233*)

3.70 It was reasonable for Mr Watson to complain that the offence did not deserve the life ban imposed by the AOF at Seoul. Despite the possibility of a life ban for such an offence, acknowledged by Mr Watson when he signed his

Competitor's Agreement on 20 November 1987, that sanction was hardly commensurate with his offence, given that the penalties then widely applying internationally included a two-year ban for a first offence and a life ban for any subsequent breach. Notably, when a lesser AOC penalty was possible (and following Mr Watson's appeal hearing in May 1989) the AOC revoked the life ban.

3.71 Had the 1989 AOF revised doping policy been in operation prior to Seoul, the matter may have proceeded differently - Mr Watson could have been banned for two years at the outset, rather than initially receiving a life ban. The 1991 doping policy refined the definition of 'doping' to include 'the taking or using of drugs or stimulants or participation in other doping methods prohibited by the IOC'. The new revision was more thorough, containing provisions covering doping tests, the manner in which an alleged breach is to be notified, the procedure for determining the merits or otherwise of the alleged breach, provisions for appeals against a decision and variations of the penalties applicable to first and subsequent offences.

