

COALITION OF MAJOR PROFESSIONAL & PARTICIPATION SPORTS

REVIEW OF THE DRAFT WORLD ANTI-DOPING CODE (DATED 1 JUNE 2012) WADA CONSULTATION PHASE II

SUMMARY OF EXTENT TO WHICH COMPPS PHASE 1 SUBMISSION HAS BEEN TAKEN INTO ACCOUNT IN THE DRAFT REVISED WORLD ANTI-DOPING CODE

15 OCTOBER 2012



OVERVIEW:

In the Phase I review of the World Anti-Doping Code (WADC), COMPPS raised a number of issues for consideration under the following broad headings via a written submission dated 15 March 2012:

1. TUE Process
2. Consistency of Sanctions
3. Criteria for the Prohibited List
4. Regulation of Supplements
5. Doping Identified Through Non-Analytical Means – Level of Athlete Targeted

In Phase II of the consultation process, COMPPS has reviewed WADA's red-lined revised WADC dated 1 June 2012. COMPPS also notes that the first of two consultation phases for WADA's International Standards (for Testing, Therapeutic Use Exemptions, Data Protection, and Laboratories) have begun; timed to run concurrently with the second and third consultation phases for the WADC. COMPPS also notes that while the Prohibited List is an International Standard, the List is not included in the broad consultation phase, and notes that instead the new List will be made official and published by October 1 and will take effect on January 1, 2013. COMPPS suggests that given that the List is arguably the most important International Standard, the timing for future reviews of the List should be brought in line with consultation on the WADC in order to ensure that all aspects of anti-doping regulation are harmonised.

COMPPS reiterates the points made in its Phase I submission relating to the WADC, the International Standards, and broader questions of transparency, diversity and accountability in the anti-doping movement. In this Phase II submission, COMPPS members are particularly concerned to raise their objections relating to the proposed "Team Sanction" amendment, and the criteria used in including substances and methods on the Prohibited List. These concerns are set out more fully below. COMPPS members suggest that WADA separately circulate a discussion paper to the sports that have teams to canvass their views on the team sanctions, as this Article will impact so many different sports and athletes around the world.

COMPPS also recommends that WADA require diversity and appropriate expertise criteria to be applied to the selection of CAS arbitrators and other tribunal members. Greater transparency could also be achieved through a published nomination process, including the skill sets sought for representatives on WADA programs including the Event Advisory and Outreach Programs, the Ethics Review Panel, the TUE Committee, the Lab Committee, the

List Committee and the Gene Doping Committees. In this way, WADA could ensure that its programs include a balance of representatives from (i) developed and developing anti-doping nations and (ii) each diversity (including gender, culture, disability sport etc.) such that experience, fresh ideas and inter-disciplinary contributions can assist in furthering WADA's goals.

INTRODUCTION

The Coalition of Major Professional and Participation Sports (COMPPS) consists of the following organisations:

- Australian Football League (AFL);
- Australian Rugby Union (ARU);
- Cricket Australia (CA);
- Football Federation Australia (FFA);
- National Rugby League (NRL);
- Netball Australia (NA); and
- Tennis Australia (TA).

One of COMPPS' roles is to provide a collective response on behalf of its Member sports where their interests are aligned. COMPPS Members are of the view that the current review and consultation process regarding the 2009 World Anti-Doping Code (WADC) presents an excellent opportunity to consider the appropriateness of the WADC and to identify and improve any weaknesses. This submission, therefore, is intended to provide a review by the COMPPS Members of the WADC, including the provision of recommendations that it believes will improve the WADC.

COMPPS Members have individually, and in some cases, in group format, provided responses to previous Code review processes. This submission follows on from, and supports, the contents of the earlier submissions by the relevant COMPPS Members. The Members request that the recommendations included in this submission, together with the earlier submissions, will be taken into consideration and incorporated into the next round of revisions to the WADC. Some COMPPS Members will also separately provide WADA with their individual submissions as part of this process.

Each of the COMPPS Member sports remain committed to the promotion and enforcement of an appropriate WADA-compliant anti-doping policy. With the exception of TA, the COMPPS member sports are defined as "Team Sports" under the WADC, although some tennis events are also defined as "Team Sports". COMPPS members comply with the Australian Sports Commission (ASC) anti-doping policy as a mandatory requirement of their funding agreement with the ASC. Each of the COMPPS Member sports have their own anti-doping policy applicable to their members. These policies also comply with the National Anti-Doping scheme (NAD scheme) administered by the Australian Sports Anti-Doping Authority (ASADA). This includes the policy of the NRL, which is a professional league. The

Australian Rugby League Commission assumes the role of overseeing the NRL programs, and those of the NSW and Queensland Rugby Leagues.

Our Members all participate in their sport on an international level. The AFL does not have an international governing body, but all other COMPPS Members have affiliations and interactions with international sports governing bodies and their associated rules and regulations. This participation, in some cases, includes Events as defined by the WADC, or other competitions run by Major Event Organisations. This means that COMPPS Member sports may be required to comply with other anti-doping policies. For example, the Olympic sports (TA, FFA and the ARU), must comply with the Australian Olympic Committee anti-doping policy.

It is our strong view that the sports bodies need to work closely with anti-doping and other relevant authorities to ensure the integrity and quality of the sports they govern. COMPPS' submission is as follows:

- **Part A – COMPPS Response to the draft WADC based on the Phase I Submission**
- **Part B - New Issues Arising Out of the draft WADC**
- **Part C - Issues relating to the International Standards or Guidelines**

PART A – COMPPS RESPONSE TO THE DRAFT WADC BASED ON THE PHASE I SUBMISSION

Issue 1: TUE Process

The COMPPS Phase I submission raised concerns with the TUE process generally, and reiterates the following specific points:

(a) Mutual recognition of decisions by TUECs

COMPPS members suggest that TUECs be accredited by WADA. Once TUECs are accredited, then their decisions must be mutually recognised by other accredited TUECs. There is no reason then to maintain the current priority given to the decisions of IF TUECs. COMPPS members submit that the draft WADC does not go far enough by merely allowing the decisions of IF TUECs to recognise the decisions of specified NADO TUECs.

In the draft WADC, Art 4.4.1 has been amended to allow for IFs to provide a list of NADOs (in effect national TUECs) whose TUE decision will be recognised by the IF.

Each International Federation shall publish a list of those *International Events* for which a therapeutic use exemption from the International Federation is required, or a list of which **National Anti-Doping Organizations*** therapeutic use exemptions **will be recognized*. Each *National Anti-Doping Organization* shall ensure, that a therapeutic use exemption process is in place for all *National-Level Athletes* within its jurisdiction.

(underlining indicating new wording)

This amendment reflects the current status that the IF TUECs have the sole jurisdiction to grant TUEs to international level athletes as defined by the IF (except with the agreement of the IF). This amendment does not address the recognition of TUE decisions of IFs by national TUECs or Major Event Organisations, or between each other. This form of recognition should be expressly provided for in the WADC.

(b) Retrospective TUEs

Article 7.3 of the new WADC has been expanded to require the ADO to review whether the: “*Athlete* is eligible for a retroactive therapeutic use exemption under the *International Standards*” at the initial review stage prior to formal investigation. This wording presumes that, if the Athlete is entitled to a retrospective TUE, the ADO responsible for results management will pick this up. However, if it is missed at the review stage, it would be useful to include the wording suggested in the COMPPS Phase I submission, i.e.: that retrospective TUEs can be granted by the (accredited) TUEC at any time in the review, investigation and hearing process.

Issue 2: Consistency of sanctions

The COMPPS Phase I submission raised a number of concerns and suggestions for achieving greater consistency in the sanctions being handed down by CAS and other hearing bodies internationally. COMPPS members made the suggestion that hearing bodies may be assisted by the following improvements:

a) Make fully reasoned decisions by all hearing bodies publicly available

- COMPPS members note that the revised WADC Art 8.4 contains new wording; “The reasoned hearing decision”, and also noting that the revised WADC Art 14.2 (Notice of Anti-Doping Rule Violation Decisions and Request for Files) includes a new Art 14.2.1:

Anti-doping rule violation decisions rendered pursuant to Articles 7.8, 8.4, 10.5.3.3, and 13.5 shall include the full reasons for the decision. Where the decision is not in English or French, the *Anti-Doping Organization* shall provide a short English or French summary of the decision and the supporting reasons. This notice shall be provided simultaneously with the notice to the *Athlete* or other *Person*.

- However, the need for the decision to be made public has not been adequately addressed. Art 14.3.4 has been amended to reduce the requirement of publishing on the website of the responsible ADO from one year to the: “longer of one month or the duration of any period of Ineligibility imposed”. It is submitted that greater transparency would be achieved if all decisions were also published on the WADA website and then archived in a clearing house so that they could be easily accessed by the general public including the sporting community, historians, academics and journalists. This then requires that all decisions must be provided to WADA (perhaps uploaded into ADAMS), whether or not WADA has a right to appeal under Art 13.2.3. COMPPS members note too that the wording “published” or “reported” is used variously in the revised Code and could be standardised.

b) WADA to facilitate the sharing of national and international hearing body decisions, as well as academic and scientific research, through a central secured portal

Information sharing within the anti-doping community could be best facilitated through the WADA clearinghouse (ADAMS), so it therefore may not require an amendment to the WADC. If responsible ADOs are able to lodge all decisions with ADAMS, this would enhance the knowledge bank available to those working in the anti-doping field (see final

dot point above in (a)). All anti-doping research commissioned by WADC signatories should also be made available through the clearinghouse facility in a timely manner.

c) Greater flexibility for hearing bodies to apply principles of fairness and justice and award suspended sentences, reprimands and other appropriate sanctions, eg: WADC Article 10.4 where it should be clarified what is meant by “performance enhancement”

COMPPS members note that flexibility in sanctions, where there has been no attempt to cheat (enhance performance) has been dealt with through the creation of two new sub-articles: Art 10.4.2 Contaminated Products and Art 10.4.3 Substances of Abuse, including an opportunity for an Athlete to be rehabilitated (at their own expense). Is it necessary for the WADC to include a definition of: “Performance Enhancement”?

COMPPS members were broadly supportive of the new draft articles, except a concern was raised by one Member that the Contaminated Products defence in Art 10.4.3 amounts to an unacceptable watering down of the principle of strict liability.

- The NRL considers that the change in the definition of *Consequences* has the result that a provisional suspension is no longer only a ban from competing. It prevents all ‘activity’ which presumably includes training. If the Provisional Suspension is overturned this could have a significant impact on an Athletes ability to slot back into their team. The NRL suggests that WADA revert to the existing position.
- COMPPS members suggest that the principles of rehabilitation need to be incorporated throughout the Code. For example, a remorseful athlete/ support person can be a useful support for a club/ team to assist on a voluntary basis for a variety of non-sporting activities, and other athletes should not be prohibited from being associated with them on this basis, contrary to the Comments to Art 10.10.1. New Art 2.10 and Art 10.10.1 are therefore too broad, and do not take into account considerations for the mental health of a sanctioned person remaining within their support community and that community benefitting from their voluntary contribution.
- The amendments to Art 10.10.3 could also lead to extremely harsh and disproportionate outcomes, for example, where there is a disagreement about how “training” is defined or the period for when training can commence. It is also unfair to create an additional impost on team sport athletes, as compared with individual athletes who can ride, run or walk alone and cannot be sanctioned on the basis that they are “training” whilst disqualified.

d) Any affected party should be entitled to bring an appeal before the relevant hearing body e.g.: the team ousted from competing at an Event by a sanctioned team

- The revised WADC has amended Art 8 and Art 13.5 to require decisions to be notified to those parties directed under the WADC deems impacted by the decision. It also contains a new Art 7.8 Notification of Results Management Decisions, which is an improvement to ensure that affected parties receive copies of the decision:

In all cases where an *Anti-Doping Organization* responsible for results management has asserted the commission of an anti-doping rule violation, withdrawn the assertion of anti-doping rule violation [see Art 8.3], imposed a *Provisional Suspension*, or agreed with an *Athlete* or other *Person* to the imposition of a sanction without a hearing, other *Anti-Doping Organizations* with a right to appeal under Article 13.2.3 shall be provided notice as set forth in Article 14.2.1.

- However, Art 13.2.3 (*Persons Entitled to Appeal*) has not been amended as suggested by COMPPS to include a broader definition of the affected parties, and retains the original wording:

In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS: (a) the *Athlete* or other *Person* who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant International Federation; (d) the *National Anti-Doping Organization* of the *Person's* country of residence or countries where the *Person* is a national or license holder; (e) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games; and (f) *WADA*.

- COMPPS reiterates its recommendation from the COMPPS Phase I submission that this article be expanded to include all affected parties, included those Athletes or federations who had been excluded by athletes/ teams alleged to have committed an ADRV. The result would be that the Comment to WADC Art 13 would have to be amended as it specifically excludes the class of person the COMPPS submission seeks to include: “*Note that the definition of interested Persons and organizations with a right to appeal under Article 13 does not include Athletes, or their federations, who might benefit from having another competitor disqualified.*”

e) **Simplification of ADRV for “Presence”**

Article 2.1.2 could be simplified to read that proof is established where the B sample confirms the A sample analysis, or where the B sample is not analysed, the A sample analysis stands alone. Elsewhere it can be stated that the Athlete has the right to request that the B sample be analysed for confirmation of the A sample result. COMPPS members support the retention of the B sample for confirmation and for storage in the “tank”-type facilities.

f) **Team sanctions in the WADC where there has been systemic doping**

COMPPS members reject the proposed amendments, and support the current provisions for team sports, where the appropriate sanctions are to be applied by the sport’s governing body. This support is based on the proviso that the Article (currently Art11.2) is amended relating to the number of team members (two is inappropriate in some cases) and ensuring the Article applies worldwide. A proposal that endorses one approach being applied to all team sports, where each sport’s circumstances differ greatly is flawed.

Professional team sports which have seasons that run from one year to the next must have the autonomy to determine their own sanctions in this area. Should the current draft proposal be adopted, the implications for such sports may be far-reaching and totally disproportionate to the goal of deterring doping. Such a penalty being applied would mean that the competition would be one team short as COMPPS sports do not have a system of relegation or qualification. This would place the competition in breach of its TV and stadium agreements and also obviously risk the loss of fans whose team was banned. Unlike other competitions, the team would not be replaced by a different team. It is strongly believed that COMPPS members are able to manage serious integrity breaches by teams by using alternative sanctions.

Notwithstanding the above, and the fact that COMPPS members support the retention of the team sanction provisions of the current Code, should WADA still determine a change is required, COMPPS recommends that any sanction be determined by the International Federation (or controlling body) based on certain criteria, such as;

- a) In determining the appropriate period of Ineligibility to be imposed on the Team, the International Federation has regard to, amongst other things:
 - I. the number of participating members of a Team participating in the Event that were found to have committed anti-doping rule violations during the Event;

- II. the nature of the relevant Event (i.e. is the Event a ‘week in, week out’ professional/amateur league as opposed to an Event held every four years, such as the Olympic Games or world championships);
- III. the upcoming domestic and international match calendar for the Team including the number of events the Team is likely to be scheduled to participate in during a period of Ineligibility;
- IV. the date or dates upon which the requisite number of participating members of a Team participating in the Event were found to have committed anti-doping rule violations during the Event;
- V. whether the participating members of the Team were acting in concert to influence the Team outcome or acting alone; and
- VI. the type of Prohibited Substances that were Used by the participating members of the Team;

b) The Consequences imposed on a Team by the International Federation:

- I. must be applied on a worldwide basis; and
- II. are in addition to any Consequences imposed upon the individual Athletes committing the anti-doping rule violation.

COMPPS members also note that while the term “Team Sports” is defined in the WADC, the term “Team” does not appear to be defined. COMPPS requests that the term “Team” be defined in the revised WADC.

g) WADA’s decision not to appeal inconsistent decisions

COMPPS members are concerned that the number of inconsistent decisions WADA has chosen not to appeal has led to a lack of fairness (see also below in Issue 2(h)). COMPPS members hope that WADA’s rigorous enforcement of the new requirement for hearing bodies to publish reasoned decisions [dealt with above in Issue 2(a)], will lead to greater transparency and help to demonstrate WADA’s rationale for appealing a decision.

h) Inconsistency in sanctions by sports and nations for the same ADRV and substance breach e.g.: recent pseudoephedrine and methylhexanamine cases

Sanctions for specified substances have been addressed in revised WADC Articles 10.4.1 and 10.4.2. Inconsistencies in these sanctions are liable to occur where greater flexibility is accorded. WADA must play a greater role in monitoring decisions of hearing bodies (see discussion above in Issue 2(g)).

i) Provisional hearings criteria

The suggestion in the COMPPS Phase I submission that WADA set out the criteria/ relevant factors to consider when determining whether to convene a Provisional Hearing, and whether to apply a Provisional Suspension under WADC Article 7.5.1 [now 7.7 under the revised WADC], has not been addressed. The COMPPS members reiterate this suggestion for this Phase II submission.

j) Waiver of hearings

While Art 8.3 has been revised, and the new Art 8.5 in the revised WADC allows for elite athletes (those in the new High Priority Athlete Pool) to agree to only have one hearing before CAS, instead of incurring the costs involved in having a first instance and then an appeal hearing, COMPPS members note that Art 8.3 could go further to assist in making the right to waive the hearing easier. One way to achieve this would be to prescribe the sanctions awarded on waiving the hearing, so that athletes/ support personnel could decide whether to waive hearings knowing the sanction to be applied in advance.

k) Substantial assistance requirements are too narrow

COMPPS members note that the revised WADC has been expanded to address concerns raised. COMPPS members are supportive of a full amnesty being offered in appropriate cases. The one area that COMPPS Members ask WADA to review is in relation to the entering into of confidentiality provisions [Art 10.5.3.3], and the requirement elsewhere to report fully reasoned decisions.

Issue 3: Criteria for the Prohibited List

The COMPPS members agree with the amendment to Art 4.3 indicating that the primary and threshold test for inclusion of a substance or method on the Prohibited List is that it is performance enhancing. However, the revised WADC does not indicate whether WADA will expressly indicate on the Prohibited List, after “performance enhancing”, which of the other criteria have been applied to each substance or class of substance included on the Prohibited List. COMPPS members suggest that:

- a) WADA expressly indicates which of the three criteria is satisfied, ie: what the basis is for including the substance on the Prohibited List;
- b) The substance must reasonably be believed to enhance performance, rather than merely being at WADA’s sole discretion, in order for the substance to meet the first Prohibited List inclusion criteria
- c) Where medical or scientific evidence is relevant, a brief summary of that medical or other scientific evidence should be included or referenced.

Therefore, COMPPS members request that WADA address this issue in the revised WADC.

Issue 4: Regulation of Supplements

COMPPS members agree with the WADC revised amendment to recognise an ‘innocent’ athlete who has made no attempt to improve their performance through taking tainted supplements (COMPPS members query how this will be established given that supplements are intended to improve performance in some way, and this phrase has not been defined). COMPPS members also suggest that the Art 18.2 education requirements, including: “managing the risks of nutritional supplements”, be made mandatory under the revised WADC.

Issue 5: Doping Identified Through Non-Analytical Means – Level of Athlete Targeted

The COMPPS members note that while the revised WADC includes a new Art 22.2 (which will need to be reflected in the UNESCO Convention). The new WADC has not been rewritten from the perspective of ADRVs being proven via non-analytical means. COMPPS members also recommend that WADA’s Guideline for “Coordinating Investigations and Sharing Anti-Doping Information and Evidence” dated May 2011 be elevated to an International Standard. COMPPS members further suggest that WADA play an enhanced role in enforcing these requirements in order to ensure that they are incorporated to some

extent by each signatory. The WADC (supported by updates to the WADA guidelines) should also reinforce to ADOs that elite-level athletes should be the priority when allocating resources around information-sharing and pursuing non-analytical offences, so that scarce resources are not wasted on chasing athletes or support personnel who have, and will never have, any involvement in elite sport, and who may not (through no fault of their own) even be aware of or fully cognisant of the operation of anti-doping policies in their sport.

PART B - NEW ISSUES ARISING OUT OF THE DRAFT WADC:

In addition to the issues raised in the COMPPS Phase I submission, COMPPS members also wish to comment on the following:

- i. COMPPS members seek clarification around the rationale for increasing the Art 17 limitation period for ADRVs for trafficking, administration, complicity or aggravating circumstances to 14 years from 8 years. COMPPS members wish to understand the cost-benefit analysis of this increase particularly in relation to the burden on ADOs and sport to keep records and other information for an additional 6 years.
- ii. COMPPS members note the special sanctioning and other provisions relating to minors (Art 10.4.1.1 and 10.6), and express concern that the definition of “Minor” has been amended from recognising the national laws on age of majority, to fourteen (14) years, and seek WADA’s advice on the rationale for this amendment.
- iii. The majority of COMPPS members consider that it should remain with the responsible ADO/ sport to determine whether they wished to waive or pursue recovery of costs (Art 10.13 and 10.14), particularly in light of the rehabilitation clause and the flexibility of the sport to return the ‘wrong-doer’ to their sporting community. One COMPPS member requests that Art 10.13 be removed altogether.
- iv. For the reasons stated above, COMPPS members feel that Art 2.10 is too broad, particularly including the word “Association”, whose common meaning would include a range of activities that sports would be unlikely to wish to prohibit. COMPPS members also do not understand how this article could be enforced, especially when the decisions on banned athletes and athlete support personnel are not published in a centralised place, and yet must be mutually recognised by all signatories. Existing mechanisms in the WADC – namely, the right to target test – are already available to respond to athletes who are known to associate with disreputable people. Unnecessarily expanding the scope of prohibited behaviours via amending the WADC should not be supported.
- v. The current draft wording also gives rise to an inconsistency when dealing with Athletes and support personnel. Athletes are able to return to sport once their period of ineligibility has expired, however Athlete Support Personnel are subject to a life ban.

- vi. In relation to the new Art 10.15 Limitation on Participation in the Olympic Games, COMPPS members consider that this provision does not accord with considerations of proportionality and could result in inequitable outcomes.
- vii. In relation to the extension of the two (2) year sanction to four (4) years, where an ADRV comes under the list of infractions contained in Art 10.6.1, the majority of COMPPS members favour a flexible discretionary increase in sanction, rather than a mandatory four (4) year sanction. COMPPS members also note that improved financial and other support in the current era allows athletes to prolong their careers, so that the two (2) year ban no longer has the same impact, and deterrence effect, as it once did. The COMPPS members also feel that there is considerable uncertainty around the wording of some of the provisions on the Art 10.6.1 list (e.g. whether ordering a contaminated supplement over the Internet containing a prohibited substance would attract the “premeditated” provision).
- viii. In line with comments set out under Issue 2 paragraph (j) above relating to Art 8.3, and the flexible approach outlined in paragraph (vii) above, COMPPS members support the ability of Athletes and Athlete Support Personnel to waive their hearings, on the basis that the sanctions to be awarded on waiving the hearing are clearly prescribed, so that Athletes/ support personnel can decide whether to waive hearings knowing the sanction to be applied in advance. The NRL suggests that Athletes be given an incentive through amending Art 10.6.3 by reducing the sanction to three (3) years instead of four (4) years for a no contest/hearing. The NRL also suggests increasing the standard sanction from two (2) years to three (3) years with a discount back to two (2) years where no hearing/contest is made. Other COMPPS members are not in favour of increasing the standard sanction to three (3) years.

PART C - ISSUES RELATING TO THE INTERNATIONAL STANDARDS OR GUIDELINES:

(a) International Standard for Laboratories

COMPPS members suggest that laboratory documentation packs be accompanied by a lay summary to assist hearing bodies to interpret results.

➤ Under ISL cl. 5.2.6.9:

The Laboratory shall have a policy regarding the provision of opinions and interpretation of data. An opinion or interpretation may be included in the Test Report provided that the opinion or interpretation is clearly identified as such. The basis upon which the opinion has been made shall be documented.

Note: An opinion or interpretation may include, but not be limited to, recommendations on how to use results, information related to the pharmacology, metabolism and pharmacokinetics of a substance, whether the observed results may suggest the need for additional Testing and whether an observed result is consistent with a set of reported conditions.

This then may also require an amendment to the WADA Technical Document on Laboratory Documentation Packages (referred to in ISL cl. 5.2.6.13).

(b) International Standard for TUEs

- i. COMPPS members suggest that accreditation standards should be set by WADA for those groups authorised to issue TUEs [TUECs].
- ii. The current version of the ISTUE (January 2011) picks up on the existing WADC mutual recognition clause, although notes there has been confusion on how this applies to TUEs in this regard:

Code Article 15.4 Mutual Recognition

15.4.1 Subject to the right to appeal provided in Article 13, *Testing*, therapeutic use exemptions and hearing results or other final adjudications of any *Signatory* which are consistent with the *Code* and are within that *Signatory's* authority, shall be recognized and respected by all other *Signatories*.

[Comment to Article 15.4.1: There has in the past been some confusion in the interpretation of this Article with regard to therapeutic use exemptions. Unless provided otherwise by the rules of an International Federation or an agreement with an

International Federation, National Anti-Doping Organizations do not have “authority” to grant therapeutic use exemptions to International-Level Athletes.]

This comment to Art 15.4.1 has now been deleted in the revised WADC. Mutual recognition needs to be clarified in the reviewed ISTUE.

- iii. The current wording of the ISTUE sets out the limited circumstances available for granting retrospective TUEs in clause 4.3:

An application for a TUE will not be considered for retroactive approval except in cases where:

- a. Emergency treatment or treatment of an acute medical condition was necessary, or
- b. Due to exceptional circumstances, there was insufficient time or opportunity for an applicant to submit, or a TUEC to consider, an application prior to *Doping Control*.

[Comment: Medical emergencies or acute medical situations requiring administration of an otherwise Prohibited Substance or Prohibited Method before an application for a TUE can be made, are uncommon. Similarly, circumstances requiring expedited consideration of an application for a TUE due to imminent competition are infrequent. Anti-Doping Organizations granting TUEs should have internal procedures that permit such situations to be addressed.]

This clause should be expanded in the ISTUE to reflect that where TUEs would have been granted by TUECs in any event, a retrospective TUE should be granted at any stage in the process.

(c) International Standard for Testing

COMPPS members suggest that:

- a. Improved harmonisation and cooperation between IFs, NADOs and Major Event Organisers could be prescribed for testing programs.
- b. Training of doping control staff - It is noted that the minimum training requirements for doping control are not set out in Art 5 of the WADC, but should be included in the amended IST. COMPPS members are also supportive of an international accreditation and identification system for doping control officers, blood collection officers and chaperones in order to protect the safety and privacy of athletes.

(d) Guideline: “Coordinating Investigations and Sharing Anti-Doping Information and Evidence”

This Guideline does not appear on the WADA website under the Guidelines section, and perhaps for this reason it has been difficult for signatories to access and implement. COMPPS members suggest that this Guideline should be elevated to an International Standard to indicate its priority as a tool for anti-doping.

(e) Guidelines: Model Rules for IFs and NADOs

- a. COMPPS members suggest that WADA could develop a guideline to set out what is meant by fair hearings to ensure that issues around natural justice, diversity, transparency, detailed and reasoned decision-making, and the use of expert witnesses could be set out.
- b. COMPPS members further suggest that the guidelines include detailed criteria for the diversity and expertise of hearing body panel members, noting that this may require WADA making submissions to CAS on the composition and expertise of CAS arbitrators. Arbitrators should adequately represent the diversity of the athlete and athlete support personnel populations, and have a strong knowledge of sport, ideally in the international context.
- c. WADA could recommend that hearing bodies in each jurisdiction establish an Independent Experts Panel (consisting of members of TUECs). These experts could then be made available to provide advice to hearing bodies. One of the issues for WADA to consider is whether, by mandating that members of the TUEC be available to provide expert advice to the hearing panel, this would impact on the independence of the TUEC. Also, as athletes could be expected to assert their right to provide evidence from their personal doctors and other experts, it should be canvassed with the Athletes Commission whether athletes / support personnel would agree to a provision that limited the panel to only consider evidence from an independent expert group (consisting of the TUEC or otherwise).

Submitted for and on behalf of the COMPPS Members

Malcolm Speed
Executive Director