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Legal Requirements to Conduct Blood Testing in Doping Control

Oceania Region

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INTRODUCTION

[As] sport is now practiced on a worldwide basis, the fight against doping is an international problem and the solution to it must necessarily be international or the level playing field, which is fundamental to sport, cannot exist. There must be national building blocks in arriving at the solution, but, unless there is an international and coordinated approach to the question of doping in sport, however well-intentioned the disparate efforts may be, they will inevitably end in failure.²

In determining the 'legal requirements to conduct blood testing in doping control', it must be determined whether there are any local impediments to the universal requirement that an athlete participating in elite international competition must provide a blood sample or be sanctioned for a 'refusal'. The Council of Europe Working Party on Legal Issues noted that; "in some countries, in particular Austria, blood sampling for any purpose other than a duly prescribed medical reason or legal-alcohol measurement was against the law."³ Athletes in other jurisdictions have also apparently convinced the courts that the provision of blood samples infringes their human dignity.⁴ The legal framework in the Oceania countries then must be carefully analysed to ensure that the fight against anti-doping in this region can be legally supported.⁵

PARAMETERS

In responding to the question posed, the following limitations have been set: -

1. the reference to 'Oceania' means the countries recognised by the International Olympic Committee (IOC) namely; American Samoa, Australia, Cook Islands, Federated States of Micronesia, Fiji, Guam, Nauru, New Zealand, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu;

² R W Pound, "Written Testimony before the US Senate Committee on Commerce, Science and Transportation", 20 October, 1999, p1 (current Chairman of WADA's Foundation Board)

³ Council of Europe, Anti-Doping Convention, Monitoring Group, Working Party on Legal Issues, "Report of the Third Meeting: Strasbourg, 6-7 April, 1995", T-DO (95) 8, 2(d), p2

⁴ C Petibos, G Deleris and G Cazorla, "Perspectives in the Utilisation of Fourier-Transform Infrared Spectroscopy of Serum in Sports Medicine: Health Monitoring of Athletes and Prevention of Doping", *Sports Med* 2000 Jun; 29(6), p387-396 at p389. They also claim that; "Most athletes, because of the metabolic and psychological stresses caused, legitimately refuse blood testing." (p387)

⁵ Such an examination is also important to answer any criticism that the blood testing requirement is an imposition on individual cultures and societies. See S Boyes, "The International Olympic Committee, Transnational Doping Policy and Globalisation", in J O'Leary, *Drugs and Doping in Sport: Socio-Legal Perspectives*, Cavendish Publishing Co, London, 2001, p173 and 178.

2. the examination of the 'legal requirements' does not include the 'legal risks' associated with conducting blood testing in doping controls;⁶
3. requirements applying to all anti-doping procedures, such as; natural justice, privacy, impact of the criminal law (including self-incrimination) and confidentiality, will not be examined in detail;⁷ and
4. it is assumed that blood samples will only be used for anti-doping purposes.⁸

OCEANIA GENERAL

The Oceania region has a number of peculiarities that make a definitive summary difficult. As pointed out by Xavier Sturbois in 1999;

*“Oceania’s ten million square kilometres are currently home to 11 NOCs [now 14]. The travel times (over 20 hours by plane from east to west and almost 13 hours from north to south) and the resulting problems represent a considerable difficulty for planning and conducting sports medicine courses. . . . Significantly, sports medicine was practically unknown outside Australia and New Zealand before 1985. . . . It should also be pointed out that the medical situation in many of Oceania’s islands remains a concern, which means that the sports medical community can only devote part of its time to treating athletes, when their main activities permit.”*⁹ [square brackets added]

⁶ See for example: R Bahr, R Andersen, D McDonagh & I Lereim, "Practical Consequences of Blood Sampling in Doping Control" and J de Pencier, "Blood Analysis and Doping Control Legal, Social, and Organisational Issues" in P Hemmersbach & K.I. Birkeland (eds.), *Blood Samples in Doping Control*, Pensumtjeneste (On Demand Publishing), Oslo, 1994; E N Vrijman, "Harmonisation: A Bridge Too Far? A Commentary on Current Issues and Problems" in J O'Leary, *Drugs and Doping in Sport: Socio-Legal Perspectives*, Cavendish Publishing Co, London, 2001, p163; Prof R Bayer & Prof L Gostin, "HIV Screening: The Ethical Issues" in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part I, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000 at p147; D J Ernst, "Reduce Your Risk When You Draw Blood", *RN*, 62(12) December 1999, Medical Economics Publishing Co Inc, p65, 66, 68, www.web.ovid.unilinc.edu.au; and Council of Europe, Anti-Doping Convention Monitoring Group, Working Party on Legal Issues, "Report of the 7th Meeting: Strasbourg, 30-31 May, 1996", T-DO (96) 5 Revised, p3

⁷ Note that English law (that most Oceania countries are based on) does not recognise a general right to privacy [Younger Committee (UK) Cmd 5012 (1972), paras 44 and 92], but in the USA it is considered an unwritten constitutional provision [*Griswold v Connecticut* 381 US 479 (1965)]. For an example of a discussion of natural justice in this context see S Bang & M Klausen, (translated), "Idrætsliv", the magazine of the NOC & Sports Confederation of Denmark, 18(6), November 1998. For natural justice, see F Blair, "Procedural Fairness in Doping Disputes", *UNSW Law Journal*, 22(3), (1999) p885-892. Also athletes must understand if the result of the analysis will have criminal law implications. See T Buti & S Fridman, "Drug Testing In Sport: Legal Challenges & Issues", *University of Queensland Law Journal*, 20(2), 1999, p153-185 at p171

⁸ This then addresses the concern relating to the consequences of returning results for a medical condition that the athlete was unaware of. eg: A high white cell count indicating leukaemia: J Watterson, "Sport (Five Ringed Circus): Blood Simple?", *Irish Times*, 7 August 2001, p57. There have also been reports in the media of drug tests determining that an athlete had testicular cancer. If the samples are to be used for research, it is also assumed that ethical protocols are followed. See *International Ethical Guidelines for Biomedical Research Involving Human Subjects*, CIOMS, 1993. See S Olivier & A Olivier, "Informed Consent in Sport Science", *Sportscience* 5(1), sportsci.org/jour/0101/so, 2001. Eg: Athletes providing blood samples for NIF are required to indicate on the Doping Control Form whether they object to their sample being used for scientific research. Cf: Nonconsensual blood tests of employees used to discover whether employees had a gene for carpal tunnel syndrome: FN Wilner, "Test Tube Ethics", *Traffic World*, 19 February 2001, p13. ASDA also uses the blood samples for research: Email to author from Kerry Knowler, ASDA dated 21 December 2001.

⁹ X Sturbois, "The Educational Effects of Medicine and Sports Science in the Olympic World", International Olympic Committee, "Olympic Review: Doping", Summarising the World Conference on Doping in Sport, 2-4 February 1999, p25. This is also discussed in the context of the financial burden being imposed on developing nations by the HIV epidemic: A Rekhi, "Health Law Versus Individual Rights in Developing

Not only does this region cover two time zones, but countries including Fiji, Papua New Guinea and the Solomon Islands have recently experienced political turmoil and civil war. Many countries in Oceania are heavily reliant on foreign aid, and their medical services are stretched to breaking point.¹⁰ The World Health Organisation (WHO) reported that a 1996 survey showed in the Western Pacific region (of which Oceania is a part), only 15 countries and areas (out of 36) have endorsed a national drug policy. It was also noted that drug enforcement and any drug education is severely hampered by a lack of trained staff.¹¹

Given this background, together with the reality that very few athletes from Oceania (outside of Australia and New Zealand) are competitive on the world stage, then neither the legislative or medical arms of these governments rate anti-doping, and blood testing in particular, as a high priority for their populations. The technical aspects of doping prosecutions are also becoming increasingly complex, and the national sports authorities are ill-equipped to consider the scientific evidence available.¹² The situation in Australia and New Zealand however is markedly different. Australia, in particular, strives to be a world leader in the field of anti-doping in sport and has done much to advance the cause legislatively and through research.

Oceania Federations

The Oceania National Olympic Committee (ONOC) is the representative organisation for the NOCs and has a secretariat based in Fiji. Brian Minikin of ONOC stated that anti-doping; "is not really an issue in this part of the world as most countries/athletes have not the resources nor need to pursue systematic drug programs."¹³ Information support for the ONOC and the region is provided by the Oceania Sports Information Centre (OSIC).¹⁴ The OSIC plays an extremely limited role in anti-doping education. The ONOC does not have an anti-doping policy, but Dr Ken Fitch, as Chair of the ONOC Medical Commission, regularly discusses the potentials for blood

Countries" in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part I, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000 p 273-274

¹⁰ The Western Pacific Regional Director of the World Health Organisation (WHO) reports WHO has been providing countries in Oceania with support because of the chronic lack of appropriately trained doctors, nurses and other health workers. See www.wpro.who.int/public/policy. See also *The Pacific Human Development Report 1999: Creating Opportunities*, United Nations Development Programme that analyses and reports on the human development status of fifteen developing island countries of the Pacific, including: Cook Islands, Fiji Islands, Federated States of Micronesia, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu.

¹¹ The Regional Director's Report, *The Work of WHO in the Western Pacific Region Archives*, Chapter 3, "Health Services Development", www.wpro.who.int/public/policy

¹² See for example the article by Lesseps Lourenço Dos Reys, "Antidopagem: Do Resultado Positivo às Consequências", *Acta Medica Portuguesa*, May 1994, 7(5), p291-295

¹³ Email from B Minikin, Oceania National Olympic Committee to the author dated 1 November 2001

¹⁴ The OSIC is hosted and implemented by the University of the South Pacific with the support of the Australian Sports Commission and UNESCO. See www.oceania-olympic.org/about

testing in his report to the Oceania General Assembly, and no religious or cultural objections to blood testing have been raised with him.¹⁵

For climatic, economic and historic reasons many sports on the Olympic program are not well represented in Oceania.¹⁶ While some Oceania umbrella federations have a development officer and an Oceania competition, others have been described as "very, very loose associations".¹⁷ None of these organisations wield any influence in the anti-doping arena, or have their own anti-doping policies.¹⁸ While there was some acknowledgement that Oceania-level education seminars could be beneficial for the region, it was generally felt that without targeted funding from the International Federations, WADA or the wealthier countries like Australia or New Zealand, there would be no improvement in the level of knowledge in the National Federations or the athletes.¹⁹ Also, despite the close legal and historical relationship between several countries in Oceania and the United States,²⁰ the US Anti-Doping Agency (USADA); "does not have any relationship with the anti-doping efforts of these countries, for educational or testing purposes."²¹

BLOOD TESTING IN SPORT IN CONTEXT

Elite athletes have voluntarily subjected themselves to blood tests and other invasive procedures in the name of 'sport' for many years.²² These tests are not conducted to determine whether athletes have engaged in prohibited anti-doping practices, but are used to determine the health of the athlete, and to monitor and test for weaknesses in the training program.²³ Also, while blood testing has been used extensively in clinical and forensic settings,²⁴ blood

¹⁵ Email to author dated 24 July 2001

¹⁶ The only sports with Oceania umbrella federations are: archery, athletics, badminton, baseball, basketball, boxing, canoeing, cycling, handball, (field) hockey, judo, luge, shooting, softball, swimming, table tennis, tennis, triathlon, volleyball, weightlifting and wrestling.

¹⁷ R Adey, Secretary, Oceania Softball Association conversations on 25 July and 6 August 2001

¹⁸ Conversations with Rosemary Adey, Secretary, Oceania Softball Association on 25 July, 6 August and 22 October 2001; George Costas, Secretary-General, Oceania Handball Federation letter to the author dated 8 August and telephone conversation of 14 August 2001 (Oceania only recognised by the IHF as a continent in Dec 2000); Paul Coffa, General Secretary, Oceania Weightlifting Federation, letter to the author dated 14 August 2001. Roger Wood, Secretary/Treasurer, Oceania Badminton Confederation, in an email to author dated 26 September 2001 states that the national badminton federations that have anti-doping policies; "have no regulations that would prevent the introduction of this procedure, providing the normal privacy issues are covered off as they currently need to be for the existing testing regime."

¹⁹ Eg: Conversations with Rosemary Adey, Secretary, Oceania Softball Association on 25 July, 6 August and 22 October 2001

²⁰ American Samoa, Palau, the Federated States of Micronesia and Guam

²¹ Email to author from Kate Mittelstadt, USADA dated 15 November 2001. American Samoa also confirmed this position in a facsimile from M D McCarthy, Assistant Attorney-General, Office of the Attorney-General, American Samoa Government to the author dated 16 November 2001. See also President Clinton's Executive Order creating the White House Task Force on Drugs and Sports dated 9 August 2000, www.playclean.org

²² Numerous articles refer to the results of blood tests for swimmers, long distance runners and bob-sledders from as early as the 1960s eg: The references contained in E R Burke, G S Patton, H L Falsetti, C Kennedy, R D Feld, "Blood Testing to Determine Overtraining in Swimmers", *Swimming Technique*, 18(3), January 1982, 29-31, 33

²³ E W Maglischo, Ch 8 "Blood Testing and Other Methods of Monitoring Training" in *Swimming Even Faster*, Mayfield Publishing Co, California, 1993

²⁴ D Noble, "Uncertain Gold: Drug Testing at the Olympics", *Analytical Chemistry*, 67(9), 1 May 1995, p321A

tests were only accepted by the IOC for all sports in doping control, albeit in conjunction with a urine test, in time for the Sydney 2000 Olympic Games.²⁵

The International Cycling Federation (UCI) developed a much closer tie between the health of the athletes and the use of blood tests as an anti-doping strategy. The UCI was forced to confront allegations that a number of athlete deaths resulted from the use of the prohibited drug erythropoietin (EPO).²⁶ As extraneous EPO could not be identified through the existing tests on urine samples, the UCI determined that, rather than waiting for a test to be developed, it would take a proactive stance to try to save the lives of cyclists.²⁷ Athletes are now required to be blood tested annually, quarterly and on demand prior to competition to determine their 'fitness' to race.²⁸ A lack of 'fitness' is not a doping offence, and does not attract a doping sanction under the UCI anti-doping programme.²⁹

The International Ski Federation (FIS) was the first IF to ban blood doping in 1983,³⁰ and since February 1989, has also conducted blood tests on its athletes for doping control or "as a protection of the health of the athlete", without an athlete refusing to provide a sample.³¹ In a report by Tapio Videman et al entitled; "Experiences in Blood Doping Testing at the 1989 World Cross-Country Ski Championships in Lahti, Finland",³² Videman admitted that blood tests were; "a considerable violation of privacy", but added that; "athletes have accepted doping tests when entering games if the organizers have informed them in advance of the possibility of such tests".³³

²⁵ IOC Press Release, "IOC Approves EPO Test for Sydney Olympic Games" dated 28 August 2000. The test had to pass the IOC Medical Commission, the IOC Juridical Commission and then the IOC Executive Board. This followed the IOC Executive Board's approval of a blood test for the Sydney Games for research purposes. [IOC Press Release "IOC Pledges Funds For Further Anti-Doping Research", 20 August 1999] See also ASDA Release, "EPO Test for the Games", www.asda.org.au/news4 and J Magnay, "Games blood tests given IOC approval", *Sydney Morning Herald*, 23 Aug 1999, p4 as an example of the numerous media reports following the announcement.

²⁶ Eg: "EPO has been blamed for the deaths of endurance athletes dating back as far as the 1980s. Long distance skiers were among the first to die from suspected EPO abuse, and in the past 15 years, as many as 50 cyclists are thought to have died from EPO." ABC Radio National's Background Briefing, 'Sydney 2000 - Are the EPO Games Up?', Produced by C Bullock, 26 March 2000

²⁷ H Verbruggen, President, International Cycling Federation (UCI), in conversation with the author in March 2001. See also "UCI - 40 years of fighting against doping (1960-2001)", UCI, www.uci.ch

²⁸ UCI Sports Safety and Conditions Commission (SSCC), "Programme of obligatory tests for UCI medical monitoring", in force from 1 January 2001, www.uci.ch/english/health_sante. A further satisfactory blood test must be provided to have the licence returned. See UCI Cycling Regulations, Part XIII Sporting Safety and Conditions, Chapter Medical Monitoring, 13.1.037, 13.1.038, 13.1.061; See also the comments by the UCI Vice-President, Ray Godkin in R Masters, "Sydney is First Summer Games to Have Blood Testing", *Sydney Morning Herald*, Australia, 23 March 2000, p46. For pre-competition blood testing, the UCI Cycling Regulations specify that cyclists will have their licence withdrawn and will not be permitted to race for a period of at least fifteen days on 'health' grounds where their haematocrit level exceeds the level of 50% in men and 47% in women. Note this level is considered to be too high, and is said to have led to a number of false positives. YO Schumacher, D Grrathwohl et al, "Haemoglobin, Haematocrit and Real Blood Cell Indices in Elite Cyclists. Are the Control Values for Blood Testing Valid?", *International Journal of Sports Medicine*, 21(5), July 2000, p380-385, and DT Martin, M Ashenden, et al, "Blood Testing For Professional Cyclists: What's A Fair Hematocrit Limit?", <http://sportssci.org/news/news9703/#update>

²⁹ See also International Skating Union Circular Letter No 565 setting out the blood testing to be conducted in 2001.

³⁰ FIS, Minutes of the 34th International Ski Congress, Bern, July 1983 and referred to in B Berglund, "Prevention of Blood Doping in Sports - Bureaucratic and Organizational Aspects", *Scand J Sports Sci*, 10(1), 1988, p39-42 at p39

³¹ Email to author from Sarah Lewis, Secretary-General, FIS and Dr K Fitch, IOC Medical Commission, email to author dated 24 July 2001. For the rules on surrounding the taking of blood samples, see the International Ski Federation, Medical Guide, www.fis-ski.com/rulespubs/documents

³² *International Athletic Foundation World Symposium on Doping in Sport*, 2nd, 1989, Monte Carlo, p5

³³ T Videman et al, "Experiences in blood doping testing at the 1989 World Cross-country Ski Championships in Lahti, Finland", *International Athletic Foundation World Symposium on Doping in Sport*, 2nd, 1989, Monte Carlo, p5

At the Lillehammer Olympic Winter Games in 1994, the IOC; "collect[ed] blood samples from athletes in a small number of [FIS] events to determine the possible added value of testing blood."³⁴ The International Amateur Athletics Federation also conducted blood testing for non-autologous blood transfusions and; "to gain experience from a wide variety of analyses aiming at detecting the application of GH, EPO and testosterone"³⁵ at eight World Cup meetings in 1993 and 1994, also without any complaint from the athletes.³⁶ The International Biathlon Union also conducted a blood testing program to identify athlete hematocrit levels, and no athlete refused to undergo blood sampling.³⁷ During the period of the Sydney Olympic Games, 310 blood tests were taken from athletes from eight sports. Again no complaints were raised relating to the Sydney Protocol or the IOC's ability to test for blood.³⁸ International Federations [IFs] have continued to consider whether to amend their anti-doping policies to allow for blood samples to be taken as further scientific evidence is received.³⁹

While many commentators refer to the possibility of cultural or religious freedoms being infringed by the use of blood tests, not one of those reviewed have been able to refer to any documented grounds for exclusion.⁴⁰ Videman

³⁴ D Noble, "Uncertain Gold: Drug Testing at the Olympics", *Analytical Chemistry*, 67(9), 1 May 1995, p321A. Dr Ken Fitch also describes the taking of blood samples for; "non-autologous blood transfusions" in the 1994 Winter Olympic Games as being "without incident". Dr K Fitch, IOC Medical Commission, email to author 24 July 2001. Prince Alexandre de Merode, Head of the IOC Medical Commission, initially hoped that blood testing in all sports could be introduced in time for the Albertville Games in 1992, but the test, personnel and political will did not support him. Denver Post Staff and Wire Services, "Blood Testing a Consideration", *Denver Post*, 23 February 1992. It was only immediately prior to the 1992 Games that a few anti-doping control agencies such as the Norwegian Olympic Committee & Confederation of Sports (NIF) began training its doping control officers to start blood testing in competition in 1993 on behalf of FIS. As of November 1997, NIF was blood testing Norwegian athletes out of competition as well: Conversation with Lindbjørg Stølan, Anti-Doping Program Manger, NIF, 8 October 2001. In 1992, the Association of Official racing Chemists reported that 210,000 blood samples were collected for drug testing in equestrian sport: M Donike et al, "Blood Analysis in Doping control Advantages & Disadvantages", in P Hemmersbach & KI Birkeland (eds.), *Blood Samples in Doping Control*, Proceedings of the Second International Symposium on Drugs in Sport entitled "Towards the Use of Blood Samples in Doping Control", Lillehammer, Norway 29-31 August 1993, Pensumtjeneste (On Demand Publishing), Oslo, 1994, F/N 1

³⁵ K Birkeland, M Donike et al, "Blood Sampling in Doping Control: First Experiences from Regular Testing in Athletics", *Int J Sports Med*, 18 (1997), p8-12 at p8

³⁶ Dr K Fitch, IOC Medical Commission, email to author dated 24 July 2001. Note that the IAAF Handbook 2002-2003 Rule 56(2) provides that; "An athlete shall only be entitled to refuse to provide a blood sample in circumstances where the mandatory procedures and safeguards set out in the "Procedure Guidelines for Doping Control" are not observed." Additional observations relating to the IAAF's consent forms are set out by J de Pencier, "Some Legal Concerns About Blood Sampling", Blood Testing Workshop, Victoria, British Columbia, 26 August 1994", 1994, p5

³⁷ F Manfredini et al, "Blood Testing in Biathlon: Observations of Hematocrit Levels During Competitive Periods 1994-1997", *Int J Sports Med*, 1999; 20, p403-406 at p404

³⁸ Dr K Fitch, IOC Medical Commission, email to author 24 July 2001 and Prof D H Catlin, UCLA, email to the author dated 21 July, 2001. The NIF also claims that to date, no athlete has raised a concern in relation to the blood testing procedures or the necessity to give a blood sample for doping control. Conversation with Lindbjørg Stølan, Anti-Doping Program Manger, NIF 8 October 2001. For a report on the testing in 2000, see B Corrigan & R Kazlauskas, "Drug Testing at the Sydney Olympics", *MJA* 2000, 173, p312-313 and www.asda.org.au/europe

³⁹ Eg: In a Press Release, "FINA, EPO & Blood Testing" dated 26 July 2001, the FINA Doping Control Review Board explained their reluctance to introduce blood testing while the tests have not been scientifically validated in all regions. Also FINA Information No 62 5 Sept 2001, the Sydney Protocol was only to be used at the Goodwill Games where the athletes agreed. Cf the recent amendment to the FISA Rulebook 2001 Edition, Part VII Anti-Doping Rules, Rule 81 - Anti-Doping, By-Law 5 requiring all athletes participating in events under FISA's authority to submit to all methods of testing "blood, urine, gases, etc". Many anti-doping policies have not needed to be amended however, for example the Australian Olympic Committee's anti-doping policy, because the definition of "sample" already included all 'bodily fluids'.

⁴⁰ Examples of assertions without supporting evidence: S Boyes, "The International Olympic Committee, Transnational Doping Policy & Globalisation", in J O'Leary, *Drugs and Doping in Sport: Socio-Legal Perspectives*, Cavendish Publishing Co, London, 2001, p173 and p175; P Coffa, General Secretary, Oceania Weightlifting Federation in a letter to the author dated 14 August 2001; J Parry, "Ethics and Doping", IEC Scientific Conference, Doping in Sport, Barcelona, 1999, Pt 6; B Whelan, "Don't Be Fooled: The Drug Problem is Worse Than Ever!", www.naturalstrength.com/steroids/problem.html, J Watterson, "Sport (Five Ringed Circus): Blood Simple?", *Irish Times*, 7 August 2001, p57; and Kraemer & Yesalis in L Schnirring, "Growth Hormone Doping: The Search for a Test", *The Physician and Sportsmedicine*, Apr 2000, 28(4), p16-18 at p18

also noted that a religion that actually objected to the provision of blood samples had not yet been named.⁴¹ The IOC, its Medical Commission⁴² and groups such as the Australian Sports Drug Agency⁴³ have made considerable attempts to research the basis for these 'infringements', but have been unable to identify any "hard facts".⁴⁴

Far from blood tests being a breach of human rights, or the Constitutionally protected rights to privacy, some commentators take the view that blood tests are actually less invasive of the athlete's privacy than are urine tests. The argument is that when faced with a choice of giving a blood sample, or having a stranger (Doping Control Officer) watch you urinate, athletes would prefer to give a blood sample.⁴⁵ In Oceania, it would appear that there are no historically documented grounds for an athlete to successfully seek an exemption from providing a blood sample for doping control.⁴⁶ However, it is debatable whether most Oceania athletes could be said to have validly given their consent to a blood test to date.

GENERAL LEGAL FRAMEWORK

There is not an author or a legal jurisdiction reviewed that has claimed that sports associations can overcome the common law of trespass, assault and battery to physically require an athlete to provide a blood sample against their will. Is it instead legally valid for sports associations to bar, suspend, not admit or not renew the membership of an athlete for refusing to provide a blood sample or refusing to sign a form containing a provision requiring that blood samples be provided upon request? Assuming that the provision that of a blood sample is an infringement of individual's privacy, this infringement can be consented to by the athlete, provided that consent is genuine. It is

⁴¹ T Videman et al, "Experiences in blood doping testing at the 1989 World Cross-country Ski Championships in Lahti, Finland", *International Athletic Foundation World Symposium on Doping in Sport*, 2nd, 1989, Monte Carlo, p5. Similar comments in KI Birkeland & P. Hemmersbach, "The Future of Doping Control in Athletes: Issues Related to Blood Sampling", *Sports Med*, July 1999, 28(1) p25-33 at p32

⁴² Eg: (Now) IOC President, Dr Jacques Rogge, in L Evans, "Blood test the way to beat 'wonder drug'", *Sydney Morning Herald*, 16 July 1999

⁴³ Email from Dr P Fricker, Australian Institute of Sport to the author dated 19 July 2001

⁴⁴ Prof D H Catlin, UCLA, email to the author dated 21 July, 2001. In November 1991, the IOC's Association of National Olympic Committees (ANOC) proposed that By-Law 45 of the Olympic Charter be amended to allow; "the IOC or an International Federation to require athletes to provide a sample (of urine or blood) for the purpose of testing whenever an authorised representative of the IOC so requests." At that time, IOC Members from a variety of countries and religious backgrounds advised the IOC Legal Director, Howard Stupp, that they knew of no grounds that could be raised by athletes to avoid the provision of blood samples. [Dr K Fitch, IOC Medical Commission, email to author 24 July 2001]

⁴⁵ Eg: R Andersen, Head of Department, Ethics, Sport Medicine and Anti-Doping, NIF, conversation with the author, 24 September 2001 & DL Coleman, Senior Lecturing Fellow, Duke Law School, email to author dated 17 July 2001. For the US perspective on urination and privacy see CA Palmer, "Drugs vs Privacy: The New Game in Sports", *Marquette Sports Law Journal*, 1992, 2, p175-209 at p205. Cf T Buti & S Fridman, "Drug Testing In Sport: Legal Challenges & Issues", *University of Queensland Law Journal*, 20(2), 1999, p153-185 at p169. Justice Scalia is quoted as stating that athlete's have lower expectations of privacy than other members of the population: D Crowley, "Student Athletes and Drug Testing", *Marquette Sports Law Journal*, 1995, 6, p65-131 at p124

⁴⁶ Professor C Tatz, Visiting Professor of Politics, Macquarie University, Sydney in a telephone conversation with the author on 5 September 2001 suggested that the IOC rules should be amended to only allow for an objection to be accepted where the athletes can prove that their culture/religion has a historical objection to the letting of blood. Peter Murgatroyd, Head Librarian, University of the South Pacific stated that while he had not come across any customary or religious rules that would prevent athletes from being able to provide blood samples; "there are so many and varied customs across the pacific - varying from country to country, island to island, and even village to village - all that you could assume is that there would be taboos against the unwilling taking of someone's blood but equally as likely these would not be written down anywhere but simply held as customs and passed down by word of mouth." Email to author dated 19 July 2001

well-established, in countries such as Australia and Canada,⁴⁷ that the consent given must be voluntary and on an informed basis.⁴⁸

The most common means of advising athletes of their obligations is through the written contracts between the athletes and sports organisations (eg: membership or event entry forms, or team and scholarship agreements).⁴⁹ Courts have supported what would otherwise be considered a violation of a personal freedom, where the provisions are; "reasonably required in the best interests of their respective sports".⁵⁰ Sports organisations then use the 'legal fiction' that athletes voluntarily enter membership (etc) contracts with their sports associations to support the argument that informed consent can be assumed.⁵¹

National Olympic Committees (NOCs) are members of the IOC. Athletes selected by their NOC to participate in the Olympic Games sign a participation agreement, agreeing to abide by the rules of the IOC for the duration of the Olympic Games. Evidence of the athlete's apparent consent to provide a blood or urine sample during this event (or any other event where a participation or equivalent agreement has been signed) is relatively easy to establish.⁵² What is difficult, is establishing that the athlete has agreed to, or even is aware of, a requirement to provide blood samples 'out of competition', at anytime and anywhere in the world.

The Olympic Movement Anti-Doping Code (OMADC) prohibits "Doping"⁵³ and purports to apply to all athletes and officials; "preparing for" the Olympic Games (or other IOC sports event), and; "all competitions organized

⁴⁷ eg: J de Pencier, "Blood Analysis and Doping Control Legal, Social, and Organisational Issues", Canadian Centre for Drug Free Sport, published in P Hemmersbach & K.I. Birkeland (eds.), *Blood Samples in Doping Control*, Proceedings of the Second International Symposium on Drugs in Sport entitled "Towards the Use of Blood Samples in Doping Control", Lillehammer, Norway 29-31 August 1993, Pensumtjeneste (On Demand Publishing), Oslo, 1994

⁴⁸ There is some debate about whether English accepts the concept of 'informed consent' or whether a consent is only vitiated where consent is obtained through fraud or misrepresentation. See Lord Donaldson in *Sidaway's Case* as quoted by C D'Eca, "Medico-Legal Aspects of AIDS", Ch 2 in D Harris & R Haigh (eds), *AIDS: A Guide to the Law*, The Terrence Higgins Trust, London, 1990, p8. Cf: The compulsory examination or treatment of a patient without informed consent is tortious: *Baugh v Delta Waters Ltd* (1971) 1 WLR 1295, 1298. See also *Bennan v Parsonnett* (1912) 83 A 948 and the USA authority: *Schoendorff v Society of New York Hospitals* 211 NY 125; "Every human being of adult years and sound mind has a right to determine what shall be done with his own body". See also discussion by A Grubb et al, *Blood Testing, AIDS & DNA Profiling: Law & Policy*, Family Law, Bristol, 1990, p3. See T Buti and S Fridman, "Drug Testing In Sport: Legal Challenges & Issues", *University of Queensland Law Journal*, 20(2), 1999, p153-185 at p177 F/N 135. Support for the concept of 'informed consent' in this context is found in S Loland, "Doping, Blood Analysis & Fair Play - Ethical Considerations", P Hemmersbach & K.I Birkeland (eds.), *Blood Samples in Doping Control*, Proceedings of the Second International Symposium on Drugs in Sport entitled "Towards the Use of Blood Samples in Doping Control", Lillehammer, Norway 29-31 August 1993, Pensumtjeneste (On Demand Publishing), Oslo, 1994. Commentators have also asked how voluntary public health screening is when patients are so vigorously followed up by GPs receiving financial benefits: J Eaden, MK Mayberry et al, "Screening: The Legal View", *Public Health*, 115(3), May 2001, p218-221 at 220

⁴⁹ Eg: T Buti & S Fridman, "Drug Testing In Sport: Legal Challenges & Issues", *University of Queensland Law Journal*, 20(2), 1999, p153-185 at p177. Lars Adam Rehof, Professor of International Law at the University of Copenhagen, is quoted as stating that if a private organisation seeks to sanction an athlete; "there should be a contract by which the individual athlete accepts the strict doping sanctions." [S Bang & M Klausen, (translated) published in "Idrætsliv", the magazine of the NOC and Sports Confederation of Denmark, 18(6), November 1998]. R Wood, Secretary/Treasurer, Oceania Badminton Confederation would also agree with this position. [Email to author dated 26 September 2001]

⁵⁰ C Woodhouse, "Sports & the Law: the Role of the Lawyer in Sport Today", *New Zealand Law Journal*, Nov 1993, p411-414 at p412

⁵¹ Email to author from DL Coleman, Senior Lecturing Fellow, Duke Law School dated 18 July 2001.

⁵² See support for this being a valid consent from Forbes Carlile, "Test or no Games", Letters to the Editor, *Sydney Morning Herald*, 30 August 1999, p16. As Mr Carlile described it, athletes have a choice whether to compete in the Olympic Games or not, and that choice involves deciding whether to compete under IOC rules. Also (now) IOC President, Dr Jacques Rogge, in L Evans, "Blood test the way to beat 'wonder drug'", *Sydney Morning Herald*, 16 July 1999. Similarly, one of the International Cycling Federation (UCI) Vice-Presidents, Ray Godkin, said; "If you want to be an international cyclist, you take out a licence that allows us to blood test. If you don't sign the paper, you don't ride world-wide." R Masters, "Sydney is First Summer Games to Have Blood Testing", *Sydney Morning Herald*, Australia, 23 March 2000, p46.

⁵³ Athletes must; "ensure that he/she does not use or allow the use of any Prohibited Substance or any Prohibited Method." OMADC dated 1 January 2000 Chapter II Article 1(2) and Chapter I Article 3 "Doping" is defined as; "1. the use of an expedient (substance or method) which is

under the authority, whether direct or delegated, of an IF or NOC."⁵⁴ It is not clear at what point an athlete begins 'preparing' for any of these events, even if the particular events referred to can be identified. In Oceania, the major events include; regional games such as the Micronesian Games, the Arafura Games,⁵⁵ the South Pacific Games⁵⁶ (and South Pacific Mini Games [SPMG]) and Oceania sport-specific leagues,⁵⁷ such as the Oceania basketball competition. Most events are held in a different country on each occasion and are subject to a selection process to determine the next host nation. Those nations submitting an application to host the event would include supportive material from their NOC, of a direct or indirect nature. Therefore, even if not all NOCs send their elite representative teams to each event, all these events can be said to be 'organised under the authority' of an NOC as required by the OMADC.

Oceania Event - Example: Arafura Games

The Arafura Games are said to be "endorsed" by the Australian Olympic Committee (AOC), although the AOC does not organise the event or provide any direct support.⁵⁸ Athletes do not sign an entry form, but their entry must be endorsed by their national body (National Federation [NF] or NOC). Smaller countries send their elite national team, but the majority send development teams. The Arafura Games pay for the Australian Sports Drug Agency (ASDA) to conduct 'in competition' testing during the event, and the Arafura organisers provide details of doping control procedures to the NFs or NOCs to distribute to the athletes they endorse.⁵⁹ Theoretically then, once athletes are entered into this event they could be subjected to 'out of competition' testing, although they are likely only to be aware that testing will be conducted 'in competition'. Doping Offences as defined in accordance with ASDA

potentially harmful to athletes' health and/or capable of enhancing their performance, or 2. the presence in the athlete's body of a Prohibited Substance or evidence of the use thereof or evidence of the use of a Prohibited Method. OMADC dated 1 January 2000 Chapter II Article 2

⁵⁴ "Participants" are defined as; "any athlete, coach, trainer, official, medical or para-medical personnel working with or treating athletes participating in or preparing for sports competitions of the Olympic Games, those competitions to which the IOC grants its patronage or support and all competitions organized under the authority, whether direct or delegated, of an IF or NOC." See OMADC dated 1 January 2000 Chapter I Article 2

⁵⁵ held in Darwin, Australia biannually targeting development teams. Email to author from A Curry Assistant Director, Arafura Games dated 29 October 2001

⁵⁶ The next South Pacific Games are to be held in Suva, Fiji in 2003 and will also involve disabled sport for the first time. Note that; "the Australian Government has established the Australian South Pacific 2000 and 2006 Sports Assistance programmes which allow regional countries to train in Australia in preparation for international sporting events." "2003 South Pacific Games Logo Launched In Suva", Oceania National Olympic Committees, Coconut Wireless - Issue 31/2001, 28 September 2001. This support also extends 50 athletes from 16 nations competing at the SPMG in 2001. D O'Driscoll, "Australia backs Norfolk Island event", *The Sports Vine*, 6 December 2001, p10. Another important regional games is the Far East & South Pacific Games for the Disabled (FESPIC)

⁵⁷ These leagues are organised by the Oceania umbrella sports federations, with the approval of ONOC. Assuming the IF are aware and approve of these leagues, they could be said to be organised indirectly by either the NOCs or the IFs, depending on where the funding for these leagues originated from.

⁵⁸ Email from A Curry, Assistant Director, Arafura Games, to author dated 26 October 2001. Note the Arafura Games involves both Olympic and non-Olympic sports. The AOC confirmed that it endorses the Arafura Games, but does not provide direct financial support. Email to author from Alan Grover, Group Manager - Brand Protection & Special Projects, AOC dated 22 November 2001

⁵⁹ Email to author from Adrian Curry, Assistant Director, Arafura Games dated 29 October 2001

regulations and are referred to the athlete's IF for sanction. The Arafura Games organisers will recognise any sanction determined by the sport.⁶⁰

'Genuine' Consent

Sports associations should be aware that there may be circumstances in which a court could negate the consent given by the athlete at the time of providing the blood sample, or signing the membership (etc) agreements:⁶¹

- the 'contract' that binds the athlete to the national and international anti-doping scheme is usually a club registration. There is almost no likelihood that this form will make any reference to anti-doping policies or requirements to provide samples for testing, as athletes at this level are rarely drug tested⁶²;
- anti-doping rules are not provided at the time of signing (and/or athletes are not given the opportunity to obtain them if requested);
- the anti-doping regulations referred to do not exist or are otherwise incorrectly named;
- the rules agreed to may change significantly after signing without notification to the athlete;
- even if the athlete is given the multitude of relevant club, regional, state, national and international anti-doping regulations, could a court impute an understanding of their provisions, even if that athlete had sophisticated literacy and/or legal skills?
- considerations of the athlete's own legal⁶³, intellectual and educational capacity, which may put the athlete at a 'special disadvantage'. The athlete would need to show the court that they entered into an agreement with a sports association whilst being at a 'special disadvantage' in dealing with that association and that

⁶⁰ Email to author from Adrian Curry, Assistant Director, Arafura Games dated 29 October 2001

⁶¹ See also the concerns raised in M Baddeley, "The Protection of The Personal Rights of Athletes: Concept, Application and Function of Such a Protection in Swiss Civil Law", *Sport & the Law Journal*, 6(1), 1998, p19-30 at p24

⁶² There are exceptions however, such as the 'professional' sports and those clubs playing in National Leagues, such as football, baseball, basketball and handball. In Australia, there has been a Court of Arbitration for Sport (CAS) case of a 'C' grade cyclist who rode so poorly on account of her illness that she was randomly selected along with the 'A' grade riders to provide a sample. The athlete (also a minor), returned a positive test result for pseudoephedrine and was sanctioned after a hearing as her membership with the club resulted in her being subject to both Cycling Australia and the AOC's anti-doping policies. An analogous case is one that involved the interpretation of the Australian *Commercial Arbitration Act (NSW)*. The issue raised by the athlete was whether in signing a club registration form he was bound the athlete to participate in an arbitration before CAS, as required by the rules of the AOC. The club registration form required the athlete to abide by the club, state, national and international rules, but not the NOC. The *Commercial Arbitration Act* required the athlete to have agreed to participate in the arbitration "in writing". The athlete had signed the one page registration form, but none of the rules referred to in the registration form used CAS as its disciplinary body. Therefore it was arguable that the athlete had not 'agreed to the arbitration'. As the case was settled (with a confidentiality agreement), and not decided by the NSW Supreme Court, it will not be known for sure what the outcome would have been. For the discussion of the acceptance of multipartite agreements, where the athlete has signed one agreement at least, see *Raguz v Sullivan* [2000] NSWCA 240 www.austlii.edu.au/au/cases/nsw and D Sturzaker & K Godhard, "The Olympic Legal Legacy", *Melbourne Journal of International Law*, 2(1), June 2001, p241-248

⁶³ Re: Capacity and age see J de Pencier, "Law & Athlete Drug Testing in Canada", *Marquette Sports Law Journal*, 1994, 4, p217-299 at p275-8

association unconscientiously took advantage of that opportunity.⁶⁴ The athlete is thereby unable to make a "worthwhile judgement as to what is his best interest."⁶⁵ This may then amount to unconscionable conduct in contravention of legislation such as Part IV of the Australian *Trade Practices Act*;⁶⁶

- the consent may amount to "practical compulsion"⁶⁷ given the current emphasis culturally on anti-doping, athletes may feel compelled to sign documents or provide samples against their will, rather than attract media attention by refusing;⁶⁸
- where the athlete earns their living from their sport, how real is the freedom to choose to accept the rules of the sport? Does it amount to 'economic duress' or restraint of trade⁶⁹?; and
- as blood testing is both a medical and invasive procedure, how much information about the possible health risks and side effects need to be provided? Must this information include details of the blood testing procedure?

To date, where athletes are not given any membership documentation, or anti-doping information, rather than the consent being negated, athletes have received a reduction in their sanction. The sports organisation (usually the NF) has also been severely criticised on account of the failure by the sports organisation to educate the athletes sufficiently on their anti-doping procedures.⁷⁰

⁶⁴ It is not necessary for the sports association to have created the 'special disadvantage', but the transaction will be found to be unconscionable where the association knows of the athlete's 'special disadvantage' and takes advantage of that opportunity: *Begbie v State Bank of New South Wales Ltd* (1994) ATPR 41-288

⁶⁵ Mason J in *Commercial Bank of Australia v Amadio* (1983) 151 CLR 447 at 461

⁶⁶ TPA s.51AC in R V Miller, *Miller's Annotated Trade Practices Act 2001*, 22nd Edition, LBC, 2001 and ss7 & 9 of the *Contracts Review Act*, 1980. Many authors have raised the issue of the validity of a minor's consent eg: A Browne, V Lachance and A Pipe, "The Ethics of Blood Testing as An Element of Doping Control in Sport", *Medicine and Science in Sports and Exercise*, 1999, 31(4) p497-501. See *Blomley v Ryan* (1956) 99 CLR 362 Kitto and Fullager JJ; for examples of 'special disadvantage' eg: "illiteracy or lack of education, lack of assistance or explanation where assistance or explanation is necessary."

⁶⁷ T Buti & S Fridman, "Drug Testing In Sport: Legal Challenges & Issues", *University of Queensland Law Journal*, 20(2), 1999, p153-185 at p177-8. They note that courts may not be prepared to find that this inducement amounted to 'illegitimate' pressure. See F/N 139. This is also Muramoto's argument, by analogy, where sport is their 'life', how free are they to choose?: O Muramoto, "Medical Confidentiality and the Protection of Jehovah's Witnesses' Autonomous Refusal of Blood", *Journal of Medical Ethics*, 2000, 26, p381-386. See also T Kavanagh (now Justice), "Thesis on Drug, Sport & the Law: Legal Solutions and the Need for An International Arbitral Court - An Australian Perspective", Submitted for the Award of Doctor of Philosophy in the Faculty of Law, University of Technology, Sydney, 1997, Ch 5 and p70-74

⁶⁸ Human rights lawyers, such as Dr David Kinley, are concerned that even where the athlete is aware of the rules relating to blood testing, a signature on an agreement may be evidence of coercion or legal duress; "because to say no to the test would be to say that you are guilty of taking drugs." As reported by D Cameron, "Games Blood Testing Bid Raises Legal Hurdles", *Sydney Morning Herald*, 27 August 1999, p10 A similar comment was also made by then AOC Secretary-General, Craig McLatchey in J Magnay, "Athletes Call for Blood Tests", *The Age*, 11 August 1999

⁶⁹ Dr D Kinley & L Rafferty, "Drug Testing, Human Rights & the Law", *How You Play the Game: The Contribution of Sport to the Promotion of Human Rights*, The Human Rights Council of Australia Conference, 1-3 September 1999, p136-140 at p139. The sports association must show that the restraint was reasonable: *Nordenfeldt v Maxim Nordenfeldt Guns & Ammunition Co Ltd* [1894] AC 535. Also *Robertson v Australian Professional Cycling Council Inc*, Waddell CJ, NSW Supreme Court unreported 10 September 1992. See F/N 16 T Buti, "AOC Athlete's Agreement for Sydney 2000: The Implications for the Athletes", *UNSW Law Journal* 22(3), p746-762 at p751

⁷⁰ Eg: Court of Arbitration for Sport case involving a young football athlete, BS, who had his suspension for psuedoephedrine reduced because he had been provided with no anti-doping information by Soccer Australia.

SUMMARY BY INDIVIDUAL NATION

Territory of American Samoa (American Samoa)

American Samoa is an unincorporated and unorganised territory of the United States of America. The US Department of the Interior, Office of Insular Affairs, administers it. American Samoa's Constitution was ratified in 1966 and came into effect in 1967. The Chief of State is the President of the United States of America and the head of government is a locally elected Governor. The bicameral parliament is known as the Fono, and consists of the House of Representatives and the Senate.⁷¹

As at July 2000 there were 65,446 people of American Samoan nationality made up of Samoan, Caucasian, Tongan and other ethnic groups. Most American Samoans are bilingual, speaking both English and Samoan.⁷² The legal system is, as for the United States of America, based on the English common law system.⁷³ Martin D McCarthy, Assistant Attorney-General, confirmed that; "American Samoa has no laws restricting tissue or blood sample testing except general constitutional prohibitions against unconstitutional searches and seizures for protection of accused persons."⁷⁴ Particularly while sport in American Samoa is at an amateur level, the Courts can be expected to follow the US precedent of supporting drug testing programs in high schools and colleges, where the negative effect of drug use has been demonstrated. As expressed by Paul M Anderson; "Unfortunately for student athletes at any amateur level, who have nothing more than a privilege to participate in athletics, the choice is simple - submit to a drug testing programme or do not participate in interscholastic or intercollegiate athletics."⁷⁵

The American Samoan National Olympic Committee (ASNOC) does not have an anti-doping policy⁷⁶ and does not provide their athletes with any advice either through a team agreement or other communication that they may have to provide blood or other samples for drug testing in sports.⁷⁷ The ASNOC have advised however that they plan to adopt an anti-doping policy by June 2002.⁷⁸ The ASNOC's General Secretary, Ken Tupua, also stated that he is not

⁷¹ World Fact Book, *Legal System*, 2000, www.bartleby.com

⁷² World Fact Book, *Legal System*, 2000, www.bartleby.com

⁷³ World Fact Book, *Legal System*, 2000, www.bartleby.com

⁷⁴ Facsimile from M D McCarthy, Assistant Attorney-General, Office of the Attorney-General, American Samoa Government to the author dated 16 November 2001. Also confirmed by K Tupua, General-Secretary, American Samoa National Olympic Committee in an email to author dated 20 July 2001

⁷⁵ P M Anderson, "Drug Testing in Amateur Sports in the US", in J O'Leary, *Drugs and Doping in Sport: Socio-Legal Perspectives*, Cavendish Publishing Co, London, 2001, p205-224 at p 224

⁷⁶ Email to author from Ken Tupua, General-Secretary, American Samoa National Olympic Committee dated 20 July 2001

⁷⁷ Email to author from Ken Tupua, General-Secretary, American Samoa National Olympic Committee dated 11 August 2001. ASNOC therefore appears to rely on either the sports (eg: IFs) or event organisers (eg: IOC) to advise their athletes of their anti-doping obligations.

⁷⁸ In the meantime, ASNOC have advised the American Samoan Government that they follow the IOC "Charter Against Doping". Facsimile from M D McCarthy, Assistant Attorney-General, Office of the Attorney-General, American Samoa Government to the author dated 16 November 2001

aware of any legislative, customary or religious reasons that American Samoan athletes could give that would require an exemption from providing a blood sample.⁷⁹

Commonwealth of Australia (Australia)

Australia has now proven itself to be a country capable of hosting the “best ever” Olympic Games following the Sydney 2000 Olympic Games. Its sports science and medical care is equal to the world’s best. Australia has a highly developed stable democracy with a federal-state system, recognising the British monarch as sovereign.⁸⁰ Its legal system is based on English common law. The Commonwealth of Australia Constitution came into force on 1 January 1901. The federal nature of the legal system in Australia adds to the complexity of summarising the 'legal requirements of doping control'.⁸¹ The national ('Commonwealth' or 'Federal') bicameral parliament has legislative power over the specific topics (heads of power) set out in the Australian Constitution, while the remaining topics may be dealt with by the individual states. Where a state law conflicts with a law of the Commonwealth, the latter prevails. Australia has six states and two territories, all of which have legislated to combat doping in sport to varying degrees, in addition to and in support of, the Commonwealth 'National Drugs in Sport Framework'. Particularly in the lead up to the Olympic Games, the various Commonwealth Ministries have attempted to ensure that their policing, tourism, technology, customs and sport efforts were coordinated.⁸²

Cultural and Religious Groups in Australia

As at March 2001, Australia had over nineteen million people living on the island continent representing a vast number of ethnic, cultural and religious groups.⁸³ Australia does not have an official religion, although the majority of people ascribe to one of the 'main-stream' Christian religions.⁸⁴ Australians, on account of having being settled

⁷⁹ Emails to author from Ken Tupua, General-Secretary, American Samoa National Olympic Committee dated 20 July and 11 August 2001

⁸⁰ Australia, US Consular Information Sheet, The US Department of the Interior, Office of Insular Affairs, dated 6 April 2000 www.travel.state.gov/australia. A useful summary of the Constitutional basis of government can be found at www.abs.gov.au/ausstats

⁸¹ Like the HIV virus, the sports drug problem knows no state boundaries and Australia's federal system causes enormous problems for any group trying to develop a co-ordinated national response. Eg: M Alexander, "The Australian Legal Response to HIV", Chapter 27 in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000, p423

⁸² The AOC also supported a coordinated approach in its November 1998 submissions to all state and federal Ministers of Parliament. This submission has resulted in some important reforms, particularly in relation to the laws on the export of prohibited sport drugs.

⁸³ "March Quarter Key Figures", Australian Demographic Statistics, Australian Bureau of Statistics, 20 September 2001, www.abs.gov.au/ausstats. More comprehensive information about the make-up of Australia's population cannot be provided until the results of the Australian census taken on 7 August 2001, which for the first time has asked a question on ancestry, are finalised. The census however was available in 22 community languages.

⁸⁴ Australia, The World Factbook, 2000, www.bartleby.com

by the British in 1788 are predominately Causasian (92%). Seven percent of the population is of Asian ethnicity and indigenous (Aboriginal) and other Australians make up the remaining one percent.⁸⁵

Red Cross Australia has identified several ethnic, cultural or religious groups within Australia that do not permit the donation and/or receipt of donor organs or the receipt of blood transfusions, namely; the Jehovah's Witnesses, members of the Shinto religion and the Romany people.⁸⁶ From the information gathered on blood testing, as distinct from transfusions, none of the identified groups had any objection to the provision of blood samples.⁸⁷ Groups such as 'Pacific Islanders' and Australian Aboriginals are recorded by the Red Cross as being in a position to decide individually whether they will donate or receive organ transplants.⁸⁸ This position is supported by the authorities in relation to blood testing.⁸⁹ It is therefore up to the individual athlete to decide whether they wish to be subject to a blood test for doping control. Despite these findings, there remains the possibility that athletes eligible

⁸⁵ Australia, The World Factbook, 2000, www.bartleby.com

⁸⁶ *National Guidelines for Organ and Tissue Donation*, Australasian Transplant Co-Ordinators Association Incorporated, 2nd edition, 1999. However, the Red Cross has not carried out any studies on which cultural groups object to donating blood, because voluntary blood donation is so low in Australia: Conversation with Kaaren Haywood, Red Cross Australia, 29 August 2001. Further studies may be carried out if the recommended National Blood Authority is established. *Review of the Australian Blood Banking and Plasma Product Sector*, 8 June 2001 as reported in *Healthcover*, Aug-Sept 2001, 11(4), p10

⁸⁷ Jehovah's Witnesses: This group is most often, incorrectly, sighted as having an objection to blood tests. IOC member, Professor Kuroda has previously advised the IOC on behalf of ascribers to the Jehovah's Witness religion that the objection is to the receipt of blood transfusions, not to the provision of blood samples for medical, or presumably, drug testing, purposes. (Dr K Fitch, IOC Medical Commission, email to author 24 July 2001). Peter Price, Director, Hospital Information Services for Jehovah's Witnesses, Watchtower Society also confirmed that Jehovah's Witnesses could individually choose whether to provide a blood sample for doping control. (Telephone conversation with the author on 8 August 2001, and supported by 'Questions from Readers' appearing in *The Watchtower*, 15 June 1978 p30 as follows; "Would it be wrong to submit to a blood test? Based on their knowledge of the Scriptures, most of Jehovah's Witnesses, if not all, do not object to such tests. The small quantity of blood removed from the body is not eaten or injected into someone else. It is merely examined or tested before being disposed of. - Deut. 15:23) There is no objection to means of disposal of blood either: *Schreiber v Connolly & anor*, Report & Recommendation, US District Court, Cedar Rapids Division, No C98-0140-MWB, 2000, www.iand.uscourts.gov. The only provisio appears to relate to the length of time the blood is stored: J de Pencier, "Blood Analysis and Doping Control Legal, Social, and Organisational Issues", Canadian Centre for Drug Free Sport, published in P Hemmersbach & K.I. Birkeland (eds.), *Blood Samples in Doping Control*, Proceedings of the Second International Symposium on Drugs in Sport entitled "Towards the Use of Blood Samples in Doping Control", Lillehammer, Norway 29-31 August 1993, Pensumtjeneste (On Demand Publishing), Oslo, 1994, p7

Romany Australians: Romany people (previously known as Gypsies) have only recently claimed their own cultural identity, and therefore it is difficult to determine whether they have a homogenised cultural or religious view on providing blood samples. However, a number of researchers world-wide have been studying the genetic background of Romany people involving the provision of blood samples with their consent eg: Luba Lalaydjieva, Medical Geneticist, Edith Cowan University. Information generally provided by Ken Lee, Department of Sociology & Anthropology, Newcastle University

Shinto Religion: Red Cross Australia has indicted that Australian followers of the Shinto religion will not accept organ transplants. IOC member, Professor Kuroda has previously advised the IOC on behalf of Japanese athletes that there are no cultural or religious objections to blood testing. (Dr K Fitch, IOC Medical Commission, email to author 24 July 2001) Further clarification may be contained in papers submitted on the Asia region, as ethnic Japanese people almost solely follow this religion. The information available in Australia indicated that there is no set text for the religion, and its teachings are contained in various poems and oral mythology. The religion is based on principles of the sanctity of the body, but it does not appear to prohibit the provision of blood samples. (Information obtained from Rie Fukuhara, Japan Foundation, Sydney. Attempts to obtain a response from the university teaching this religion, Kokugakuin University, Japan to clarify this were unsuccessful.)

Seventh Day Adventists: Dr Percy Harold, Associate Director, Health Department, Adventist Health Ministries for the South Pacific Division stated that Adventists are fully supportive of the anti-doping program, and have no objection to the taking of blood samples: Telephone conversation with the author on 26 July 2001

⁸⁸ *National Guidelines for Organ and Tissue Donation*, Australasian Transplant Co-Ordinators Association Incorporated, 2nd edition, 1999

⁸⁹ For the 'Pacific Islanders' in Oceania, each group will be canvassed separated below. Aboriginal & Torres Strait Islander Australians are not a homogenised group that can be easily categorised. Many tribal groups have different languages, dialects and cultural beliefs, although nearly all appear to be based on a respect for the land and the spirits. While some tribal punishments can include non-fatal spearing, Professor Colin Tatz states categorically that as distinct from cultures such as the South Americans that believe that when blood is let, some of your soul departs your body, Australian Aboriginals do not have an objection to blood letting. (Professor C Tatz, Visiting Professor of Politics, Macquarie University, Sydney telephone conversation 5 September 2001. (John Lester, Newcastle University also supported this position). Also, Australia's most famous competing Aboriginal athlete, Cathy Freeman is reported to have given a blood sample at the Sydney Olympic Games without raising an objection.

for selection by Australian representative teams may also identify with a cultural or religious group whose principles prevent that athlete from being able to provide a blood sample for drug testing.⁹⁰

National Approach:⁹¹ Development of AOC and ASC Anti-Doping Policies

In Australia, the drugs in sport issue was first comprehensively addressed in 1987 when representatives of the non-government Australian Olympic Committee (AOC) and the government funding arm, the Australian Sports Commission (ASC) met with the then Federal Minister for Sport, John Brown, and his advisers.⁹² Agreement was reached for both the AOC and ASC to adopt anti-doping policies embodying the same principles and similar language.⁹³

Both the ASC the AOC policies required the NFs⁹⁴ to have approved anti-doping policies that comply with the rules of their respective International Federations (IFs).⁹⁵ Where the IF rules conflicted with domestic rules set down by the AOC, the ASC or even the NF on significant issues, the AOC took the position, in accordance with the UCI and

⁹⁰ Note however that Peter Price, Director, Hospital Information Services for Jehovah's Witnesses, Watchtower Society, Sydney Australia did not concede that this was even a theoretical possibility in his religion. His view was that a person's dedication to their faith would not allow them the time to devote sufficient time to becoming an elite athlete. Mr Price further stated that to his knowledge, for this reason, no Jehovah's Witness had ever competed at an Olympic Games. Telephone conversation with the author on 8 August 2001.

⁹¹ An excellent summary of the Australian Government's contribution to anti-doping generally is found in: Committee for the Development of Sport (CDDS), Anti-Doping Convention (T-DO), "Compliance with Commitments Project: Respect by Australia of the Anti-Doping Convention", Reports by Australia and Examining Group, T-DO(2001) 16 Final, 2 October 2001, Strasbourg. See also T Buti and S Fridman, "The Intersection of Law and Policy: Drug Testing in Sport", *Australian Journal of Public Administration*, 53(4), 1994, p489-506 and Council of Europe, "Legislation and Regulations on Doping in the Countries which Adhere to the Convention of the Council of Europe", *Sports Information Bulletin*, 52 (Dec 1999), p41-43

⁹² The Australian government's late interest in anti-doping has been criticised by authors such as Barrie Houlihan, who said that rich countries, such as Australia, were inactive; "not just by a general reluctance to make doping an issue of public policy, but also by a strong suspicion that state organised doping was in place in the countries that were their main ideological and Olympic rivals." B Houlihan, "Anti-Doping Political Measures: The New Approaches After the Lausanne Meeting on Doping", *IEC Scientific Conference: Doping In Sport*, Barcelona, 17 & 18 June 1999, p1

⁹³ The policies of the AOC and ASC have both been revised over the years, with the AOC adopting amended policies in 1992, 1995 and 1996. The amended policies were revisions of the initial policy. During 1997 however, the AOC embarked upon a major review involving a consideration of the policies of the IFs, the decisions of the Court of Arbitration for Sport (CAS) and in consultation with the ASC and the AOC's Athletes Commission [The Athlete's Commission advises the AOC on all matters relating to the Olympic movement including; the IOC, the International Federations, the National Olympic Committees, the Olympic Museum, Olympic Solidarity, doping, eligibility, Olympic Village facilities, Olympic ceremonies, sport and politics. All members of the Commission must have been competitors in the Australian Team at either or both of the previous two summer or winter Olympic Games.] Reference was also had to international discussions that had been taking place throughout this period, including The 4th Permanent World Conference on Anti-Doping in Sport, London 1993. The AOC Executive adopted the policy on 20 November 1997, which became effective on 1 December 1997. On 20 March 1998 the AOC amended clause 8 to reflect the then IOC position on sanctions for class III drugs: alcohol, corticosteroids, cannabinoids, local anaesthetics and beta blockers. These amendments were retrospective to 1 December 1997. The AOC anti-doping policy was revised again on 9 March 2001, returning much of the responsibility for the anti-doping process to the NFs. [Copies of policies held by the author.] The ASC adopted its new policy in March 1998, and both policies agreed on all critical components, particularly in relation to the embracing of the concept of strict liability. The AOC's policy was subject to its first major test in 1988 when Alex Watson, modern pentathlon, tested positive at the Seoul Olympic Games for an excessive quantity of caffeine. Watson became the first member of an Australian Olympic Team to be disqualified from an Olympic Games for a drug-related offence, and he was subsequently suspended under the AOC policy [AOF (Australian Olympic Federation) as the AOC then was known.]: For more complete details see 'The Circumstances Surrounding the Positive Drug Test on Mr Alex Watson', A Report by the Senate Standing Committee on Environment, Recreation and the Arts, May 1992, Canberra.

⁹⁴ Note the ASC refers to NFs as 'National Sporting Organisations' or 'NSOs', as they are both Olympic and non-Olympic sports.

⁹⁵ Assistance in developing a stand-alone policy was provided through the use of template policies, and in 1999 and 2000 the AOC paid the NFs legal fees where assistance to draft the policies was requested. The 1997 AOC anti-doping policy for the first time referred all anti-doping cases of first instance and appeal to the Court of Arbitration for Sport (CAS), rather than the domestic National Sports Dispute Centre. By the end of 2000, the AOC had initiated a third of all drugs in sport cases before CAS. [Conversation with Mathieu Reeb, Acting Registrar, Court of Arbitration for Sport, Lausanne, 26 November 2000.]

CONI decision, that the IF rules prevail.⁹⁶ NFs that have adopted anti-doping policies in compliance with the AOC and ASC template allow for blood testing through the definition of "sample" which includes, "human biological fluid and expired air"⁹⁷ and through the acceptance of the procedures used by defined anti-doping agencies.⁹⁸ Athletes signing the AOC Team Agreements are also required to acknowledge that they have read the AOC and relevant NF Anti-Doping By-Laws, and that the IF Anti-Doping Policy and OMADC can be made available upon request.⁹⁹ The current AOC anti-doping by-law does not define 'sample' however, and states that "Doping" has the definition given by the OMADC.¹⁰⁰

ASDA and ASDTL

In 1988,¹⁰¹ amid considerable publicity, the Senate Standing Committee on Environment, Recreation and the Arts conducted an inquiry into the use by Australian athletes of performance enhancing drugs and the role to be played by Federal agencies.¹⁰² As a result, in 1990 the Federal Government enacted the *Australian Sports Drug Agency (ASDA) Act* to create ASDA as Australia's premier and independent drug testing and education organisation by 1991.¹⁰³ The actual analysis of samples is conducted by the Australian Government Analytical Laboratory (AGAL)

⁹⁶ *UCI v CONI* TAS 94/128, advisory opinion dated 5 Jan 1995. See also H E Judge K Mbaye, 'Juridical problems of the IOC Medical Commission', Lausanne, 1997. The NFs must strictly follow the relevant IF's policy on sanction periods, hearing body, definitions of prohibited substances and methods and any therapeutic approval procedures. [Except where the IF gives their express written authorisation to deviate from its anti-doping policy eg: Cycling Australia was permitted by the UCI to follow the AOC/ASC sanctions, rather than following the UCI sanctions domestically.] If the IF stipulates the hearing body for the NF to refer dispute matters to, then this requirement will over-ride the AOC and ASC preference for using the CAS. [Cf. *Robertson v Australian Professional Cycling Council Inc*, Waddell CJ, NSW Supreme Court found that the UCI regulations were only binding on the ACC in relation to international events, or where a foreign rider failed a drug test in Australia. Unreported 10 September 1992] The exception to this as included in the policies was 'during the Olympic Games' where the IOC and its Olympic Charter is the governing body. Accordingly, competitors in the Olympic Games are bound by the IOC Medical Code and, therefore, the substances and methods prohibited by the IOC. That there may be differences between the substances and methods prohibited by the IOC as against the relevant IF is clearly shown by the Rebagliati case on marijuana. R Rebagliati and IOC, CAS Arbitration NAG 2, 12 February 1998

⁹⁷ Eg: Cycling Australia Anti-Doping Policy dated 1 August 2001. Note Tennis Australia and Athletics Australia have not adopted approved policies. While the AOC Anti-Doping By-Law dated 9 March 2001 makes reference to the OMADC and WADA, none of the Australian anti-doping policies strictly comply with the OMADC, as a result of the internally inconsistent and loosely defined terms of the OMADC.

Commonwealth funding is also used for the Australian Institute of Sport (AIS) to provide sports medicine services and research, training facilities, coaches and scholarships in specified sports. Individual athletes offered scholarships to train in their sport at the AIS, must sign to acknowledge their acquiescence to the AIS anti-doping policy. Each of the States and Territories also have Institutes and Academies of Sport and athletes receiving scholarships under those programs are also subject to their anti-doping policies. The majority of these agreements allow for blood testing. Eg: South Australian Sports Institute (SASI) scholarship holders are also subject to the SASI Drug and Doping Policy dated June 1999. The definition of "sample" in this policy is; "human biological fluid or tissue" and thereby includes blood. (cl.12.1 para 64) [this definition also appeared in the July 1998 SASI policy].

⁹⁸ K Knowler, ASDA email to author dated 21 December 2001

⁹⁹ Copies of the 2000 and 2002 AOC Athlete Team Agreements held by the author.

¹⁰⁰ By-Law adopted 9 March 2001 cl.3.1

¹⁰¹ Note that the timing coincided with the positive test result by Canadian Ben Johnson and Australian Alex Watson at the Seoul Olympic Games. The First Permanent World Conference on Anti-Doping in Sport also took place in 1988 in Ottawa, Canada and the Elements of a Model for a National Anti-Doping Programme were drawn up.

¹⁰² First and Second Report of the Senate Standing Committee on Environment, Recreation and the Arts, *Drugs in Sport*, May 1990, Canberra (known as the "Black Report"). Commentators have noted that this report found evidence of systematic and extensive drug abuse: B Houlihan, "Anti-Doping Political Measures: The New Approaches After the Lausanne Meeting on Doping", *IEC Scientific Conference: Doping In Sport*, Barcelona, 17 & 18 June 1999, p1

¹⁰³ It has been said that Australia was the first government worldwide to; "enshrine such a body in government legislation". J Fitzgibbon, MP, "Second Reading Speech to the *Australian Sports Drug Agency Amendment Bill, 1998*", *House Hansard*, 18 February 1999, p3240. See S Richards, "The ASDA Act: A Legal Basis for Testing", *ANZSLA Newsletter*, 2(4), 1992, p1, 7-8. Additionally, drug testing is conducted on employees in various industries, including mining and policing. For a discussion on the power to order a member of the Australian Federal Police force to provide a urine sample, see *Anderson v Sullivan* (1997) 148 ALR 633. Police officers in NSW and Victoria are also required to provide samples for random drug and alcohol testing: "Police Face Drug Testing", *The Age*, 9 July 2001

at Pymble, which had already achieved IOC accreditation by 1990. In 1996, AGAL set up the Australian Sports Drug Testing Laboratory (ASDTL) specifically to conduct drugs in sport analysis.

In May 2000 ASDA's procedures were certified in accordance with the International Standard for Doping control and the international standard AS/NZS ISO 9002.¹⁰⁴ Within Australia, ASDA's role is to manage its financial and human resources, recruit and train sample collection personnel, select and notify athletes for doping controls, educate athletes through seminars, videos and the 'hotline' information service, prepare and conduct the sample collection sessions, handle the samples to pass onto ASDTL or other laboratory, and manage the results of the sample analysis.¹⁰⁵

Apart from 'user pay' testing, ASDA receives additional government funding to conduct what are known as 'government funded tests'. These tests have the advantage of being performed any time, anywhere in the world on an unannounced, no notice basis.¹⁰⁶ A 'sample' is defined by the *ASDA Act* to include; "any human biological fluid".¹⁰⁷ The blood testing procedures are set out in a leaflet entitled; "Blood Testing: An Athlete's Guide" are provided by ASDA as a supplement to the information pamphlet on the urine sample collection procedures described in "Drug Testing: An Athlete's Guide".¹⁰⁸ At the date of writing, no Australian athletes have had urine samples that confirmed a positive return on a blood sample.

Australia's Part in International Coordination

Australia and New Zealand, along with Norway, Canada, and the United Kingdom signed an Agreement Memorandum in 1992; "in order to harmonise their national policies in the fight against doping" through the exchange of information and experiences.¹⁰⁹ This became known as the International Anti-Doping Arrangement

¹⁰⁴ ASDA has also been audited in 2000 through the WADA Independent Observer process, and a DTT Probity Audit. [www.asda.org.au/new] ASDA and ASDTL have also been certified in accordance with ISO/PAS 18873 and ISO 17025 [www.asda.org.au/europe]

¹⁰⁵ See www.asda.org.au/asda For more information on the role of National Anti-Doping Agencies, see R Andersen, "Technical Questions in Doping Control", *Sprint Doping Seminar: Topical Problems of Doping Control Patterns and Analysis*, Madrid, 18-20 September 1997

¹⁰⁶ Jackie Kelly, Minister for Sport & Tourism, announced that in addition to the A\$1.5 million allocated to research on the development of an EPO test, the Federal Government was providing ASDA with A\$1 million to conduct blood tests for EPO should such a test become available. "\$1 M Federal Funding to Test for 'Undetectable' Sports Drug", Media Release, 00/147, CMR197 dated 9 May 2000, www.minister.industry.gov.au/kelly/releases/2000/may. This is in addition to the \$1.5m granted to researchers to develop the test in 1999: "Federal Government Cracks Down on EPO Cheats", Media Release, 99/376, dated 15 November 1999. See also the Commonwealth Government's "Tough on Drugs in Sport: Australia's Anti-Drugs in Sport Strategy 1999-2000 and beyond", 1999. Copy held by the author. Kerry Knowler, ASDA also pointed out in an email to the author on 21 December 2001 that; "ASDA conducts both UP and GF no notice tests. The legislative basis for the blood testing procedures is outlined under Scheme B of the Act."

¹⁰⁷ *ASDA Act* 1990 s.2(1). Definition amended by *ASDA Amendment Act* 1999 No 5, 1999 Schedule 1 Sect. 22. The Scheme B blood testing procedures were introduced through the *ASDA Amendment Regulations* 2000 (No 2) 2000 No 253

¹⁰⁸ Both available on ASDA's website: www.ausport.gov.au. If athletes have any concerns that the sample collection and chain of custody procedures were not followed in compliance with the ASDA regulations, they can make an application to be heard by the Commonwealth tribunal set up to hear disputes relating to decisions made by government bodies, the Administrative Appeals Tribunal (AAT).

¹⁰⁹ Council of Europe, "Legislation and Regulations on Doping in the Countries which Adhere to the Convention of the Council of Europe", *Sports Information Bulletin*, 52 (Dec 1999), p41. See also the abridged version in English of The Action Plan for Anti-Doping Work in Norway, published by the Ministry of Cultural Affairs, October 1999 www.odin.dep.no/kd/engelsk/publ. This had begun as the Trilateral Anti-Doping in Sport Agreement between Australia, Canada and the United Kingdom dated December 1990: J de Pencier, "Law & Athlete Drug Testing in Canada", *Marquette Sports Law Journal*, 1994, 4, p217-299 at p271

(IADA). The IADA; “facilitates the harmonization of high quality domestic programs of the participating governments and organizations. Through continuous improvement and by example of good practice, IADA intends to positively influence the international sporting community.”¹¹⁰

Australia (as a non-member state) agreed to become a signatory to the Council of Europe Anti-Doping Convention in October 1994, and ratified this commitment in December 1994. In reality, Australia was already fulfilling the requirements set out under the Convention.¹¹¹ The Council of Europe Monitoring Group reviews the degree of compliance by signatory nations periodically.¹¹² The Monitoring Group has just undertaken the review of Australia following the self-assessment report provided in May 2001, and in person visit in July 2001.¹¹³

ASDA is also a partner in the Drug Free Sports Consortium signed in November 1999 to work co-operatively in the fight against anti-doping. The Consortium, consisting of ASDA, the Canadian Centre for Ethics in Sport (CCES) and the Norwegian Olympic Committee and Confederation of Sports (NIF), has successfully tendered to provide drug testing services on behalf of WADA. Under this agreement with WADA, ASDA is the Test Co-ordination Centre for the WADA tests worldwide. In addition, ASDA is responsible for the planning of tests in the sports on the Summer Olympic Games program. ASDA has also signed a raft of other bilateral agreements, and participated in various working groups and conferences aiming to increase the cooperative anti-doping effort world-wide.¹¹⁴

National Framework in Australia

In 1995 ASDA instigated a national dialogue in the form of a working party between the ASC, and the Commonwealth, States and Territory governments on anti-doping. Called the 'National Drugs in Sport Framework'¹¹⁵ (NDISF), it is intended to ensure that; “athletes around the country are treated in a consistent

¹¹⁰ IADA was later joined by Denmark, Finland, Netherlands and Sweden. Quotation from the joint WADA/IADA Doping Control in Sports 'Invitation to an Awareness Symposium' dated 18 September 2001 hosted by the South African Institute for Drug Free Sports 7-9 November 2001.

¹¹¹ The requirements include, legislating with a view to reducing doping in sport, coordinating the domestic policies and actions of government departments, restricting the availability and use of banned doping agents and methods, supporting laboratory programs for research and development, co-operating with sporting organisations; and enhancing international co-operation. [D Russell, Sport & Anti-Doping Team, Sport & Tourism Division, Commonwealth Department of Industry, Science & Resources]. The AOC has also assisted the IOC, and now WADA, in the pooling of knowledge on anti-doping by contributing to the various working parties, and sending delegates to events such as the World Conference on Doping held in Lausanne on 2-4 February 1999. Copy of the AOC submission held by the author.

¹¹² See Council of Europe, “Legislation and Regulations on Doping in the Countries which Adhere to the Convention of the Council of Europe”, *Sports Information Bulletin*, 52 (Dec 1999), p41-43 (Australia) and "Report from Australia to the Monitoring Group Council of Europe Anti-Doping Convention on Anti-Doping Initiatives from the 2000 Sydney Olympic Games", 9 November 2001, Strasbourg, www.asda.org.au/europe

¹¹³ The author attended the Monitoring Group's meeting with the AOC on 13 July 2001. See Committee for the Development of Sport (CDDS), Anti-Doping Convention (T-DO), "Compliance with Commitments Project: Respect by Australia of the Anti-Doping Convention", Reports by Australia and Examining Group, T-DO(2001) 16 Final, 2 October 2001, Strasbourg

¹¹⁴ Most recently, the bilateral agreement between ASDA and the United States Anti-Doping Agency (USADA). USADA Media Release dated 1 October 2001. See also the ASDA booklet, "Snapshot: A Preview of the Australian Sports Drug Agency - We Support True Champions", Commonwealth of Australia, 1999 p7. Eg: Oslo Anti-Doping in Sport Working Group, and the International Inter-Governmental Consultative Group in Anti-Doping in Sport resulted in a declaration dated 16 November 2000: www.odin.dep.no/kd/norsk

¹¹⁵ Produced by the National Drugs in Sport Working Party in consultation with sport and agreed to by the Sport & Recreation Ministers Council, 1995

manner”,¹¹⁶ with special consideration for the rights of children.¹¹⁷ The stated goal is; "To achieve an internationally recognised drug-free environment in Australian sport that protects the well-being and rights of the individual and the ethical values of sport."¹¹⁸

The legislative framework for the States and Territories to enact complementary legislation is provided by the 1999 amendment to the *ASDA Act*.¹¹⁹ The need for complementary legislation stems from the limited Commonwealth legislative power, which is reflected in the *ASDA Act*'s focus on; “mainly those athletes who represent Australia or participate at an international level, who receive Commonwealth financial assistance or who fall under the international testing arrangements.”¹²⁰ The Federal government's role then is to ensure that the complementary legislation is enacted and that the States and Territories engage in a testing regime that involves state level athletes.¹²¹ This has been partially successful, with the Australian Capital Territory, New South Wales, South Australia, and Victoria having enacted complementary legislation to date.¹²²

¹¹⁶ Letter from Bill Stefaniak MLA, the Minister for Sport and Recreation, Australian Capital Territory to the author dated 21 August 2001. Mr Stefaniak was replaced by Mr Ted Quinlan following the ACT Government election on 20 October 2001. (Reported in *The Sports Vine*, B4Bsport, Australia, V3, Issue 44, 15 November 2001, p1)

¹¹⁷ 'National Drugs in Sport Framework', National Drugs in Sport Working Party, 1995 p1

¹¹⁸ 'National Drugs in Sport Framework', National Drugs in Sport Working Party, 1995 p2-3. With so much time being spent focused on the lead up to the Olympic Games in 2000, the working party has not met for some time, and no plans had been made for it to reconvene.

¹¹⁹ The *ASDA Amendment Bill* 1998 took effect from 1 July 1999. See also *ASDA "Drugs in Sport Update"*, 3(1), May 1999, p4

¹²⁰ H Opie, “Performance Enhancing Drugs in Sport”, *The Law Society of South Australia Bulletin*, September 1996, p21 at p22

¹²¹ See J Fitzgibbon, MP, "Second Reading Speech to the *Australian Sports Drug Agency Amendment Bill, 1998*", *House Hansard*, 18 February 1999, p3240

¹²² *Australian Capital Territory (ACT)*: The ACT Legislative Assembly unanimously passed the *ACT Drugs in Sport Act, 1999* in December 1999, consistent with the NDISF. The then ACT Minister for Sport and Recreation, Bill Stefaniak MLA, advised that the ACT was the first State or Territory to; “implement a locally-based anti-doping program with legislation fully complementary to the *Commonwealth Australian Sports Drug Agency Act, 1990*.” [Letter from Bill Stefaniak MLA, the Minister for Sport and Recreation to the author dated 21 August 2001]. The Act serves to confer upon ASDA the same functions and powers as it has under its Act to “ACT competitors”. [*ACT Drugs in Sport Act, 1999* s.6(1) and s.3] The same definitions are used in the ACT Act, as are used in the Commonwealth Act, so that the term “sample” also includes blood samples (s.4). Reported by “ACT Plans Drug Tests for Reps & Fund Recipients”, *The Canberra Times*, 22 October 1999, p25

New South Wales (NSW): *Sports Drug Testing Act, 1995* (NSW). See also second reading speech 20 September 1995. Conversations with John Kean and David Woods, NSW Dept of State and Regional Development 8 & 9 August 2001. Also H Opie, “State Drug testing Legislation – New South Wales”, *Australian and New Zealand Sports Law Association (ANZSLA) Newsletter*, 5(4), 1995, p3

Queensland (QLD): Cathy Leisfield, Queensland ASDA State Coordinator advised that blood tests are not currently conducted under the Queensland State testing program. [Email to author dated 7 November 2001] Troy Fraser, the Project Officer coordinating the State testing program in Queensland (Queensland Government Drug Testing Program (QGDTDP)), indicated that the Queensland Government (QG) has provided funding for drug testing state level athletes competing at an open level for the last 3 years. “The State Drug Testing Legislation in Queensland has yet to be passed by Parliament, therefore, some Minimum Operating Standards (MOS) were established in order to conduct a State drug testing program. Sports interested in implementing drug testing under the QGUPDTP are required to meet these MOS. The MOS for the QGDTDP include: (a) Ensuring a doping policy has been adopted (usually adopted from their NSO); (b) Positive test result management procedures are in place (again, usually handled by their NSO as they already have procedures and infrastructure in place to deal with a positive test result); (c) Provide education to athletes and other members on athletes' rights and responsibilities and drug testing procedures; and (d) Athletes (or guardians if under 18) must sign a consent form. A test distribution plan is devised based on an incentive scheme matrix. This matrix classifies the sport into a "high", "medium" or "low" priority in regards to the profile of the sport (Olympic, media coverage etc), chances of athlete gain (performance enhance or financial) from using prohibited substances or methods and the history of drug use in the sport. The QG funding is used to offer sports Government Funded (GF) Tests upon purchasing "User Pays" (UP) tests - that is the State sporting organisation buys x number of tests and the QG provides them with GF tests as an incentive. The ratio of GF tests depends on the sports ranking (eg Out of Competition (OOC) tests - a high priority sport offered a ratio of 3GF tests to 1 UP test; medium priority sports offered a ratio of 2GF tests to 1UP test; and low priority sports offered 1GF test to 1 UP test). The QG and ASDA enter into an agreement, were the QG contract ASDA to implement the testing. The QG enters into an Agreement with the sports. The QG invoices the sport for the UP tests and pays ASDA for the UP and GF tests. ASDA liaise with sports regarding event organisation to conduct drug testing at events if they so purchase event tests, and/or to develop an OOC athlete register for sports who purchase OOC tests. The OOC register consists of all athletes (open level and usually A-grade were applicable) who should be subject to testing. From this list, athletes who are already on the National Register or Queensland Academy of Sport Register are removed (as they are already subject to drug testing under those programs). The sports and QG receive progress reports each quarter”. Troy Fraser A/Qld Sports Service Officer, ASDA email to the author dated 29 Nov 2001

Each of the States and Territories in Australia also have almost identically worded provisions allowing for adults and in some cases (parents on behalf of) children to consent to the removal of blood for (relevantly); "medical or scientific purposes". Children (as defined) must also agree to the taking of the blood sample.¹²³ Anti-doping policies therefore will need to take this legislation into account, particularly when involving minors.

While there is also no general right to privacy in Australia, the common law has vigilantly defended the individual's right to privacy.¹²⁴ Australia is a signatory to the *International Covenant of Civil and Political Rights*, and has recently extended the *Privacy Act* to private sector organisations, which will give athletes added rights to access personal information held on them.¹²⁵

Cook Islands

The Cook Islands consists of fifteen islands, scattered over more than two million square kilometres of the southwest Pacific Ocean.¹²⁶ It became a self-governing parliamentary democracy in free association with New Zealand on 4 August 1965. It has the right at any time to move to full independence by unilateral action. The Cook Islands is fully responsible for its internal affairs while New Zealand retains responsibility for the external affairs, in

South Australia (SA): The *Sports Drug Testing Act 2000* (SA) was proclaimed in November 2000 to; "enable the South Australian Government to take an active role in a comprehensive, consistent and coordinated national approach towards the complete eradication of banned performance enhancing drugs." [C Bildstein, Chief of Staff to the Hon Iain Evans MP, South Australian Minister for Recreation, Sport and Racing in a letter to the author dated 17 September 2001] It is intended that this Act should allow ASDA to apply its legislation to "State competitors" (defined as State level representatives and scholarship holders. Therefore, as set out under s5 of the SA Act, ASDA is permitted to collect and test blood samples from State competitors where it is in accordance with "any relevant drug testing scheme". [In the Second Reading Speech for the *Sports Drug Testing Bill 2000* before the South Australian House of Assembly, on 6 April 2000, The Hon I F Evans (Minister for Recreation, Sport and Racing) stated that; "It should be noted that, under section 9A of the Commonwealth Act, ASDA cannot perform functions or exercise powers that have been conferred by a State Act unless the relevant Commonwealth Minister has given ASDA written approval to do so." (Hansard p837) In accordance with the NDISF, it is assumed that the Commonwealth Minister has provided this approval.] Based on the NDISF, the South Australian Government has also published a 'Drugs in Sport Policy' that; "must be adhered to by all SA Government departments and agencies providing funds and/or support to state sporting organisations." [South Australian Government Policy on 'Drugs in Sport', Position 7, November 2000] Also, conversation with Geoff Pearce, Program Manager, SASI on 13 August 2001. See Second Reading Speeches 2, 4 and 23 May 2000

Victoria (Vic): *Sports Drug Testing Act*, 1995 (Vic). See H Opie, "State Drug testing Legislation – Victoria", *Australian and New Zealand Sports Law Association (ANZSLA) Newsletter*, 5(2), 1995, p4

Western Australia (WA): WA's *Sports Drug Testing Bill 2001*, in terms complementary to the *ASDA Act*, is currently in the Lower House of Parliament and is expected to be proclaimed as legislation in 2002. [As advised by A Carpenter MLA, Minister for Sport & Recreation, WA in a letter to the author dated 21 August 2001 and confirmed by C Bildstein, Chief of Staff to the Hon Iain Evans MP, South Australian Minister for Recreation, Sport and Racing in a letter to the author dated 17 September 2001]

¹²³ **ACT:** *Transplantation & Anatomy Act* (ACT) 1978, s.20 (adults - 16 years and older) s.21 (children - under 16 years) [Amended by *Transplantation & Anatomy Amendment Act 2000* No 45 of 2000], s.22 (Consent sufficient authority at certain places), and s.24 (Revocation of Consent); **NSW:** *Human Tissues Act* (NSW) 1983, s.19 (adult- 18 years and over), s.20 (child), and s.21B (uses) and regulations; **NT:** *Human Tissue Transplantation Act* (NT) 1999, s.14 (adults - 18 years and over), s.15 (Effect of consent), and s.16 (Revocation of Consent); **QLD:** *Transplantation & Anatomy Act* (Qld) 1979, s.17 (adults), s.18 (children), s.19 (Consent sufficient authority), and s.21 (Revocation); **SA:** *Transplantation & Anatomy Act* (SA) 1983, s.18 (adults), s.19 (children), and s.20 (Consent sufficient authority); **TAS:** *Human Tissue Act* (Tas) 1985, s.18 (adults), s.19 (children), s.20 (Consent to be sufficient authority) and s.22 (Revocation); **VIC:** *Health Act* (Vic) 1958, s.132 (Blood Donations); and **WA:** *Human Tissue and Transplant Act* (WA) 1982, s.18 (adults), s.19 (children), and s.20 (Consent to be sufficient authority).

¹²⁴ See T Buti, "AOC Athlete's Agreement for Sydney 2000: The Implications for the Athletes", *UNSW Law Journal* 22(3), p746-762 at 759, quoting *Carrol v Mijovich* (1991) 25 NSWLR 441 at 446

¹²⁵ Sports organisations, as private sector organisations, will have to incorporate the amendments to the *Privacy Act*, 1988 (Cth) that came into operation on 21 December 2001.

¹²⁶ T Elikana and T Herman, "The HIV/AIDS Situation in the Cook Islands", Chapter 29 in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000, p440

consultation with the Cook Islands. Financially, the Cook Islands is overwhelmingly reliant on foreign aid, particularly from New Zealand.¹²⁷

The legal system is based on New Zealand law and English common law. The Chief of State is the British Queen, Elizabeth II. The head of government is a local Prime Minister elected through democratic elections. The Cook Islands has a unicameral parliament and the House of Arikis (Chiefs) advises on traditional matters, but has no legislative powers. As at July 2000 there were an estimated 20,407 Cook Islanders, the majority of whom are ethnically Polynesian. Most people also belong to the Cook Islands Christian Church. The official language is English but Maori is also spoken.¹²⁸

Robert Graham, Sports Development Officer, Cook Islands Sports & Olympic Association (CISOC), advised that as a developing country; "We are still [at] the planning stages of putting a Doping Paper together for our athletes and NOC. At the moment we are using what the Fijians have in place, also getting information from the WADA on Doping Control, and what new drugs are out there that are used."¹²⁹ David Lobb, General Secretary, CISOC also added that he did not believe that Cook Islander culture would prohibit the bringing in of compulsory blood testing for athletes.¹³⁰

An analysis on the current HIV/AIDS situation in the Cook Islands noted that; "There have been no reports of injecting drug use in the country",¹³¹ which may also indicate that the likelihood of elite sport drug use in the Cook Islands is also low. The lifestyles and traditional values of the nations young people are reported to have undergone rapid changes in recent years, partly through increased international travel but also due to the close contact with New Zealand and Australia.¹³² This may then mean that the use of sports drugs is a trend the CISOA should pre-empt.

Medical services in the Cook Islands are good in comparison to other Oceania countries.¹³³ The Ministry of Health is responsible for administering the *Notifiable Diseases Act*, 1953, and the *Narcotics Act*, 1965, either of which

¹²⁷ World Fact Book 2000, www.bartleby.com. See the United Nations Development Programme (UNDP) national poverty studies in the Cook Islands. www.undp.org.fj Note the Cook Islands are described legally as a "dependent area" of New Zealand. See www.photius.com

¹²⁸ World Fact Book 2000, www.bartleby.com

¹²⁹ Email to author from R Graham, Sports Development Officer, Cook Islands Sports & Olympic Association dated 1 November 2001

¹³⁰ No cultural issues around blood and blood products were raised in the summary by the Rarotonga Sergeant of Police and Health Worker either in their chapter: T Elikana and T Herman, "The HIV/AIDS Situation in the Cook Islands", Chapter 29 in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000, p440-443

¹³¹ T Elikana and T Herman, "The HIV/AIDS Situation in the Cook Islands", Chapter 29 in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000, p442

¹³² T Elikana and T Herman, "The HIV/AIDS Situation in the Cook Islands", Chapter 29 in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000, p441

¹³³ The Regional Director's Report, *The Work of WHO in the Western Pacific Region Archives*, Chapter 3, "Health Services Development", www.wpro.who.int/public/policy states that; "Health legislation has become a more important aspect in the development of initiatives in a

could be amended to deal with anti-doping in sport. Apart from that legislation, it appears that there is no specific legislation that would impact on blood testing in doping controls. For example, while certain enactments of the Parliament of New Zealand extend to the Cook Islands as part of the law of the Cook Islands, at no time does the *New Zealand Sports Drug Agency Act, 1994* appear to have been adopted by the Cook Islands.

Federated States of Micronesia (FSM)

Micronesia is spread over 3 million miles of the Pacific and includes over 2000 islands. Micronesia means "small islands". The distance from one end of Micronesia to the other is 2,040 nautical miles.¹³⁴ The Federated States of Micronesia (FSM) is composed of four states, named after their main islands; Pohnpei, Kosrae, Chuuk and Yap. The federal capital is located at Palikir, on the island of Pohnpei and close to its largest city, Kolonia.¹³⁵

As at July 2000 there were 133,144 Micronesians made up of nine ethnic Micronesian and Polynesian groups, whose official and common language is English. Ninety-seven percent of the population ascribes to either the roman catholic or protestant religions. It has a developing economy primarily involved in subsistence agriculture, fishing and tourism. FSM is therefore financially reliant on the US and is likely to be for some time given its geographical isolation and poorly developed infrastructure.¹³⁶

The FSM adopted a Constitution based on the United States of America model on 10 May 1979. However, FSM only became independent from the United Nations trust under US administration on signing the Compact of Free Association with the US on 3 November 1986.¹³⁷ The FSM Constitution contains a Declaration of Rights similar to the US Bill of Rights, which upholds basic standards of human rights consistent with international norms. It also contains a provision protecting traditional rights.¹³⁸ The legal system in FSM is therefore based on adapted Trust Territory laws, Acts of the Legislature, municipal, common and customary laws. The President, who is elected by the unicameral Congress, is both Chief of State and Head of Government.

Paul McIlrath, Secretary of Justice in the FSM Department of Justice, stated that he did not believe that there was any religious, cultural or legal impediment to the blood testing of FSM elite athletes, and that it was unlikely that an

number of countries. For example, a review of the structure and functions of the health department in Cook Islands was conducted to enable more efficient use of financial and human resources."

¹³⁴ See www.micronesia.com

¹³⁵ FSM, US Consular Information Sheet, 14 September 1999, www.travel.state.gov/micronesia

¹³⁶ World Fact Book 2000, www.bartleby.com

¹³⁷ See G H Flanz, Editor, "Constitutions of the Countries of the World", Chapter by N Meller, "Federated States of Micronesia", Oceania Publications Inc, Dobbs Ferry NY. (Note: Dr Meller died in 2000)

¹³⁸ FSM Visitors Board, Department of Economic Affairs, FSM National Government, www.visit-fsm.org

athlete could rely on the terms of the Constitution to seek an exemption. Mr McIlrath further stated that urine drug testing is routinely carried out on FSM police and other state officers, without an exemption ever being sought by these employees.¹³⁹

Health care facilities in the FSM consist of hospitals on each of the four major islands and a few scattered clinics. These facilities sometimes lack basic supplies and medicines, and the quality of health care is variable.¹⁴⁰ Blood testing for doping control therefore is not carried out in FSM because the hospitals are understaffed and lack the necessary technology, rather than because of any cultural or religious reasons.¹⁴¹ Dr Pretrich, Secretary, Department of Health, Education and Social Services indicated that FSM does not have any regulations specifying how blood tests are to be conducted.¹⁴²

The FSM National Olympic Committee (FSMNOC) does not have an anti-doping policy, and provides no anti-doping education to its athletes. Given that FSM is made up of hundreds of small remote islands, communication is extremely difficult. Jim Tobin, FSMNOC Secretary General confirmed that anti-doping was not a major issue in FSM because; “We only have one elite athlete in the country - a male weightlifter”. Mr Tobin also advised that FSMNOC had not had to deal with a positive test result before, because on the only previous occasion the FSM national team was tested, at the 1999 South Pacific Games at Guam, they all returned negative results.¹⁴³

Republic of the Fiji Islands (Fiji)

Fiji was declared independent in 1970 after almost a century of British occupation.¹⁴⁴ Since independence, Fiji has had a President as Chief of State, and the Head of Government in the Prime Minister. The Great Council of Chiefs appoints the President.¹⁴⁵ The elected Prime Minister presides over a bicameral parliament consisting of the Senate and the House of Representatives. The legal system is based on the British common law system.¹⁴⁶ English is the

¹³⁹ Telephone conversation with P McIlrath, Secretary of Justice, FSM Department of Justice on 29 November 2001.

¹⁴⁰ FSM, USA Consular Information Sheet, <http://travel.state.gov/micronesia.html>, 14 September, 1999

¹⁴¹ Email to author from J Tobin, FSMNOC Secretary General dated 15 November 2001. P McIlrath, Secretary of Justice in the FSM Department of Justice, in a telephone conversation on 29 November 2001, also added that while there was the power to blood test, this power had never, to his knowledge, been used

¹⁴² Telephone conversation between the author and the secretary to the Hon Dr Eliuel K Pretrick on 25 July 2001. Also confirmed by P McIlrath, Secretary of Justice, FSM Department of Justice in a telephone conversation on 29 November 2001 and J Tobin, FSMNOC Secretary General in an email to the author on 15 November 2001 (Note: Dr Pretrich is also the President of the FSMNOC)

¹⁴³ J Tobin, FSMNOC Secretary General in an email to the author dated 15 November 2001

¹⁴⁴ The World Factbook, *Legal System*, 2000, www.bartleby.com

¹⁴⁵ M Head, "A Victory for Democracy? An Alternative Assessment of *Republic of Fiji v Prasad*", (2001) 2(2) *Melbourne Journal of International Law* p535 - 549 at p540. This provision appears under the 1997 Constitution

¹⁴⁶ The World Factbook, *Legal System*, 2000, www.bartleby.com

official language while Fijian and Hindustani is also spoken.¹⁴⁷ Democracy was then interrupted by two military coups in 1987. The military coup leader, Rabuka formerly declared Fiji a republic on 6 October 1987.

The Constitution was then amended ten years later (the 1997 Constitution) to return Indo-Fijians the rights that had been denied them since the 1987 coup.¹⁴⁸ Following the democratic election of an Indo-Fijian Prime Minister, Mahendra Chaudry in May 1999, George Speight's group of soldiers from Fiji's elite counter-revolutionary warfare squadron seized Parliament on 20 May 2000.¹⁴⁹ Ten days later Commodore Frank Bainimarama, commander of the Fijian army, declared martial law. On the strength of the populist ethnic Fijian movement, Speight stated that the 1997 Constitution should be substituted by one giving greater power to ethnic Fijians in the civil service and the Prime Minister replaced by an ethnic Fijian.¹⁵⁰ As at July 2000, there were 832,494 Fijians made up of ethnic Fijians (predominately ethnic Melanesians with a Polynesian admixture), Indian, European, other Pacific Islanders, and other ethnic groups.¹⁵¹

Fiji is economically dependent on foreign aid, particularly as the tourist trade has been decimated by the military coups of the recent past.¹⁵² The Fijian economy is expected to improve given the success of the United Nations observed elections held in September 2001, and Parliament was reconvened with its newly sworn in government and elected members on 2 October 2001. While there remains some dispute within Fiji on the constitutionality of the new government and its Constitution, countries, such as Australia, have lifted the bilateral sanctions imposed as a result of the coup in 2000.¹⁵³ This means increased development aid, resumption of the Defence Cooperation Program and the lifting of restrictions on sporting teams from Fiji participating in events to be held in Australia.¹⁵⁴

Although Fiji has a Bill of Rights and the Government has ratified a number of human rights conventions, Zulfikar Sahukhan, Legal Officer for The Solicitor General of Fiji, advised, after consulting with the legal officers from the

¹⁴⁷ The World Factbook, *Legal System*, 2000, www.bartleby.com

¹⁴⁸ See C G Powles, "Republic of the Fiji Islands", in G H Flanz, Editor, "Constitutions of the Countries of the World", Volume VI, Booklets 1 & 2, Release 98-8, Issued Dec 1998, Oceania Publications Inc, Dobbs Ferry NY. The Constitution of the Republic of the Fiji Islands Act No 13 of 1997, 25 July 1997 and the Constitution (Amendment) Act, 1998 No 5 of 1998, 28 April 1998 (1997 Constitution) both entered into force on 27 July 1998

¹⁴⁹ For more information see the Amnesty International Report 2001 "Fiji" (for the period Jan-Dec 2000), www.amnesty.org

¹⁵⁰ See for example, articles such as; J Fraenkl, "Isle of Terror", *The Guardian*, 30 May 2000 and M Tran and J Griffiths, "Fiji Coup", *Guardian Unlimited*, 13 July 2001, www.guardian.co.uk

¹⁵¹ The World Factbook, *Legal System*, 2000, www.bartleby.com. Ethnic Fijians make up 51% of the population, and Fijian Indians only 44% since the 1987 coup: M Tran and J Griffiths, "Fiji Coup", *Guardian Unlimited*, 13 July 2001, www.guardian.co.uk

¹⁵² "About a quarter of Fiji's households are classified as poor in 1991, but there are many more which are in constant danger of sliding into poverty or destitution because their incomes are almost as small as in poor households. Illness, old age or accident can tip them into dire poverty." See *Fiji Poverty Report*, United Nations Development Programme (UNDP), 1997, www.undp.org.fj/poverty/poverty_study and www.undp.org.fj/success/fiji_poverty_study

¹⁵³ *Republic of Fiji v Prasad*, unreported 1 March 2000 found that the 1997 Constitution had not been abrogated by the 2000 declaration of martial law. See the discussion in articles by G Williams, '*Republic of Fiji v Prasad: Introduction*' (2001) 2(1) *Melbourne Journal of International Law* 144 and M Head, "A Victory for Democracy? An Alternative Assessment of *Republic of Fiji v Prasad*", (2001) 2(2) *Melbourne Journal of International Law* p535 - 549

Ministry of Health and the office of the Director of Public Prosecutions, that Fiji; "does not have any legislation in reference to blood testing in sport."¹⁵⁵ Basic medical services and training in Fiji however are not yet at a level where luxuries such as sport medicine anti-doping can be routinely included.¹⁵⁶

Vidhya Lakhan, Secretary-General, Fijian Association of Sports and National Olympic Committee (FASANOC) requested that it be noted that while FASANOC does not have an anti-doping policy; "FASANOC itself, as enshrined in its Charter undertakes to respect the provisions of the Olympic Charter and the Olympic Movement Anti-Doping Code and to abide by the decisions of the IOC."¹⁵⁷ Members of the Fijian representative teams are required to sign indemnity agreements before being permitted to compete in events such as; Olympic, Paralympic, South Pacific and Commonwealth Games.¹⁵⁸ The FASANOC Agreement and Indemnity For Membership signed by Fijian athletes competing at the 2000 Olympic and Paralympic Games required athletes to agree to; "undergo any . . . doping tests if required"¹⁵⁹ and "undertake and agree . . . to neither take nor use drugs or stimulants, nor participate in any other practices prohibited by the IOC, IPC or FASANOC."¹⁶⁰ Athletes could then be taken to have agreed to submit to providing blood samples for the period of that agreement,¹⁶¹ but not on an ongoing basis. Fijian athletes previously have been urine tested in competition, and the FASANOC medical commission stated that they had not been made aware of any objections being raised to providing blood or urine samples for doping control.¹⁶²

Territory of Guam (Guam)

Guam is an organised, unincorporated territory of the United States of America with policy relations between Guam and the US under the jurisdiction of the Office of Insular Affairs, US Department of the Interior. The Constitution is the Organic Act of 1 August 1950 and the legal system is modeled on the United States of America as US Federal

¹⁵⁴ A Downer, Australian Minister of Foreign Affairs, "Sanctions Against Fiji are Lifted", Media Release, Department of Foreign Affairs and Trade, FA153, 5 October 2001

¹⁵⁵ Email to author dated 10 September 2001

¹⁵⁶ The Regional Director's Report, *The Work of WHO in the Western Pacific Region Archives*, Chapter 3, "Health Services Development", www.wpro.who.int/public/policy refers to the support WHO has been providing Fiji to improve its medical facilities in the areas of; the development of an improved health management information system, quality assessment of the national laboratory, the training of health workers involved in primary health care and distance education programs.

¹⁵⁷ Email from L Fisher, Sports Administration Officer, FASANOC to the author.

¹⁵⁸ Email from L Fisher, Sports Administration Officer, FASANOC dated 6 September 2001 to Z Sahukhan, Legal Officer for The Solicitor General of Fiji and forwarded to the author via email dated 10 September 2001.

¹⁵⁹ paragraph 8

¹⁶⁰ Paragraph 3(h). This Fiji Association of Sports and National Olympic Committee Agreement and Indemnity Agreement is also used for the representative team competing in the Commonwealth and South Pacific Games and amended accordingly. Email from L Fisher, Sports Administration Officer, FASANOC dated 6 September 2001 to Z Sahukhan, Legal Officer for The Solicitor General of Fiji and forwarded to the author via email dated 10 September 2001.

¹⁶¹ The term of the Agreement is couched in the following terms: "I agree that his [sic] Agreement shall commence at the time of departure from Fiji, or joining the Team and shall remain in force until my return to Fiji after the Games or official release from the Team." (paragraph 2). Note that FASANOC does not appear to prohibit any doping practices, although it is referred to in paragraph 3(h).

¹⁶² Dr Husnoor Ali, FASANOC Medical Commission stated in an email to the author on 19 November 2001 that; "There is no cultural or religious reason(s) for athletes not giving blood for testing, that we know of. At present all drug testing is done on urine samples." Note that this does not exclude the possibility of a valid cultural or religious objection being raised. Fiji's traditional chiefs for example; "wield enormous

Laws apply. The Chief of State then is the US President, and the Head of Government is a local Governor presiding over a unicameral legislature. There are 154,623 Guamanians as at July 2000 mostly made up of Chamorro people, but also Philipinos, Chinese, Japanese, Korean and other ethnic groups. The main languages spoken are English, Chamorro and Japanese.¹⁶³ The Speaker of the Guam Legislature, Antonio Unpingco, advised that; "Guam has no local laws prohibiting blood testing for doping control".¹⁶⁴

The Guam National Olympic Committee (GNOC) has a medical committee headed by Dr Sagisi. Anita Blas, Administrator for the Sport Division of the GNOC, stated that there is no mechanism in place for drug testing via blood samples.¹⁶⁵ The GNOC does not appear to have its own anti-doping policy but claims that it follows the IOC regulations and requires random urine testing prior to any major sporting events.¹⁶⁶ Ms Blas also advised that, prior to being chosen for a representative team, an athlete must undergo a physical exam from a physician. If there is a "suspicion of doping" the athlete is tested, as is the entire team they are vying for. Where the athlete has signed a team agreement, the GNOC has procedure in place to ban any athletes that test positive.¹⁶⁷

For example, the Eligibility Code of Conduct & Waiver provided to athletes to represent the GNOC at the South Pacific Mini Games (SPMG) in Norfolk Island, Australia, 2001 requires that athletes acknowledge by their signature that they; "have read and understand the above terms and conditions and agree to be bound by them."¹⁶⁸ One of the terms of the agreement is that there; "will be absolutely no drinking, use of illegal drugs or banned substances" and athletes; "agree to submit to drug testing as required in international competition to be conducted by GNOC and/or MSPGOC and as required by the international federation governing [their] sport."¹⁶⁹ The agreement requires that the athlete abide by; "all rules, regulations, and policies established by the Guam National Olympic Committee (GNOC) and the 2001 Mini South Pacific Games Organizing Committee (MSPGOC)."¹⁷⁰ The term of the agreement would seem to be limited from the date of signature and until the athlete returns home from the SPMG, and therefore would not encompass out of competition testing.

influence", and may have a view on blood testing that we are not aware of. Eg: M Tran and J Griffiths, "Fiji Coup", *Guardian Unlimited*, 13 July 2001, www.guardian.co.uk.

¹⁶³ The World Factbook, *Legal System*, 2000, www.bartleby.com

¹⁶⁴ Email to the author from A R Unpingco, Speaker, Guam Legislature dated 9 November 2001

¹⁶⁵ Advice provided via email to author from Kenneth Aguilar, Graduate Research Department, University of Guam dated 6 August 2001

¹⁶⁶ Eg: prior to the South Pacific Games, South Pacific Mini Games and all medal winners are also tested. Advice provided via email to the author from Kenneth Aguilar, Graduate Research Department, University of Guam dated 6 August 2001. Confirmed in an email to the author from A R Unpingco, Speaker, Guam Legislature dated 9 November 2001.

¹⁶⁷ Email from B Minikin, Oceania National Olympic Committee to the author dated 1 November 2001

¹⁶⁸ Form kindly provided by Kenneth Aguilar, Guam triathlete and competitor in the SPMG

¹⁶⁹ There is no specific mention in the Agreement of whether blood testing is to be conducted at the SPMG, and testing here is specifically referred to as 'in competition'.

¹⁷⁰ These rules are not provided to the athlete at the time of signature.

Republic of Nauru (Nauru)

Nauru, a small single-island nation in the South Pacific, is about 25 miles south of the equator and totals twenty-one square kilometres.¹⁷¹ Approximately 11,845 Nauruans were estimated to live in Nauru in July 2000, made up of ethnic Nauruans, other Pacific Islanders, Chinese and European ethnic groups. The official language is Nauruan although English is widely understood, spoken and used for most government and commercial purposes.¹⁷²

Nauru is a constitutional republic with a parliamentary system of government based in Yaren, the capital.¹⁷³ Nauru's Constitution is dated 29 January 1968 and independence from Australia was declared on 31 January 1968. The President is both the Chief of State and Head of Government and leads the unicameral parliament. The legal system features acts of the Nauru Parliament and British common law.¹⁷⁴

The economy in Nauru was based on the export of phosphates, and now Nauru is described to be in; "an advanced stage of economic collapse", with "a century of mining [having left] Nauru's ecology in tatters and its inland as harsh as a desert."¹⁷⁵ Supplemental basic services such as power, water, sewerage, housing, telephones and vehicles have been provided by Australia since September 2001 to enable Nauru to accommodate refugees attempting to enter Australia illegally.¹⁷⁶

Health care facilities in Nauru are said to be adequate for routine medical problems.¹⁷⁷ However, serious medical conditions requiring hospitalisation and/or medical evacuation usually involve patients being cared for in Australia.¹⁷⁸

The Nauru Olympic Committee's view is that as an affiliated body of the IOC, they; "therefore follow the IOC Anti-Doping Policy" (IOC Medical Code and now OMADC) and do not require an anti-doping policy of their own. The Nauru Olympic Committee's Secretary-General, Lawrence Stephen, also advised that there were no local laws governing the blood testing of individuals, but noted that; "given our very strong ties with our culture and its strict

¹⁷¹ Nauru, US Consular Information Sheet, 11 April 2000, www.travel.state.gov/nauru

¹⁷² The World Factbook, *Legal System*, 2000, www.bartleby.com

¹⁷³ Nauru, US Consular Information Sheet, 11 April 2000, www.travel.state.gov/nauru

¹⁷⁴ The World Factbook, *Legal System*, 2000, www.bartleby.com

¹⁷⁵ D Ballantine, "Nauru Nightmare", *Sunday Mail*, 9 September 2001, p49

¹⁷⁶ D Ballantine, "Nauru Nightmare", *Sunday Mail*, 9 September 2001, p49. For more information see the Amnesty International Report 2001 "Australia" (for the period Jan-Dec 2000), www.amnesty.org

¹⁷⁷ Nauru, US Consular Information Sheet, 11 April 2000, www.travel.state.gov/nauru

¹⁷⁸ The Nauru Olympic Committee General Secretary has, for example, spent several months in a Melbourne hospital this year.

adherence still in our society of today plus the various religions which exist on our island, I am not certain how the Nauru Government would react to blood testing of its people."¹⁷⁹

New Zealand (NZ)

NZ is a highly developed, stable parliamentary democracy which recognizes the British monarch as sovereign, having been a British colony until 1907.¹⁸⁰ It has a modern economy, to service the population of just under four million people.¹⁸¹ Most New Zealanders are of an European heritage, but the indigenous people, Maoris, also make up 9.7% of the population.¹⁸² The NZ legal system is based on English law, with special land legislation and land courts for Maoris.¹⁸³ NZ does not have a formal, written Constitution, and therefore Acts of both the NZ and United Kingdom Parliaments are relied on.¹⁸⁴ In 2000, the government announced a major review of existing systems and legislation for the protection and promotion of human rights.¹⁸⁵ It is not known how this review and the guidelines issued on the application of the *Human Rights Act*, 1993 might impact on an athlete's claim for exemption from a request to provide a sample for doping control.

The majority of religious New Zealanders ascribe to one of the 'main-stream' Christian religions that do not prohibit blood testing. There is no documented evidence of cultural or religious objections to blood testing by Maori or other New Zealanders.¹⁸⁶ As evidenced by the dialogue on genetic modification, it appears that individual Maoris may consent on a case by case basis.¹⁸⁷ Chris Collins, an expert in Maoris in sport, stated that it was his view that in the case of a very few; "Maori with a very strong connection with their Maori heritage/culture, there may be a reluctance to provide blood if they were at an overseas location, in that for such people there is a desire to not leave any part of themselves in a foreign location - i.e. a desire to return all to the land. For example, some are reluctant to cut nails/hair etc, when on tour."¹⁸⁸ Anne Jansen, Sports Adviser to the NZ Ministry of Sport also noted that the human rights and privacy lobby group is very strong in NZ, and that urine testing was initially opposed until clear

¹⁷⁹ Letter to author from L Stephen, General Secretary, Nauru Olympic Committee dated 20 August 2001. [Note Nauru's President is the Nauru Olympic Committee Patron.] Unfortunately, no response was received from either the President or the Minister of Sport on this point.

¹⁸⁰ New Zealand, US Consular Information Sheet, 13 April 2000, www.travel.state.gov/new_zealand

¹⁸¹ As at July 2000. See www.photius.com

¹⁸² See www.photius.com

¹⁸³ The World Factbook, *Legal System*, 2000, www.bartleby.com. See The Treaty of Waitangi, dated 6 February 1840, www.kennett.co.nz/maorilaw

¹⁸⁴ The NZ *Constitution Act* 1986, to have come into force on 1 January 1987, has never been enacted. See www.photius.com

¹⁸⁵ For more information see the Amnesty International Report 2001 "New Zealand" (for the period Jan-Dec 2000), www.amnesty.org

¹⁸⁶ This is also the view of Anne Jansen, Sports Adviser, Ministry for Sport, NZ in an email to author from dated 24 July 2001 and Andrew Erueti, Lecturer in Law, Faculty of Law, Victoria University, Wellington, NZ in an email to author dated 23 September 2001.

¹⁸⁷ Eg: One comment from a Maori consulted was; "Because it, requires iwi to understand first of all, and then to actually take the step of trusting us with their blood, in order for us to do the analysis. That's been quite a slow process." B Tipene-Matua, "Maori Aspects", Paper 5, *Royal Commission on Genetic Modification*, August 2000, www.gmcommission.gov.nz/publications, p8

¹⁸⁸ Email from Chris Collins, Regional Registrar, Palmerston North, Massey University to the author dated 12 December 2001

guidelines embodying human rights and privacy principles were developed in consultation with the Privacy Commissioner.¹⁸⁹

The current New Zealand Olympic Committee (NZOC) anti-doping policy does not define positive drug tests in terms of the type of sample to be provided by the athlete, or even advise athletes that they may be required to provide blood samples.¹⁹⁰ As at July 2001, the NZOC had also not amended their 2000 Team Agreement in preparation for Salt Lake 2002 to advise athletes that they may be subject to blood testing for doping control.¹⁹¹

The NZ government sports arm, the Hillary Commission,¹⁹² has an anti-doping policy, based on the Australian Sports Commission model code, and amended; "to bring it into line with NZ legislation and practice and the IOC."¹⁹³ NFs (known in NZ as NSOs) funded by the Hillary Commission are required to adopt a policy based on their model. The model policy includes a definition of "sample" to include blood.¹⁹⁴ In addition, individual NFs, such as the NZ Badminton Federation, obtain signed consents from each of their high performance athletes in order for in and out of competition testing to be validly conducted upon them.¹⁹⁵ NZ is also in the process of establishing a government agency to oversee all levels of sport in NZ, so it will be interesting to see what impact that body has on anti-doping.¹⁹⁶

NZ also has a Sports Drug Agency modeled on Australia's ASDA with the acronym NZSDA.¹⁹⁷ It has also been established through its own Act and regulations, namely the *New Zealand Sports Drug Agency Act, 1994*. As set out under the summary on Australia, NZSDA is also a participant in IADA. NZSDA keeps athletes informed on anti-

¹⁸⁹ Email to author from Anne Jansen, Sports Adviser, Ministry for Sport, NZ dated 24 July 2001

¹⁹⁰ "In the event of an athlete returning a positive drug test, then the NZOC will exclude this athlete from being selected for an NZOC team for a period of 4 years and any additional period necessary to include the subsequent competition equivalent to the one at which the athlete returned a positive drug test, unless the circumstances indicate a lesser penalty." [NZOC Anti-Doping Policy dated 15 September 1992]. It is stated in the NZOC Team Agreement 2000 that this policy applies; "to athletes returning positive tests in any competition or out of competition testing programme, including those administered by the NZOC, NZ and overseas national sporting bodies, the Hillary Commission, the IOC and IFs."

¹⁹¹ The 2000 Team Agreement was not updated to advise athletes competing in Sydney that they may have to provide blood samples for doping control. The current wording is as follows; "Contingency plans are being developed to cover the possible development and introduction of new technology, including the use of blood sampling to detect banned substances. The IOC has announced that it will allow the voluntary collection of blood samples for research purposes during the Games."

¹⁹² Established under the *Sport, Fitness & Leisure Act (1987)*. A good general summary of sport governance in NZ is found in the "NZ's Report to the International Drugs in Sport Summit", Sydney, Australia, 14-17 November 1999 [copy held by the author]

¹⁹³ "Before finalising it, we had a meeting with several NSOs to thrash out the code which resulted in a number of very practical amendments. . . . So far the following sports have adopted the model or a version of it: Basketball, Indoor Bowls, Luge, Rowing, Table Tennis, Wrestling, Windsurfing, Karate and Softball. Yachting, Paralympics and Snowsports probably will lie alongside their international regulations. We expect a number of others to do so. We fund over 80 NSOs so the smaller ones will no doubt find it easy to adopt the code". Emails to author from Carol Quirk, Manager Sport Development, Hillary Commission dated 9 and 16 August 2001 and telephone conversation 8 August 2001.

¹⁹⁴ Clause 12.1: "sample" means human biological fluid or tissue.

¹⁹⁵ Roger Wood, Secretary/Treasurer, Oceania Badminton Confederation, email to author dated 26 September 2001

¹⁹⁶ Email to the author from Kylie Foy, Bell Gully lawyers, dated 24 July 2001. There is also a proposal to make the NZ Blood Service a statutory body, which may also have an impact on authorisation process of blood collection personnel: see Hon A King, Minister of Health, Memorandum to Cabinet Social Policy & Health Committee", www.executive.govt.nz/minister/king/cabinet00-08/other/index

¹⁹⁷ For a general review, see M Shand [now Clarke], "New Zealand for Drug Testing in NZ", *ANZSLA Newsletter*, 5(2), 1995, p3-4 and a summary on its genesis: J Doig, "NZ Sport Drug Agency Develops", *ANZSLA Newsletter*, 2(4) 1992, p10

doping updates through its quarterly "Athletes Newsletter".¹⁹⁸ A recent Newsletter explains that the IOC recognised test for EPO requires the analysis of both blood and urine samples, but because of the expense, timing issues and the fact that only a few laboratories in the world have the ability to analyse the samples that; "Because there are no current regulations which provide for the taking of blood samples, there is no immediate prospect of the Agency conducting such testing in New Zealand."¹⁹⁹ Once the blood collection procedures are drafted however, NZSDA has the capacity to blood test under the current definition of sample including all bodily fluids.²⁰⁰

NZ athletes are subject to the requirement to provide blood samples in other jurisdictions, and it is interesting to note that in the results of the Annual Athletes Survey conducted in June 2001, 82% of NZ athletes stated that they; "agree that blood samples should be taken 5% disagree."²⁰¹ There is no explanation provided by the 5%, so there is no clue whether it signifies cultural or religious objections, or merely a resistance to being caught for doping.

Republic of Palau (local short form 'Belau')

Palau is an archipelago consisting of more than three hundred volcanic islands and a few coral atolls from the westernmost cluster of the Caroline Islands.²⁰² Only a few of the islands are inhabited, but Palau is politically divided into sixteen states. Having adopted its own Constitution in 1980 while still a United States "trust territory", Palau finally became a constitutional democracy in free association with the US in 1994.²⁰³

Less than 20,000 people live in Palau and their ethnic make up is described as; "Micronesian with Malayan and Melanesian admixtures".²⁰⁴ English is one of the official languages in each of the Palauan states. Tourism, especially marine-based tourism (mostly divers and snorkellers), is an important and growing sector of the economy. While currently limited, tourist facilities are expanding, particularly in Koror, the capital.²⁰⁵ Palau also has a developing agrarian economy, and the production of craft items from natural products, such as shell, wood and pearls, is also an important industry in Palau.

¹⁹⁸ The NZOC's ability to communicate anti-doping information has just been further enhanced through the launch of its upgraded website featuring ground-breaking technology: R de Groen, NZOC Games Team Manager, *Coconut Wireless*, Issue 35/2001, ONOC

¹⁹⁹ NZSDA *Athletes Newsletter*, September 2001, p1, www.nzsda.co.nz. The "regulations" the newsletter refers to are the NZSDA regulations to the *New Zealand Sports Drug Agency Act, 1994*

²⁰⁰ Telephone conversation with Graeme Steel, Executive Director, NZSDA on 16 July 2001 and email to author from Anne Jansen, Sports Adviser, Ministry for Sport, NZ dated 24 July 2001

²⁰¹ NZSDA *Athletes Newsletter*, September 2001, p2, www.nzsda.co.nz. Also email to the author from Graeme Steel, NZSDA dated 18 July 2001 detailing the raw data in response to the question; "The NZSDA should be allowed to take blood samples if they can be used to find drugs which current methods cannot detect": Agree: 80%, Disagree 8%, Neither Agree Nor Disagree 11% and Don't Know 1%.

²⁰² See "Sustainable Human Development in Palau: Progressing with the Past", www.undp.org.fj/library

²⁰³ A Compact of Free Association with the US was approved in 1986, but not ratified until 1993, because of Palau's anti-nuclear stance. The World Factbook, *Legal System*, 2000, www.bartleby.com.

See also www.cia.gov/cia/publications/factbook/geos/ps and Palau, USA Consular Information Sheet, 14 September 1999, www.travel.state.gov/palau. Information also provided by Imelda Nakamura, Assistant Attorney General, Office of the Attorney General, Republic of Palau in an email to the author dated 20 November 2001

²⁰⁴ The World Factbook, *Legal System*, 2000, www.bartleby.com

However, as has been described in a United Nations Development Programme report;

*with rapid westernisation and monetisation, the resilience of the traditional and subsistence sectors are rapidly being eroded in Palau. Worsening nutrition, growing income inequalities, youth vagrancy, urban joblessness, increasing difficulties in meeting customary obligations, rapid natural resource degradation, disenchantment of rural lifestyle among the youth and general deterioration in rural well being and are posing a formidable challenge to planners and policy makers.*²⁰⁶

Many Palauans practice one of the Christian religions, but around one third of the population solely observes the indigenous Palauan Modekngai religion.²⁰⁷ Mr Valentin Emesiochel, Principal of Belau Modekngai School, confirmed that there are no religious restrictions within "Modekngai" that would prohibit an athlete from giving blood samples for doping control.²⁰⁸

The executive branch of government is made up of the President, Vice President and Council of Chiefs. Assisting them is the Cabinet, composed of the various Ministers and their staff (one of whom is the Vice President).²⁰⁹ The President and Vice President of Palau are popularly elected on separate tickets for four-year terms. The President is then both the chief of state and the head of government.²¹⁰ The Council of Chiefs consists of one traditional chief from each of the States. The Council advises the President on matters concerning traditional laws and customs and their relationship to the Constitution²¹¹ and the laws of Palau. The Palau Constitution, like the US Constitution, provides Palauans with a "Right to Privacy" in relation to their body, which will impact on the taking of blood samples. Therefore, in collecting blood samples, due process and privacy issues need to be considered.²¹² The Minister of Justice, Michael Rosenthal indicated that provided athletes were made aware of the requirements, that there were no laws in Palau that prevent athletes from providing blood samples for doping control.²¹³

Palau's National Congress is known as the Olbiil Era Kelulau (OEK) ("House of Whispered Decisions"). The Congress is bicameral, and consists of the House of Delegates which features delegates from each of the sixteen

²⁰⁵ Palau, *USA Consular Information Sheet*, 14 September 1999, www.travel.state.gov/palau

²⁰⁶ Summary text by Jeff Liew, UNDP, *Palau: Building National Consensus and Partnership for Informal Employment and Sustainable Livelihoods*, 1995, www.undp.org.fj/success/palau

²⁰⁷ The World Factbook, *Legal System*, 2000, www.bartleby.com

²⁰⁸ Mr Emesiochel spoke with Imelda Nakamura as described in an email to author from I Nakamura, Assistant Attorney General, Office of the Attorney General, Republic of Palau dated 19 November 2001

²⁰⁹ PNCC, www.palaunet.com/government

²¹⁰ The World Factbook, *Legal System*, 2000, www.bartleby.com

²¹¹ The Constitution of the Republic of Palau as effective 1 January 1981. G H Flanz, Editor, "Constitutions of the Countries of the World", Volume XIV, Booklets 1 & 2, N Meller, "Republic of Palau", Release 96-7, Issued Nov 1996, Oceania Publications Inc, Dobbs Ferry NY, Constitution as amended to 4 November 1992. (Note Dr Meller died in 2000)

²¹² Email to author from Imelda Nakamura, Assistant Attorney General, Office of the Attorney General, Republic of Palau dated 19 November 2001

states, and the Senate, whose fourteen members are popularly elected based on district population. The Palau legal system is therefore based on Trust Territory laws, acts of the legislature, municipal, common and customary laws.²¹⁴ Traditionally, Palauan history, lore and knowledge was passed down orally, as there was no written language until the late 1800's.²¹⁵ The customary law then undergoes significant debate within Palau and continues to develop over time.

In 1999, Palau National Olympic Committee (PNOC) adopted "Doping Rules and Regulations", in compliance with the IOC Medical Code.²¹⁶ Elite athletes also sign a "Waiver of Liability" that provides that the athlete agrees to; "comply with all Doping Regulations as set by the Palau National Olympic Committee, including the doping regulations on the event I will participate in and IOC Medical Code on Doping".²¹⁷ All national athletes are required to take a blood and/or urine test prior to the team taking part in a regional or international event as well as being subject to random testing.²¹⁸ An objection to testing to date has not been raised.²¹⁹ Blood testing was first conducted on all 250 athletes in 1999 prior to the Guam South Pacific Games.²²⁰ Palauan athletes are blood tested at the national hospital and at the Belau Medical Clinic.²²¹

The PNOC strongly promotes drug education and awareness campaigns, relying on material developed in Australia and New Zealand. Two years ago they also held their first Sports Medicine Congress,²²² despite the fact that health facilities in Palau are described as adequate for routine medical care, but limited in availability and quality.²²³ Where a positive test is returned, the PNOC General Assembly determines the sanction based on the IF rules. The

²¹³ Attendees at the Palau Police Academy are routinely drug tested through blood samples, and four students were expelled after returning positive test results. Telephone conversation with the Minister of Justice, Michael Rosenthal on 10 August 2001

²¹⁴ The World Factbook, *Legal System*, 2000, www.bartleby.com

²¹⁵ Palau - Babeldaob Island, Culture & History, Palau Visitors Authority, www.visit-palau.com/cult

²¹⁶ now presumably the Olympic Movement Anti-Doping Code.

²¹⁷ Both documents were provided by letter to the author from B Temengil, Secretary-General, PNOC dated 2 November 2001

²¹⁸ PNOC "Doping Rules and Regulations" paragraphs B and D. This policy will also be used for the 2002 Micronesian Games. In August 2001, the Minister of Justice had developed amended drug testing legislation for police officers, which was proposed as a model for the PNOC. It was suggested that the PNOC should adopt an anti-doping policy providing for athletes with criminal records to be excluded from representative teams. Email to author from the Minister of Justice, Michael Rosenthal dated 11 August 2001.

²¹⁹ Email to author from Imelda Nakamura, Assistant Attorney General, Office of the Attorney General, Republic of Palau dated 19 November 2001: "From my research, I have not found any restrictions whether religious, cultural or legal that would prohibit an athlete from giving a blood sample for doping control. Also, there are certain government agencies and divisions which periodically test their employees for doping control, and there are procedures setting out how those blood samples are to be collected."

²²⁰ Some countries, including Guam, were not supportive of PNOC pre-event testing. [Telephone conversation with B Temengil, General Secretary, Palau National Olympic Committee 25 July 2001].

²²¹ The Ministry of Health provides this service for free for the PNOC. The BMC confirmed that drug tests are conducted; "on the Palauan athletes, police officers, police academy, our local tele-communications, and some private businesses. It is an immunometric assay for the detection of drugs of abuse in human urine. The kit checks for THC, opiates, cocaine, and methamphetamines. We do some blood test on athletes for CBC which is blood count and blood typing. Once in a while we check urine to see if they have any infections." Email to author from Jennifer, Belau Medical Clinic dated 9 and 13 December 2001. Email also from Clarette, Palau National Hospital dated 9 December 2001, and conversation with Richard Duncan.

²²² This was followed up by the 1st Sports Medicine Workshop on 24-26 March 2000. One of the sessions covered 'Drugs in Sport'. As stated in Ms Temengil's Secretary-General's 2000 Annual Report; "The Sports Medicine Workshop also helped with the development of the Doping in Sports Policy and the development plan to create a Sports Medical Commission for Palau." See www.oceania-olympic.org/members/palau

²²³ Palau, USA Consular Information Sheet, 14 September 1999, www.travel.state.gov/palau

General Assembly takes into account arguments of therapeutic use, but generally a first offence attracts a two year suspension period.

The PNOC works very closely with the Ministry of Justice and in relation to their rehabilitation and drug prevention programs. As expressed by Baklai Temengil, Secretary-General, PNOC; "We are using our sports programs to try to make our community healthier . . . While the drug testing is relatively small scale, we believe that it has a big impact on people's attitudes on drugs in sport and in the community generally. We need to have a much stronger anti-doping policy, because we want to show that our athletes are clean."²²⁴ Where a positive test is returned for marijuana, the athlete is sanctioned in accordance with regular Palau drug laws.²²⁵ PNOC has had a large number of positive cases for marijuana, which reflects a wider social problem in Palau.²²⁶ The leading role taken by PNOC in anti-doping is all the more remarkable when it is considered that PNOC was only officially recognised by the IOC in June 1999, and Sydney 2000 was their first Olympic Games representation.²²⁷

Independent State of Papua New Guinea (PNG)

PNG is a country consisting of the eastern half of New Guinea Island (sharing a border with Indonesia), the Bismarck Archipelago, the D'Entrecasteaux Islands, the Louisiade Archipelago, and the islands of Buka and Bougainville.²²⁸ Over ninety years, PNG was occupied by Germany, Great Britain, Japan, United States and Australia. From 1946 and until independence in 1975, Australia governed PNG under a United Nations trusteeship.²²⁹ PNG and Australia still maintain close ties, with Australia being its main trading partner and provider of aid.²³⁰

PNG is a member of the British Commonwealth and the chief of state is a hereditary position occupied by the British Queen, represented locally by a Governor General. The parliamentary democracy government system is headed by a Prime Minister and Deputy Prime Minister, who are appointed by the Governor General for up to five years on the basis of majority support in National Parliament. The members of the unicameral National Parliament (also referred to as the House of Assembly) are elected for five-year terms by popular vote. The membership of the

²²⁴ Telephone conversation with Baklai Temengil, General Secretary, Palau National Olympic Committee 25 July 2001

²²⁵ Mrs Temengil stated that Robyn Mitchell and the ONOC are very supportive of the direction being taken by the PNOC. Telephone conversation with Baklai Temengil, General Secretary, Palau National Olympic Committee 25 July 2001

²²⁶ "In 1999, out of a team of 250 athletes, we had 21 positive test results." Telephone conversation with B Temengil, General Secretary, Palau National Olympic Committee 25 July 2001

²²⁷ See Ms Temengil's Secretary-General's 2000 Annual Report and generally in www.oceania-olympic.org/members/palau

²²⁸ Papua New Guinea - US Consular Information Sheet, 14 March 2001, www.travel.state.gov/papua_newguinea

²²⁹ *History*, Papua New Guinea Home Page, www.png.net

²³⁰ The World Factbook, *Legal System*, 2000, www.bartleby.com

National Executive Council, or cabinet, is appointed by the Governor General on the recommendation of the Prime Minister.²³¹

Stability in PNG has been threatened on many occasions, and most recently the PNG Government imposed a curfew in June 2000 on the National Capital District (including Port Moresby) as a result of the violence, burning and looting that occurred after student demonstrators clashed with police.²³² The curfew has now been lifted, but the law and order situation remains very grim.²³³

As at July 2000, there were almost 5 million people living in PNG, made up of Melanesian, Papuan, Negrito, Micronesian and Polynesian ethnicities. While many PNG people ascribe to one of the Christian religions, 34% identify with living in accordance with indigenous beliefs.²³⁴ There are 715 indigenous languages spoken in PNG, and yet the official language, English, is only spoken by 1-2% of the population.²³⁵ Approximately 30% of the population over 15 years of age has been assessed as being unable to read or write any language.²³⁶ The challenge to educate athletes in PNG in relation to ethics and anti-doping issues is therefore so much greater because of education and language difficulties.

Agriculture provides a subsistence livelihood for the bulk of the population.²³⁷ The combined effect of years of drought, severe floods and civil war has meant PNG is heavily reliant on development aid from the World Bank and the International Monetary Fund.²³⁸ In addition to the natural disasters, there are; “growing social strains as residents of formerly isolated communities come into contact with each other. The absence or weakening of traditional village social controls is a major contributor to both urban and rural crime.”²³⁹ The most recent revolt on the island of Bougainville was only ended via the signing of a peace agreement on 30 August 2001, and many

²³¹ The World Factbook, *Legal System*, 2000, www.bartleby.com

²³² See for example 'Papua New Guinea', *Public Announcement*, Office of the Spokesman, U.S. Department of State, 13 July 2001, www.travel.state.gov/papua_newguinea_announce

²³³ Country Advice, "Papua New Guinea", UK Foreign & Commonwealth Office, dated 25 September 2001, www.fco.gov.uk/travel, and see also Papua New Guinea - US Consular Information Sheet, 14 March 2001, www.travel.state.gov/papua_newguinea and the US travel document: "A Primer On Personal Security For Visitors To Papua New Guinea", www.travel.state.gov/primer. Now tribal warfare and political chaos has erupted in the Southern Highlands: See "Eight killed in PNG tribal war", www.ninemsm.com, 18 December 2001, AAP 2001

²³⁴ The World Factbook, *Legal System*, 2000, www.bartleby.com. "Religious adherence tends to be determined by village or cultural group, rather than individual choice. Despite the advent of Christianity, traditional religious beliefs, including those of good and evil spirits, sorcery (white and black), telepathy, etc., persists at all levels of society, side by side or even syncretised with the introduced religious systems." C Stewart, "Existing Law on HIV/AIDS in Papua New Guinea" in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000 at p568

²³⁵ See www.photius.com

²³⁶ The World Factbook, *Legal System*, 2000, www.bartleby.com. See also www.png.net/main

²³⁶ The World Factbook, *Legal System*, 2000, www.bartleby.com

²³⁷ See www.ipa.gov.pg/png for a discussion of the traditional and cash economies in PNG.

²³⁸ The World Factbook, *Legal System*, 2000, www.bartleby.com

²³⁹ US travel document: "A Primer On Personal Security For Visitors To Papua New Guinea", www.travel.state.gov/primer

commentators doubt whether this peace deal can hold. It will be of particular interest to see how successful the process of amending the PNG Constitution is to incorporate the terms of the peace agreement.

The legal system is based on English common law,²⁴⁰ and yet the Courts are increasingly taking local customs into account in decision-making, which leads to many unresolved tensions and conflicts.²⁴¹ In addition, the PNG Constitution entrenches a number of human rights, largely following the Universal Declaration of Human Rights, which changes the traditional emphasis from the rights of the group to the rights of the individual.²⁴² While there is currently no legislation covering drug testing in sport, legislation such as the PNG *Sports Commission Act*, could be extended to require defined persons (for example elite athletes) to provide blood samples for specified doping control agencies. There is no indication however, that this is likely to occur in the near future.

The possibility to begin blood testing in PNG is limited as the medical facilities are poor. However the World Health Organisation has been working with local authorities to assist.²⁴³ WHO collaborated in studies aimed at improving health care financing, and carried out reviews of PNG health legislation. WHO also initiated the establishment of a national drug policy, and noted in its quality assessment program that progress had been made in PNG laboratory testing.²⁴⁴

The PNG Sports Federation & National Olympic Committee (PNGSFNOC) sports doctor, Dr Bernie Amof, advised that the PNGSFNOC does not have an anti-doping policy, but has been guided by the ONOC Medical Commission Policy in developing a "Competitors Agreement & Indemnity Form".²⁴⁵ The Competitors Declaration included as

²⁴⁰ The World Factbook, *Legal System*, 2000, www.bartleby.com

²⁴¹ C Stewart, "Existing Law on HIV/AIDS in Papua New Guinea" in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000 at p569; "Due to the diversity of cultures, however, a unified customary law is unlikely to develop, though general trends can be extracted." Also p570 and 587. See also T Newton Cain, "Convergence or Clash? The Recognition of Customary Law & Practice in Sentencing Decisions of the Courts of the Pacific Island Region", *Melbourne Journal of International Law*, 2(1), June 2001, p48-68 at p63

²⁴² C Stewart, "Existing Law on HIV/AIDS in Papua New Guinea" in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000 at p569. The PNG Constitution includes rights termed "Qualified Rights" (Div III.3.C), which may be relevant in the current context. For example, the following rights may be regulated or restricted where a law is made for the purpose of giving effect to the public interest in public order and public welfare, including; freedom from arbitrary search and entry (s.44), freedom of expression (s.46); privacy (s.49); and freedom of movement (s.52). M A Ntuny, "The Independent State of PNG", Volume XIV, in GH Flanz (ed), *Constitutions of the Countries of the World*, Release 95-8, Issued Dec 1995, Oceania Publications Inc, Dobbs Ferry NY

²⁴³ The Regional Director's Report, *The Work of WHO in the Western Pacific Region Archives*, Chapter 3, "Health Services Development", www.wpro.who.int/public/policy. See also Papua New Guinea - US Consular Information Sheet, 14 March 2001, www.travel.state.gov/papua_newguinea. See also C Stewart, "Existing Law on HIV/AIDS in Papua New Guinea" in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000 at p568

²⁴⁴ The Regional Director's Report, *The Work of WHO in the Western Pacific Region Archives*, Chapter 3, "Health Services Development", www.wpro.who.int/public/policy. The Medical Code of Ethics states that no-one may be required to submit themselves for medical examination unless the law requires it. [C Stewart, "Existing Law on HIV/AIDS in Papua New Guinea" in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000 at p571] It is not clear whether doping controls would amount to medical examinations and whether a signed consent to provide samples for doping controls would over-ride this Code. Compulsory testing and medical examinations currently take place in PNG prisons, the defence force and on Ok Tedi Mining employees. C Stewart at p578, 579 and 585. C Stewart also noted that there is currently no recorded injecting drug use in PNG, which would also include the sports industry [at p594]

²⁴⁵ Auvita Rapilla, PNG Sports Federation & National Olympic Committee emails to author dated 28 November and 4 December 2001. Note the Chairman of the ONOC Medical commission, Professor Ken Fitch stated that while the ONOC Medical Commission had issued a statement many years ago supporting an anti-doping position they had not adopted an anti-doping policy. Telephone conversation with the author on 4

part of this Agreement, makes reference to "Doping Requirements and Use of Drugs".²⁴⁶ The type of samples to be provided are not specified, except in the context of medical assessment.²⁴⁷ To date there have been no positive test results recorded for PNG athletes, and the PNGSFNOC has not been made aware of any restrictions on the blood testing of their athletes due to religious, cultural or legal reasons.²⁴⁸

Independent State of Samoa (formerly Western Samoa)

The island country of Samoa is structured as a constitutional monarchy, and has a developing economy.²⁴⁹ The main exports are bananas, coconut products, copra and cocoa. After being governed by New Zealand, Samoa became fully independent in 1962, but it maintains strong economic and defense ties with New Zealand. Samoan people therefore speak both Samoan and English.

An ethnic Samoan chief is the Chief of State. After being appointed by the Chief of State, the Prime Minister heads a unicameral legislative assembly or Fono. Only chiefs (matai) may stand for election to the Fono. The current Chief of State has occupied the position alone since 1963, and upon his death, the Fono will elect a new Chief of State for a five-year term.²⁵⁰ The legal system is based on English common law and local customs. The system permits the judicial review of legislative acts with respect to fundamental rights of the citizen.²⁵¹ Customary law does not prevent the giving of blood samples for any reason.²⁵²

Given that Samoa is so dependent on development aid from countries such as Australia, sports medicine for elite athletes is not a high priority. Health care facilities in Samoa are adequate for routine medical treatment, but are limited in range and availability. A national hospital is located in the capital Apia and district hospitals are found on the two main islands, Savai'i and Upolu.²⁵³ The Acting Head of the Health Department confirmed that Samoa does

December 2001. Yet the Competitors Declaration clause 2(3) has the athlete acknowledge their; "not having committed any doping offence under the PNGSF/NOC/CGA Anti-Doping Policy for which a sanction imposed has not been fully satisfied." (The Anti-Doping Policy is also referred to again in clause 5).

²⁴⁶ Competitors Declaration clause 5

²⁴⁷ Where athletes are advised that they may be blood tested for medical assessment, including HIV [Competitors Declaration clause 6(2)]. Note that athletes may be exempted from competing on particular days if it is for religious reasons. [Competitors Declaration clause 10]

²⁴⁸ Email to author from A Rapilla, PNG Sports Federation & National Olympic Committee dated 28 November 2001. Note also that in neither the President's nor the Secretary-General's 2000 Annual Report is anti-doping raised as an issue for the PNGSFNOC. See www.oceania-olympic.org/members/png PNG athletes have previously been tested at home. Ms Rapilla recalled that either in 1996 or 1997, Dr Amof organised with ASDA to drug test PNG bodybuilders. The samples were collected by ASDA in PNG and analysed in Australia. A Rapilla email to author dated 4 December 2001

²⁴⁹ Samoa, Consular Information Sheet, USA, 6 April 2000, www.travel.state.gov/samoa. Two-thirds of the labour force is occupied in the agriculture industry, and in 1994 there were only 8,000 main telephone lines in use. The World Factbook, *Legal System*, 2000, www.bartleby.com

²⁵⁰ The World Factbook, *Legal System*, 2000, www.bartleby.com. The Chief was a Co-Chief from 1962, and then sat alone from 1963.

²⁵¹ The World Factbook, *Legal System*, 2000, www.bartleby.com

²⁵² Rather than Samoan custom precluding any invasion of the person, it is traditional for Samoan men to prove their courage and pride by submitting to a full body tattoo (Samoan word 'tatou'), which extends from above the waist to below the knees.

²⁵³ Samoa, Consular Information Sheet, USA, 6 April 2000, www.travel.state.gov/samoa. The national health program in Samoa was reviewed by the World Health Organisation recently as reported in the Regional Director's Report, *The Work of WHO in the Western Pacific Region Archives*, Chapter 3, "Health Services Development", www.wpro.who.int/public/policy

not have any laws for drug testing in sport, as distinct from the laws on the screening of blood donations for communicable diseases, blood transfusions and the provision of samples to check blood/alcohol readings for drivers.²⁵⁴ All blood samples are currently sent to New Zealand for processing, as there is not the technology to analyse them in Samoa.²⁵⁵

As at July 2000 there were almost 180,000 people living in Samoa, made up of ethnic Samoans, Eurasians and Europeans. Reportedly, 99.7% of these people identify with being Christians, as a result of long-term contact with missionaries.²⁵⁶ While the Samoan Constitution guarantees the freedom of religion, Amnesty International reports in 2000 that; "at least 54 Christian villagers on Savai'i island were arrested, imprisoned or banished for taking part in religious activities outside mainstream Christian churches."²⁵⁷ This then suggests that there may be other religions on the islands that could possibly have views on blood testing that they do not feel free to express.

One cultural conflict that will impact on drug testing and results management is that Samoans have a different view of privacy and confidentiality than do people of western culture. The debate relates to the traditional view that the public has the 'right to know' and the individuals' rights to privacy and confidentiality are secondary.²⁵⁸

Tony Lawson, Samoan Parliamentary Counsel confirmed that Samoa has no laws that prevent blood testing and no legislation that would require or govern doping controls in sport.²⁵⁹ Samoa is unlikely to have such legislation in the near future, as it would not be responsible to divert their scarce resources towards the elite athlete minority.²⁶⁰ Mr

²⁵⁴ Telephone conversation with the Acting Head of Health Department for Mr Anosi on 20 July 2001. Note that in their chapter published in 2000, it was also noted by Dr Kamuta Seuseu and Fagalao Tufuga, that a new Bill entitled "The Health of the People Bill 1995/96" was about to be tabled before the Samoan Parliament, in an attempt to bring together all health laws in Samoa, including that relating to dental practitioners, medical practitioners, nurses, etc." Dr K Seuseu & F Tufuga, "HIV/AIDS Law and Law Reform in Western Samoa", Chapter 65 in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000, p713

²⁵⁵ Telephone conversation with the Acting Head of Health Department for Mr Anosi on 20 July 2001. Note that attempts are being made to improve the work of the national laboratory, following the May 1997 WHO quality assessment that proposed solutions to identified weaknesses. See the Regional Director's Report, *The Work of WHO in the Western Pacific Region Archives*, Chapter 3, "Health Services Development", www.wpro.who.int/public/policy

²⁵⁶ The World Factbook, *Legal System*, 2000, www.bartleby.com. Confirmed in telephone conversations with T Lawson, Parliamentary Counsel, Samoa on 20 July and 29 November 2001. For more information see www.samoa.co.uk/religion

²⁵⁷ Amnesty International Report 2001 "Samoa" (covers the period Jan-Dec 2000), www.amnesty.org

²⁵⁸ Dr K Seuseu & F Tufuga, "HIV/AIDS Law and Law Reform in Western Samoa", Chapter 65 in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000, p715

²⁵⁹ T Lawson, Parliamentary Counsel and Acting Attorney-General in a conversation with the author on 20 July 2001

²⁶⁰ While Australia assists with Samoa's legislative development through the provision of government lawyers and other financial support, it is noted that; "Western Samoa does not have a mechanism such as a Law Commission. Although the Attorney-General's Office plays a major role in screening, revising and drafting legislation, Government Departments would usually instruct the Attorney-General's Office to draft amendments before draft laws are presented in Parliament and the Attorney-General does not have the manpower to do such tasks. There is only one Parliamentary Counsel who deals specifically with drafting legislation. It would be ideal to engage a group of lawyers to focus entirely on making recommendations on what amendments are needed for any legislation. Solicitors working in the Attorney-Generals Office do not have the time for revising legislation as they have other duties, especially litigation on behalf of the State". Dr K Seuseu & F Tufuga, "HIV/AIDS Law and Law Reform in Western Samoa", Chapter 65 in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000, p714

Lawson's office was also able to confirm that Samoan cultural laws, Fa'aSamoa, "the Samoan way",²⁶¹ would not prevent an athlete signing a contract providing for compulsory blood testing.²⁶²

Solomon Islands

Less than 500,000 people live in the Solomon Islands, which is made up of mostly ethnic Melanesian people. There are 120 indigenous languages spoken throughout the Solomons, although Melanesian pidgin is the most widely spoken. Only 1-2% of the population is able to fluently use English.²⁶³ Christian religions predominate in the Solomon Islands, with only 4% of the population claiming to adhere to indigenous beliefs.²⁶⁴ Brian Minikin from the Oceania National Olympic Committees, states that it is his understanding that none of the indigenous religions prohibit providing blood samples for testing.²⁶⁵ Culturally however, it is possible that some tribal groups may have a custom prohibiting the provision of urine or blood samples for doping control. It is not possible to state definitively that there are no prohibitions because of the poor research facilities, and the number of different tribal groups with their own languages and customs.²⁶⁶

The Solomon Islands have been independent from Britain since 1978, but the British Queen remains the chief of state, and is represented locally by the Governor General. The Governor General is appointed by the monarch on the recommendation of the Parliament for up to five years. Members of the unicameral National Parliament are elected by popular vote and serve four-year terms. The leader of the majority party, or the majority coalition, is usually elected the Prime Minister by parliament. The Deputy Prime Minister is appointed by the Governor General on the recommendation of the Prime Minister from the members of parliament.

Making contact with the Solomon Islands is severely hampered by electrical and telecommunications difficulties. In 1995 there were only 7,000 telephone lines in use and in recent times many of these have been destroyed as part of the civil war. In May 2001 the US Department of State issued a travel warning suggesting that "non-essential travel" not be undertaken to the Solomon Islands, because; "although ethnic conflict, which had mainly involved the islands of Guadalcanal and Malaita, has abated following the October 2000 peace agreement between rival militia groups, hundreds of automatic weapons remain in the hands of former fighters. The severe economic consequences

²⁶¹ For more information see: www.samoa.co.uk/faasamoaintro

²⁶² Tony Lawson, Parliamentary Counsel in a telephone conversation with the author on 20 July 2001 and confirmed by Raymond Schuster of the Attorney-General's Office: "Samoans have a traditional debate on their culture. It is oral organic and changing over time, so it is not a settled position. The same issues of intrusion that face other athletes arise."

²⁶³ See www.photius.com

²⁶⁴ The World Factbook, *Legal System*, 2000, www.bartleby.com. Email to author from B Minikin, ONOC dated 7 November 2001 confirmed that the people of the Solomon Islands were; "fully converted to Christianity by the Wesleyan Missionaries at the turn of the century."

²⁶⁵ Email to author from B Minikin, ONOC dated 7 November 2001

²⁶⁶ J Katahanas, Partner, Sol-Law, in a facsimile to the author dated 29 July 2001

of the conflict add to the unpredictability of the security environment, which has the potential to deteriorate rapidly."²⁶⁷

The legal system is based on English common law.²⁶⁸ In accordance with the Solomon Islands Constitution, the statute law of England of general application in force as at 1 January 1961 applies in the Solomon Islands until repealed by the Solomon Islands Parliament.²⁶⁹ The English *Human Tissues Act*, 1961 was enacted too late to apply to the Solomon Islands.²⁷⁰ There was no legislation in force in England at that time relating to anti-doping in sport. The Attorney General's Chambers confirmed that the Solomon Islands do not have any laws regulating the taking or testing of blood.²⁷¹

The National Olympic Committee of Solomon Islands (NOCSI) does not have a drug testing or education program and does not have the resources to fund one.²⁷² As expressed by Brian Minikin; "We struggle just to get people into sport, never mind using drugs to enhance performance."²⁷³ In any event, no incidence of intravenous drug abuse has been reported at all in Solomon society, and therefore it can be assumed that at this time doping in sport is extremely rare.²⁷⁴

Kingdom of Tonga (Tonga)

Tonga is the only monarchy in the Pacific, after the archipelago of islands known as "the Friendly Islands" were united as a Polynesian Kingdom in 1845. It became a hereditary constitutional monarchy in 1875 and has remained stable, even through its independence from Britain in 1970.²⁷⁵ The monarch appoints the Prime Minister and Deputy Prime Minister for life. The Cabinet Ministers are also appointed by the monarch. Members of the unicameral legislative assembly or Fale Alea are elected for three year terms. Of the thirty seats in the Fale Alea,

²⁶⁷ Solomon Islands, Travel Warning, USA Department of State, 1 May 2001, www.travel.state.gov/solomons_warning. For more information on the crisis, see the Amnesty International Report 2001 "Solomon Islands" (for the period Jan-Dec 2000), www.amnesty.org. Soccer Australia also announced this year that the planned tour of the Solomon Islands by the LG Socceroos was to be cancelled because the safety of the players and the officials could not be guaranteed. See Press Release: LG Socceroos Visit to Solomon Islands Cancelled, B4Bsport News, www.b4bsport.com, 20 August 2001

²⁶⁸ The World Factbook, *Legal System*, 2000, www.bartleby.com

²⁶⁹ J Katahanas, Partner, Sol-Law, in a facsimile to the author dated 29 July 2001

²⁷⁰ It was enacted in June 1961. An earlier English Act, the 1832 *Anatomy Act* related to the use of a person's body parts once they were dead, and so is not relevant here. Also too late was the UK Doping Control Service set up in 1968: Council of Europe, "Legislation and Regulations on Doping in the Countries which Adhere to the Convention of the Council of Europe", *Sports Information Bulletin*, 52 (Dec 1999), p41

²⁷¹ Letter to author from A Mekau for the Attorney General of the Solomon Islands dated 1 August 2001. Also confirmed by John Katahanas, Partner, Sol-Law, in a facsimile to the author dated 29 July 2001, who added that the local *affiliation, Separation and Maintenance Act (Cap.1)* does not even provide for the Court to order blood tests in paternity cases.

²⁷² Email from B Minikin, Oceania National Olympic Committee to the author dated 1 November 2001. At the most recent NOCSI elections, 23 June 2001, as reported by the *ONOC Coconut Wireless*, there was role assigned for anti-doping or even a medical commission. See *ONOC Coconut Wireless* dated 30 June 2001

²⁷³ Email from B Minikin, Oceania National Olympic Committee to the author dated 7 November 2001

²⁷⁴ P Afeau, "Solomon Islands National AIDS (HIV Infection) Prevention and Control Programme" in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000 at p644 and 647

²⁷⁵ Tonga, US Consular Information Sheet, 18 April 2000, www.travel.state.gov/tonga; Tonga remains a member of the British Commonwealth

twelve are reserved for the Cabinet Ministers, nine for the nobles (selected by Tonga's thirty-three nobles) and the remaining nine are elected by popular vote. Together, the Cabinet and the monarch sit as the Privy Council. The Privy Council and the Chief Justice of the Supreme Court sit as the Court of Appeal of the Supreme Court. The monarch appoints all of the judges.

As at July 2000, there were estimated to be 102,000 ethnically Polynesian people living in Tonga (and approximately 300 ethnic European people). The literacy rates in both Tongan and English are high, with 98.5% of the population over 15 years being able to read and write these languages.²⁷⁶ The Tongan agrarian economy is developing and the majority of its labor force is involved in this industry. Although exporting a lot of its squash, coconuts, bananas and vanilla beans, it still relies on countries such as New Zealand for the importation of its food supplies.²⁷⁷ Tonga's tourist industry, although limited, is also growing. The tourist facilities are concentrated in and around the main island of Tongatapu where the capital, Nuku'alofa, is located.²⁷⁸

The legal system is based on British law.²⁷⁹ Sela Tupou of the Crown Law Office, Tonga confirmed that there are no laws governing blood testing in Tonga, and nothing in the Tongan Constitution that would allow an athlete to claim an exemption from providing a blood sample.²⁸⁰ Sitiveni Takaetali (Steve) Finau, Secretary-General of the Tongan National Olympic Committee (TNOC)²⁸¹, also advised that to his knowledge, there are no cultural or religious restrictions on Tongan athletes providing blood samples for doping control.²⁸²

The medical facilities in Tonga however are limited, which will impact on the possibility to conduct blood screenings locally. The cities of Nuku'alofa and Neiafu have hospitals with emergency and outpatient facilities. Local residents and visitors with serious medical problems are often referred to New Zealand for treatment.²⁸³ Financially, the capacity for Tonga to increase its emphasis on elite sport, and drug testing in particular, is extremely restricted.²⁸⁴

²⁷⁶ The World Factbook, *Legal System*, 2000, www.bartleby.com

²⁷⁷ The World Factbook, *Legal System*, 2000, www.bartleby.com

²⁷⁸ Tonga, USA Consular Information Sheet, 18 April, 2000, www.travel.state.gov/tonga

²⁷⁹ The World Factbook, *Legal System*, 2000, www.bartleby.com

²⁸⁰ S L L Tupou, for Acting Attorney-General, Crown Law Office, Government of Tonga, in a facsimile to the Acting Secretary for Justice dated 12 December 2001 added that the *Public Health Act (1992)* also did not cover blood testing. Also, Anita Jowitt, regional expert on HIV in the Pacific, advised that: "Tonga has included HIV on its list of notifiable diseases, giving the state fairly broad powers to test people", which would suggest that the Tongan government is not aware of, or does not recognise, cultural or religious objections to blood testing. [A Jowitt, Law Faculty, University of the South Pacific, email to author dated 17 July 2001.]

²⁸¹ Hiko Sungavaka, Sports Development Officer, TNOC advised that the TNOC was both the National Olympic Committee and the Tonga Amateur Sports Federation. The TNOC is a separate legal entity to the Ministry of Sport. Telephone conversation with author dated 25 July 2001

²⁸² Email from S Finau, Secretary-General of the Tongan National Olympic Committee (TNOC) to author dated 20 October 2001

²⁸³ Tonga, USA Consular Information Sheet, 18 April, 2000, www.travel.state.gov/tonga

²⁸⁴ This situation has recently been exacerbated by the discovery that a former investment advisor to the Tongan Kingdom has absconded with A\$40 million of the annual government budget of 86 million paanga (A\$78 million): M Field, "Tongans Fail to See the Joke in Scandal of Country's Missing Millions", *Agence France-Presse*, 27 September 2001, www.smh.com.au

Mr Finau also confirmed that the TNOC does not have a formal policy on anti-doping or any written procedures in the event of the return of a positive test result.²⁸⁵ The TNOC does not provide their representative teams with any anti-doping education or advice that they may have to provide urine or blood samples for doping controls.²⁸⁶ Instead, experienced Tongan athletes now informally brief younger athletes of the same gender on their anti-doping responsibilities prior to major international competitions.²⁸⁷

Republic of Vanuatu (Vanuatu)

Vanuatu, meaning "Land Eternal", consists of eighty-three islands located in an Y-shaped archipelago, sixty-eight of which are inhabited.²⁸⁸ There are approximately 200,000 people living in Vanuatu, ninety-four percent of whom are indigenous Melanesian.²⁸⁹ Vanuatu is said to be one of the most culturally diverse countries in the world, with more than 115 distinctly different cultures and languages still thriving. As there is no uniformity between the cultural beliefs of these groups, it is not possible to determine whether any athlete could be prohibited from providing a blood samples for doping control.²⁹⁰

People in Vanuatu are predominately members of 'main-stream' Christian churches, although sections of the community maintain belief in one of the indigenous religions.²⁹¹ Vanuatu is said to be currently experiencing a socio-economic transition. A growing tourist industry, an increasing number of Ni-Vanuatu travelling abroad and the urban drift are elements of this change.²⁹² Although tourism is becoming increasingly important, especially from the Australian market, the economy is primarily based on agriculture.

Vanuatu has a unified legal system, having been created from former dual French and British systems.²⁹³ It became an independent parliamentary democracy and adopted a Constitution in 1980. The Head of state is an elected President for a five-year term. The President is elected from an 'electoral college', which consists of the Parliament

²⁸⁵ Email to author dated 19 October 2001

²⁸⁶ Sitiveni Takaetali (Steve) Finau, Secretary-General of the Tongan National Olympic Committee (TNOC), describes that the lack of information led to a culturally embarrassing situation where a male coach had to explain the urine collection procedure to a young female charge, where the coach was not a blood relative from the mother's side. Emails to author dated 19 and 20 October 2001

²⁸⁷ Sitiveni Takaetali (Steve) Finau, Secretary-General of the Tongan National Olympic Committee (TNOC) stated that at the Team Managers meeting on 19 October 2001 in preparation for the South Pacific Mini Games being held in Norfolk Island, Australia 3-14 December, 2001, Steve briefed the coaches on the anti-doping tests to be conducted at that event, and asked the female coaches to orally advise the female athletes, and the male coaches the male athletes. Email to author 20 October 2001

²⁸⁸ Vanuatu, USA Consular Information Sheet, 6 April 2000, www.travel.state.gov/vanuatu

²⁸⁹ See www.vanuatu.net.vu/facts, www.immigration-usa.com

²⁹⁰ H Bulu, Attorney-General, State Law Office, Government of the Republic of Vanuatu, in a facsimile to the author dated 13 December 2001

²⁹¹ See www.immigration-usa.com

²⁹² Staff of STD/HIV/AIDS Section, Disease Control Unit, Department of Health, Republic of Vanuatu, "HIV/AIDS Prevention and Control in the Republic of Vanuatu", Chapter 62 in D B Rao, *HIV/AIDS and Law, Ethics and Human Rights*, Part II, International Encyclopaedia of AIDS - 4, Discovery Publishing House, New Delhi, 2000, p689. 'Ni-Vanuatu' is the nationality of Melanesian people born in Vanuatu.

²⁹³ The World Factbook, *Legal System*, 2000, www.bartleby.com. It was known as "New Hebrides" and until 1980 was jointly administered by France and Britain as a 'Condominium'. See www.vanuatu.net.vu

and the presidents of the regional councils. Once parliamentary elections have been conducted, the leader of the majority party is usually elected the Prime Minister of the unicameral parliament for a six-year term.²⁹⁴ French and English are the official languages, although pidgin, known as Bislama or Bichelama are widely spoken. Customary systems, community groups and family units are an extremely important part of Vanuatu life,²⁹⁵ and government officials tend to be distrusted by much of the population.²⁹⁶ The National Council of Chiefs (Malvatumauri) advises on matters of custom and land and operates outside of the adopted Court system and in parallel to it.²⁹⁷

Blood is so symbolic for Vanuatu people that it is included as the colour red on the national flag. It is described as follows;

*The red is symbolic of blood [blood of sacrificed boars, power of traditions, and mens' blood, fide Talocci].*²⁹⁸

It is unlikely however that this would translate into any prohibition on blood testing in doping control, given that there is legislation proposed, such as the draft *Public Health Act*, that will allow anonymous medical testing for HIV.²⁹⁹ In any event, Ham Bulu, Attorney-General, has confirmed that there is no specific legislation dealing with the blood testing of athletes in Vanuatu.³⁰⁰

The medical facilities in Vanuatu are limited. Although there are hospitals in Port Vila and at Luganville, Espiritu, Santo, the nearest reliable medical facilities are in Australia or New Zealand. The World Health Organisation (WHO) however has been working with the authorities in Vanuatu in an attempt to improve health care financing, and the national quality assurance programs in both the hospitals and laboratories. A national workshop on blood transfusion was held in Vanuatu in 1996, that reviewed existing methods of donor recruitment, collection and storage of blood and the screening procedures of transfusion-transmissible infections.³⁰¹

²⁹⁴ The World Factbook 2000, *Vanuatu*, www.odci.gov/cia/publications/factbook

²⁹⁵ See the report *Sustainable Human Development in Vanuatu: Moving on Together*, United Nations Development Programme, www.undp.org.fj/library

²⁹⁶ Eg: "For many years the government had attempted to send in land survey teams but they were greeted with suspicion and chased away – sometimes violently." Text by Jeff Liew, UNDP, *Vanuatu Customary Land Reconciliation -Using Participatory and Customary Processes for Settling Land Disputes*, www.undp.org.fj/success/vanuatu_customary_land

²⁹⁷ The Malvatumauri drafted a discussion paper in 1995 for Customary Courts to be fully integrated, but the proposal has not progressed. T Newton Cain, "Convergence or Clash? The Recognition of Customary Law & Practice in Sentencing Decisions of the Courts of the Pacific Island Region", *Melbourne Journal of International Law*, 2(1), June 2001, p48-68 at p67

²⁹⁸ *Flags of The World*, www.flagspot.net/flags/vu

²⁹⁹ A Jowitt, Law Faculty, University of the South Pacific in an email to the author dated 17 July 2001. She also noted that other regulations surrounding notifiable diseases, will make implementing the provisions on medical testing for HIV awkward.

³⁰⁰ H Bulu, Attorney-General, State Law Office, Government of the Republic of Vanuatu, in a facsimile to the author dated 13 December 2001

³⁰¹ The workshop also established national policy guidelines on the use of safe blood and blood products, and drew up policy guidelines on the establishment of a national blood bank: The Regional Director's Report, *The Work of WHO in the Western Pacific Region Archives*, Chapter 3, "Health Services Development", www.wpro.who.int/public/policy

The Vanuatu Amateur Sports Association & National Olympic Committee (VASANOC) was recognised in 1991, after being inaugurated by the then IOC president, Juan Antonio Samaranch in 1987.³⁰² In the VASANOC Annual Report prepared by President Joe Carlo, there is no reference to anti-doping, indicating that it does not yet rate as a priority, or even a topic for discussion.³⁰³ The difficulty in Vanuatu will also be in maintaining contact with their elite athletes. Radio is said to be the most important medium of communication in Vanuatu, and yet only fifty percent of the population own a radio.³⁰⁴

Conclusion and Recommendations

While the reality for the majority of countries in Oceania is that their inactivity in anti-doping generally, and blood testing in particular, is less about disinterest, and more; "a result of a low level of participation in international sport frequently coupled with a severe shortage of resources",³⁰⁵ this will change in the coming years. Athletes in Oceania will increasingly become players on the international stage, and the legal framework to support the anti-doping measures must be in place in preparation. The analysis above has demonstrated that even the over-regulated countries like Australia and New Zealand have not yet comprehensively ensured that their 'elite' athletes have genuinely consented to providing blood samples on demand.

The driver to achieve legally supported anti-doping programs cannot be expected to come from the grass roots, but must come from WADA. WADA is in a unique position to coordinate the anti-doping measures from an independent position, untainted by direct commercial considerations arising from drug-assisted athletic records. The consensus of the legal and other commentators appears to be that anti-doping will only be upheld legally where athletes are informed of their anti-doping obligations, and evidence of their understanding of those obligations is available. The best evidence is the signed acknowledgement by the athlete as part of a contract with their sport, or as now suggested, WADA.³⁰⁶ It is also suggested that to emphasise the importance of the education component, that sports associations approach athletes to authorise them to conduct anti-doping procedures, as would be required for any other medical procedure. The two crucial elements then are 'information' and a signed 'authority'.

³⁰² See VASANOC Brief History, www.oceania-olympic.org/members/vanuatu

³⁰³ J Carlo, President, VASANOC, Annual Report 2000, www.oceania-olympic.org/members/vanuatu

³⁰⁴ See Vanuatu, Country Profile, International Planned Parenthood Federation, www.ippfnet.ippf.org

³⁰⁵ B Houlihan, "Anti-Doping Political Measures: The New Approaches After the Lausanne Meeting on Doping", *IEC Scientific Conference: Doping In Sport*, Barcelona, 17 & 18 June 1999, p1

³⁰⁶ eg: Tony Lawson, Parliamentary Counsel, Samoa in a conversation with the author on 20 July 2001; A Gray, "Doping Control: The National Governing Body Perspective" in J O'Leary, *Drugs and Doping in Sport: Socio-Legal Perspectives*, Cavendish Publishing Co, London, 2001, p13; and J de Pencier, "Blood Analysis and Doping Control Legal, Social, and Organisational Issues", Canadian Centre for Drug Free Sport, published in P Hemmersbach & K.I. Birkeland (eds.), *Blood Samples in Doping Control*, Proceedings of the Second International Symposium on Drugs in Sport entitled "Towards the Use of Blood Samples in Doping Control", Lillehammer, Norway 29-31 August 1993, Pensumtjeneste (On Demand Publishing), Oslo, 1994

Practically, WADA could contract with all the national anti-doping organisations (NADOs) to ensure that these elements were carried out. NADOs would be responsible for their own nations and those nations without such an agency, as assigned to them by WADA. WADA would contract with governments of countries such as Fiji and American Samoa to provide anti-doping services (education, information collection and testing) through ASDA, NZSDA or USADA. These NADOs could be expected to train local people in anti-doping measures, so that in the future each nation had its own certified anti-doping agency working in conjunction with WADA.

Education

Athletes will have a better chance of understanding what is required of them, once the complexity of national and international anti-doping policies is dissolved. Sports associations owe it to athletes to simplify the procedures and promptly agree to standards to be adopted as a world anti-doping code (Code) to replace the OMADC. Together with this Code, it must be WADA's responsibility to develop standardised education materials, and doping control and athlete whereabouts forms to ensure that all athletes competing at an elite level are being similarly educated.

The pool of athletes that these anti-doping procedures are to apply to must be clearly defined in the Code, together with a requirement to regularly update the information. It must be a requirement of this Code for National Federations (NFs) to submit the names of their elite squads in each discipline to WADA (via the NADOs).

WADA can work together with the NADOs to disseminate the education material. These materials should also indicate the degree to which amendment can be made to reflect domestic circumstances and IF rules. While the trend is for both NOCs and IFs to put the anti-doping education obligation on NFs, it is submitted that NFs are inadequately equipped to undertake this role, as they have neither the trained personnel nor financial support to properly conduct this task. A centralised body in each nation (or group of nations in the case of regions such as Oceania) reporting back to WADA will be in the best position to ensure that each athlete has genuinely given their 'informed' consent to the anti-doping procedures.

It is envisaged that WADA will ultimately be responsible for conducting all the elite in and out of competition testing programs. Therefore information can also be centrally disseminated and collected through the use of an international WADA database, that athletes can access and update via the internet.³⁰⁷ This information should be made available in multiple languages, although the world is moving gradually towards English becoming the

³⁰⁷ A prototype is currently being developed and trialled by WADA and ASDA. This database must include sufficient information to allow an athlete to be tested on any day chosen by WADA.

international language of sport and business.³⁰⁸ While the internet will be of assistance to the bulk of the literate and computer-savvy athletes that regularly train and compete around the globe, as evidenced above, many athletes in Oceania will not even have regular access to telephone lines, and therefore paper versions must also be made available.

Authority

It is therefore recommended that all elite athletes be asked to sign a specific consent form fully detailing the anti-doping procedures sought to be imposed up on them. This could be incorporated into the 'Athlete Passport', initially launched by ASDA for Australian athletes, being developed for wider application by WADA. . The NADOs could coordinate the regular collection of a standardised consent form (altered where necessary to reflect IF rules and/or domestic legislation and customs) and pass this onto WADA (and the IFs and the IOC should they continue to conduct testing).³⁰⁹ If the terms are to be altered in any way, then the athlete will need to resign the contract. (This will impact on the alteration of the WADA prohibited substances list). It is suggested that the contract should only have a term of 12 months.

To maximise the effectiveness of this process, athletes would need to provide this consent and whereabouts information as a prerequisite to competing at an elite level (defined as appropriate to include state or regional level competition). The consent could then take the form of an identification licence or 'passport' that athletes can take with them into competitions and doping controls to evidence their prima facie identity and 'informed' consent. This would then take similar sport-specific concepts world-wide.³¹⁰

Obviously the process of achieving this level of simplicity is not as easy as this summary presents, however where there is the political will, harmonisation can be achieved. With WADA as an organisation moving from its set-up structure to one that reflects the next stage in its development, there is no better time to develop an international

³⁰⁸ The countries in Oceania all use English as one of their official languages at least, even if it is not always used.

³⁰⁹ The consent would obviously also have to include a provision specifying who would have access to the information provided and what it would be used for.

³¹⁰ See discussion of the UCI licence above. NZ Badminton has high performance athletes sign their acquiesce to anti-doping procedures: Roger Wood, Secretary/Treasurer, Oceania Badminton Confederation, email to author dated 26 September 2001. Triathlon Australia also has a 'Pro-Licence' system (since 95-96 season for domestic competition and to be eligible for selection as a representative of Australia) for its elite athletes. The Pro-Licence includes an agreement to provide blood samples for research purposes. The Triathlon Australia anti-doping policy dated 1 July 1999 includes the definition of "sample" as "human biological fluid" - letter from Holly Richardson, Triathlon Australia 9 August and telephone conversation 13 August 2001

consensus and standardised processes. Every member of the international sporting community can now choose whether to play their part in making a difference for the athletes of the future.

Legal Requirements to Conduct Blood Testing in Doping Control - Oceania Region

Catherine Ordway

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