



INDEPENDENT OBSERVERS (IO) REPORT

**XVIII Commonwealth Games
Melbourne, Australia**

15-26 March 2006

INDEPENDENT OBSERVERS (IO) REPORT

XVIII COMMONWEALTH GAMES
MELBOURNE, AUSTRALIA
March 2006

EXECUTIVE SUMMARY	3
INTRODUCTION	4
TEAM COMPOSITION	4
PRELIMINARIES	4
OVERALL EVALUATION	6
ASPECTS OF THE ANTI-DOPING PROGRAMME	8
A. Therapeutic Use Exemptions (TUEs) and Abbreviated Therapeutic Use Exemptions (ATUEs)	8
B. Laboratory Reporting Time (“Turnaround Time”)	8
C. Test Distribution Plan (TDP)	9
D. Blood Sampling	9
E. Result Management	10
F. Sample Collection Procedures	11
a. General	11
b. Selection	11
c. Notification and Chaperoning	12
d. Documentation	13
e. Sample Processing	14
f. Doping Control Stations	14
g. Transport and Chain of Custody	15
h. Laboratory	16
SUMMARY OF RECOMMENDATIONS	17
APPENDICES	Attached
1. Analysis of follow-up given by the CGF to the Manchester 2002 IO Report Recommendations	Attached
2. IO Team members	Attached
3. Summary of Independent Observations	Attached
4. Summary of Adverse Analytical Findings	Attached
5. Court of Arbitration for Sport Interim Order – CAS Arbitration No. CG 06/01 and CG 06/02	Attached
6. Letter to CGF Medical Commission Chair from IO Team Chair regarding CGF Federation Court deliberations	Attached

EXECUTIVE SUMMARY

The doping control programme put in place for the XVIII Commonwealth Games in Melbourne in March 2006 was carried out competently and satisfactorily. Many of the matters raised in the WADA Independent Observer's report from the XVIIth Commonwealth Games Manchester in 2002 had been addressed by the Commonwealth Games Federation (CGF) and corrective action taken, including revised rules and regulations.

The education programme was a good innovation. The Test Distribution Plan prepared for the Games was appropriate, as was the number of tests. The number of blood/urine tests was impressive. The administration of TUEs was good. The poor quality of many doping control stations and the consequent pressures which arose during sample taking posed potential problems to the integrity of the programme, but these were surmounted. The quality of the doping control staff was high. The management of the blood sampling process, and the manner in which procedures were changed during the Games, was unfortunate, causing confusion for athletes and doping control officials. There were several regrettable incidents observed by the Office during the doping control process, but these tended to be "one-off" incidents, without cumulative effect. The rules set out by the CGF before the Games concerning result management, and notably the rules of confidentiality, caused difficulties for many parties and slowed the administration of efficient sanctions.

The Commonwealth Games Federation, in the context of preparation for the next edition of the Games, is recommended to look closely at:

- i) The status of the CGF doping control procedures to be used at the XIXth Commonwealth Games, and their relationship with the World Anti-Doping Code, the International Standards, and the procedures to be developed by the host country. Particular attention during this review should be given to the objectives and procedures for blood sampling.
- ii) Setting out clear procedures for dealing with result management before, during and after the Games paying close attention to articles 7, 10, 13 and 14 of the Code and associated International Standards.
- iii) Providing leadership to the local organising committee in setting appropriate standards for doping control stations, and in making it aware of the requirements of doping control and their consequences for athletes selected for doping control; and to the body providing doping control services at future Games, ensuring harmonisation of sample processing and equal treatment of all athletes.

In addition, the IO Office recommends the World Anti-Doping Agency to:

- i) Review the scope of Independent Observer missions, with a view to determining whether the entire doping control programme of events observed should be included.
- ii) Review the need for the medications and supplements section of the doping control form.
- iii) Review the protocol for the use or non-use of mobile telephones during the sample collection process, and the means for observing the protocol.

A list of all recommendations can be found at the conclusion to this IO report.

INTRODUCTION

Following the mission of the Independent Observers Office (the Office) to the XVIIIth Commonwealth Games in Manchester (GBR) in 2002, and the ensuing report, the Commonwealth Games Federation (CGF) in accordance with article 20.6.3 of the World Anti-Doping Code (the Code) of 2003, arranged for the Office to be present at the XVIIIth Commonwealth Games in order to conduct an Independent Observer programme. The mission did not include competence for observing the doping programme in the period before the Games, when the World Anti-Doping Agency (WADA), the Australian Sports Drug Agency (ASDA) in liaison with the CGF, together conducted an extensive, global programme of 300 out-of-competition controls (financed by the Australian government). However, some of the results from these controls were observed during the period of the Games.

As noted above the IO mission does not include observing such pre-competition controls. Yet the results of such controls filter through the system during the event. Similarly, for calendar reasons, the IO mission at such events does not systematically include observing the result management phase of cases dealt with after the event has ended, or any related appeals process. It is therefore necessary to stress that this report does not present an overall view of the doping control programme at the XVIIIth Commonwealth Games in Melbourne 2006. It reports on the sample collection process during the Games, some of the analytical process, some of the result management process, and on some of the hearing process. ***WADA is invited to consider the implications of these limitations for a complete and transparent IO mission (Recommendation 1).***

The Office would like to extend its appreciation to the CGF, its President Mr M Fennell, the Chair of the CGF Medical Commission (CGFMC), Dr M Jegathesan, and the members of the Commission for their kind and whole-hearted cooperation during the Games. The IOs were warmly welcomed, and were given full access to the doping control programme, including all meetings of the Medical Commission. The Office was however disappointed not to be invited to observe a crucial phase of the results management process, i.e. the discussions within the CGF "Federation Court". These discussions focused on the adverse analytical findings (AAFs) from the two Indian weightlifters (see appendix 6).

The Office would also like to express its gratitude to the officials of the Organising Committee for the Games, and to the Australian Sports Drug Agency for their assistance. In particular Dr Peter Harcourt and Mr Tim Burke are thanked for making our work easier by their openness and understanding of our role.

TEAM COMPOSITION

The IO team at the Commonwealth Games consisted of: Dr Ichiro Kono, Chair (JPN), Ms Daisy Zereceda Monge (PER), Ms Rosa Mota (POR), Ms Delphine Verheyden (FRA) and Mr George Walker (GBR). One additional member appointed to the team had to desist from attending at the last moment which put additional demands on the team at a large multi-sport event such as these Games.

The Chair would like to pay tribute to the excellent work accomplished by Ms Shannan Withers (WADA), who managed the office, prepared the rosters, checked all the faxed documentation and forms, and attended to the thousand other matters that inevitably arise on these occasions. In this she was ably assisted by Ms Chiho Miki (WADA, Asia/Oceania Regional Office). It is worth mentioning that this team worked intensively for the entire fortnight and that it represents the minimum requirement for such an assignment.

PRELIMINARIES

- a. An analysis of the follow-up given by the CGF to the Recommendations made in the report by the Office to the XVIIIth Commonwealth Games reveals that much had been done by the CGF to address the problems that were observed at Manchester. Appendix 1 details this progress. In this respect it is clear that the introduction of the Code in 2003 and its accompanying International Standards has done much to ensure greater

harmonisation and consistency in international anti-doping programmes at major events.

- b. The CGF had prepared before the Games a document entitled the "CGF Anti-Doping Standard for the Melbourne 2006 Commonwealth Games" (issued in late January 2006), which was a detailed guide to the procedures that would be the basis for the anti-doping programme. There were some complaints heard by the Office that this comprehensive standard could, indeed should, have been published earlier so that all parties would have had the time to become thoroughly familiar with its contents. The Office also feels that an earlier publication would have been helpful. Known colloquially at the Games as the "Gold Standard" (doubtless because of the colour of its cover) it provided a very sound basis for the procedures for the Melbourne Games and following some revision, for the procedures to be followed at the XIXth Commonwealth Games in New Delhi in 2010. Such revision can also address the problem observed of a number of minor differences between the CGF Standard, the standards used by the host country (in this case ASDA), and the standards of the Code.

As other IO missions have had occasion to comment, we also stress the need to clarify the legal status of this Standard. Is it a non-binding source of information or is it a binding set of rules and regulations? And how does it relate to other similar documents?

Recommendation 2:

That the CGF publishes its doping control procedures at least three months before the opening of the Games.

- c. A very promising innovation in the context of anti-doping work at major events was introduced in the build-up to these Games. ASDA set up an Education Programme for participating teams' officials and a one-on-one interview process with a number of athletes. The programme was aimed especially at officials and athletes from countries without structured national anti-doping programmes and policies. This programme was budgeted at AUS\$55,000 out of a total budget of \$1.6m. It represents a good beginning; not all teams had access to the programme and approximately 400 athletes had an interview. Athletes were also given a card on which to record their recent consumption of medications, supplements, etc. Despite our later recommendation concerning this section of the doping control form, we observed that these cards were often used by athletes at doping control, so they proved to be helpful and useful.
- d. The sports programme at these Games included a number of events for elite athletes with a disability. The provisions of the International Standard for Testing for athletes with a disability - in a slightly modified form - were included in the "Gold Standard" (Appendix 11). The Office observed several doping control sessions for such athletes. No major problems were observed, though the possibility for visually impaired athletes to have a representative present at the urine passing stage was not always followed.
- e. Compared to the Manchester Games, two major innovations were seen at Melbourne. The first was the strong programme of blood testing and blood sampling (of 1014 tests planned during the Games, 253 were to be blood tests). The second was the detailed provisions for Results Management and Hearings included in the Gold Standard. We shall have occasion to comment on both these elements in our report.
- f. One last aspect of the anti-doping system put in place for these Games deserves comment. Our observations and remarks made to us suggest that the division of responsibilities for parts of the anti-doping programme between the CGF as the organiser, and ASDA as the contracted service provider, was not as clear-cut as it should have been. ASDA (which on the first day of the Games, following the adoption of a new Act of Parliament became the Australian Sports Anti-Doping Authority, ASADA, with some new domestic responsibilities which did not affect their role at the

Games) has considerable experience in doping control and results management; the CGF has the responsibility for the overall management and leadership of the anti-doping programme at the Commonwealth Games. There were occasions when because of the lack of clarity on their respective roles, for example on blood collection procedures, the day-to-day management of the programme was difficult to follow.

Recommendation 3:

That the CGF and the local doping control service provider agree to a clear division of tasks and responsibilities.

OVERALL EVALUATION

In our view, the doping control programme at the XVIIIth Commonwealth Games was conducted in such a way that the integrity of the programme was preserved. As mentioned before, 1014 tests were planned: the number of participating athletes was 4500. There was thus a more than 20% chance of an athlete being tested at least once. The blood/urine testing was aimed at sports with strength and/or endurance needs. The sampling processes were carried out competently and all samples analysed at the WADA accredited laboratory at Sydney. The CGFMC demonstrated its willingness to be responsive to complaints and criticisms by athletes or teams and to adjust to changing circumstances.

However, there were four areas which were of concern to the Office:

- a) In the desire to be responsive, the CGFMC changed procedures as the Games progressed. This was particularly the case with the blood/urine and blood sampling programme. The changes had various consequences; they gave the impression that:
 - i) The CGFMC was not clear in its own mind what this part of the doping programme was meant to achieve.
 - ii) The decision-making processes were driven by problems rather than by policy.
 - iii) The changes confused athletes, teams and sampling officers (cf. D - Blood Sampling).
- b) The result management and hearing procedures as set out in the Gold Standard were complex, slow, and unclear. The separation of powers of the various bodies involved at the later stages of the result management process was not evident, particularly where CAS was concerned (cf. B – Result Management). An attempt by the CGFMC to introduce more clarity and effectiveness during the Games indicates that the CGFMC itself was not happy with the procedures set out in the Gold Standard.
- c) The sampling collection procedures at the Games were carried out by ASDA officials (together with a few international doping control officers from other countries). This service was provided to the CGF on the basis of a contract with ASDA. The sample collections were almost invariably carried out most competently. ASDA has a reputation for the effectiveness of its work. It was therefore surprising to the Office to observe that there were inconsistencies between the WADA International Standard for Testing (and the Code's "Guidelines for Blood Sample Collection"), the Gold Standard, and the standards used by ASDA. There were also inconsistencies in the way the ASDA officials themselves carried out the procedures. No single item was in itself of great significance (and individual athletes and their representatives would only be faced with one method) but the cumulative effect of such changes and inconsistencies as observed by the Office at various sports and venues was worrying. In effect, DCOs and athletes were confronted with three separate bulky items of documentation: the International Standard for Testing; the Gold Standard; and a further lengthy

handbook, ASDA's "Sample Collection Procedures for the 2006 Commonwealth Games". All this documentation gave the strong impression of a lack of harmonisation. Some examples of this lack of consistency are given in the relevant sections of our report below (cf. F c, d, e – Sample Collection Procedures).

- d) It was surprising to the Office to observe that in a great sporting city such as Melbourne, with a host of world-class sports venues, the doping control facilities and stations were often improvised and inadequate for the demands of a major event such as the Commonwealth Games. Even at the Melbourne Cricket Ground, one of the world's greatest stadiums, the provision for doping control appeared to be ad hoc and was barely sufficient. The situation in the state-of-the-art Aquatics Centre was even worse. In other venues, adapted specifically for Commonwealth Games' purposes, the provisions for doping control were often lamentable. The human capacity for ingenious improvisation could overcome the majority of the structural consequences and problems, but it could not eliminate the extra stress which these inadequacies had on both athletes and on doping control officials. These deficiencies were nearly almost always overcome, but without strong management, there was a danger that the integrity of the sample control process could have been put at risk (cf. F - Sample Collection Procedures).

More detailed observations on these matters are provided later in this report.

ASPECTS OF THE ANTI-DOPING PROGRAMME

A) THERAPEUTIC USE EXEMPTIONS (TUES) AND ABBREVIATED THERAPEUTIC USE EXEMPTIONS (ATUES)

The Office was provided with full documentation by the CGFMC on therapeutic use exemptions approved before the Games started and the submissions for abbreviated TUEs submitted during the Games (by 16 March there were 20 TUEs and 700 ATUEs in place; a final report was later provided indicating a total of 28 TUEs). No irregularities were found. Indeed, the management of the TUE system and the consequent database is to be applauded.

It should be noted however that the Office were unable to fully observe the communication process between the Laboratory and the CGFMC when screening results indicated the presence of a beta-2 agonist or glucocorticosteroid. The data was presented by the laboratory to the CGFMC via phone discussion and where verbal confirmation was received of the presence of a TUE/ATUE, the samples were subsequently reported as not containing a banned substance. It was only after these calls that the IO Office were informed and provided copies of the appropriate paperwork. Unfortunately the Office is unable to report that all screening results indicating TUE/ATUE substances were confirmed. Following the end of the Games (i.e. after 26 March), the Office continued to receive results from the Laboratory, but did not receive any copies of paperwork from the CGFMC regarding TUE/ATUE cases. Although the desire not to carry out a full confirmation procedure when substances relating to approved TUEs or ATUEs are found is to some extent understandable, it is in contravention of a WADA directive to Laboratories sent in October 2004 requiring full confirmatory tests.

Two "screening results" from the laboratory did cause some difficulties for the CGFMC in researching if an appropriate TUE was in place. In both cases the athlete was not living or training in the country to whose Commonwealth Games Association (the equivalent of the "NOC") the athlete was affiliated. The process of obtaining the correct approvals in sufficient time for a TUE was therefore complicated. Also, this created problems for the CGFMC to establish whether the exemption was correctly in place (a lengthy process in itself). In one instance the CGFMC subsequently determined that there was no irregularity; in another, it considered that the athlete had committed a violation, and also recommended that a warning would be sufficient sanction. These cases illustrate the need to ensure that athletes are aware of the TUE requirements and that they follow the correct procedures wherever they may live.

B) LABORATORY REPORTING TIME ("TURNAROUND TIME")

The contract between ASDA and the CGF included a provision that the laboratory would report on the results of the analysis of samples taken during the Games within 48 hours of reception at Pymble, a northern suburb of Sydney where the accredited laboratory is located. Our copies of relevant documentation indicate that this time limit was respected in the vast majority of sample analyses.

No such stipulation was included in the contract with regard to reporting times for samples taken during the pre-competition phase. Two adverse analytical findings were eventually reported from these pre-competition controls during the Games. If the 48-hour provision had also been included for the pre-competition samples, these cases could have been dealt with much earlier, possibly even before the start of the Games. Such delays harmed the interests of fairness to athletes, effectiveness of the programme, as well as transparency. As the CGF had a full result management and hearing process in place at Melbourne, such delays were unfortunate.

Recommendation 4:

For a major event such as these international, multi-sport Games, 48 hours should be considered as a maximum laboratory turnaround time.

Recommendation 5:

The CGF should also stipulate a maximum turnaround time for the analysis of samples taken in connection with, but before the opening of, the Games. 48 hours could be an appropriate time limit.

C) TEST DISTRIBUTION PLAN (TDP)

The TDP was prepared by the CGF with the help of ASDA, paying attention to the risk level of each of the 16 sports (of which five had two or more disciplines) included in the Commonwealth Games programme. Over 1000 tests were budgeted for, of which one-third were to be combined blood/urine samples. Provision was also made for EPO analysis of some urine samples. The plan was flexible and could be altered during the Games in order to react to new needs, target testing, record setting controls, and other developments. At the time of writing the report, the total number of tests carried out at the Games was still to be confirmed. It is known that there were changes, albeit minimal, to the planned 1014 controls.

One minor shortcoming in the TDP needs some comment. Of the 1014 controls planned for the games, 134 were to be out-of-competition controls during the Games period. These were mostly to be arranged from the Polyclinic at the Games Village. However, by the time the doping control staff knew the names of the athletes to be so tested that day (usually about 10h00) most of them had already left the village for a training session or otherwise left their nation's house(s). Those responsible for notifying the athletes thus had great difficulty in doing their job. This shortcoming might have been overcome if the names of the selected athletes had been communicated earlier to the Polyclinic doping control staff (whilst of course ensuring confidentiality).

Recommendation 6:

To give consideration to improving the efficiency of the planning for out-of-competition tests during the Games.

D) BLOOD SAMPLING

Appendix 11 of the "Gold Standard" set out the blood sample collection procedures to be followed. These were based on the provision of 4ml of blood and its division after coagulation and centrifuging into two separate tubes. Six centrifuge machines had been purchased by ASDA for use at the doping control stations where blood samples were likely to be collected. The IOs observed a large number of sessions where these procedures were followed, and where only DCOs previously trained in blood sample collection were allowed to officiate. Athletes reacted well to these sample collections and the DCOs and phlebotomists behaved most correctly, especially on those few occasions (rugby on 16th; weightlifting on 22nd) where the phlebotomist was not able to obtain a sample from the athlete.

However, as the Games progressed, and following changes introduced by the CGFMC on 18th March, the blood sample collection procedure was changed by the addition of the collection of two samples, one 4ml, one 8ml, which were put directly into A & B tubes without coagulation and centrifuging. This method was not mentioned in the Gold Standard or in the ASDA "Sample Collection Procedures for the 2006 Commonwealth Games". There was also a lack of consistency in the application of the procedure for centrifuging blood samples: samples for human growth hormone (hGH) and haemoglobin-based oxygen carrier (HBOC) were centrifuged to obtain serum at most of the venues; but whole blood samples, the kits for which included a tube for serum, were transported to the ASDA headquarters in the centrally located Melbourne suburb of Richmond, without centrifuging.

The Office was informed that there had been some practical problems with the stipulated method (athletes complaining of the long time the whole process took; lack of blood sampling facilities at some stations, and of an adequate number of centrifuge machines; and the Office itself observed these problems). It also appeared to the Office that there was confusion as to

the different purposes in the doping control programme of taking blood tests, whole blood samples and other samples, and to which kinds of sports which procedure might be more appropriate. For example, on 18th March, the CGFMC also decided that blood samples would only be taken in endurance events; however, whole blood samples were still being taken at weightlifting as late as 22nd March. By the 24th March, it appeared to the IOs that the collection of the two blood samples had ceased, and only the first procedure was being used. There was also confusion – certainly in the opinion of team doctors, and to some extent amongst the IOs too - as to whether the blood samples were being taken to test for hGH, or, in conjunction with 120ml urine samples, for EPO, or as health tests before competition.

In the opinion of the Office, the doubtless well-intentioned, operational reasons for these changes were insufficient to include an additional procedure which had not been included in the standards set out beforehand for the Games.

While on the subject of blood controls, it is perhaps worth mentioning that athletes from athletics, cycling, swimming and weightlifting were often used to such tests; rugby players on the other hand faced them for the first time.

Recommendation 7:

That the provision of appropriate information, and in particular on blood collection procedures, to athletes and athlete support personnel is essential if the doping control programme is to satisfy the requirements of articles 18.2, 20 and 21 of the World Anti-Doping Code. This information must also be made available before events such as the Commonwealth Games begin. The pre-Games meeting(s) for team doctors provide an opportunity for giving practical explanations and demonstrations, explaining the procedures in depth, particularly where blood sampling is concerned.

Recommendation 8:

To try to reduce the time (including waiting time) that athletes must spend when giving blood samples. At doping control sessions late at night, the amount of time required is excessive; blood sampling sessions could perhaps be rescheduled.

E) RESULT MANAGEMENT

Sections 7 and 8 and appendices 14 and 15 of the Gold Standard set out the Results Management and Hearing provisions to be followed at the Melbourne Games. The provisions are detailed and appear to be complete, covering inquiry, disciplinary and appeal phases, and showing the role and responsibilities of the various bodies (CGFMC, CG Federation Court and CAS). They conform to the principles of the World Anti-Doping Code.

In practice, however, these provisions showed that they had a number of limitations and potential for overlapping competences. Firstly, the process was cumbersome and slow. This was demonstrated in the case of the two Indian weightlifters whose out-of-competition samples, taken on 11th and 13th March respectively, produced adverse analytical findings on 18th March. On 19th March, the Federation Court, on the basis of a recommendation from the CGF MC on 18th March, found alleged Anti-Doping Rule Violations had occurred and provisionally suspended the athletes. The Court then informed the athletes of their right to be present at the opening of the B sample on 21st March. Following a written request from the athletes; the B opening was postponed until 22nd March. Upon receipt of the B sample confirmations on 23rd March, the files were then referred to the ad hoc division of CAS sitting in Melbourne to determine whether the alleged violation had occurred.

During this process the confidentiality provisions in the procedures prevented the public identification of the athletes involved. The enormous media interest resulted in some difficulties for the CGF. In the end, this was resolved when CAS released the names of the athletes later on 24 March 2006. There are obviously a number of lessons in this case for consideration by the CGF with a view to improving its procedures:

- a) Stipulating a turn around time for laboratory reports from the pre-competition controls (cf Recommendation 7).
- b) Reviewing the length of the confidentiality period: “throughout the result management process” is not clear. It can be interpreted also to mean that even when a provisional suspension is imposed, no public declaration is possible. On 23rd March, the CGF said on the one hand “no details would be released until the B samples had been analysed and the cases confirmed”; on the other hand, later that same day that “the results were confidential until the appeals process had been exhausted”. The following day, 24th March, the CGF said that “the protocols did not allow for naming athletes until CAS gave its ruling”. In its reference to CAS, did this last statement refer to the ad hoc division of CAS or to the full panel of the ad hoc division? Without what appeared to be with prior knowledge by the CGF, the CAS announced the names of the athletes later on 24th March. On looking at the CGF’s regulations, it is clear that the positioning of the confidentiality article (7.8) before the one on hearings implies that the confidentiality article does not necessarily apply once the hearing process has started. The review of the confidentiality period would also need to take account of the procedures of CAS in this regard.
- c) The result management process is longer than necessary; this despite the fact that the Gold Standard says (article 8.2.2) that “all hearings will be expedited hearings and held as soon as possible after the imposition of the provisional suspension”. In the case of the two Indian weightlifters, the ad hoc division of CAS agreed to two adjournments at the request of the respondents so that they could produce a report from its experts. It is understood that such report was never submitted to CAS and therefore the respondents did not continue to dispute the findings. The CAS interim decisions of 26 March (appendix 5) were confirmed in the arbitral awards of the CAS on 24 April. In addition, an in competition test on one of these weightlifters resulted in CAS determining that a doping offence had occurred (arbitral award of 26 May). These cases illustrate the slowness of the CGF result management process. It is also appropriate to note that the cases have been referred to the IWF for follow up.
- d) There appears to be a conflict of interest for CAS in this process: the Gold Standard stipulates that an ad hoc division of CAS determines whether an anti-doping rule violation has occurred, and also that “appeals from decisions of the ad hoc division shall be heard by the full panel of the ad hoc Division of the Court of Arbitration for Sport” (article 8.5.1).
- e) Further complications are introduced by article 8.5.2, which sets in motion “after the conclusion of the Games period” another appeals procedure within the CAS system. Does this resolve the conflict of interest question raised above? Should the appeals process also have been completed within a week of the end of the Games?

Recommendation 9:

That the result management process for the Commonwealth Games be reviewed by the CGF, with a view to making the process more robust, simpler and speedier to avoid overlap between the various bodies involved.

There were 13 cases of elevated T/E ratios reported by the laboratory. The CGFMC initiated the required past history process for these athletes, either during or after the Games. Because of the CGF’s structure, it was not easy for the CGF to do this directly and the inquiries were made through the appropriate international federations.

F) SAMPLE COLLECTION PROCEDURES

a. General

Stations were poorly signed. In some cases, the station for one sport would also be used by another sport in a different part of the building (e.g. squash at the Aquatics Centre, all the sports at the Exhibition Centre and all those at the very large Multi-

Purpose Venue used the same station). Sometimes the stations were a considerable distance away from that sport's area. It would have been helpful for team officials and for the IOs to have been provided with unambiguous maps showing their location.

b. Selection

Selection of players to be tested, especially in team sports, should be in accordance with the appropriate IF rules. If not, an explanation should be given in the "Gold Standard" and explained to the team doctors at their meeting prior to the Games. At these Games, we observed a single policy of selection: card numbers placed downwards and then drawn at random by either the CGF representative, or by the lead DCO when no other authorised person was available.

We noted with approval that in the sport of netball, three players were drawn from each team for random doping controls. As there are only seven players on court at any one time, this is a relatively high proportion compared to most other team sports.

c. Notification and Chaperoning

Despite the unsatisfactory lay out of many venues from the angle of doping control, and often the unhelpful attitude of volunteer Games' officials to the requirements and needs of doping control staff at the end of an event or competition, the notifications were carried out correctly in the vast majority of cases. There were problems at track cycling on 18th March (when a medal winner ran away to the toilets at great speed just when he was about to be notified) and at two sessions of gymnastics on 20th and 21st, (where gymnasts wore no numbers and left the field of play quickly and en masse). Similarly at swimming on the 19th, the TDP 6th place athlete was not notified, the 5th place athlete was notified instead "due to finding it difficult to identify athletes". Such problems were common at the Aquatics Centre. The same day (the 19th), in the evening at synchronised swimming, a notified athlete ran off to a toilet to "change into a fresh costume" for another competition: the chaperone did her best to explain the problem which was resolved satisfactorily. However, there was potential for a serious irregularity on that occasion. On one other occasion (cycling, 16th) the DCO did not note any reason for the 2 hour 45 minute delay between notification and reporting to the doping control station (the time limit is 60 minutes).

Some of these problems might have been handled better, particularly at events with a large number of tests, if a "venue doping manager" had been appointed with specific overall coordination responsibility for the DCOs and the chaperones on duty at that session.

Chaperoning was on the whole good and efficient. One less efficient occasion (but not without its humorous aspect) was observed, following the men's 20km walk. One of the notified athletes, a medal winner, following due notification and the medal ceremony, went off for a "walk-down" along the course, but at such a speed that the chaperone could not keep up with him. Luckily, a fitter Games volunteer was able to accompany the walker by jogging herself. This situation was somewhat typical of a climate at the Games where chaperones were heard to say, of Australian athletes, "ah well, they have been tested many times/they are good/they are clean". Complaisance of this sort is not fair to other athletes. A similar attitude was noticed when late at night the representative of an Australian athlete might ask for the transfer of the test to the Village polyclinic. This was granted on at least two occasions (cycling, 16th; swimming, 17th) witnessed by the IO, whereas a similar facility was not offered to other athletes present at the same session. On another occasion, the manager of the Australian swimming team called a team meeting (21st) thus delaying the swimmers due for doping control. The CGFMC regarded this as "not acceptable" and not a sufficient or authorised reason for delay; and that it probably would not have happened if the Games had been held outside Australia.

Recommendation 10:

That consideration be given to devising a method that would benefit doping control staff, competition staff as well as the athletes selected for doping control who are due to compete in another event during the same session before the sample collection procedure can be finished.

d. Documentation

The Doping Control Test forms used at the Games were the standard ASDA forms, with the addition of the CGF logo on the top right hand corner. As such they were better suited to domestic Australian use than for a major international event. Two elements in particular seemed inappropriate: some details in the various declarations that the athlete was required to sign (notably authorities which would have access to the information on the form and any follow-up thereto), which might be totally correct for Australian athletes were less so for non-Australian athletes. Similarly, the spaces for identifying the athlete (address, home, mobile phone numbers and email address) may be necessary for ASDA but are not so in the context of a major international sports event when participating athletes are under the authority of their national Commonwealth Games Association. Nor did the form provide space for the athlete to agree or to disagree with article 4.3 of the Gold Standard: "No sample...may be used for any other purpose than the detection of substances...or methods on the Prohibited List...without the athlete's written consent".

The Office observed a large number of variations in the way the Doping Control Forms were completed by the DCOs at various stations. The manner in which corrections were recorded and initialled by the DCO and athlete (rather than start a new form) was at the discretion of the DCO. Insufficient space on the form for such corrections often resulted in virtual illegibility, especially on the bottom copies. When the DCO required an athlete to initial corrections to the section on declared medications or supplements it could have had the consequence of providing data enabling the laboratory potentially to identify the provider of the sample. At some sessions with blood sampling, in order to gain time, the form was completed as far as possible and signed before the samples had been sealed. Halfway through the Games, the CGF (wisely) decided that the athlete's address box could be completed by simply giving the name of the athlete's CGA. Some DCOs used this new method; others continued with asking for the full personal identification data. Lastly, the order in which signatures were asked for varied widely; there appeared to be no agreed order between the DCO, the athlete's representative and the athlete. From a legal standpoint, it should be the athlete who signs last.

While on the subject of the doping control forms, the Office has some doubts as to the practical usefulness and as to the legal status of the medications and supplements section of the Doping Control Form. A further advantage of getting rid of this section would be the reduction in time, especially when there is some confusion or difficulty regarding the substances to be recorded, taken at doping control for the athlete. The Office also notes that in the International Standard for Testing, the Laboratory decides on the period over which declarations of use should be made. This could also lead to inconsistency. The appropriate WADA Guidelines (for Urine Sample Collection) recommend seven days, the timeframe used at these Games.

Recommendation 11:

WADA should review the purpose and utility of the medications section of the Doping Control Form.

The Office also suggests that in future the blue copies of forms destined for the Independent Observer should be sent directly to the IO office in the city of the Games. Transiting the blue copies of the forms through the appropriate Medical Commission is not altogether conducive to "independence".

e. Sample Processing

The sample collection procedures were conducted with a high degree of professionalism and consideration for the athlete. The Office noticed a very small number of athletes' comments, most of which referred to the length of the proceedings, especially when blood sampling was also required.

There was inconsistency in the way any residual urine was disposed of; some DCOs asked the athlete to dispose of it; some gave it to the chaperone/witness; others did it themselves.

The procedures for dealing with partial samples also varied from DCO to DCO, some of whom seemed to be unaware of the new – and simpler – procedures for sealing partial samples.

f. Doping Control Stations

We mentioned earlier that these were often inadequate, ill-planned and unsatisfactory. Lack of space, lack of privacy, presence of extraneous noise, absence of signage, no provision for separate waiting rooms and processing toilets, use of cramped temporary portakabins were all observed on too many occasions. Security was very lax to begin with (no guards; unlocked doors; unlocked fridges, etc) but improved as the Games progressed.

Early teething problems in many of the stations were resolved in the first few days thanks to the reporting system set up by ASDA enabling DCOs to identify deficiencies and thus initiate the remedial action to be taken. However, there were too many stations where it was not possible to make the necessary changes, which therefore remained cramped or overcrowded and generally poor.

Many stations seemed to have equipment problems too. DCOs varied in the attention they paid before a session started to the provision of the right equipment in the processing rooms: this led to a considerable amount of toing and froing in the search for the missing items. The lack of prior preparation also led, on one occasion (gymnastics, 18th), when the waiting room was very full of notified athletes, to the drinks cabinet being refilled by the contractor's representative, which took 15 minutes, created an unwelcome disturbance and further reduced the space available for athletes and their representatives.

One case illustrating many of these problems occurred on the first day of athletics, at the Melbourne Cricket Ground. After notification, the athletes were led to the Doping Control Waiting Room for signing-in. To get there, they had to pass through the Post Event Control space, and the medical recuperation station. As this was the day of the marathons, these were both substantial areas. These two areas fed seamlessly into the doping control station. There were a large number of athletes present in this space, some there for doping control purposes, some needing medical and para-medical attention, some just recuperating after their exertions. In this apparently disorganised situation, the son of one of the marathon winners was seen wandering around with his parent, without any visible accreditation. The child did not enter the doping control station, but he was in an area where notified athletes were waiting with chaperones.

This session also produced the only serious irregularity observed by the Office. The circumstances were, as described before, verging on the chaotic. The athletes to be tested following the women's javelin final were in the doping control station, and two medal winners were in the middle of their sample collection sessions, when, to add to

the confusion, the medallists were called for the ceremony, which in the event took place 35 minutes later. One athlete's sample, in its collection vessel (i.e. unsealed) was left in the processing room watched by her representative for an hour. Another athlete's sample was left in similar circumstances. The representative left the room for some reason; the doping control staff needed the room which had blood kits and the centrifuge machine for another blood/urine sample collection, and the athlete's sample was moved to another room. The athlete, on her return, questioned what had happened. As a consequence, it was agreed that the athlete would provide a second sample. However the first sample was not declared void. The doping control staff on duty filed the appropriate incident reports (and there were other problems happening at that session which did not have a direct bearing on doping control, but which further contributed to the stress of a difficult situation) and lessons were learned.

The Office is very conscious that the circumstances at this major session, with numerous medal events, were unusual, in scale, in scope, and in consequences. However, the large number of athletes to be tested that session had been foreseen; the consequences of the geography of the area should have been foreseen; the provision of more processing rooms with blood kits and centrifuge machines could have been prepared in advance. Later doping control sessions in the venue were managed in a much more controlled, calm and competent fashion. Amongst other changes observed, there seemed to be a better liaison between the Games protocol staff and the doping control staff, whose needs had been insufficiently taken into account on that day.

The use of mobile phones during doping control sessions in the processing rooms becomes more and more widespread, despite the general prohibition on their use. DCOs may need assistance; athletes are being congratulated; representatives have appointments to fix for their athletes. The need to identify medications and supplements taken in the recent past may require consulting the team doctor. These are in themselves substantial reasons. Some DCOs were strict in controlling, or at least limiting their use; others were more "flexible". Some order is necessary: either DCOs must require mobile phones to be switched off, or their use should be tolerated. The present situation is a half-way house, and not satisfactory. ***This is a matter for WADA when reviewing the international standard on doping control (Recommendation 12).***

Lastly, while on the subject of sampling sessions, ***(Recommendation 13) the CGF and the local organising committee are encouraged for future Games to make more adequate transport arrangements for athletes and representatives required to undergo doping control.*** They will often finish – especially at the night events - late and after the venue is shut (and locked) down. Then they discover they have no transport to return to the Village. This is a question of respect for athletes fulfilling their responsibilities. The same lack of transport support was also observed for doping control staff finishing late. However, they knew in advance what arrangements they would have to make.

In summary ***(Recommendation 14), the CGF is urged to provide leadership to the local organising committee in setting appropriate standards for doping control stations, as well assist in making the various areas within the local organising committee aware of the requirements of doping control (i.e. necessary access for doping control staff within a venue).***

g. Transport and Chain of Custody

The sample bags were taken by the lead DCO to ASDA's office in Richmond (an area not far from the centre of Melbourne) at the end of the session in his/her car, and there signed in. This process was observed on several occasions. On our visit to this office on 22nd March, we were somewhat surprised to see the previous night's samples stored in two glass-fronted refrigerators in full view of passers-by in the street. Transport to the laboratory in Sydney was undertaken by commercial couriers (one for

the urine samples, another for the blood samples). The chain of custody forms we observed and those of which we received copies were all correctly completed.

h. Laboratory

The Office was present at the opening of the B samples of the two Indian weightlifters on 22nd March. The procedures were carried out correctly and professionally. The visit to the laboratory (in Sydney) for this purpose also enabled the Office later that day to observe the laboratory's analytical work with other samples. No further remarks are necessary in that context.

The Office wishes to make two comments in regards to the laboratory. As mentioned earlier (in the section on TUEs), monitoring of the TUE/ATUE reports from the laboratory was not fully possible due to communications occurring between the laboratory and the CGFMC via phone. Secondly, on one occasion, when most unusually the A urine bottle broke on opening, the laboratory proceeded at once to the analysis of the B bottle, without asking the CGFMC for guidance beforehand. Should the sample have been in connection with a record, or given rise to an adverse analytical finding, it is not clear what would have been the consequences. If the laboratory had notified the CGFMC, the latter might have considered it advisable to have obtained a second sample from the athlete in question.

And one final remark, although not directly related to the work of the laboratory, concerns a number of equipment failures during the Games. Besides the broken bottle mentioned above, three bottle seals broke on being closed by the athlete; two athletes found dirt in the bottles after opening them; and three blood kits were rejected by athletes because of dirt inside the packaging.

Recommendation 15:

That the CGF set up procedures for dealing with equipment failures at the laboratory.

SUMMARY OF RECOMMENDATIONS:

1. WADA is invited to consider the implications of the present IO mandate for a complete and transparent IO mission.
2. That the CGF publishes its doping control procedures at least three months before the opening of the Games, and ensure that all the applicable doping control procedures and rules are compatible. Particular attention should be paid to the procedures and rules for blood sampling (cf. recommendation 7).
3. That the CGF and the local doping control service provider agree to a clear division of tasks and responsibilities, ensuring harmonised sample processing and equal treatment of all athletes.
4. For a major event such as these international, multi-sport Games, 48 hours should be considered as a maximum laboratory turnaround time.
5. The CGF should also stipulate a maximum turnaround time for the analysis of samples taken in connection with, but before the opening of, the Games. 48 hours could be an appropriate time limit.
6. To give consideration to improving the efficiency of the planning for out-of-competition tests during the Games.
7. That the provision of appropriate information, and in particular on blood collection procedures, to athletes and athlete support personnel is essential if the doping control programme is to satisfy the requirements of article 18.2 of the World Anti-Doping Code. This information must also be made available before events such as the Commonwealth Games begin. The pre-Games meeting(s) for team doctors provide an opportunity for giving practical explanations and demonstrations, explaining the procedures in depth, particularly where blood sampling is concerned.
8. To try to reduce the time (including waiting time) that athletes must spend when giving blood samples. At doping control sessions late at night, the amount of time required is excessive; blood sampling sessions could perhaps be rescheduled.
9. That the result management process for the Commonwealth Games be reviewed by the CGF, with a view to making the process more robust, simpler and speedier to avoid overlap between the various bodies involved.
10. That consideration be given to devising a method that would benefit doping control staff, competition staff as well as the athletes selected for doping control who are due to compete in another event during the same session before the sample collection procedure can be finished.
11. WADA should review the purpose and utility of the medications section of the Doping Control Form.
12. WADA should consider the protocol for the use or non-use of mobile telephones during the sample collection process when reviewing the international standard on doping control.
13. The CGF and the local organising committee are encouraged for future Games to make more adequate transport arrangements for athletes and representatives required to undergo doping control.
14. That the CGF provides leadership to the local organising committee in setting appropriate standards for doping control stations, as well assist in making the various areas within the local organising committee aware of the requirements of doping control (i.e. necessary access for doping control staff within a venue).

15. That the CGF set up procedures for dealing with equipment failures at the Laboratory.

Appendix 1 - **FOLLOW-UP GIVEN TO THE IO RECOMMENDATIONS FROM THE XVIIITH COMMONWEALTH GAMES 2002 WHICH ARE RELEVANT FOR THE MELBOURNE GAMES 2006**

No.	Recommendation Heading and Page (as listed in M2002 IO Report)	Status
1	Agreements and Preparatory Meetings	5 Actioned. Almost all people concerned seemed to be aware of the Independent Observer mission and tasks.
2	Agreements and Preparatory Meetings	5 Actioned. The Office Chair had meetings with the CGFMC and Chief Team Doctors before the Games. The Office observed a pre-games seminar for ASDA staff deployed at the Games.
3	Facilities	9 Mainly actioned. Many stations had TV monitors for notified athletes to watch the progress of their event. Reading material was not seen. Most stations had a variety of sealed drinks available.
4	Personnel	10 Not sufficiently actioned. It is debatable whether the publication of the Gold Standard in mid-February counts as "early enough".
5 & 11	Briefings	11 Actioned. Any specific IF requirements were made known and were available.
6	Documentation	12 Actioned. The IO received copies of all relevant documentation and forms.
7	Medical Notifications (TUEs)	13 Actioned. TUEs were put in place in time; a cut-off period was set; the procedure for granting aTUEs was revised and was effective.
8	Anti-Doping Equipment	14 Actioned. Equipment was satisfactory and refractometers used in all stations. (However, the IOs did not observe a single case of a DCO recalibrating the refractometer before a session).
9	Planning of Tests	15 Actioned. The TDP for the Games, included risk criteria in each sport.
10a	Selection of Athletes - Procedure in stations where there is uncertainty	16 Actioned. The CGF Medical Commissioner was not the sole judge of dealing with uncertainties. When such uncertainties were observed by an IO, the problem was resolved by the Commissioner (if present) and the lead DCO at the station together.
10b	Selection of Athletes - Clear procedures in case of injury or a tied result	16 No such procedures were observed.
10c	Selection of Athletes -Selection procedures and criteria	16 Selection criteria were explained to officials, but not, as far as the IO could observe, to the athletes (who sometimes queried the basis for their selection).
10d	Selection of Athletes -Software	16 This was more a matter for ASDA than for the CGF. However, the CGF TUE data base marks a notable advance.
11	See above #5	11
12a	Sample Collection - Destruction of excess urine	19 Actioned. This was nearly always done in the presence of the athlete and usually by the athlete. (See comment in body of report).
12b	Sample Collection - Use of	19 The nature of many stations at these Games meant that such dividers were necessary

No.	Recommendation Heading and Page <i>(as listed in M2002 IO Report)</i>		Status
	portable dividers in stations		and provided.
12c	Sample Collection - Mirrors to be positioned in toilets	19	Not actioned as far the IOs could see.
13	Storage - Lockable Refrigerators	20	Actioned. Lock-up fridges were provided in stations for sample storage.
14	Laboratory	23	Following the introduction of the relevant WADA standards and procedures, laboratory analytical procedures are now standardised.
15	Athletes/Doctors/Coaches - Education materials	24	Actioned. As described in the report, ASDA introduced a very significant education component into the doping control programme for these Games.
16a	Medical Commissioners - Uniforms	25	Actioned. The Commissioners were identifiable (special logo on uniforms).
16b	Medical Commissioners - Conflict of Interest	25	Conflict of interest document. The IO was informed such a document was in place, though a copy was not received.
17	Results management	28	See relevant section in report.
18	Notification of negatives	29	The provision of negative laboratory reports to interested parties, including the athlete, was said to be the CGF's intention. The IO is not aware of how this was implemented.
19	Hearings	29-30	Actioned.
20	Disabled athletes	30	No particular provisions for disabled athletes were observed, apart from the reference in the Gold Standard to the Appendix on Doping Control for athletes with a disability to the WADA International Standard on Testing. No problems in practice were observed by the IOs (but see report).

Appendix 2 – IO TEAM MEMBERS

1. **Prof Ichiro KONO – Medical and Anti-Doping Expert (Japan)**
Chairman, Japanese Anti-Doping Agency
Chair of the Independent Observers

2. **Ms Rosa MOTA - Athletes Representative (Portugal)**
Former Olympic and World Champion in marathon
Member, WADA Athlete Committee

3. **Ms Delphine VERHEYDEN – Legal Expert (France)**
Sports Lawyer, Vivien & Juvigny, France

4. **Mr George WALKER – Anti-Doping Expert (Great Britain)**
Anti-Doping Consultant
Former Director, Sports Department, Council of Europe

5. **Ms Daisy ZERECEDA – Anti-Doping Expert (Peru)**
Manager, Anti-Doping Commission of Peru

SUMMARY OF INDEPENDENT OBSERVATIONS

Games Day	-2	-1	0	1	2	3	4	5	6	7	8	9	10	11	
Date	13-Mar	14-Mar	15-Mar	16-Mar	17-Mar	18-Mar	19-Mar	20-Mar	21-Mar	22-Mar	23-Mar	24-Mar	25-Mar	26-Mar	Total
Aquatics - Diving										1		1			2
Aquatics - Swimming				2	2	1		1	1						7
Aquatics - Synchronised Swimming							1								1
Athletics							1	1	1	2	1	1	1		8
Athletics - Walks								1				1			2
Badminton													1		1
Basketball - Country Venues					1		1								2
Basketball - Melbourne City									1	1	1	1			4
Boxing					1	1				1				1	4
Cycling Mountain Bike											1				1
Cycling Road									1					1	2
Cycling Track				1	1	1	1								4
Gymnastics Artistic						1		1	1						3
Gymnastics Rhythmic													1		1
Hockey				1		1	1	1	1				1	1	7
Lawn Bowls												1			1
Netball					1		1							1	3
Rugby 7s				1	1										2
Shooting- Clay								1		1					2
Shooting- Pistol					1				1						2
Shooting- Small Bore									1						1
Shooting- Full Bore											1				1
Squash								1			1	1		1	4
Table Tennis								1							1
Triathlon						1									1
Weightlifting				1	1	1	1	1	1	1	1				8
															75
ASADA Command Centre										1					1
ASADA DCO Training Workshop			1												1
Athlete Village - Polyclinic					1	1	1	1		1					5
CAS													1	1	2
CGF Medical Commission	1	1	1	1	1	1	1	2	1	1	1	1	1	1	15
CGF Team Doctors Briefing	1														1
Laboratory - Sydney										1					1
Transport - Chain of Custody							1	1		1		1			4
TUE Meetings			1											1	2
															32
TOTAL	2	1	3	1	2	2	3	4	1	5	1	2	2	3	107

APPENDIX 4 - SUMMARY OF ADVERSE ANALYTICAL FINDINGS

ADVERSE ANALYTICAL FINDING CASES

No.	Sample Collection Date	Sample Type	Sample Code	Rec. by Lab Date	Lab Code	Period of analysis (A sample)	Federation and/or Athlete Advised	B Sample Date	Period of analysis (B sample)	Substance identified	Nationality	Comments
1	11 Mar-06	Urine	244935	12 Mar-06	NA06/02007	12-23 Mar-06	19 Mar-2006	22 Mar-06	22-23 Mar-06	Stanozolol	India	-
2	13 Mar-06	Urine	246209	14 Mar-06	NA06/02008	14-23 Mar-06	19 Mar-06	22 Mar-06	22-23 Mar-06	Stanozolol	India	-
3	16 Mar-06	Urine	242905	17 Mar-06	NA06/01715	17-21 Mar-06	21 Mar-06	23 Mar-06	23-25 Mar-06	Stanozolol	India	-

ABBREVIATED TUE CASES

Date collected	Sample No.	Country	Sport	Compound found (and estimated screen concentration)	TUE Confirmed	Comment
16-Mar-06	243988	Canada	Gymnastics	Salbutamol (179)	Yes	
16-Mar-06	242697	England	Cycling	Salbutamol (163)	Yes	
16-Mar-06	242493	Sri Lanka	Swimming	Salbutamol (222)	No	CGF MC followed up with athlete; ATUE submission on file with FINA; no further action.
16-Mar-06	242484	Australia	Swimming	Terbutaline (125)	Yes	
18-Mar-06	242632	Canada	Prednisone	Prednisone/Prednisolone	Yes	
18-Mar-06	243460	Trinidad and Tobago	Triathlon	Salbutamol (239)	No	CGF MC followed up with athlete; ATUE submission later provided; Warning given to athlete by CGF
18-Mar-06	242480	Australia	Swimming	Fluticasone (>30)	Yes	
18-Mar-06	246686	Australia	Swimming	Fluticasone (>30)	Yes	
19-Mar-06	242945	England	Basketball	Prednisolone (>30)	Yes	
19-Mar-06	243831	Australia	Swimming	Salbutamol (181)	Yes	
19-Mar-06	244931	New Zealand	Cycling	Triamcinolone (>30)	Yes	
19-Mar-06	242528	England	Cycling	Salbutamol (362)	Yes	
19-Mar-06	242276	England	Athletics	Salbutamol (180)	Yes	
20-Mar-06	231893	Australia	Swimming	Salbutamol (150)	Yes	
21-Mar-06	242972	Australia	Salbutamol	Salbutamol (148)	Yes	
21-Mar-06	233662	Canada	Gymnastics	Prednisone/Prednisolone	Yes	
21-Mar-06	243653	New Zealand	Swimming	Salbutamol and Fluticasone	Yes	

Paperwork from 22-26 March 2006 concerning aTUE and TUEs not received by IO Office from CGF MC.



COURT OF ARBITRATION FOR SPORT (CAS)
TRIBUNAL ARBITRAL DU SPORT (TAS)
Ad hoc Division – XVIII Commonwealth Games in Melbourne

INTERIM ORDER

in the arbitration between

CAS arbitration N° CG 06/01

The Commonwealth Games Federation (CGF)

("Applicant")

and

Mr Raju Edwin

("Respondent 1")

CAS arbitration N° CG 06/02

The Commonwealth Games Federation (CGF)

("Applicant")

and

Mr Tajinder Singh

("Respondent 2")

* * *

I FACTS AND PROCEDURE

1. It is the purpose of an ad hoc panel of the Court of Arbitration for Sport (CAS) at Major international Games to give a decision “within 24 hours of the lodging of the application” (art. 18 of the Arbitration Rules for the XVIII Commonwealth Games in Melbourne (“the Rules”).
2. However, the same Rules recognise that this may not always be achievable (see art. 15 (b) and article 20 (a)) which permits the Panel to “refer the dispute to arbitration by the CAS in accordance with the Code of Sports-related Arbitration” mentioning in particular the parties right to be heard. These are such cases. The Panel observes that the urgency which might otherwise exist is absent given that one of the Respondents Mr Tajinder Singh was withdrawn from the Games, and that the other, Mr Raju Edwin, was placed fourth and accordingly was not a medallist.
3. On 25 March 2006, for the reasons set out in an interim order that the Panel delivered, it gave the Respondents the opportunity to consider with the aid of an expert whether the analysis of the Respondents’ samples relied on to support a case of violation of the anti-doping rules was in any way flawed.
4. By a letter hand delivered on 25 March 2006, the Respondents’ representatives indicated that since Saturday was a holiday in Dehli, they had been unable to contact their chosen expert, Dr Sheila Jain at the Sports Authority of India. They also said that they had sought the help of The Hon. Consul General of India in Melbourne, who had informed them that because of the coincidence of the week-end and the climax of the Games, he too was unable to locate any available expert.
5. It is a matter for regret that the Respondents’ representative did not make use of the offer of the CAS to identify potentially available experts but it appears that this was the result of a misunderstanding and that there is no basis for concluding that their omission was in any way a deliberate means of seeking to delay the Panel’s proceedings.
6. In the same letter, the Respondents asked for “at least til Tuesday evening 28 March 2006 so as to get two working days to analyse the data and file our appeal”. The Panel interprets the latter phrase to refer to the filing of a defence since the present proceedings are not appellate in nature.

II ORDER

7. Having heard submissions from both parties which resulted in a measure of consensus and in consideration of article 20 of the CAS ad hoc Rules, the Panel directs as follows :

- (1) By 06:00pm Swiss time on 28 March 2006, the Respondents produce a report from their expert on the analytical data to be distributed in accordance with directions of the CAS Secretariat.
- (2) By 06:00pm Swiss time on 29 March 2006, the Respondents indicate to CAS in Lausanne whether in the light of such report, the Respondents continue to dispute the findings of violation of an anti-doping rule, and if so, on what basis.
- (3) If and in so far as the Respondents continue to dispute the findings on the basis that the analysis of their samples was in some material way flawed, the CGF has until 06:00pm Swiss time on 31 March 2006 to produce a report in defence of the analysis to be distributed on the same basis.
- (4) The Panel refers the dispute to arbitration by the CAS in accordance with the Code of Sports-related Arbitration (Article 20 (a) and (c) (i) and (iii) of the ad hoc Rules)
- (5) If a defence is advanced by the Respondents, further directions will be given for its resolution.

If, however, the Respondents advance no defence, the Panel will as soon as possible determine that an anti-doping rule violation has been committed (see article 28.8 (d) of the CGF Constitution), and the Federation Court will thereafter impose the sanctions provided for under article 28.9. (The Panel further draws attention to article 28.10, although its implementation is not a matter for it.)

III ADDITIONAL REMARKS

8. It may be helpful if the Panel adds the following observations :

(1) The relevant anti-doping rule violation relied on by the Federation Court is “*the presence of a Prohibited Substance or its metabolites ... in an athletes bodily specimen*” (Regulation 10 of the CGF Constitution).

(2) Furthermore, the applicable Commonwealth Games Anti-Doping Standard for the Melbourne 2006 Commonwealth Games (“the Standard”) provide that

5.2.1 WADA-accredited Laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories (current version 4.0 dated August 2004).

The athlete may rebut this presumption by establishing that a departure from the International Standard occurred. If the athlete rebuts the preceding presumption by showing that a departure from the International Standard occurred, then the CGF shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

5.2.2 Departures from the International Standard for Testing which did not cause an Adverse Analytical Finding or other Anti-Doping Rule Violation shall not invalidate such results. If the athlete establishes that departures from the International Standard occurred during Testing then the CGF shall have the burden to establish that such departures did not cause the Adverse Analytical Finding or the factual basis for the Anti-Doping Rule Violation.

These provisions read together provide a presumption of regularity as well as an anti-doping technicality rule.

9. Various points have been raised by the Respondents in correspondence

(1) a denial that either used any prohibited substance

(2) a reference to negative tests within the recent past of each carried out by both WADA and the Indian Authorities

(3) a suggestion that the prohibited substance whose metabolites was found that is to say stanozolol would have had no performance enhancing effect.

The Panel observes that established precedent suggest that none of these points could avail against the results of a properly conducted test which revealed the presence of a prohibited substance in an athlete's urine.

10. The Panel has no doubt that, consistent with the realistic attitude they have displayed throughout these proceedings, the Respondents' representatives will take these matters into account when they come to determine, in consultation with the Respondents, their future course of action. "

Melbourne, 26 March 2006

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

The Hon. Michael J. **Beloff** QC

President of the Panel

Judge Hugh **Fraser**

Arbitrator

Henry **Jolson** QC

Arbitrator

Office of the WADA Independent Observer Team
Melbourne 2006 Commonwealth Games

24 March 2006

Dr M. Jegathesan
Honorary Medical Advisor
Commonwealth Games Federation
Melbourne 2006 Commonwealth Games

Via fax: 03-9653 7014
Pages: 02

Re: CGF Federation Court

Dear Dr Jegathesan,

As we continue to observe the results management processes in place for the 2006 Commonwealth Games here in Melbourne, Australia, I wanted to clarify one step of the management of recent findings.

This relates to the CGF Medical Commission's decision on two results to refer the Adverse Analytical Findings to the Federation Court, with a recommendation to the court for provisional suspensions. It now also includes the very recent decision of the Commission to refer an anti-doping rule violation (failure to submit a TUE) to the Court with the recommendation for a warning.

We understand and concur this is the process as outlined in the CGF Anti-Doping Standard, however our query relates to the exact review process which the Federation Court undertakes following your recommendations.

In regards to the two results, we received a copy of the letters where your President notified the athletes of the findings and their provisional suspensions. We are unsure however if there was any deliberation by the Federation Court on the cases before communication to the athletes. Can you please advise if there were any discussions or did the Court simply agree with the Medical Commission's recommendation and then notify the athletes in writing of the findings? If so, how was this communicated to you and/or documented for the Medical Commission records?

We would like to provide a full account in our independent observer report, and it would therefore be helpful to be alert to the complete course of actions as they occurred or will occur for any future matters. Can I request at this time that for any upcoming processes, where the Federation Court is required to action and/or review any anti-doping matters, that the WADA IO team be informed and provided the opportunity to observe the Federation Court and their work. We have not sent this direct to the court based on the understanding that you would pass on this information.

I would like to take this opportunity to thank you and your colleagues for your cooperation thus far during the Games. You really have been extremely helpful and supportive.

I look forward to hearing from you in regards to the above at your earliest convenience.

With best regards,

Prof. Ichiro KONO

Chair, WADA Independent Observer Team
2006 Melbourne Commonwealth Games