

WORLD PLAYERS ASSOCIATION



BEST PRACTICE IMPROVEMENTS TO ANTI-DOPING PROGRAMS





Introduction

The World Players Association, through its affiliates, represents approximately 80,000 athletes, who are compulsorily bound to the World Anti-Doping Code (Code) across the world's major sports including football, cricket, rugby (union and league), hockey, basketball, Australian football, and others.

These athletes, who have chosen to be represented via player associations and unions, have been systematically excluded from WADA's decision-making systems and processes since the formation of the World Anti-Doping Agency (WADA). The world's sport governing bodies (SGBs) in major professional team sports such as football, basketball, cricket, hockey, rugby, and others have also been absent from WADA's major decision-making bodies. The absence of organized athletes, and their counterparts, is a major governance gap for WADA that goes to the heart of its capacity as a fit for purpose regulator.

The root cause of this has been the creation of a system that has failed to give athletes an equal say and continues to harm athlete rights. This has been seen in recent years through well documented reports of state sponsored doping and numerous cases of manifest injustice where a player's internationally recognised

human rights have been harmed, and their reputations and livelihoods profoundly damaged.

At the heart of this is WADA's partnership between public authorities (or governments) and the sport movement, as led by the International Olympic Committee (IOC). The prevailing wishes of these stakeholders, and often conflicts of interest, have embedded deficits in relation to its governance and created and controlled method of athlete representation, that continue to this day.

World Players has tried to constructively address these through various policies, advocacy, and extensive bilateral engagement with WADA, including in its:

- *Statement of Concern on the Effectiveness and Fairness of Anti-Doping Policy (July, 2016)*
- *WADA Governance Reform Proposal (July, 2017 and as updated August, 2021)*
- *Athlete Rights Impact Assessment (September, 2021): and*

Its Policy in Response to the 2021 Code Review (October, 2018) which tabled six key reforms

1. Respect for the principle of individual case management
2. The undertaking of an athlete rights impact assessment, including on the question of proportionality of sanctions
3. Adopt a health and rehabilitation based approach to substance of abuse
4. Adhere to the framework of the *United Nations Guiding Principles on Business and Human Rights (UNGPs)*
5. Acknowledge organised players are not part of WADA's so called consensus
6. Enable players in professional team sports to collectively bargain anti-doping policies.



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Attempts at reform to date have, however, only produced incremental changes. For example:

- Although a reform was introduced in relation to substances of abuse in the last Code review process, it retains a punitive element and falls well behind best practice.
- The protracted governance review process further embedded many of the existing governance deficits and expanded a model of athlete representation that has been recommended for overhaul by the IOC's own independent experts.
- The question of understanding adverse athlete rights impacts to date remains unaddressed despite a comprehensive proposal from World Players

Good governance and effective athlete representation must be the two building blocks the global anti-doping system is built upon if it is to restore athlete trust and confidence.

At the same time, sophisticated best practices have been developed in many anti-doping programs that do not fall under the Code and are typically negotiated and implemented in partnership with the players.

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These best practices provide the basis for the Best Practice Improvements to Anti-Doping Programs outlined throughout. The implementation of these best practices would stop ongoing harm to athlete rights and resolve most cases of injustice under the Code. They would also allow for more effective and evidence based global anti-doping programs that are responsive to scientific and societal developments.

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WADA should facilitate and allow for the implementation of these Best Practice Improvements and actively support stakeholders, including sport governing bodies and professional leagues, that are committed and capable of doing so. This would go some way to addressing the longstanding exclusion of organized athletes and their sports and providing the basis of a more fit for purpose anti-doping system.

BUILDING BLOCK:

1. Adopt best practice governance standards



WADA's Approach	Best Practice Improvement(s)
<p>WADA's Foundation Board</p> <ul style="list-style-type: none"> • WADA's Foundation Board is its highest decision-making body. • Is committed to maintaining a bilateral partnership between the sports movement, led by the International Olympic Committee (IOC), and public authorities, which continues to deny athletes an equal say. • The Foundation Board is more entirely unrepresentative of professional team sports, which compromises its ability and legitimacy to regulate them. In the last three versions of the Code review process, representation from professional team sports was: <ul style="list-style-type: none"> • 2009 Code: 0 / 38 • 2015 Code: 1 / 38 (FIFA, football) • 2021 Code: 0 / 38 <p>WADA's Executive Committee</p> <ul style="list-style-type: none"> • The WADA Executive Committee is responsible for the day-to-day running of the organisation and making many key decisions. • Embedded stakeholder representation on the Ex Co means it lacks the independence required to act in the best interests of the organisation, and in turn, athletes. • Even purported 'independent Executive Committee members' are effectively appointed by the sport movement and public authorities with no or limited cooling-off periods applied. • It is neither skills, nor expertise based, and its recent enlargement risks undermining its effectiveness - an issue conceded by WADA itself. 	<p>WADA's Foundation Board</p> <ul style="list-style-type: none"> • WADA should evolve into a trilateral partnership that ensures equal representation for athletes, WADA's most important stakeholder. • Athlete representation should be determined in accordance with the three essential actions set out below under <i>Best Practice Improvement #2</i>. <p>WADA's Executive Committee</p> <p>In accordance with best practice governance standards, the Executive Committee should:ⁱⁱ</p> <ul style="list-style-type: none"> • be fully independent of sport, government, and athletes.ⁱⁱⁱ • have the requisite skills, experiences, and diversity to lead the global anti-doping effort. • be of a size that ensures it operates strategically and makes informed, knowledge-based, and objective decisions without the suggestion of political influence or conflicts of interest. • apply a reasonable cooling-off period (such as two years) as a condition of membership.

Reform the global anti-doping system of arbitration and justice

- Access to effective remedy and reformation of the Court of Arbitration for Sport (CAS) has continued to be excluded from the scope of WADA's governance review processes despite its central role in implementing and enforcing decisions.

Embed the internationally recognised human rights of athletes into the governance, activities and relationships of WADA

- Despite the human rights of athletes being a central question for WADA's governance and affairs, it continues to be excluded from the scope of its Working Group processes and activities.^{iv}

Reform the global anti-doping system of arbitration and justice

- Reformation of the governance of WADA requires the strict separation of powers between the legislative, executive, and judicial functions of the global anti-doping system.
- This is required to ensure public, and stakeholder confidence, and that decisions are rendered in a timely and rights-compliant way.
- Critical decisions on compliance must not be perceived as politicised through WADA's conflicted governance structure.
- Additional matters are outlined below under *Best Practice Improvement #4*.

Embed the internationally recognised human rights of athletes into the governance, activities and relationships of WADA

- World Players has tabled a comprehensive *Athlete Rights Impact Assessment*^v to ensure WADA's systems and processes are human rights compliant, yet no action has been taken to advance this despite it being tabled almost two years ago with WADA's Athlete Committee (WADA AC).

BUILDING BLOCK:

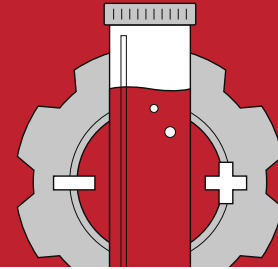
2. Respect the internationally recognised human rights of athletes, including the right to organise and collectively bargain



WADA's Approach	Best Practice Improvement(s)
<ul style="list-style-type: none"> • WADA's vehicle for athlete representation, the WADA AC, is fully integrated within, funded by, and accountable to WADA management. • This fundamentally compromises its independence and effectiveness. • Given these constraints, unlike player associations, it cannot represent or negotiate on behalf of athletes, nor does it have the same legal obligations to act in their best interests. • Recent changes bring its composition closer in line with the Athlete Commission model used by the IOC. This has been recommended for overhaul by independent experts in an independent expert report commissioned by the IOC. • Restrictions on eligibility to be an 'athlete representative' conflict with the internationally recognised human rights standards, including freedom of association by: <ul style="list-style-type: none"> • excluding established, strong and independent representatives such as World Players and its affiliates; and • limiting the full range of professional experience and expertise athletes can draw upon to effectively advance their best interests 	<p>Respect for the internationally recognised human rights to organise and collectively bargain has been a win-win for athletes and their sports. It is moreover the best practice standard for athlete representation in the world's major sports including football, cricket, rugby, basketball, and hockey.</p> <p>To meet its internationally recognised human rights requirements in relation to the right to organise and collective bargaining, WADA must:</p> <ul style="list-style-type: none"> • Action #1 Commit to uphold its international obligations, including to protect, respect and fulfil internationally recognised human rights, including the rights of athletes to freedom of association and to organise and collective bargaining. • Action #2 Recognise and promote the representatives of those athletes who have exercised their right to freedom of association, starting with World Players and its affiliated player associations at national, regional and international levels. Moreover, WADA should promote respect for that right throughout the global anti-doping system, which includes the ability to collectively bargain; and • Action #3 Do no harm: not act in a way which undermines or violates the rights of athletes to be represented in accordance with their internationally recognised human rights.

BEST PRACTICE IMPROVEMENT:

1. An effective regime for contaminated substances



WADA's Approach	Best Practice Improvement(s)
<ul style="list-style-type: none">• Anti-doping science has evolved much faster than the rules. Substances prohibited under the Code can be detected at levels so low they can be as low as a trillionth of a gram or a 'picogram'.• This has resulted in numerous cases where athletes have recorded Anti-Doping Rule Violations (ADRV) under the Code due to factors including contaminated meat, medicine, supplements or even through kissing and sexual intercourse^{vi}.• Although WADA has introduced some 'minimum reporting limits' (MRLs) to address this problem (in essence triggering an investigation rather than an automatically recorded ADRV) it:<ol style="list-style-type: none">1. does not include the full range of substances that are known to be contaminants; and2. an athlete who records a positive result below the MRLs still bears the burden of proof. This means they are still presumed to be a 'doper' even where they have recorded a result in a range where WADA itself concedes it is not possible to prove they took the substance intentionally due to such low levels of presence.	<ul style="list-style-type: none">• Other sports have been both quick to introduce reporting limits, or thresholds and include a much wider range of possible contaminants.• A best practice example like the UFC Anti-Doping Policy^{vii} includes:<ol style="list-style-type: none">1. thresholds, for the full range of substances, i.e., the M3 metabolite of DHCMT, or oral Turinabol, Trenbolone, SARMS and Clomiphene;^{viii} and2. in cases where athletes test positive for substances below these thresholds, the burden of proof is reversed onto the anti-doping authority, in this case, USADA. It works with the athlete and undertakes an investigation where it will only pursue an ADRV if supported by the overwhelming evidence.^{ix}

2. Fast & effective dispute resolution



WADA's Approach	Best Practice Improvement(s)
<p>Problems with the dispute resolution system under the Code have been extensively documented and include^x:</p> <ul style="list-style-type: none"> • It can take athletes years to resolve disputes. • Significant resources and time are required for athletes to mount a legal and scientific defence without access to effective legal aid. • Lack of legal certainty. No uniformity of decisions at first instance, and many anti-doping organisations impose unduly harsh sanctions on athletes for fear of WADA appealing. • A 'de novo' appeals process to the CAS, which is rarely, or if ever, used in favour of athletes and means athletes must prove their innocence twice. • Lack of independence in the governance and composition of key arbitral bodies which are dominated by sport governing bodies. 	<p>Best practice improvements contained in many collectively bargained programs include:</p> <ul style="list-style-type: none"> • Clearly defined case management timetables. Under the MLB-MLBPA Joint Drug Agreement (JDA), there are clear timeframes to expedite the resolution of the dispute. For example, a panel must be established no later than ten days after a grievance was filed, and within twenty-five days following a hearing, a decision must be issued^{xi}. • Under the NHL NHLPA CBA^{xii}, appeals are limited to whether a finding was supported by the substantial evidence available and not unreasonable based on the facts of the case • These agreements and others stipulate access to legal representation must be provided via a players association or external counsel.

BEST PRACTICE IMPROVEMENT:

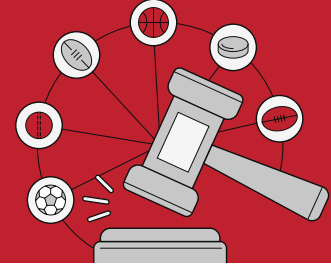
3. Fully health & wellbeing based approaches to substances of abuse



WADA's Approach	Best Practice Improvement(s)
<ul style="list-style-type: none">• WADA itself acknowledges substances of abuse are a problem for society at large and often a drain on the resources of anti-doping organisations.^{xiii}• Yet despite some overdue reforms, the Code retains a punitive, rather than health and wellbeing-based approach.• Athletes who have challenges with substances of abuse may still be sanctioned for up to four years if they test positive for marijuana or cocaine 'in competition'. This is in circumstances where access to support and rehabilitation should be prioritised.	<ul style="list-style-type: none">• World Players has developed principles on <i>Promoting Player Health & Wellbeing Through Effective Treatment Programs</i> that consolidate collectively bargained best practice from sports including the NFL, NHL, MLB, AFL, NRL, NBA, WNBA and others.• This includes having a separate regime for substances of abuse that incorporates the following key aspects:<ol style="list-style-type: none">1. player engagement and negotiation2. player education3. preserving player confidentiality; and4. providing access to player treatment and support services

BEST PRACTICE IMPROVEMENT:

4. Tough but proportionate sanctions that take into account the needs of the sport



WADA's Approach	Best Practice Improvement(s)
<ul style="list-style-type: none">• WADA's sanctioning regime is based on the Olympic Games cycle, which sees sanctions built upon the four-year ban.• This disproportionately impacts athletes in professional team sports whose careers are (i) not defined by Olympic participation and (ii) compete at far more regular intervals – for example, in football, rugby and cricket. Sanctions in these sports are accordingly not fit for purpose and may have career ending impacts for athletes who have not sought to enhance their performance.• Moreover, its sanctioning regime extends to many sports which have little, if any, connection to the Olympics, including Gaelic games, baseball, Australian Rules Football and Rugby League.	<ul style="list-style-type: none">• Anti-doping is both a disciplinary and occupational health and safety matter.• In accordance with best practice and the requirements of national and international law, sanctions should be defined by negotiations with athlete representatives to ensure tough but proportionate penalties that take into account the realities of the workplace environment and the sport.• For example, the sanctioning regime in the MLB-MLBPA JDA contains a sliding scale of sanctions which vary and increase in severity according to the circumstances of the offence, substance consumed, and the number of times an offence has been committed. This includes strong deterrents such as lifetime bans for repeat offences.^{xiv}• Moreover, under the NHL CBA, a player's right to privacy is preserved throughout the process and they are only sanctioned once a final decision has been rendered.

5. Accessible and effective defences



WADA’s Approach	Best Practice Improvement(s)
<ul style="list-style-type: none"> Defences available under the Code for athletes to reduce their sanction, such as “no fault or negligence” or “no significant fault or negligence”^{xv}, can be significantly difficult to assert in practice. An athlete will often have to provide evidence of source or contamination, which can be near on impossible to prove in practice, particularly given a 10-year statute of limitation period. It can also lead to highly variable and often absurd results. For example, there have been many cases where arbitration panels have confirmed an athlete did not, and had no intention to cheat, yet still imposed a significant sanction due to the ineffective regime of available defences.^{xvi} 	<ul style="list-style-type: none"> Many anti-doping programs have adopted more effective ways to ensure access to effective defences. For example, under the UFC Anti-Doping Policy sanctions may be reduced to a reprimand based on an athlete’s degree of fault^{xvii}. Similarly, the MLB-MLBPA JDA has a tiered approach where the “no significant fault or negligence” defence offers far greater certainty than under the Code. For a first offence, a reduction can be made to a still significant 30 games, whereas for a second it will be 60 games.

6. Protect athlete confidentiality



WADA's Approach	Best Practice Improvement(s)
<ul style="list-style-type: none">• The impacts of being wrongly labelled as a 'drug cheat' can be devastating and affect an athlete for the rest of their life.• The Code enables this through disclosure provisions where an anti-doping organisation can publicly reveal a positive test as soon as notice of an ADRV has been provided to an athlete^{xviii}.• With statistics indicating a significant number of ADRVs are for unintentional or inadvertent doping,^{xix} this means there are many athletes who are being wrongly labelled as dopers, and having their due process rights eroded.	<ul style="list-style-type: none">• In contrast, under collectively bargained programs, a player's right to privacy is preserved throughout the process.• Under the NBA-NBPA CBA, an athlete's identity is only revealed where (a) it is uncontested by the athlete^{xx}, (b) it is upheld as part of the dispute resolution process^{xxi} and (c) in response to allegations being made public by another source^{xxii}.

7. Deliver education in partnership with the athletes



WADA's Approach	Best Practice Improvement(s)
<ul style="list-style-type: none">• Anti-doping education is typically delivered by national anti-doping organisations. These are often under-resourced, meaning the quality of education is highly variable across the world.• More fundamentally, these organisations are not responsive to the needs of athletes, and often not trusted by them. This means the content and mode of delivery of education are often done in ways that fail to engage athletes on matters essential to their rights and responsibilities.• Furthermore, changes to fundamental matters such as the <i>Prohibited List</i> are often poorly communicated or not at all.	<ul style="list-style-type: none">• Player associations have an extensive track record of delivering educational programs for athletes, including anti-doping education in many sports.• Best practice in the NFL CBA includes delivering anti-doping programs at agreed times of a player's match calendar / schedule designed to optimise understanding, using relevant technology, communicating in plain language, as well as having programs flexible enough to respond and adapt to prevalent risks such as those presented by international travel and contaminated supplements.• Under the MLB-MBLPA JDA, anti-doping organisations also have a responsibility to communicate to players changes on fundamental matters, such as changes to the list of prohibited substances.

BEST PRACTICE IMPROVEMENT:

8. Incorporate best practice on an ongoing basis



WADA's Approach	Best Practice Improvement(s)
<ul style="list-style-type: none">• The Code review process only happens once every six years, which means fundamental problems with the architecture and application of the Code are very slow to change. As seen for example, in relation to substances of abuse where the approach under the Code has long lagged behind approaches in other sports.• Moreover, given WADA's key working groups are created and accountable to its Executive Committee, they too are beholden to stakeholder interests - for example, in relation to its Governance Review Working Group.• On other key matters such as the composition of the prohibited list, Working Groups are guided by arbitrary criteria such as the 'spirit of sport' and may make decisions that lack transparency.• WADA's Working Groups have also been slow to introduce and adopt best practice, as seen, for example, by its continuing lag on contaminated supplements in contrast to many other sports.	<ul style="list-style-type: none">• Many other sports have developed effective and timely processes to ensure anti-doping programs are responsive to best practice.• For example, under the MLB-MLBPA JDA, within thirty days of the conclusion of the season, the player's association and league meet with the independent program administrator, the Medical Testing Officer, and the Chairperson of the Expert Panel. They will deliberate upon potential changes to the Program based on developments during the previous year.• They consider and confer on any recommendations or suggestions and work towards their implementation.• This includes changes on key matters such as the prohibited list, which are also agreed between the parties.

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- i WADA 'Minutes of the WADA Executive Committee meeting' (November 2021), available at https://www.wada-ama.org/sites/default/files/2022-05/exco_minutes_24nov2021_final_0.pdf
 - ii See for example the Australian Sports Commission, Sport Governance Principles which have been endorsed by the Council of Europe among others, available at <https://www.sportaus.gov.au/governance/principles>
 - iii World Players Association, The Governance of WADA, 10 August 2021, available at https://uniglobalunion.org/news_media/uploads/2021/11/wp_wada_gov_wg_10_aug_21.pdf
 - iv 'WORKING GROUP ON THE REVIEW OF WADA GOVERNANCE REFORMS' (April 2021), available at https://www.wada-ama.org/sites/default/files/2022-02/item_4_1_attach_2_governancewg_interimreport_final.pdf
 - v World Players Association, Correspondence to WADA President, Witold Banka: Athlete Rights Impact Assessment, 3 September 2021
 - vi Andy Brown 'The SII Anti-Doping Monitor – week ending 12 August 2022' (August 2022), available at <https://www.sportsintegrityinitiative.com/the-sii-anti-doping-monitor-week-ending-12-august-2022/>; also see SR/262/2020 ITF v Shoshyna - decision of the independent tribunal (June 2022), available at <https://antidoping.itftennis.com/media/326922/326922.pdf>
 - vii 'UFC Prohibited List' (January 2022), available at <https://ufc.usada.org/wp-content/uploads/UFC-Prohibited-List.pdf>
 - viii 'UFC Prohibited List' (January 2022), available at <https://ufc.usada.org/wp-content/uploads/UFC-Prohibited-List.pdf>
 - ix P Greene, 'Contamination & Doping: Is The UFC's Approach To 'Reporting Limits' Fairer Than WADA's?' (10 March 2022), available at <https://www.lawinsport.com/topics/item/contamination-doping-is-the-ufc-s-approach-to-reporting-limits-fairer-than-wada-s>
 - x P Dimeo & V Meller, 'The Anti- Doping Crisis in Sport' (1st edn, Routledge Publishing 2018)
 - xi MLB – MLBPA Joint Drug Agreement, Art. 8C(3)-(4) available at https://www.mlbplayers.com/_files/gd/4d23dc_5ac1b51876554fc283b5e74e7e25be68.pdf
 - xii NHL Collective Bargaining Agreement, Art. 18A. 4, available at <https://www.nhlpa.com/the-pa/cba>
 - xiii World Anti-Doping Agency '2021 World Anti-Doping Code and International Standard Framework' (18 October 2019), available at <https://www.wada-ama.org/en/resources/2021-world-anti-doping-code-and-international-standard-framework-development-and#resource-download>
Development and Implementation Guide for Stakeholders.
 - xiv MLB – MLBPA Joint Drug Agreement, available at https://www.mlbplayers.com/_files/ugd/4d23dc_5ac1b51876554fc283b5e74e7e25be68.pdf
 - xv World Anti-Doping Agency 'WADA Code' (January 2021) Art. 10.5 & 10.6, available at https://www.wada-ama.org/sites/default/files/resources/files/2021_wada_code.pdf
 - xvi CAS 2018/A/5546 José Paolo Guerrero v. Fédération Internationale de Football Association (FIFA) (May 2018), available at <https://jurisprudence.tas-cas.org/Shared%20Documents/5546.%205571.pdf>; also see CAS 2017/A/5015 International Ski Federation (FIS) v. Therese (August 2017), available at <https://jurisprudence.tas-cas.org/Shared%20Documents/5015.%205110.pdf>
 - xvii 'UFC Anti-Doping Policy' (January 2022), Art. 10.5, available at <https://ufc.usada.org/wp-content/uploads/UFC-Prohibited-List.pdf>
 - xviii World Anti-Doping Agency 'WADA Code' (January 2021) Art. 14.3.1., available at https://www.wada-ama.org/sites/default/files/resources/files/2021_wada_code.pdf
 - xix Andy Brown 'US pro sport sanction issue highlights WADA politics' (December 2020), available at <https://www.>

sportsintegrityinitiative.com/us-pro-sport-sanction-issue-highlights-wada-politics/

- xx World Anti-Doping Agency 'WADA Code' (January 2021) Art. 14.3.1., available at https://www.wada-ama.org/sites/default/files/resources/files/2021_wada_code.pdf
- xxi NHL Collective Bargaining Agreement (July 2020) Art. 47.11(a), available at <https://www.nhlp.com/the-pa/cba>
- xxii NFL Policy on Performance Enhancing Substances, Art. 6, available at <https://nflpaweb.blob.core.windows.net/website/Departments/Legal/2022-Policy-on-Performance-Enhancing-Substances.pdf>

O U R V A L U E S



Inheritance
Leadership
Support
Legacy



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