

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 367

Australian Sports Anti-Doping Authority Act 2006

Australian Sports Anti-Doping Authority Amendment Regulations 2009 (No. 1)

Section 79 of the *Australian Sports Anti-Doping Authority Act 2006* (the Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulations is to enable entrusted persons from the Australian Sports Anti-Doping Authority (ASADA) to be exempt from committing an offence when disclosing personal and/or contract information relating to the National Anti-Doping (NAD) Scheme where such disclosure is required under the World Anti-Doping Code (the Code) or international standards.

The NAD Scheme is the instrument that empowers ASADA to act in regard to anti-doping matters, and contains anti-doping rules relevant to athletes, support persons and sporting administration bodies. It vests responsibility for testing, investigating, making findings and maintaining a register of findings with ASADA.

In exercising this responsibility, ASADA is sometimes required to contract to perform NAD Scheme related tasks. The legislation makes appropriate provision for the situations in which personal information contained in these contracts may be disclosed, and by whom.

Under Section 71 of the Act (Protection of NAD Scheme personal information), it is an offence if an entrusted person discloses NAD scheme personal information to someone else, unless such disclosure is in accordance with the Act or in the NAD scheme or prescribed in the regulations.

The Regulations remove any-doubt on ASADA's ability to make the disclosures required by the Code or an international standard. This ensures Australia's continued compliance with the Code.

The same reasoning applies to Section 72 of the Act which makes provision for the *Protection of contract services personal information*. Therefore a parallel regulation is necessary to cover disclosure of contract services personal information required under the Code or an international standard.

New regulations 13 to 15 make provisions for remuneration and allowances to be put in place for members of the ASADA Advisory Group, Anti-Doping Rule Violation Panel and the ASADA Chief Executive Officer in situations where the Remuneration Tribunal has been unable to finalise determinations for these positions.

Details of the Regulations are set out in the Attachment.

Consultation

Amendments to the Australian Sports Anti-Doping Authority Regulations 2006 (the Principal Regulations) are required to ensure consistency with the Act, which is also being amended by the *Australian Sports Anti-Doping Authority Amendment Act 2009* (the Amending Act). The Amending Act implements recommendations which resulted from an independent review of the Australian Sports Anti-Doping Authority's governance and organisational structures. During this undertaking, the reviewers consulted with the ASADA Chair, non-executive ASADA members, ASADA staff and the Department of Health and Ageing (the Department) to identify major issues and develop their key recommendations.

To ensure that the Regulations enable ASADA to meet new requirements outlined in the amended Act, the Department conducted extensive consultation with ASADA to clarify required changes to the Regulations. Consultation was on-going, involving interaction between the Department and the ASADA Chair, the ASADA Chief Operating Officer and other members of the ASADA staff.

The Department also consulted its Legal Services Branch and the Regulatory Policy and Governance Division. In addition, numerous external departments and agencies were consulted, including the Department of Prime Minister and Cabinet, the Department of Finance and Deregulation.

The Australian Customs and Border Protection Agency and the Australian Sports Commission were also consulted regarding information handling and disclosure matters, as part of broader consultations that occurred during the development of the Bill.

The Act specifies no conditions which need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on 1 January 2010.

DETAILS OF THE AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY AMENDMENT REGULATIONS 2009 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides for the Regulations to be referred to as the *Australian Sports Anti-Doping Authority Amendment Regulations 2009 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 January 2010.

Regulation 3 – Amendment of the Australian Sports Anti-Doping Authority Regulations 2006

This regulation provides for Schedule 1 to amend the *Australian Sports Anti-Doping Authority Regulations 2006*.

Schedule 1 Amendments

Item [1] – Definition

Regulation 1A provides that for the purpose of the Regulations, **Act** means the *Australian Sports Anti-Doping Authority Act 2006*.

Item [2] – Disclosing NAD Scheme and contract services personal information

Regulation 5A provides for ‘entrusted persons’ (as defined under section 69 of the Act) to be able to disclose NAD Scheme personal information where such disclosure is required by the Code or an international standard. Paragraph 71(2)(g) of the Act, makes clear that an ‘entrusted person’ is excepted from committing an offence in disclosing NAD Scheme personal information if the disclosure is prescribed in the regulations.

Regulation 5B provides for ‘entrusted persons’ (as defined under section 69 of the Act) to be able to disclose NAD Scheme contract information where such disclosure is required by the Code or an International Standard. Paragraph 72(2)(h) of the Act, makes clear that an ‘entrusted person’ is excepted from committing an offence in disclosing NAD Scheme contract information if the disclosure is prescribed in the regulations.

The new regulations 5A and 5B are accompanied by additional sub-regulations which restrict ASADA from disclosing NAD Scheme personal and/or contract information in situations where ASADA is not reasonably satisfied that the information being disclosed will be used, as specified, for the purposes of the Code or an International Standard.

Item [3] – Remuneration

This item repeals regulation 13, which currently makes provision for the remuneration of the ASADA Chair, ASADA Deputy Chair and ASADA members in situations where a determination on remuneration for these persons may not have been made by the Remuneration Tribunal.

Regulation 13 is replaced by new provisions that provide for the ASADA CEO to receive remuneration at the same level as for the CEO of the Australian Crime Commission, in situations where the Remuneration Tribunal has been unable to make a determination.

Regulation 13 also provides that the ASADA CEO is to be eligible, where a determination has not been specified by the Remuneration Tribunal, for allowances as outlined in Part 4 of Remuneration Tribunal *Determination 2009/18: Remuneration and Allowances for Holders of Full-Time Public Office*.

Regulation 14 provides that remuneration and allowance entitlements for the Advisory Group Chair and members, in situations where the Remuneration Tribunal has been unable to make a determination, will be at category 2 rates for 'Offices not specified, as outlined in Remuneration Tribunal *Determination 2009/14: Remuneration and Allowances for Holders of Part-Time Public Office* (Determination 2009/14).

Regulation 15 provides that remuneration and allowance entitlements for the ADRVP Chair and members, in situations where the Remuneration Tribunal has been unable to make a determination, will be at category 3 rates for 'Offices not specified, as outlined in Remuneration Tribunal *Determination 2009/14*.