

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 307

Issued by authority of the Minister for Sport

Australian Sports Anti-Doping Authority Act 2006
Australian Sports Anti-Doping Authority Amendment Regulation 2012 (No. 1)

The *Australian Sports Anti-Doping Authority Act 2006* (the Act) provides for the regulation of the Australia's sports anti-doping arrangements.

Section 79 of the Act provides that the Governor-General may make regulations prescribing 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.

Australia's anti-doping framework comprises the Act, the *Australian Sports Anti-Doping Authority Regulations 2006* (the Principal Regulations) and the National Anti-Doping (NAD) Scheme, which comprises Schedule 1 to the Principal Regulations. The Australian Sports Anti-Doping Authority (ASADA) is the focal point for the Australian Government's efforts against doping in sport.

Section 41 of the Act sets out the functions of the Anti-Doping Rule Violation Panel (the Panel). Paragraph 41(a) states that the Panel has the functions set out in the NAD Scheme. Section 13 of the Act sets out the content that the NAD scheme must deal with.

The primary purpose of the *Australian Sports Anti-Doping Authority Amendment Regulation 2012 (No. 1)* is to clarify the intended role of the Panel within Australia's anti-doping regime.

The regulation follows on from a recent decision of the Administrative Appeals Tribunal (AAT) in *XZTT v Anti-Doping Rule Violation Panel* [2012] AATA 728, in which the AAT found that the Panel was a hearing body within the meaning of Article 8 of the World Anti-Doping Code and therefore, its role was to make a finding that an anti-doping rule violation had been committed. This finding was not consistent with the legislative intention, which is that the role of the Panel is to make a finding that an athlete or support person had possibly committed an anti-doping rule violation, while the role of the sport is to determine whether an anti-doping rule violation has in fact been committed.

Specifically, the amendments to the Principal Regulations:

- set out the functions of the Panel;
- clarify that the Panel is not a hearing body, within the meaning of Article 8 of the World Anti-Doping Code;
- confirm that the ASADA Chief Executive Officer and the Panel must have regard to the World Anti-Doping Code and other relevant international anti-doping instruments in exercising powers under the NAD Scheme;

- removes the current definition of ‘consequences’;
- updates the meaning of ‘findings’ in the context of the Panel’s operation;
- clarifies that, where the NAD scheme refers to a possible anti-doping rule violation, it is a reference to any one of the seven non-presence anti-doping rule violations that are specified in the World Anti-Doping Code and replicated in the anti-doping policies of Australia’s national sporting organisations;
- re-affirms that sports tribunals are the final arbiter on anti-doping rule violations; and
- confirm the steps undertaken by the ASADA Chief Executive Officer if it is determined that a possible non-presence anti-doping rule violation warrants action.

In amending the Principal Regulations, consultation has been undertaken with ASADA.

Details of the regulation are set out in Attachment A.

A statement of this regulation’s compatibility with human rights is set out in Attachment B.

This regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Details of the Australian Sports Anti-Doping Authority Regulation 2012 (No. 1)

Section 1 – Name of Regulation

This regulation provides for the amending Regulations to be referred to as the *Australian Sports Anti-Doping Authority Amendment Regulation 2012 (No. 1)*.

Section 2 – Commencement

This regulation provides for the amending Regulations to commence on the day after it is registered.

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

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

Schedule 1 – Amendments

Item [1] – Schedule 1, clause 1.03

This regulation amends clause 1.03 to explicitly set out the functions of the Anti-Doping Rule Violation Panel (the Panel) under the National Anti-Doping (NAD) scheme. The Panel considers information or material presented to it and makes findings in relation to possible breaches of anti-doping rules (also known as anti-doping rule violations). This includes whether an adverse analytical finding (a positive test for prohibited substances) has occurred or whether it is possible that an athlete has committed a non-presence anti-doping rule violation. The Panel also makes recommendations on the consequences (sanctions) for such breaches of the anti-doping rules.

Importantly, the Panel is not the final decision maker on whether an actual anti-doping rule violation has occurred or the sanctions (bans from sport) that should be imposed for doping offences.

This regulation also makes it clear that the Panel is not a hearing body within the meaning of Article 8 of the World Anti-Doping Code.

This regulation provides that both the Australian Sports Anti-Doping Authority (ASADA) Chief Executive Officer and the Panel must have regard to the World Anti-Doping Code and other relevant international anti-doping instruments in exercising their powers under the NAD scheme. The World Anti-Doping Code provides the framework for harmonised anti-doping policies, rules and regulations across the world. In ratifying the UNESCO International Convention Against Doping in Sport, the Australian Government committed to implement anti-doping arrangements consistent with the principles of the World Anti-Doping Code.

Item [2] – Schedule 1, clause 1.05, definition of consequences

This regulation removes definition of “consequences” so as to remove any notion that the Panel is the final arbiter on anti-doping rule violations.

Item [3] – Schedule 1, clause 1.05, definition of finding

This regulation inserts a signpost for the new definition of “finding” at clause 1.05A.

Item [4] – Schedule 1, clause 1.05

This regulation specifies the meaning of a non-presence anti-doping rule violation. A non-presence anti-doping rule violation refers to any of the seven anti-doping rule violations specified under the World Anti-Doping Code, and replicated in a sport’s anti-doping policy, that are substantiated through the collection of evidence or information other than through an adverse analytical finding (failed test result). These violations are specified in clause 2.01(b)-(h) of the regulations.

Item [5] – Schedule 1, clause 1.05, notes

This regulation provides an additional note to clause 1.05 reminding the readers of the existence of the ASADA (*Operations of laws and references*) *Determination 2009*. This determination specifies that, for some clauses in the NAD scheme, the reference to ASADA should be treated as a reference to either the ASADA Chief Executive Officer or to the Panel.

Item [6] – Schedule 1, after clause 1.05

This regulation clarifies the meaning of “finding” for the purposes of the NAD scheme. The Panel can make a finding in relation to an adverse analytical finding (a finding of a possible anti-doping rule violation for the Presence of a Prohibited Substance) or whether it is possible that an athlete or support person has committed a non-presence anti-doping rule violation.

Item [7] – Schedule 1, paragraph 2.04 (m)

This regulation re-affirms the role of Australia’s national sporting organisations as the final decision makers on anti-doping rule violations and the sanctions that should be applied for each violation. Each sporting organisation is obliged to receive the findings of the Panel, act on these findings and enforce any sanctions imposed by a sporting tribunal.

Item [8] – Schedule 1, section 4.07

This regulation confirms the steps undertaken by the ASADA Chief Executive Officer if it is determined that a possible non-presence anti-doping rule violation warrants action.

Item [9] – Schedule 1, clause 4.08

This regulation clarifies that the reference to other possible anti-doping rule violation is a reference to a possible non-presence anti-doping rule violation.

Item [10] – Schedule 1, clause 4.09 and 4.10

This regulation ensures that an athlete or support person who is notified of an adverse analytical finding or a non-presence anti-doping rule violation, is also advised if the Panel, after considering a submission by the athlete or support person, decides not to make an entry on the Register of Findings.

The Register of Findings is a record of findings by the Panel in relation to adverse analytical findings and non-presence anti-doping rule violations.

Once the Panel decides to make an entry on the Register of Findings, the ASADA CEO is required to notify the athlete, support person and the relevant sporting administration bodies of these findings. The relevant NSO is then required, under its rules, to take action in respect of the possible anti-doping rule violation.

The regulation also confirms that the details of a non-presence anti-doping rule violation may be entered onto the Register of Findings.

Item [11] – Schedule 1, paragraph 4.11 (1)(a)

This regulation clarifies that the reference to other possible anti-doping rule violation is a reference to a possible non-presence anti-doping rule violation.

Item [12] – Schedule 1, paragraph 4.11 (2)(a)

This regulation clarifies that the reference to other possible anti-doping rule violation is a reference to a possible non-presence anti-doping rule violation.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Sports Anti-Doping Authority Amendment Regulation 2012 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This Legislative Instrument will clarify the intended role and responsibilities of the Anti-Doping Rule Violation Panel within Australia's anti-doping regime. The amendments include explicitly setting out the functions of the Panel and removing any doubt that the Panel is not a hearing body under Article 8 of the World Anti-Doping Code. The amendments also redefine the term "finding" to make it clear that the Panel's finding is not the final decision in relation to a doping offence.

The amendments also include recognising the role of sporting organisations in determining whether an anti-doping rule violation has been committed, and the consequences that flow from that breach.

None of these amendments make any substantive changes to the law.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Senator the Hon Kate Lundy, Minister for Sport