



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

Select Legislative Instrument 2012 No. 307

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Australian Sports Anti-Doping Authority Act 2006*.

Dated 6 December 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

KATE LUNDY
Minister for Sport

1 Name of regulation

This regulation is the *Australian Sports Anti-Doping Authority Amendment Regulation 2012 (No. 1)*.

2 Commencement

This regulation commences on the day after it is registered.

3 Amendment of *Australian Sports Anti-Doping Authority Regulations 2006*

Schedule 1 amends the *Australian Sports Anti-Doping Authority Regulations 2006*.

Schedule 1 Amendments

(section 3)

[1] Schedule 1, clause 1.03

substitute

1.03 Authority for ASADA to exercise certain powers

Exercise of powers in relation to requests from sporting administration bodies

- (1) ASADA is authorised to exercise powers under the NAD scheme in order to cooperate with a request from a sporting administration body if the request is reasonably necessary to enforce or give effect to the World Anti-Doping Code and other relevant international anti-doping instruments.

Exercise of powers in relation to requests to sporting administration bodies

- (2) ASADA is authorised to use information about an athlete or support person that is given to ASADA by a sporting administration body as if it were information that was obtained by an investigation by ASADA under the NAD scheme if ASADA requested the sporting administration body to provide, or obtain and provide, the information.

Note Regulation 4 of the *Australian Sports Anti-Doping Authority Regulations 2006* prescribes additional relevant international anti-doping instruments for the Act.

1.03A Functions of the ADRVP under the NAD scheme

- (1) In addition to the functions of the ADRVP mentioned in paragraphs 41 (1) (b) and (c) of the Act, the ADRVP has the following functions under the NAD scheme:
- (a) to consider a submission made to it by a participant in relation to:
 - (i) an adverse analytical finding; or
 - (ii) a possible non-presence anti-doping rule violation;
 - (b) to receive and consider information and material that:
 - (i) is given to it by the CEO or a member of the ASADA staff; and
 - (ii) relates to a participant mentioned in paragraph (a);
 - (c) to consider whether to make a finding that an adverse analytical finding has occurred and to make a finding of that kind;
 - (d) to consider whether to make a finding that it is possible that an athlete or support person has committed a non-presence anti-doping rule violation and to make a finding of that kind;
 - (e) to make recommendations about the consequences of a finding that:
 - (i) there is an adverse analytical finding; or
 - (ii) it is possible that an athlete or support person has committed a non-presence anti-doping rule violation;

(f) to make entries on the Register of Findings.

- (2) The ADRVP does not have the function of acting as a hearing panel of the kind mentioned in Article 8 of the World Anti-Doping Code.

1.03B ASADA and ADRVP to have regard to World Anti-Doping Code etc

In exercising powers for the NAD scheme and making recommendations, the CEO and the ADRVP must have regard to:

- (a) the World Anti-Doping Code (including the comments annotating various provisions of the World Anti-Doping Code); and
(b) other relevant international anti-doping instruments.

Note Regulation 4 of the *Australian Sports Anti-Doping Authority Regulations 2006* prescribes additional relevant international anti-doping instruments for the Act.

[2] Schedule 1, clause 1.05, definition of *consequences*

omit

[3] Schedule 1, clause 1.05, definition of *finding*

substitute

finding: see clause 1.05A.

[4] Schedule 1, clause 1.05

insert

non-presence anti-doping rule violation means an anti-doping rule violation mentioned in any of paragraphs 2.01 (2) (b) to (h).

Note The anti-doping rule violation mentioned in paragraph 2.01 (2) (a) relates to the presence of a prohibited substance or its metabolites or markers in an athlete's sample.

[5] Schedule 1, clause 1.05, notes

substitute

Note 1 In accordance with the definition of **World Anti-Doping Code** in subsection 4 (1) of the Act, a reference to the World Anti-Doping Code is a reference to the World Anti-Doping Code as in force from time to time.

Note 2 Other words and phrases used in the NAD scheme, including **ASADA** and **ASC**, are defined in section 4 of the Act.

Note 3 A reference in these definitions to ASADA may be treated as a reference to the CEO or to the ADRVP if a determination made under subsection 131 (2) of Schedule 1 to the *Australian Sports Anti-Doping Authority Amendment Act 2009* applies to the reference.

[6] Schedule 1, after clause 1.05

insert

1.05A Meaning of *finding*

In the NAD scheme, a ***finding*** is a finding by the ADRVP that:

- (a) there is an adverse analytical finding; or
- (b) it is possible that an athlete or support person has committed a non-presence anti-doping rule violation.

[7] Schedule 1, paragraph 2.04 (m)

substitute

- (m) accept findings by the ADRVP, act on findings by the ADRVP, ensure that a notice of an alleged anti-doping rule violation is issued in accordance with a recommendation made by the ADRVP, and enforce sanctions imposed by a sporting tribunal; and

[8] Schedule 1, section 4.07*substitute***4.07A Notification of possible non-presence anti-doping rule violation**

- (1) This clause applies if:
 - (a) the CEO receives evidence or information showing a possible non-presence anti-doping rule violation; and
 - (b) following a review of the evidence or information, the CEO determines there is a possible non-presence anti-doping rule violation that warrants action by the CEO.
- (2) The CEO must notify the participant in writing of the possible non-presence anti-doping rule violation.
- (3) The notice must include:
 - (a) details of the possible non-presence anti-doping rule violation; and
 - (b) a statement that the participant (or a person on the participant's behalf) may, within the response period, give the CEO a written submission setting out information or evidence relating to the possible non-presence anti-doping rule violation, or waiving this right to make a submission; and
 - (c) a statement that if the participant (or a person on the participant's behalf) does not give the CEO a written submission or notice within the response period, the participant is taken to have waived the participant's right to make a submission; and
 - (d) a statement that, after considering any submission made by the participant (or a person on the participant's behalf), the ADRVP may make an entry on the Register relating to the possible non-presence anti-doping rule violation; and
 - (e) a statement that the ADRVP may make recommendations to relevant sporting organisations about the consequences of the possible non-presence anti-doping rule violation; and
 - (f) details of other parties that will be notified of the entry on the Register; and

(g) a statement that the ADRVP may also publicly disclose details of the entry on the Register.

(4) In this clause:

response period means:

- (a) the period of 10 days after a participant receives a notice;
or
- (b) if the CEO considers that a shorter period is reasonably necessary due to the circumstances (for example, because of a forthcoming international event or national event)—a shorter period notified by the CEO in writing to the participant before the end of the original response period;
or
- (c) a longer period notified by the CEO in writing to the participant.

[9] Schedule 1, clause 4.08

omit

other possible anti-doping rule violations

insert

possible non-presence anti-doping rule violations

[10] Schedule 1, clauses 4.09 and 4.10

substitute

4.09 Finding—consideration by the ADRVP

- (1) This clause applies if:
 - (a) a participant has received notification under clause 4.06 or 4.07A; and
 - (b) the response period for the notification has ended.
- (2) The ADRVP must, as soon as practicable, consider any submissions made by the participant and decide whether or not to make an entry on the Register.

- (3) If the ADRVP decides not to make an entry on the Register, the ADRVP must notify:
- (a) the participant; and
 - (b) any other party that has been notified of the adverse analytical finding or possible non-presence anti-doping rule violation.

4.10 Entry of finding on Register

As soon as practicable after deciding to make an entry on the Register, the ADRVP must enter the following information on the Register:

- (a) the name of the participant;
- (b) if the participant is an athlete:
 - (i) the athlete's date of birth; and
 - (ii) the athlete's sport;
- (c) the nature of the finding relating to the adverse analytical finding or possible non-presence anti-doping rule violation;
- (d) the date of the adverse analytical finding or possible non-presence anti-doping rule violation;
- (e) any other details relevant to the adverse analytical finding or possible non-presence anti-doping rule violation that the ADRVP considers should be entered on the Register.

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

omit

other possible anti-doping rule violation

insert

possible non-presence anti-doping rule violation

[12] Schedule 1, paragraph 4.11 (2) (a)*omit*

other possible anti-doping rule violation

*insert*possible non-presence anti-doping rule violation

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.