

EXPLANATORY STATEMENT

Select Legislative Instrument No. 206, 2014

Australian Sports Anti-Doping Authority Act 2006

Australian Sports Anti-Doping Authority Amendment (World Anti-Doping Code and Other Measures) Regulation 2014

The *Australian Sports Anti-Doping Authority Act 2006* (Act) provides for the operation of 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* (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.

ASADA implements programmes and activities that comply with the World Anti-Doping Code (Code) and encompass deterrence (education and awareness), detection (testing and investigations) and enforcement (management of cases involving possible ADRVs).

The Code is an international agreement, administered by the World Anti-Doping Agency (WADA), which provides the framework for harmonised anti-doping policies, rules and regulations within sport organisations and among governments. A fundamental purpose of the Code is to protect the rights of the clean athlete.

Australia's National Sporting Organisations (NSO) are required to have an anti-doping policy that complies with the Code, and acknowledges ASADA's powers and functions under the Act and NAD Scheme. All NSO anti-doping policies replicate essential parts of the Code (for example, Article 2, which sets out the ADRVs), meaning the operation of ASADA's legislative functions complement the anti-doping policy of the relevant NSO.

In November 2011 WADA initiated a comprehensive two-year review of the Code. This review included an extensive consultation process allowing all members of the international anti-doping community to comment on proposed revisions. The review culminated with the adoption of revisions at the World Conference on Doping in Sport in Johannesburg, South Africa on 15 November 2013. The revisions are due to come into effect, world-wide from 1 January 2015.

To ensure that anti-doping arrangements are harmonised across the world, international sporting federations and anti-doping organisations that are signatories to the Code are currently updating their anti-doping policies to reflect the revisions. At the same time, governments that have ratified the UNESCO International Convention against Doping in Sport, such as the Australian Government, are obligated to update their arrangements to align with the principles of the revised Code.

The primary purpose of the *Australian Sports Anti-Doping Authority Amendment (World Anti-Doping Code and Other Measures) Regulation 2014* (amending regulation) is to give effect to changes to the Code and introduce certain measures to streamline Australia's anti-doping arrangements. The implementation of many of these amendments relied on the passage of the *Australian Sports Anti-Doping Authority Amendment Act 2014* which received Royal Assent on 26 November 2014.

In order to give effect to changes in the Code, the amendments to the Principal Regulations include:

- specifying new 'complicity' and 'prohibited association' ADRVs and amending the specification of other existing violations;
- enabling ASADA to administer its responsibilities in relation to the new 'prohibited association' ADRV;
- linking the requirements for athletes to provide 'whereabouts information' to the International Standard for Testing and Investigations;
- specifying a new requirement for retired athletes to be available for testing for six months before return to competition;
- establishing a review mechanism for decisions made by the Australian Sports Drug Medical Advisory Committee (ASDMAC);
- extending the statute of limitations for commencing an ADRV process from eight to ten years;
- amending 'information sharing' (protected information) arrangements; and
- amending terminology and definitions.

The amendments also give effect to the removal of the 'register of findings' and clarify the Anti-Doping Rule Violation Panel's (ADRVP) role in making assertions of possible ADRVs.

Consultation

The Code revisions were developed following a two-year consultation process. The Australian sports sector was consulted in preparing the Australian Government's submissions to this review. Amendments to the Act were the subject of an Inquiry by the Senate Community Affairs Legislation Committee. ASADA, ADRVP and ASDMAC were consulted.

Details of the amending regulation are set out in the Attachment.

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

The amending regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The proposed amending regulation commences on 1 January 2015.

Authority: Section 79, *Australian Sports Anti-Doping Authority Act 2006*

Details of the proposed *Australian Sports Anti-Doping Authority Amendment (World Anti-Doping Code and Other Measures) Regulations 2014*

Section 1 – Name

This section provides for the amending regulation to be referred to as the *Australian Sports Anti-Doping Authority (World Anti-Doping Code and Other Measures) Amendment Regulation 2014*.

Section 2 – Commencement

This section provides for the amending regulation to commence on 1 January 2015.

Section 3 – Authority

The *Australian Sports Anti-Doping Authority Act 2006* provides for the amendments of the Regulations.

Section 4 – Schedules

This section provides that the Schedules to this Regulation set out amendments to, and where applicable, repeal provisions of the Principal Regulations (including Schedule 1).

Schedule 1 – Amendments - Australian Sports Anti-Doping Authority Regulations 2006

Item [1] – Regulation 1A

This item inserts a signpost to the definition for the term *ASDMAC review function*. The term has the meaning given by sub-regulation 6(5).

Item [2] – Regulations 5, 5A and 5B

This item repeals regulations 5, 5A, and 5B and substitutes a new regulation relating to the disclosure of protected information. The regulation provides that, for the purposes of section 68B of the Act, the ASADA Chief Executive Officer (ASADA CEO) can disclose protected information to a body or person where the ASADA CEO is satisfied that the protected information will enable or assist the body or person to perform its functions. The regulation also provides for the disclosure of protected information in accordance with the Act to a sporting administration body.

Item [3] – Part 3, heading

This item repeals the heading of Part 3 and inserts a new heading ‘ASDMAC functions, meetings and procedures’.

Item [4] – Regulations 6, 7 and 8

This item repeals regulations 6, 7 and 8 and inserts new regulations prescribing ASDMAC functions, meetings and procedures.

Regulation 6 specifies the meaning of *ASDMAC review function*.

While the Regulation is not intended to prevent the ASDMAC members from interacting with each other, Regulation 6 requires the ASDMAC review functions to be performed separately from the functions of ASDMAC. To protect the integrity of the *Therapeutic Use Exemption (TUE)* process, a review of a TUE application should be considered by ASDMAC members not involved in the initial decision.

Regulation 6 also prescribes that ASDMAC functions and review functions may only be performed under a delegation (Section 66 of the Act).

Regulation 6A prescribes the conditions in which a meeting of the ASDMAC may be convened for the purposes of performing an ASDMAC function or an ASDMAC review function.

Regulation 7 sets a quorum of three members for ASDMAC meetings when performing a function other than an *ASDMAC review function* and a quorum of two for meetings of the ASDMAC review members.

Regulation 8 provides the arrangements for chairing meetings of ASDMAC members and ASDMAC review members in the absence of the ASDMAC Chair.

Item [5] – Subregulation 9(3), note

This item repeals the note under subregulation 9(3) and replaces it with a note referring to section 33B of the *Acts Interpretation Act 1901*.

Item [6] – at the end of regulation 9

This item provides that if at a meeting of ASDMAC review members, in which the review members are considering whether to affirm or set aside the original decision in relation to a review of a TUE decision and the votes are equal, the original decision is affirmed.

Item [7] – Subregulation 10(1)

This item removes ‘(1)’ from the subregulation.

Item [8] – Subregulations 10(2) and (3)

This item repeals subregulations 10(2) and (3). Under section 33B of the *Acts Interpretation Act 1901*, ASDMAC will still be able to meet by telephone, closed circuit television or other means of communication.

Item [9] – Part 4

This item repeals part 4 of the regulations. The Act provides that the remuneration of the ASADA CEO and members of both the Advisory Group and the ADRVP is set by the Remuneration Tribunal.

Item [10] – Subclause 1.02A(1) of Schedule 1

With the removal of the Register of Findings, the ADRVP now makes an ‘assertion’ in relation to a possible ADRV. Accordingly, this item removes the reference to the ‘Register of Findings’ and substitutes it with the term ‘assertions made by the ADRVP’.

Item [11] – Subclauses 1.02A(2) of Schedule 1

This item removes the reference to ‘findings’ and replaces it with ‘assertions’.

Item [12] – Subclauses 1.02A(3) of Schedule 1

This item removes the reference to ‘findings’ and replaces it with ‘assertions’.

Item [13] – Subclause 1.03A(1)

Subclause 1.03A(1) sets out the functions of the ADRVP under the NAD scheme. This item amends the functions of the ADRVP to reflect the removal of the ‘Register of Findings’. The new subclause also specifies the functions of the ADRVP in terms of clauses 4.08, 4.09, 4.09A and 4.10 of the NAD scheme.

Item [14] – Clause 1.04 of Schedule 1

This item repeals clause 1.04. The limitations period for commencing the ADRV process is dealt with under clause 4.23 of the NAD scheme.

Item [15] – Clause 1.05 of Schedule 1

This item inserts a note advising that a number of expressions used in the NAD scheme are defined in the Act. This item also inserts a note confirming that in accordance with the definition of the Code in section 4 of the Act, a reference to the Code is a reference to the Code as in force from time to time.

Item [16] – Clause 1.05 of Schedule 1, definition of *accredited laboratory*

This item repeals the definition of *accredited laboratory*. This definition is not required given the inclusion of the definition of *recognised laboratory* in the Act.

Item [17] – Clause 1.05 of Schedule 1

This item inserts a definition of administration and provides that the term has the meaning given by sub clause 2.01H(2).

Item [18] – Clause 1.05 of Schedule 1, definition of *adverse analytical finding*

This item amends the definition of *adverse analytical finding* to remove a reference to the term ‘accredited laboratory’ and replace it with the term ‘recognised laboratory’.

Item [19] – Clause 1.05 of Schedule 1, at the end of the definition of *anti-doping organisation*

This item provides that a regional anti-doping organisation is an *anti-doping organisation* for the purposes of the NAD scheme. A regional anti-doping organisation brings together several countries and stakeholders within a geographic area to mobilise and pool their resources to deliver Code-compliant anti-doping programmes within the region.

Item [20] – Clause 1.05 of Schedule 1, definition of *anti-doping rules*

This item repeals the definition of *anti-doping rules* and substitutes a new definition. The new definition specifies that the anti-doping rules are included at Division 2.1 of the NAD scheme.

Item [21] – Clause 1.05 of Schedule 1, definition of *anti-doping rule violation*

This item repeals the definition of *anti-doping rule violation* in the NAD scheme. The definition of this term is now included in the Act.

Item [22] – Clause 1.05 of Schedule 1

This item inserts a definition for the term *assertion*. This change is required as section 13(1)(h) of the Act now authorises the ADRVP to make assertions, rather than findings, in relation to possible ADRVs.

Item [23] – Clause 1.05 of Schedule 1, definition of *athlete*

This item repeals the definition of *athlete* in the NAD scheme. The definition of this term is now included in the Act.

Item [24] – Clause 1.05 of Schedule 1, definition of *atypical finding*

This item amends the definition of *atypical finding* to remove a reference to the term accredited laboratory and replace it with the term recognised laboratory.

Item [25] – Clause 1.05 of Schedule 1, definition of *competition*

This item amends the definition of *competition* to reflect revisions to the definition in the Code. The word ‘athletic’ has been replaced with ‘sport’.

Item [26] – Clause 1.05 of Schedule 1, note at the end of the definition of *competition*

This item amends the note at the end of the definition of *competition* to reflect revisions to the definition in the Code. The word ‘athletic’ has been replaced with ‘sport’.

Item [27] – Clause 1.05 of Schedule 1, definition of *finding*

This item repeals the definition of *finding*. As specified in the amended 13(1)(h) of the Act, the ADRVP makes assertions relating to possible violations of the anti-doping rules. This replaces the previous requirement for the ADRVP to make findings in relation to possible violations of the anti-doping rules.

Item [28] – Clause 1.05 of Schedule 1, definition of *in-competition*

This item repeals the existing definition of *in-competition* and inserts a new definition. The new definition reflects the revision to the definition in the Code.

Item [29] – Clause 1.05 of Schedule 1, definition of *ineligibility*

This item repeals the definition of *ineligibility* in the NAD scheme as this term is now defined in the Act.

Item [30] – Clause 1.05 of Schedule 1, definition of *international event*

This item amends the definition of *international event* to reflect revisions to the definition in the Code. The definition has been broadened in the Code to include a ‘competition’ in addition to an ‘event’.

Item [31] – Clause 1.05 of Schedule 1, definition of *international event*

This item amends the definition of *international event* to include the words ‘or competition’ after ‘for an event’.

Item [32] – Clause 1.05 of Schedule 1, definition of *International Standard for Testing*

This item repeals the definition of *International Standard for Testing*. The title of the International Standard has been renamed by WADA as the *International Standard for Testing and Investigations*.

Item [33] Clause 1.05 of Schedule 1

This item inserts a new definition for the *International Standard for Testing and Investigations*.

Item [34] Clause 1.05, definition of *international-level athlete*

This item repeals the existing definition of international-level athlete and substitutes a new definition which reflects changes made to the definition in the Code. An international-level athlete is defined as a person who is recognised by a specific International Sporting Federation as an athlete who competes in that particular sport at an international level in accordance with the *International Standard for Testing and Investigations*.

Item [35] Clause 1.05, definition of *marker*

This item amends the definition of the term *marker* to reflect the revised definition in the Code.

Item [36] Clause 1.05, definition of *national anti-doping organisation*

This item amends the definition of *national anti-doping organisation* to reflect the revised definition in the Code. Under the revised definition a regional anti-doping organisation will no longer be classified as a national anti-doping organisation.

Item [37] Clause 1.05, definition of *national event*

This item amends the definition of *national event* to reflect the revised definition in the Code.

Item [38] Clause 1.05, definition of *no advance notice*

This item repeals the definition of *no advance notice* as ASADA collects samples without giving advance notice to the athlete.

Item [39] Clause 1.05, definition of *non-presence anti-doping rule violation*

This item repeals the definition of *non-presence anti-doping rule violation* and substitutes a new definition. All ADRVs, except the violation of Presence specified in clause 2.01A of the NAD scheme, which relates to the presence of a prohibited substance or its metabolites or markers in an athlete's sample, are non-presence ADRVs.

Item [40] Clause 1.05, definition of *out-of-competition*

This item repeals the definition of *out-of-competition* and substitutes a new definition.

Item [41] Clause 1.05, definition of *possession*

This item inserts a signpost to the definition of *possession* in subclause 2.01F(3).

Item [42] Clause 1.05, definition of *prohibited substance*

This item repeals the definition of *prohibited substance* and substitutes a new definition. The definition in the Code has been amended to provide that a class of substances may be a substance for the purposes of the revised Code.

Item [43] Clause 1.05, definition of *provisional suspension*

This item repeals the definition of *provisional suspension*.

Item [44] Clause 1.05, definition of *regional anti-doping organisation*

This item inserts a definition of *regional anti-doping organisation*. The definition is consistent with the definition provided in the revised Code.

Item [45] Clause 1.05, definition of *Register of Findings or Register*

This item repeals the definition of *Register of Findings or Register* as the term is now redundant.

Item [46] Clause 1.05, definition of *registered testing pool*

This item repeals the definition of *registered testing pool* and substitutes a new definition. The definition aligns with the definition in the revised Code. An athlete is not placed on the registered testing pool solely on the basis of being at the elite level. A decision to place someone in the registered testing pool takes into account other factors such as the risk of doping.

Item [47] Clause 1.05, definition of *representative*

This item amends the definition of *representative* to recognise the operation of the renamed International Standard for Testing and Investigations.

Item [48] Clause 1.05, definition of *support person*

This item repeals the definition of *support person* in the NAD scheme. The definition of this term is now included in the Act.

Item [49] Clause 1.05

To improve readability, this item inserts a definition for *response period* for a notice (colloquially described as a “show cause” notice) given to an athlete or support person (a participant) by the ASADA CEO under Part 4 of the NAD scheme. The length of the response period is ten days, or as otherwise notified by CEO in writing.

Item [50] Clause 1.05, definition of *tampering*

This item inserts a signpost to the definition of *tampering* in subclause 2.01E(2).

Item [51] Clause 1.05

This item inserts a definition for *therapeutic use exemption* (TUE) and provides that the term means an exemption granted to an athlete by a TUE Committee, in accordance with the revised Code and the International Standard for Therapeutic Use Exemptions that authorises the athlete to use a prohibited substance or a prohibited method for therapeutic purposes.

Item [52] Clause 1.05, definition of *trafficking*

This item inserts a signpost to the definition of *trafficking* in subclause 2.01G(2). The definition reflects the definition in the revised Code.

Item [53] Clause 1.05, definition of *use*

This item inserts a signpost to the definition of *use* in subclause 2.01B(4). The definition reflects the definition in the revised Code.

Item [54] Clause 1.05

This item inserts a signpost to the definition of *whereabouts information* and refers to the meaning given by subclause 3.09(1). The definition reflects the definition in the revised Code.

Item [55] Clause 1.05A of Schedule 1

This item repeals the definition of the term finding as it is now redundant.

Item [56] Subclause 1.06(1) of Schedule 1

This item repeals subclause 1.06(1) and inserts a new subclause which provides greater clarity on which athletes are subject to the NAD Scheme.

Item [57] Paragraph 1.06(2)(f) of Schedule 1

This item is a drafting amendment to remove the word ‘and’.

Item [58] Subclause 1.06(2)(g) of Schedule 1

This item gives effect to revisions to the Code by amending subclause 1.06(2)(g) to allow for the testing of athletes in the registered testing pool of a regional anti-doping organisation.

Item [59] at the end of subclause 1.06(2) of Schedule 1

This item gives effect to revisions to the Code by amending subclause 1.06(2) to allow for the testing of athletes who are present in Australia at the time of testing and athletes serving a period of ineligibility from sport.

Item [60] Subclauses 1.06(3) and (4) of Schedule 1

This item repeals subclauses 1.06(3) and (4) as these subclauses are no longer required. Item 3.09 states that ‘whereabouts information’ can only be collected from an athlete in a registered testing pool. The requirements in relation to TUEs are now specified in Part 5.

Item [61] Clause 1.07 of Schedule 1

This item repeals clause 1.07 and inserts a new subclause which provides greater clarity on the classes of support persons subject to the NAD scheme.

Item [62] Division 2.1 of Schedule 1

This item repeals existing Division 2.01 of the NAD Scheme and inserts a new Division 2.01. Division 2.01 of the NAD Scheme sets out those actions that constitute a violation of the anti-doping rules. New Division 2.01 is based on Article 2 of the Code, including the revisions made to the Code. Some minor amendments have also been made to make the rules easier to read.

Clause 2.01 makes it clear that athletes and support persons are responsible for knowing what constitutes an ADRV and the substances and methods that have been included on the prohibited list.

Clause 2.01A provides that the presence of a prohibited substance or its metabolites or markers in an athlete’s sample constitutes a violation of an anti-doping rule.

Clause 2.01B provides that the use or attempted use by an athlete of a prohibited substance or a prohibited method constitutes a violation of an anti-doping rule.

Clause 2.01C provides that evading sample collection, or without compelling justification, refusing or failing to submit to sample collection after notification as authorised in applicable anti-doping rules constitutes a violation of an anti-doping rule.

Clause 2.01D provides that any combination of 3 missed tests or filing failures (or a combination of both), as defined in the International Standard for Testing and Investigations, within a 12 month period by an athlete in a registered testing pool, constitutes a violation of an anti-doping rule. Previously, the rule was violated when an athlete had three missed tests or filing failures (or a combination of both) within an 18 month period.

Clause 2.01E provides that the ADRV for *Tampering* in the revised Code now includes (without limitation) intentionally interfering or attempting to interfere with a doping control official, providing fraudulent information to an anti-doping organisation, or intimidating or attempting to intimidate a potential witness. Clause 2.01E reflects these changes.

Subclause 2.01F(1) provides that possession by an athlete in-competition of a prohibited method or a prohibited substance, or possession by an athlete out-of-competition of a prohibited method or a prohibited substance that is prohibited out-of-competition, constitutes a violation of an anti-doping rule, unless the athlete establishes that the possession is authorised by a TUE or other acceptable justification.

Subclause 2.01F(2) provides that possession by support personnel of a prohibited substance or prohibited method in connection with an athlete, competition or training, constitutes a violation unless the support person establishes that the possession is consistent with a TUE granted to the athlete, or other acceptable justification.

Clause 2.01G provides that trafficking or attempted trafficking in a prohibited substance or prohibited method constitutes a violation of an anti-doping rule.

Clause 2.01H provides that the administration or attempted administration of a prohibited substance or prohibited method constitutes a violation of an anti-doping rule. Subclause 2.01H(2) defines administration, as well as circumstances that do not constitute administration.

Clause 2.01J provides that complicity constitutes a violation of an anti-doping rule. Complicity includes the acts of assisting, encouraging, aiding, abetting, covering-up or any other type of intentional complicity involving an ADRV. These actions are already specified under the administration ADRV but have been separated into a stand-alone ADRV in the revised Code.

The revised Code also adds the act of assisting and intentional complicity into the *Complicity* ADRV and provides that those acts classed as complicity will also apply to violations of Article 10.12.1 of the Code (Prohibited against Participation during Ineligibility). These changes are reflected in clause 2.01J.NAD scheme

Clause 2.01K specifies the new prohibited association ADRV.

Subclause 2.01K(1) provides that an association by an athlete or support person (the participant) with another person who is banned from sport or has been criminally convicted or professionally disciplined (a *disqualified support person*) in a professional or sport-related capacity constitutes a violation of an anti-doping rule. This clause links the criteria for classifying a person as a *disqualified support person* with Articles 2.10.1, 2.10.2 or 2.10.3 of the Code.

Subclause 2.01K(2) provides that the burden is on the participant to establish that any association with a disqualified support person is not in a professional or sport-related capacity. Placing the burden of proof on the athlete or support person is appropriate as they will have the requisite knowledge to demonstrate that the association is not in a professional or sport-related capacity.

Under the revised Code, there is no ADRV unless the athlete has been first warned that the association is prohibited and then continues the association. Subclause 2.01K(3) authorises the ASADA CEO to issue an athlete with a formal warning notice, where the CEO is satisfied that the athlete is associating with a disqualified support person.

2.01K(4) specifies that a warning notice issued under subclause (3) must be in writing and outlines the items that must be included in a warning notice.

Under subclause 2.01(K)(5), before a formal warning notice can be issued, the ASADA CEO must invite the athlete to make a submission within 15 days after the date of the notice explaining the nature of the association and why it should not be prohibited. This clause potentially streamlines the process by allowing the athlete to clarify the nature of any association that may be in question and avoid the ASADA CEO issuing warning notices that are not warranted.

The ASADA CEO must also take reasonable steps to notify the *disqualified support person* written notice inviting them to make a written submission within 15 days as to why they should not be considered to be a disqualified support person.

Subclause 2.01K(6) requires the ASADA CEO to consider any such submission made before deciding whether to give the participant a warning notice.

Subclause 2.01K(7) provides that if the ASADA CEO decides not to issue a warning notice, the CEO must give the participant written notice of this decision.

Subclause 2.01K(8) provides that a warning notice issued by the ASADA CEO comes into force on the day it is provided to a participant and ceases to be in force on the earlier of the day after the disqualified person ceases to be a disqualified person or the day after the warning notice is withdrawn under subclause 2.01K(9).

Subclause 2.01K(9) enables the ASADA CEO to withdraw a warning notice if the CEO is no longer satisfied that an association is prohibited.

Subclause 2.01K(10) provides that subclause 2.01K(1) does not apply to the extent of any inconsistency with Article 22 of the International Covenant on Civil and Political Rights.

Item [63] Paragraph 2.04(m) of Schedule 1

Reflecting the removal of the Register of Findings, this item omits the term ‘findings’ (wherever occurring) and inserts the term ‘assertions’.

Item [64] Clause 3.04(1) of Schedule 1

This item amends paragraph 3.04(1) to refer to the updated title for the International Standard for Testing and Investigations.

Item [65] Clause 3.05 of Schedule 1

This item clarifies that, for paragraph 78(1)(d) of the Act, a doping control officer, an investigator and a blood collection official, are appointed as a drug testing official.

Item [66] Division 3.2 of Schedule 1

This item simplifies Division 3.2 by linking the collection of 'whereabouts information' from athletes in the Registered Testing Pool with the requirements of the revised International Standard for Testing and Investigations. When requesting an athlete with an intellectual disability to provide 'whereabouts information', the ASADA CEO has been retained. Where an athlete cannot be located, the ASADA CEO may also request 'whereabouts information' from an athlete through the athlete's sporting administration body.

Item [67] Paragraph 3.12(1)(f) of Schedule 1

This item amends paragraph 3.12(1)(f) to make clear that ASADA may request, collect and test an athlete sample if requested to do so by a regional anti-doping organisation.

Item [68] Clause 3.13 of Schedule 1

This item amends paragraph 3.13 to refer to the updated title, 'International Standard for Testing and Investigations'.

Item [69] Subclause 3.16(5) of Schedule 1

This item repeals subclause 3.16(5) and inserts a new clause clarifying that a request by the ASADA CEO to an athlete to provide a sample may be made without giving any advance notice.

Item [70] Subclause 3.23(2) of Schedule 1

This item updates subclause 3.23 to replace the reference to 'accredited laboratory' with 'recognised laboratory'.

Item [71] Clause 3.25 of Schedule 1 (heading)

This item substitutes a new heading, 'Retention and further analysis of samples' to reflect the revised Code.

Item [72] Subclause 3.25(1)(a) of Schedule 1

This item updates subclause 3.25(1)(a) to replace the reference to 'accredited laboratory' with 'recognised laboratory'.

Item [73] Subclauses 3.25(2) and (3) of Schedule 1

This item updates subclauses 3.25(2) and (3) to replace the reference to 'accredited laboratory' with 'recognised laboratory'.

Item [74] Subclause 3.25(5) of Schedule 1

This item updates subclauses 3.25(2) and (3) to replace the reference to 'an accredited laboratory' with 'a recognised laboratory'.

Item [75] Subclause 3.25(5) of Schedule 1 (note)

This item inserts a new note to reflect the new limitation period specified in the Code for commencing an ADRV process. The limitation period in the Code has been increased from eight to ten years.

Item [76] Paragraph 3.27(1) of Schedule 1

The item makes an editorial amendment to refer to possible violations of the anti-doping rules.

Item [77] Paragraph 3.27(2)(b) of Schedule 1

The item makes a minor, technical amendment to paragraph 3.27(2)(b).

Item [78] Paragraph 3.27(2)(c) of Schedule 1

This item repeals paragraph 3.27(2)(c) as the reference to the Australian Government Investigation Standard is not required. As an Australian Government agency, ASADA is required to conduct investigations in accordance with the Standard.

Item [79] Clause 4.01 of Schedule 1 (heading)

This item repeals the heading of clause 4.01, 'Initial review' and substitutes a new heading, 'Review by CEO'. Clause 4.01 provides the first steps in progressing an atypical finding or an adverse analytical finding from an athlete's A sample to the confirmation of the presence ADRV (2.01A) or as part of the evidence of a use ADRV (2.01B).

Item [80] Subclause 4.01(1) of Schedule 1

The item is repealed and incorporated into subclause 4.01(2).

Item [81] Subclause 4.01(2) of Schedule 1

This item confirms the ASADA CEO reviews the documentation relevant to sample collection and the laboratory analysis for an adverse analytical finding or atypical finding on an A sample for irregularities or departures from the relevant international standards.

Item [82] Clause 4.02 of Schedule 1

This item provides for the ASADA CEO to review whether an adverse analytical finding or an atypical finding from the testing of an athlete's A sample is covered by a TUE. Amendments have been made so that this clause is easier to read.

Under subclause 4.02(1), the ASADA CEO is required to check whether a TUE covers the adverse analytical finding or atypical finding. Under subclause 4.02(2), the ASADA CEO must be satisfied the use of the prohibited substance that led to the adverse analytical finding or atypical finding is authorised by the TUE or that any conditions of the TUE have been complied with.

Subclause 4.02(3) allows for the circumstance where the TUE does not cover the adverse analytical finding or an atypical finding.

Subclause 4.02(4) specifies what the ASADA CEO must be satisfied of to make a determination under subclause 4.02(2) or 4.02(3).

Item [83] Clause 4.03 of Schedule 1 (heading)

This item repeals the heading and inserts a new heading to clarify that clause 4.03 specifically pertains to the investigation of atypical findings.

Item [84] Subclause 4.03(1) of Schedule 1

To simplify the regulation, this item repeals Subclause 4.03(1) and inserts a new subclause making clear that the ASADA CEO may conduct an investigation if an atypical finding is not covered by a TUE to determine whether the atypical finding amounts to an adverse analytical finding.

Item [85] Subclause 4.03(2) of Schedule 1

This item omits the first sentence of subclause 4.03(2) as it included in new subclause 4.03(1).

Item [86] Subclause 4.03(2) of Schedule 1

This item is an editorial amendment to subclause 4.03(2).

Item [87] Paragraph 4.03(2)(b) of Schedule 1

This item updates Paragraph 4.03(2)(b) to replace the reference to ‘accredited laboratory’ with ‘recognised laboratory’.

Item [88] Subclause 4.03(3) of Schedule 1

This item is a minor editorial amendment to subclause 4.03(3).

Item [89] Clause 4.04 of Schedule 1 (heading)

This item repeals the heading ‘Notification after initial review’ and inserts a new heading, ‘Notification after review by CEO’. As required under the Code, Clause 4.04 specifies the processes for notifying an athlete of an adverse analytical finding from their A sample, including the process for the analysis of their B sample.

Item [90] Subclause 4.04(1) of Schedule 1

This item confirms that notification of an athlete is required if the ASADA CEO determines that either an adverse analytical finding or an atypical finding is not covered by a TUE (subclause 4.04(2)), and in the case of the atypical finding, that it amounts to an adverse analytical finding (subclause 4.04(3)).

Item [91] After paragraph 4.04(2)(b) of Schedule 1

This item is amended to require the ASADA CEO to inform the athlete that the adverse analytical finding is not covered by a TUE.

Item [92] Subclause 4.04(3) of Schedule 1

A minor amendment is made to subclause 4.04(3) to make it simpler.

Item [93] Subclause 4.05(5) of Schedule 1

This item repeals this subclause as it is addressed in clause 4.06.

Item [94] Paragraph 4.06(2)(b) of Schedule 1

This item amends paragraph 4.06(2)(b) to make the paragraph easier to read.

Item [95] Paragraph 4.06(2)(d) of Schedule 1

This item amends the paragraph to reflect that under the amendments to the Act, the ADRVP no longer makes a ‘finding’ in relation to a possible ADRV. Instead, the ADRVP makes an ‘assertion’ in relation to a possible ADRV.

Item [96] Paragraphs 4.06(2)(e) and (f) of Schedule 1

With the removal of the Register of Findings, this item amends paragraphs 4.06(2)(e) and (f) to remove the reference to an ‘entry on the Register’ and replaces it with ‘assertions’.

Item [97] Subclause 4.06(3) of Schedule 1

This item repeals subclause 4.06(3) as this subclause is no longer required. A definition for *response period* is now provided at clause 1.05.

Item [98] Paragraph 4.07A(1)(b) of Schedule 1

The item makes an editorial amendment to paragraph 4.07A(1)(b).

Item [99] Paragraphs 4.07A(3)(a) and (b) of Schedule 1

The item repeals paragraphs 4.07A(3)(a) and (b) and insert new paragraphs 4.07A(3)(a) and (b) in order to provide greater clarity on what the ASADA CEO provides in a notice to a participant in relation to a possible non-presence ADRV. The ASADA CEO is to provide a summary of the evidence or information relied upon when forming the view that there has been a possible non-presence ADRV.

Item [100] Paragraph 4.07A(3)(d) of Schedule 1

With the removal of the Register of Findings, this item amends paragraph 4.07A(3)(d) to remove the reference to an ‘entry on the Register’. The notice will now need to advise the participant that the ADRVP may make an assertion relating to the possible non-presence ADRV and notify the ASADA CEO of that assertion.

Item [101] Paragraphs 4.07A(3)(f) and (g) of Schedule 1

With the removal of the Register of Findings, this item amends paragraphs 4.07A(3)(f) and (g) to remove the reference to an ‘entry on the Register’ and replace it with the words ‘an assertion’.

Item [102] Subclause 4.07A(4) of Schedule 1

This item repeals Subclause 4.07A(4) as this subclause is no longer required. A definition for *response period* is now provided at clause 1.05. However, a new subclause 4.07A(4) is inserted to identify circumstances where the ASADA CEO may withhold details from the summary referred to in paragraph 4.07A(3)(a).

Item [103] Division 4.3 of Schedule 1 (heading)

With the removal of the Register of Findings, this item repeals the heading ‘Register of Findings’ and inserts a new heading, ‘Assertions about possible anti-doping rule violations’.

Item [104] Clauses 4.08 to 4.12 of Schedule 1

This item repeals clauses 4.08 to 4.12 and inserts new clauses 4.08 to 4.12 that deal with the operation of the ADRVP in the absence of the Register of Findings. Despite the removal of the Register of Findings, the primary role of the ADRVP in reviewing the evidence and information collected in relation to a possible ADRV is unchanged.

Subclauses 4.08(1) to 4.08(3) specifies the evidence or information to be provided by the ASADA CEO to the ADRVP for its initial consideration of a possible ADRV. It is intended the ADRVP has access to the evidence and information it requires to make a decision. Accordingly, the ADRVP is also allowed to request additional information from the ASADA CEO.

Subclauses 4.08(4) to 4.08(6) provide for the initial consideration by the ADRVP of whether there has been a possible ADRV by a participant (athlete or support person). Subclause 4.08(4) provides that the ADRVP must deal with matters as soon as practicable. Subclauses 4.08(5) and 4.08(6) requires the ADRVP to determine whether they are satisfied or not there has been a possible ADRV by the participant before making an assertion.

Subclauses 4.08(5) and 4.08(6) also provide for consequent action following the ADRVP’s decision. Where the ADRVP is satisfied that there has been a possible ADRV under Clause 4.08(5), the ADRVP must request the ASADA CEO to give the participant a notice under subclause 4.09(1). If however, it is not satisfied there has been a possible ADRV, the ADRVP must decide not to make an assertion.

Subclause 4.09(1) provides for the ASADA CEO to notify the participant that the ADRVP is satisfied that there has been a possible ADRV by the participant and invite the participant to make a further submission before the ADRVP finalises its consideration of the matter. Subclause 4.09(2) provides guidance on what this submission should contain. The intention of this submission is to provide a participant with the opportunity to provide any additional evidence or information that addresses the evidence used by the ADRVP to determine a possible ADRV.

Subclause 4.09(3) ensures the ASADA CEO provides any submission to the ADRVP.

Subclauses 4.09(4) to 4.09(7) provides for the ADRVP to finalise its deliberations on the possible ADRV. The extent to which the ADRVP reviews its original decision under subclause 4.08(5) in light of any new information is a matter for the ADRVP. For example, if the participant does not provide a submission under this clause or the information provided is irrelevant, the ADRVP may simply re-affirm its original decision under subclause 4.08(5) and finalise its deliberations. Ultimately, the ADRVP members determines whether they are satisfied there is a possible violation.

Under subclause 4.09(4), the ADRVP needs to finalise its deliberations as soon as practicable. Subclause 4.09(5) specifies that if the ADRVP is still satisfied that there has been a possible ADRV by the participant, then it makes an assertion that there has

been a possible ADRV by the participant. This provision replaces the requirement to put a person's name on the Register of Findings.

Subclause 4.09(6) specifies the information that must be included in the assertion. The assertion must be in writing.

Subclause 4.09(7) countenances the possibility that, after considering the additional information provided by a participant under subclause 4.09(2), the ADRVP is no longer satisfied there has been a possible ADRV by the participant. In this situation, the ADRVP decides to not make an assertion.

Clause 4.09A specifies the material the ADRVP is required to have regard to in its deliberations. This includes a copy of the notice issued by the ASADA CEO under clause 4.06 and 4.07A (as applicable) and a copy of the evidence or information relied on by the ASADA CEO. The ADRVP must also consider any submission made by a participant in relation to the matter, any submission made by ASADA in relation to the possible ADRV and any additional information the ADRVP has requested from the ASADA CEO relating to the possible ADRV.

Australia's anti-doping arrangements are underpinned by ASADA and Australia's national sporting organisations working together to implement programmes and activities that promote doping-free sport. Clause 4.09A(3) enables ASADA to exercise those statutory functions relating to assertions.

Under clause 4.09A(4), the ADRVP may consider more than one possible ADRV (for example, Presence and Use) by a participant at the same time.

Clause 4.10 advances the ADRV process by requiring the ADRVP to provide the ASADA CEO with written notice of its decision to make or not to make an assertion.

Clause 4.11 requires the ASADA CEO to notify a participant of the ADRVP's decision. Subclause 4.11 (2) specifies what should be included in the notice. This includes the information contained in the assertion, the person's right to have the decision reviewed by the Administrative Appeals Tribunal (AAT), and advice as to those persons and organisations who will receive written notification of the assertion. A notice may also include any other details that the ASADA CEO considers relevant.

Despite the removal of the Register of Findings, the right of the participant to appeal to the AAT has been retained. Clause 4.12 provides that an application for review must be made within 28 days of receiving notice of the assertion from the CEO.

Item [105] Subclause 4.13(1) of Schedule 1

With the removal of the Register of Findings, this item amends subclause 4.13(1) to authorise the ASADA CEO to present to a hearing of the Court of Arbitration for Sport or other sporting tribunal, an assertion, the ASADA CEO's recommendations in relation to an assertion and any other additional information. Subclause 4.13(1A) makes clear that the CEO can do this at the request of a sporting administration body or on his/her own initiative.

Item [106] Subclause 4.13(2) of Schedule 1

With the removal of the Register of Findings, this item amends subclause 4.13(2) to remove the reference to an 'entry on the Register' and insert a reference to the 'assertion' by the ADRVP.

Item [107] Clauses 4.14 to 4.16 of Schedule 1

With the removal of the Register of Findings, this item repeals clauses 4.14 to 4.16 as they are now redundant.

Item [108] Clauses 4.17 to 4.19 of Schedule 1

With the removal of the Register of Findings, this item repeals clauses 4.17 to 4.19 and substitutes a new clause 4.17 to require the ASADA CEO to advise certain bodies of an assertion that has been made by the ADRV.

Subclause 4.17(1) provides that the ASADA CEO must notify each relevant sporting administration body, each relevant government sports agency for that participant and the WADA. A relevant sports administration body would include a national sporting organisation and an international sporting federation. A relevant government sports agency would include, for example, the Australian Sports Commission.

Subclause 4.17(2) provides that the ASADA CEO may provide notice of the assertion to any other sporting administration body not already encompassed under 4.17(1)(a).

Subclause 4.17(3) prescribes the requirements relating to a notice given by the ASADA CEO under subclauses (1) and (2).

Subclause 4.17(4) confirms the operation of clause 4.17 does not limit or is limited by other provisions which require or authorise the ASADA CEO to disclose information.

Item [109] Subclause 4.20(1) of Schedule 1

This item removes references to clauses 4.18 and 4.19 as they have now been repealed.

Item [110] Clause 4.21 of Schedule 1 (heading)

This item repeals the heading ‘Non-entry information and inserts a new heading, ‘Disclosing information etc. obtained in relation to administration of the NAD scheme’.

Item [111] Subclause 4.21(1) of Schedule 1

With the removal of the Register of Findings, this item repeals clauses 4.21(1).

Item [112] Subclause 4.21(2) of Schedule 1

This item expands on the type of information that is disclosed under clause 4.21, thereby bringing it into line with the authorising provision (paragraph 13(1)(g) of the Act).

Item [113] After subclause 4.21(2) of Schedule 1

This item clarifies that information under subclause 4.21(2) is disclosed for the purposes of, or in connection with, the administration of the NAD scheme.

Item [114] Subclause 4.21(3) of Schedule 1

This item inserts a reference the Act, to make clear that nothing in clause 4.21 limits, or is limited by, any other provision in the Act or NAD scheme under which the CEO

is required or authorised to disclose information. For example, clause 4.21 does not limit the ability of the ASADA CEO or a member of ASADA staff to disclose information under a provision of Division 1 of Part 8 of the Act.

Item [115] Subclause 4.21(4) of Schedule 1

This item updates subclause 4.21(4) to refer to the Australian Privacy Principles.

Item [116] Subclause 4.21(4) of Schedule 1

This item confirms the reference to ‘personal information’ is within the meaning of that Act.

Item [117] Subclause 4.21(4) of Schedule 1

This item is an editorial amendment.

Item [118] Clause 4.22 of Schedule 1 (heading)

This item repeals the heading ‘Making information publicly available’ and inserts new heading, ‘Publishing information relating to assertions’.

Item [119] Subclause 4.22(1) of Schedule 1

This item repeals subclause 4.22(1) and inserts a new subclause 4.22(1) to explicitly reflect that the ASADA CEO can publish information relating to assertions as required or permitted under the Code.

Subclause 4.22(1A) specifies the conditions that must exist before the ASADA CEO can publish information relating to assertions. Subclause 4.22(1B) provides for the circumstances where subclause 4.22(1A) does not apply. These circumstances are provided for in sections 68C (disclosure to reduce threat to life or health), 68D (disclosure of publicly available information) and 68E (disclosure to respond to public comments).

Item [120] Paragraphs 4.22(2)(a) and (b) of Schedule 1

This item is a minor editorial amendment to paragraphs 4.22(2)(a) and (b).

Item [121] At the end of clause 4.22 of Schedule 1

New subclause 4.22(3) makes clear that clause 4.22 otherwise does not limit, or is limited by, other provisions of the Act or the NAD scheme under which the ASADA CEO is required or authorised to disclose or publish information.

Item [122] Clause 4.23 of Schedule 1

This item repeals clause 4.23 and inserts a new clause to reflect the new limitation period specified in the revised Code. Subclause 4.23(1) establishes the new limitation period of ten years. To reflect the change in terminology used in the revised Code, subclause 4.23(3) specifies that commencement of the ADRV process occurs when the athlete or support person is given a notice under clause 4.04 or 4.07A in relation to the possible violation.

Item [123] At the end of Part 4 of Schedule 1

The item inserts new Division 4.6 and clause 4.24 to authorise the ASADA CEO to correct errors in the Violations List as soon as practicable.

Item [124] Subclauses 5.01(1), (2) and (3) of Schedule 1

With the changes proposed by the revised Code and the amendment of the Act to increase the membership of ASDMAC to appoint review members, this item inserts new subclauses 5.01(1), (2) and (3) in order to re-specify the functions of ASDMAC.

Subclause 5.01(1) provides for ASDMAC to consider TUEs in accordance with the Code and the International Standard for Therapeutic Use Exemptions. Subclause 5.01(1A) specifies the form a TUE may take.

Subclause 5.01(1B) requires ASDMAC to advise an athlete when it refuses to grant the athlete a TUE.

Importantly, subsection 5.01(1C) provides for ASDMAC to develop and implement its own procedures for the making of applications for and for the granting of TUEs.

Subsection 5.01(2) to 5.01(2D) provides for the review of TUE decisions made by ASDMAC.

Subsection 5.01(3) clarifies that ASDMAC may investigate whether an athlete granted a TUE has complied with any conditions of the exemption.

Item [125] Subclause 5.01(5) of Schedule 1

Item 125 is a minor technical amendment.

Item [126] Subclauses 5.01(7) and (8) of Schedule 1

This item repeals subclauses 5.01(7) and (8) and inserts new subclauses. New subclause 5.01(7) allows ASDMAC to provide an opinion to the ASADA CEO on an application for a TUE made to ASDMAC and the granting of a TUE by ASDMAC or another TUE Committee.

Item [127] Clause 5.02 of Schedule 1

This item repeals clause 5.02 as the amendments to the Act now provide for the disclosure of information by ASDMAC.

Item [128] After Part 5 of Schedule 1

This item inserts new Part 5A which provides that the NAD scheme applies to retired athletes returning to competition. The revised Code provides that an athlete in a registered testing pool who retires must make himself or herself available for testing by giving six months prior written notice before returning to competition.

This provision seeks to deter an athlete from taking time off sport, partake in a doping programme and then return to the sport.

Item [129] Application and Transitional Provisions

This item specifies a number of application and transitional provisions to provide for the seamless operation of Australia's anti-doping arrangements.

Clause 7.01 is inserted to define the term amending regulation. Clause 7.02 ensures the amending regulation apply to all ADRVs, irrespective of when they occurred.

To ensure the establishment of the prohibited association ADRV does not impose an additional punishment on someone that would have been available at the time of the action, clause 7.03 ensures that the classification of a support person as a disqualified support person is based on conduct that would have constituted a violation of anti-doping rules after 1 January 2015.

In order to ensure fairness in the treatment of athletes, the change in the limitation period in the revised Code from eight to ten years should not apply to matters where the eight year limitation period had expired by 1 January 2015. Clause 7.04 specifies that Clause 4.23 of the NAD scheme applies in relation to violations alleged to have occurred on or after 1 January 2007.

Clause 7.05(1) provides that where ASADA CEO received notice of an adverse analytical finding or atypical finding from a WADA accredited laboratory before 1 January 2015, the initial notification procedures are those set out in clauses 4.01 - 4.05 of the NAD Scheme as in force before 1 January 2015. Clause 7.05(2) provides that the processes for notification following the B sample analysis in clause 4.06 as amended after 1 January 2015 will apply in situations where the either the athlete's B sample is analysed after 1 January 2015 or the athlete waives their right to have the B sample analysed after that date.

Subclause 7.06(1) provides that where a notice under clause 4.06 or 4.07A was given to a person before 1 January 2015 and the ADRV had not made a decision on that matter, any further consideration of the matter by the ADRV is to be undertaken in accordance with the provisions as in force after 1 January 2015. Subclause 7.06(2) ensures the ADRV has access to the information that the ASADA CEO would be otherwise required to provide to the ADRV under clause 4.08(3) as amended.

Clause 7.07 ensures that the Register of Findings and related provisions continue in existence after 1 January 2015, for limited purposes. The Register of Findings remains available for the ongoing management of the ADRV process. This includes preserving the ability of the ASADA CEO to provide information from the Register as required, and the ability of the ADRV to amend the Register where necessary, for example, in response to a decision of a sport tribunal or the Administrative Appeals Tribunal (subclause 7.07(3) refers). Subclause 7.07(2) will enable an athlete to be notified of a decision not to put their name on the Register of Findings made by the ADRV prior to 1 January 2015. Under subclause 7.07(3) the provisions that were in force immediately before the commencement of the amending regulation when dealing with a finding on the Register continues to apply after commencement.

Clause 7.08 provides that a person will only be able to seek a review of a decision made by ASDMAC after 1 January 2015.

Clause 7.09 repeals clauses 7.04 to 7.08 on 1 January 2017, as they will no longer be required after that date.

Statement of Compatibility with Human Rights

Australian Sports Anti-Doping Authority Amendment (World Anti-Doping Code and other Measures) Regulation 2014

This amending regulation is assessed to be 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 amending regulation

This amending regulation principally amends the Australian Sports Anti-Doping Authority Regulations 2006 (Principal Regulations) to align Australia's anti-doping arrangements with the revised World Anti-Doping Code (Code). Some of these amendments relied on the passage of the *Australian Sports Anti-Doping Authority Amendment Act 2014* (Amendment Act), which received Royal Assent on 26 November 2014. Where appropriate, the opportunity has also been taken to implement revisions that clarify or streamline existing provisions in the Regulations.

Australia's anti-doping legislation gives effect to its international obligations under the *UNESCO International Convention Against Doping in Sport* (UNESCO Convention). Chiefly, the UNESCO Convention requires States Parties to implement arrangements that are consistent with the principles of the Code. The Code is an international agreement between governments and the international sporting movement that provides the framework for the operation of harmonised anti-doping policies, rules and regulations around the world.

The Australian Sports Anti-Doping Authority (ASADA) is the focal point for the Australian Government's efforts against doping in sport. ASADA's powers and functions are specified under the Act and the Regulations, including the National Anti-Doping (NAD) Scheme. The NAD scheme underpins ASADA's implementation of a co-ordinated Code-compliant anti-doping programme encompassing deterrence, detection and the management of cases involving possible breaches of anti-doping rules.

ASADA works with Australia's national sporting organisations (NSOs) to implement Code-compliant anti-doping arrangements. As a condition of receiving Australian Government funding or recognition, Australia's NSOs are required to have an anti-doping policy that complies with the Code as well as acknowledging ASADA's powers and functions under the Act, Regulations and NAD scheme. The majority of NSOs are also required to have a Code-compliant policy as a condition of membership to their international federation. This membership enables Australian sportsmen and women to compete in major international events such as Olympic Games and World Championships.

All NSO anti-doping policies replicate the essential parts of the Code. This includes the provisions for sanctioning athletes who are found to have committed an anti-doping rule violation (ADRV). Sanctions for doping violations involve bans from sport for a certain period, disqualification of results and the forfeiture of any medals, points and prizes.

Following a two-year international review, revisions to the Code and associated International Standards (Standards) were adopted by the international anti-doping community – comprising international federations, national anti-doping organisations and

Governments who have ratified the UNESCO Convention – at the World Conference on Doping in Sport in Johannesburg, South Africa on 15 November 2013.

It is now incumbent on the international anti-doping community to amend their anti-doping frameworks to align with the revised Code and Standards by 1 January 2015. As signatories to the Code, international federations are currently updating their anti-doping policies to align with the requirements of the revised Code. As a signatory to the UNESCO Convention, the Australian Government is also obligated to amend its anti-doping arrangements to align with the principles of the revised Code by 1 January 2015.

The revised Code has been drafted with due consideration of the principles of proportionality and human rights. The World Anti-Doping Agency, as custodians of the Code, ensured these principles were considered in drafting the revisions by engaging Mr Jean-Paul Costa, a former President of the European Court of Human Rights, to provide advice on the international human rights aspects of the revisions throughout the review process. Mr Costa's final opinion on the revised Code was tabled at the World Conference in November 2013.

Amendments to the Regulations

Australia's anti-doping legislation is structured such that the *Australian Sports Anti-Doping Authority Act 2006* provides the authority for the making of regulations. The Regulations contain the detail of our anti-doping arrangements, including the specification of the NAD scheme. A number of the amendments in the Amendment Act provide for the making of regulations to give effect to the revised Code. These include:

- Prohibited Association – authorises the making of Regulations to authorise the CEO to implement the new prohibited association ADRV. Prohibited association will occur when an athlete or other person associates in a professional or sports-related capacity with athlete support persons who are banned from sport, criminally convicted or professionally disciplined. This amendment aligns with new Article 2.10 of the revised Code.
- Limitation Period - extends the time period in which action on a possible ADRV must commence from eight to ten years from the date the violation is asserted to have occurred. This amendment aligns with Article 17 of the revised Code.
- ASDMAC review mechanism – expands ASDMAC membership to appoint three people for the sole purpose of reviewing decisions, where requested, by ASDMAC in relation to applications for Therapeutic Use Exemptions. This amendment aligns with Article 4.4.2 of the revised Code.
- ASDMAC membership – it becomes a requirement that least one ASDMAC primary member must possess general experience in the care and treatment of athletes with impairments. This change reflects a requirement in the revised International Standard for Therapeutic use Exemptions.
- Violations List – while it is current practice for ASADA to report on its website the details of an ADRV once the matter is finalised, the amendments seek to facilitate that practice through the Violations List. This amendment aligns with Article 14 of the revised Code.
- Public Disclosure – allows ASADA to provide comment on the specific facts of a pending case in response to public comments attributed to an athlete, other person or their representatives. This amendment aligns with Article 14.3.5 of the revised Code.

There are other amendments to the Regulations required to give effect to the revised Code, but they do not rely on amendments to the Act. These amendments include:

- Retired Athletes - requires retirees athletes returning to competition to be available for testing six months prior to competition. This amendment aligns with Article 5.7 of the revised Code; and
- Whereabouts Violations- The window in which an athlete may accumulate three 'whereabouts' filings (Filing Failures or Missed Tests) which trigger an ADRV has been reduced from 18 months to 12 months. This amendment aligns with Article 2.4 of the revised Code.

Further, this amending regulation also provides for the streamlining of existing processes including the removal of the Register of Findings from the ADRV process. Other changes however are minor in nature, such as updated definitions.

Human rights implications

When considering the Amendment Act, Members of Parliament considered its interaction with a number of human rights. Indeed, a number of the proposed amendments to the Regulations were flagged in discussions on the Bill. The Bill was also reviewed by the Parliamentary Joint Committee on Human Rights (PJCHR), who concluded its examination of the Bill in its 13th Report of the 44th Parliament.

The following human rights obligations may be engaged by the amending regulation:

- Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) – right to work;
- Article 2(3A) of the *International Covenant on Civil and Political Rights* (ICCPR) – right to an effective remedy;
- Article 17 of the ICCPR –privacy and reputation;
- Article 22 of the ICCPR – right to the freedom of association; and
- Article 23 of the ICCPR – right to respect for the family.

Prohibited Association ADRV

The international anti-doping community has agreed that the influence of people with a proven capability to facilitate doping in sport should be curtailed. From 1 January 2015, the Code will provide that it will be an ADRV for an athlete or support person to associate in a professional or sports-related capacity with another person who is banned from sport for the period of their ineligibility or a person who has been criminally convicted or professionally disciplined for an action that would constitute an ADRV. In the former case, the prohibition will be for the period of the person's ineligibility. In the latter case, the prohibition will be for the period of six years from the conviction or disciplinary action.

It has been shown in Australia and internationally that, apart from the athlete, doping can be facilitated by coaches, trainers, people with medical expertise and other athlete support persons. In its report *Organised Crime and Drugs in Sport*, the Australian Crime Commission highlighted the involvement of sports scientists, doctors, pharmacists, criminal gangs and anti-ageing clinics in the supply of performance and image enhancing drugs.

The ‘prohibited association’ ADRV provides a mechanism for anti-doping authorities to curb the influence of those professionals operating outside the umbrella of a national sporting organisation from using their expertise to facilitate doping. It aims to deter athletes from associating with outsiders who have demonstrated the capability to facilitate doping in sport but who are beyond the reach of officials as they are not bound by an anti-doping policy. Implementing this violation engages Article 22 of the ICCPR.

Article 22 of the ICCPR specifies:

‘That everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.’

There may be some situations covered by this ADRV that would engage the right to freedom of association. For example, the ADRV would appear to prohibit athletes from associating with a coach, trainer or physician as part of a sports club (eg: if a physician serving a period of ineligibility joined a sports club, and purported to give advice to the other members of the club, including the athletes in the club).

Article 22(2) provides for lawful restrictions on the freedom of association if the following three requirements are met:

1. The restriction must be prescribed by law.
2. The restriction must be necessary in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.
3. The restriction must be necessary in a democratic society.

The first requirement is met as the prohibited association violation will be prescribed by the Act, Regulations, and the NAD scheme.

In terms of the second requirement, the inclusion of this violation is necessary in the protection of public health and morals. As noted in the Bill, the purpose of the Code is to protect the fundamental right of an athlete to participate in doping-free sport and thus promote health, fairness and equity for all athletes globally. Anti-doping programmes are implemented globally to preserve the values of sport – teamwork, dedication, commitment, and respect for the rules and to promote a sense of community.

Parents encourage their children to play sport and governments sponsor programmes that use sport to achieve development outcomes because of the intrinsic values that sport promotes. These values are undermined whenever an elite athlete commits an ADRV. Moreover, if a culture of doping is allowed to flourish at the elite level, there are real risks that it will extend down to those who participate in community sport, risking the health of many individuals.

For the third requirement to be satisfied, the restriction must also be necessary in a democratic society. In other words; the restriction must be proportionate to the purpose of the activity. Unscrupulous people purporting to support athletes are likely to take the opportunity to influence the athlete to exploit new and undetectable means of seeking an advantage through the use of prohibited substances and methods. The ‘prohibited association’ ADRV provides anti-doping organisations with a tool to curb this activity.

There are a number of protections associated with the specification of this ADRV that make this a proportionate response to athletes who risk being sanctioned for engaging in a prohibited association:

- an association is only prohibited if it is of a ‘professional’ or ‘sports-related’ nature;
- an association is only prohibited if it can be reasonably avoided;
- the prohibition on association only applies where there has been a previous action that equates to an ADRV by a support person (ie: it only applies to people who are serving a period of ineligibility for an ADRV, or who have been criminally convicted or professionally disciplined for something that equates to an ADRV);
- the ASADA CEO has to be satisfied that a ‘prohibited association’ is occurring before commencing action. The ASADA CEO has to have evidence to be satisfied of the association;
- an individual will be officially warned about an association and the consequences should the association continue before an ADRV can be asserted;
- prior to that warning, the athlete has the opportunity to provide advice as to why the association should not be considered ‘prohibited’;
- anti-doping authorities are also required to undertake best efforts to advise the person they have fifteen days to explain why they should not be classified as a disqualified person; and
- should the association continue after the warning, it becomes subject to the normal ADRV process, including consideration by the Anti-Doping Rule Violation Panel (Panel) and the standard avenues of appeal; and
- a person can only be considered to be ‘prohibited’ for actions that occur from 1 January 2015.

Despite these protections, to minimise any risk of this violation unfairly engaging the freedom of association violation, a provision has been included in the amending regulation to the effect that the new ADRV only applies insofar as it is not inconsistent with Article 22 of the ICCPR. PJCHR suggested that this provision be included in the Act. While the opportunity did not arise to consider this proposal as the Act passed without amendment, the Minister indicated in his response to the PJCHR that he would be prepared to revisit the placement of this provision when amendments to the Act are next developed.

The prohibited association violation appears to create an evidential burden on a defendant who seeks to show that an association with a disqualified person was not of a professional or sports-related nature or that it could not have been reasonably avoided. The placing of an evidential burden on the defendant in relation to these exceptions engages the right to be presumed innocent in article 14(2) of the ICCPR.

Article 14(2) of the ICCPR provides that persons charged with an offence shall have the right to be presumed innocent until proven guilty according to law. It imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt.

Reverse burden provisions will not violate the presumption of innocence if they are reasonable in the circumstances and maintain the rights of the accused. Such a provision may be justified if the nature of the offence makes it very difficult for the prosecution to

prove each element, or if it is clearly more practical for the accused to prove a fact than for the prosecution to disprove it.

In this case the athlete is in a unique position to know the reasons for the continued association and best placed to explain the association. It allows the decision maker (in this case, the sports tribunal) to make a fair and informed decision because the athlete has the opportunity to provide evidence about the nature of the association.

In the Senate Community Affairs Legislation Committee's inquiry into the Bill, examples were provided in some submissions asserting that the application of the prohibited association may be unfair. In most of these examples, it was assumed that a person's status as a 'prohibited' person is based on the use of a substance that is prohibited from sport. However, the use of a prohibited substance by a support person is not an ADRV. These examples were not valid because the action being used to classify a person as being 'prohibited' was not an ADRV.

Article 6 of the ICESCR specifies:

'The right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.'

A qualified person who delivers services to athletes on a professional basis may lose the athlete's business if found to have committed offences and other transgressions that would constitute an ADRV. While this violation discourages the person's involvement in sport, it does not affect their capacity to use their skills generally.

Article 23 of the ICCPR specifies:

'The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.'

WADA has intentionally specified this ADRV so that an athlete can partake in family activities and maintain personal relationships with other family members. The only limitation on a family member is that they will not be able assist a familial athlete in their preparation, involvement or participation in sport should they fit the criteria for 'prohibited association'.

At the World Conference in November 2013, it was reported that Mr Costa provided a favourable opinion on the specification of this new ADRV from an international human rights perspective.

Extending the Limitation Period

The Code has been revised so that, from 1 January 2015, authorities will have up to ten years within which to commence the ADRV process. Currently, the limitation period is eight years. This change provides an additional deterrent to doping as it allows more time for anti-doping authorities to identify and investigate organised and sophisticated doping networks. The extended time period also provides greater scope for the storage of samples so that they can be tested once the technologies have been developed to detect substances that are currently undetectable.

Generally, anti-doping agencies do not have the same investigative capacity as law enforcement authorities. As evidenced in recent cases, it can take anti-doping authorities a significant amount of time to uncover sophisticated doping programmes. Hence, the Code was revised to provide agencies with more time to expose such practices.

As part of its consideration of the comparable amendment in the Bill, the PJCHR raised concerns about the limitation period and the compatibility of the Bill with the right to a fair hearing. In response, it was explained that the extension of the time period for commencing the anti-doping rule violation process did not reduce the level of proof required to confirm an ADRV. The operation of this provision does not override the need for there to be sufficient evidence to:

- prompt the ASADA Chief Executive to invite the person to make a submission in relation to a possible ADRV;
- allow the Panel to make an assessment of whether a possible ADRV has occurred; and
- enable a sports tribunal to be comfortably satisfied that a violation has occurred.

On the basis of the information provided, the PJCHR concluded its examination of this aspect of the Bill.

Australian Sports Drug Medical Advisory Committee

The Australian Sports Drug Medical Advisory Committee (ASDMAC) is responsible for assessing applications by athletes for the legitimate therapeutic use of substances or methods that are otherwise prohibited from sport. The granting of a TUE allows athletes to access legitimate and essential medical treatment without the risk of committing an ADRV.

The Amendment Act expands the maximum number of ASDMAC members by three with these members appointed for the sole purpose of reviewing decisions of ASDMAC. The Regulations have been amended to provide some detail around the activities of the review members. The amendments provide for the separation of the review members from the other members of ASDMAC and gives guidance on the conduct of meetings.

This amendment promotes Article 2(3)(a) of the ICCPR which specifies:

‘To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity’

and Article 14 of the ICCPR which specifies:

‘everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law’

Currently, an Australian athlete who wants to appeal a decision by ASDMAC would need to appeal to WADA. The introduction of this review process improves an Australian athlete’s access to seek an effective remedy should they feel aggrieved by a decision by ASDMAC. Athletes will, in the first instance, no longer have to apply to a body based overseas for a review. The establishment of this mechanism also protects the integrity of the TUE process.

Arrangements for retired athletes

Amendments to Code Article 5.7 require retired Athletes returning to competition to be available for testing six months prior to competition. This provides a necessary safeguard for clean athletes by ensuring athletes who are returning to competition following an extended lay-off are not able to take advantage of using prohibited substances during the period of their lay-off.

This amendment engages the right to work in Article 6 of the ICESCR. While preventing athletes from returning to competition where they are not clean may limit the right to work, this limitation is justifiable. This requirement attempts to remove the prospect of an athlete claiming to be in retirement, using this time to build their physical capability through doping and then returning to sport. This provision protects the clean athlete. Importantly, WADA, in consultation with the relevant International Federation and anti-doping organisation, may grant an exemption to the six-month written notice rule where the strict application of that rule would be manifestly unfair to an Athlete.

Public Disclosure of Information

The Code provides that no anti-doping organisation shall publicly comment on the specific facts of a pending case, except in response to public comments attributed to an athlete, other person or their representatives.

While existing legislation prevents public comment by ASADA on specific facts of a pending case, it does not recognise expressly the exception provided for in the Code. It may be needed to correct or clarify facts where an athlete initiates discussion publicly about his or her case. It is important that the public's access to information is not distorted by one-sided secrecy requirements that are inconsistent with the Code. The Regulations have been amended to implement this exception on public disclosure.

This amendment engages with Article 17 of the ICCP which specifies:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

While this amendment may engage Article 17 of the ICCPR, it is only available to the ASADA CEO to respond, once public comments have been made by an athlete or representative. Being subject to the Code, the athlete would be expected to be aware that any comments they make may invite a response. Accordingly, this is considered to be a proportionate response.

Whereabouts violation

The Regulations have been amended to reflect changes to the Code around the provision of whereabouts information and the application of Article 2.4 of the revised Code regarding whereabouts violations.

The requirement for elite athletes to provide whereabouts information has been in place for some time and is essential for the operation of modern day detection programmes. Anti-doping authorities require information about a person's whereabouts in order to conduct testing without notice. The collection of samples is most effective when an athlete is not aware of when the test will occur. If an athlete involved in doping knew, they could alter the timing of any doping activities in order to avoid detection.

The amending regulation links the operation of Australia's whereabouts requirement with the International Standard for Testing and Investigations established under the revised Code. As such, there are two revisions in the Code that have been reflected in the amending regulation.

Firstly, the revised Code makes it clear that only athletes in a Registered Testing Pool are required to provide whereabouts information. This means a limited number of athletes are required to provide this information. This amendment makes the whereabouts violation fairer.

Secondly, not providing whereabouts information in accordance with the revised Code is a violation. The window in which an athlete may accumulate three whereabouts filings (Filing Failures or Missed Tests) which trigger an anti-doping rule violation has been reduced from 18 months to 12 months. It is considered that 12 months provides sufficient time for an anti-doping organisation to accumulate three whereabouts failures on an athlete who is trying to avoid testing. Shortening this window reduces the risk that athletes who are simply careless in handling their paperwork will be found to have committed anti-doping rule violations.

Register of Findings

Placing an entry on the Register is currently a trigger to allow a number of notifications to be made under the NAD Scheme. This includes providing the athlete with the right to appeal to the Administrative Appeals Tribunal (AAT). Despite the removal of the Register, amendments are proposed that retain the notifications and right of a person to appeal to the AAT in respect of an assertion made by the Panel. This is provided for by clauses 4.11 and 4.12 of the Regulations. In this way, procedural fairness is preserved.

Conclusion

This Bill is compatible with our international human rights obligations as any engagement is justified or has been addressed through the proposed amendments.

The Hon Peter Dutton MP, the Minister for Sport