



Australian Sports Anti-Doping Authority Amendment Act 2009

No. 113, 2009

***An Act to amend the Australian Sports Anti-Doping
Authority Act 2006, and for related purposes***

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No. 113, 2009

An Act to amend the *Australian Sports Anti-Doping Authority Act 2006*, and for related purposes

[Assented to 16 November 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Sports Anti-Doping Authority Amendment Act 2009*.

2 Commencement

This Act commences on 1 January 2010.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Governance of ASADA

Part 1—Amendments

Australian Sports Anti-Doping Authority Act 2006

1 Section 3

Repeal the section.

2 Section 4

Insert:

ADRVP means the Anti-Doping Rule Violation Panel established by section 40.

3 Section 4

Insert:

ADRVP Chair means the Chair of the ADRVP.

4 Section 4

Insert:

ADRVP member means a member of the ADRVP, and includes the ADRVP Chair.

5 Section 4

Insert:

advisory committee means an advisory committee established under section 24P.

6 Section 4

Insert:

advisory committee member means a member of an advisory committee.

7 Section 4

Insert:

Advisory Group means the Advisory Group of the ASADA established by section 25.

8 Section 4

Insert:

Advisory Group Chair means the Chair of the Advisory Group.

9 Section 4

Insert:

Advisory Group member means a member of the Advisory Group, and includes the Advisory Group Chair.

10 Section 4 (definition of ASADA Chair)

Repeal the definition.

11 Section 4 (definition of ASADA Deputy Chair)

Repeal the definition.

12 Section 4 (definition of ASADA member)

Repeal the definition.

13 Section 4 (definition of ASADA staff)

Omit “section 49”, substitute “section 24L”.

14 Section 4

Insert:

CEO means the Chief Executive Officer of the ASADA appointed in accordance with section 24A.

15 Section 4 (at the end of the definition of *sporting administration body*)

Add “, the Advisory Group or the ADRVP”.

16 Section 4 (paragraph (a) of the definition of *vacancy*)

Repeal the paragraph, substitute:

- (a) the office of an Advisory Group member; or
- (aa) the office of an ADRVP member; or

17 Paragraph 5(1)(a)

Omit “ASADA member”, substitute “Advisory Group member”.

18 Subsection 5(1)

Omit “5 offices of ASADA members in addition to the ASADA Chair and the ASADA Deputy Chair”, substitute “6 offices of Advisory Group members in addition to the Advisory Group Chair”.

19 After subsection 5(1)

Insert:

(1A) For the purposes of a reference in:

- (a) this Act to a vacancy in the office of an ADRVP member; or
- (b) the *Acts Interpretation Act 1901* to a vacancy in the membership of a body;

there are taken to be 6 offices of ADRVP members in addition to the ADRVP Chair.

20 Subsection 11(1)

Omit “ASADA” (first occurring), substitute “CEO”.

21 Paragraph 11(1)(b)

Omit “ASADA when it”, substitute “CEO when he or she”.

22 Subsection 11(2)

Omit “ASADA when it”, substitute “CEO when he or she”.

23 Paragraph 13(1)(c)

Omit “ASADA” (first occurring), substitute “CEO”.

24 Paragraphs 13(1)(d), (e), (f) and (g)

Omit “ASADA”, substitute “CEO”.

25 Paragraph 13(1)(h)

Omit “ASADA”, substitute “ADRVP”.

26 After paragraph 13(1)(h)

Insert:

- (ha) authorise the ADRVP to make recommendations as to the consequences of such findings; and

27 Paragraph 13(1)(i)

Omit "ASADA", substitute "ADRVP".

28 Paragraph 13(1)(j)

Omit "ASADA", substitute "CEO".

29 Subparagraph 13(1)(j)(ii)

Omit "ASADA's", substitute "ADRVP's".

30 Paragraph 13(1)(k)

Omit "ASADA", substitute "CEO".

31 Subparagraph 13(1)(k)(ii)

Omit "ASADA's", substitute "ADRVP's".

32 Subparagraph 13(1)(k)(iv)

Omit "ASADA's", substitute "CEO's".

33 Paragraph 13(1)(l)

Omit "ASADA", substitute "ADRVP".

34 Subsection 13(1)(m)

Omit "ASADA" (wherever occurring), substitute "CEO".

35 After subparagraph 13(1)(m)(i)

Insert:

- (ia) the publication is required by the World Anti-Doping Code; or

36 Subsection 14(2)

Omit "ASADA" (first occurring), substitute "CEO".

37 Subsection 14(3)

Omit “ASADA” (wherever occurring), substitute “ADRVP”.

38 Subsection 14(4)

Omit “ASADA”, substitute “ADRVP”.

39 Paragraphs 15(1)(b), (c) and (d)

Omit “ASADA”, substitute “CEO”.

40 Paragraph 15(2)(c)

Omit “giving information, to”, substitute “giving information to,”.

41 Paragraph 15(2)(d)

Omit “ASADA’s”, substitute “ADRVP’s”.

42 Paragraph 18(a)

Repeal the paragraph, substitute:

- (a) the CEO;
- (aa) the ADRVP;

43 Subsection 19(1)

Repeal the subsection, substitute:

- (1) The NAD scheme may authorise either or both of the following:
 - (a) the CEO to charge fees for performing his or her functions under the NAD scheme;
 - (b) the ASDMAC to charge fees for performing its functions under the NAD scheme.

44 Part 3 (heading)

Repeal the heading, substitute:

Part 3—ASADA’s establishment and function

45 Section 20

Repeal the section, substitute:

20 Establishment of ASADA

The Australian Sports Anti-Doping Authority is established.

20A ASADA's constitution

The ASADA consists of:

- (a) the CEO; and
- (b) the ASADA staff.

Note: The ASADA does not have a legal identity separate from the Commonwealth.

20B ASADA's function

The ASADA's function is to assist the CEO in the performance of his or her functions.

20C ASADA has privileges and immunities of the Crown

The ASADA has the privileges and immunities of the Crown.

Part 3A—Chief Executive Officer

Division 1—CEO's functions and powers

20D Chief Executive Officer

There is to be a Chief Executive Officer of the ASADA.

46 Subsection 21(1)

Omit "ASADA" (first occurring), substitute "CEO".

Note: The heading to section 21 is altered by omitting "ASADA's" and substituting "CEO's".

47 Paragraphs 21(1)(a) and (b)

Omit "ASADA", substitute "CEO".

48 After paragraph 21(1)(j)

Insert:

- (ja) to cooperate with an organisation of a foreign country in the Oceania region that has functions that are the same as, or similar to, those of the CEO;

49 After paragraph 21(1)(k)

Insert:

(ka) to make resources and facilities (including secretariat services and clerical assistance) available to the Advisory Group for the purposes of enabling the Advisory Group to perform its function;

(kb) to make resources and facilities (including secretariat services and clerical assistance) available to the ADRVP for the purposes of enabling the ADRVP to perform its functions;

50 Paragraph 21(1)(m)

Omit “ASADA”, substitute “CEO”.

51 After subsection 21(1)

Insert:

(1A) In performing his or her functions and exercising his or her powers, the CEO must have regard to the advice and recommendations given to him or her by the Advisory Group or an advisory committee.

52 Subsection 21(2)

Omit “ASADA may perform its”, substitute “CEO may perform his or her”.

53 Paragraph 21(2)(n)

Omit “the ASADA’s capacity to perform its other functions”, substitute “the CEO’s capacity to perform his or her other functions”.

54 Sections 22 and 23

Repeal the sections, substitute:

22 CEO’s powers

The CEO has the power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

Note: For the power to enter into contracts etc. on behalf of the Commonwealth for the benefit of the ASADA, see section 44 of the *Financial Management and Accountability Act 1997* as it applies in relation to the ASADA as an Agency.

55 Subsection 24(1)

Omit “ASADA in relation to the performance of its functions and the exercise of its powers”, substitute “CEO in relation to the performance of his or her functions and the exercise of his or her powers”.

Note: The heading to section 24 is altered by omitting “ASADA” and substituting “the CEO”.

56 Paragraph 24(2)(b)

Omit “ASADA”, substitute “CEO under contract on behalf of the Commonwealth”.

57 Subsection 24(3)

Omit “ASADA”, substitute “CEO”.

58 At the end of section 24

Add:

- (4) Subsection (3) does not apply to the extent that the direction relates to the CEO’s performance of functions or exercise of powers under the *Financial Management and Accountability Act 1997* or as an Agency Head under the *Public Service Act 1999*.

59 At the end of Part 3

Add:

Division 2—Appointment of CEO

24A Appointment of CEO

- (1) The CEO is to be appointed by the Minister, by written instrument, on a full-time basis.
- (2) An Advisory Group member or an ADRVP member is not eligible for appointment as the CEO.
- (3) The appointment of a person as CEO is not invalid because of a defect or irregularity in connection with the person’s appointment.

24B Period of appointment for CEO

The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

24C Acting CEO

- (1) The Minister may, by written instrument, appoint a person to act as CEO:
 - (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to that office); or
 - (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

Division 3—Terms and conditions for CEO

24D Remuneration

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

24E Disclosure of interests

The CEO must give written notice to the Minister of all interests, pecuniary or otherwise, that the CEO has or acquires and that

conflict or could conflict with the proper performance of the CEO's functions.

Note: If the CEO attends and participates in a meeting of the Advisory Group and has an interest, pecuniary or otherwise, in a matter being considered by the Advisory Group, the CEO must disclose that interest to the meeting—see section 32.

24F Outside employment

The CEO must not engage in paid employment outside the duties of his or her office without the Minister's approval.

24G Leave of absence

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant to the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines in writing.

24H Resignation

- (1) The CEO may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day on which it is received by the Minister or, if a later day is specified in the resignation, on that later day.

24J Termination of appointment

- (1) The Minister may terminate the appointment of the CEO for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of the CEO if:
 - (a) the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

- (b) the CEO fails, without reasonable excuse, to comply with section 24E or 32; or
- (c) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (d) the CEO engages, without the Minister's approval, in paid employment outside the duties of his or her office (see section 24F); or
- (e) the CEO commits an offence against section 71 or 72.

24K Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.

Division 4—ASADA's staff etc.

24L Staff

- (1) The staff of the ASADA are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the CEO and the ASADA staff together constitute a Statutory Agency; and
 - (b) the CEO is the Head of that Statutory Agency.

24M Persons assisting the CEO

The CEO may be assisted:

- (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of authorities of the Commonwealth;

whose services are made available to the CEO in connection with the performance of any of his or her functions.

Division 5—Delegation

24N Delegation by the CEO

- (1) The CEO may, by writing, delegate any or all of his or her functions and powers to:
 - (a) a member of the ASADA staff; or
 - (b) an individual whose services are made available to the CEO under section 24M; or
 - (c) an individual appointed as a chaperone, or as a drug testing official, under the NAD scheme.
- (2) Subsection (1) does not apply to the power to make a legislative instrument amending the NAD scheme.
- (3) Paragraph (1)(c) does not apply to a function or power unless it is conferred by the NAD scheme.
- (4) A delegate must comply with any written directions of the CEO.

Division 6—Advisory committees

24P Advisory committees

- (1) The CEO may, by writing, establish advisory committees to assist the CEO in performing any of the CEO's functions.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (2) An advisory committee consists of such Advisory Group members as the CEO determines.
- (3) The CEO must determine, in relation to an advisory committee, the terms and conditions of appointment of the advisory committee members.
- (4) The CEO may give an advisory committee written directions as to:
 - (a) the way in which the committee is to carry out its functions; and
 - (b) procedures to be followed in relation to meetings.
- (5) An instrument made under subsection (1) is not a legislative instrument.

- (6) A direction made under subsection (4) is not a legislative instrument.

60 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Advisory Group

61 Division 1 of Part 4

Repeal the Division, substitute:

Division 1—Advisory Group’s establishment, function and powers

25 Establishment of Advisory Group

The Advisory Group of the ASADA is established by this section.

25A Advisory Group’s function and powers

- (1) The Advisory Group’s function is, at the request of the CEO, to provide advice and make recommendations to the CEO on a matter relating to the CEO’s functions.
- (2) The Advisory Group has the power to do all things necessary or convenient to be done for or in connection with the performance of its function.
- (3) To avoid doubt, the Advisory Group cannot give any directions to the CEO.

62 Division 2 of Part 4 (heading)

Repeal the heading, substitute:

Division 2—Advisory Group’s membership

63 Sections 26 and 27

Repeal the sections, substitute:

26 Advisory Group's membership

The Advisory Group consists of at least 2, and not more than 7, members.

27 Appointment of Advisory Group members

- (1) Each Advisory Group member is to be appointed by the Minister, by written instrument, on a part-time basis.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

- (2) The Minister must not appoint a person as an Advisory Group member unless:
- (a) the Minister is satisfied that the person has appropriate knowledge or experience, which may include, for example, knowledge or experience in:
 - (i) education and training (so as to increase awareness of sports doping and safety matters); or
 - (ii) sports medicine; or
 - (iii) sports law; or
 - (iv) ethics; or
 - (v) investigative practices or techniques; and
 - (b) the person is ordinarily resident in Australia.
- (3) The CEO or an ADRVP member is not eligible for appointment as an Advisory Group member.
- (4) The Minister must appoint one Advisory Group member to be the Advisory Group Chair.
- (5) The appointment of a person as an Advisory Group member or as the Advisory Group Chair is not invalid because of a defect or irregularity in connection with the person's appointment.

64 Section 28

Omit "ASADA member", substitute "Advisory Group member".

Note: The heading to section 28 is altered by omitting "**ASADA members**" and substituting "**Advisory Group members**".

65 Section 28

Omit "5 years", substitute "3 years".

66 Subsection 29(1)

Omit “ASADA Chair” (wherever occurring), substitute “Advisory Group Chair”.

Note 1: The heading to section 29 is altered by omitting “ASADA members” and substituting “Advisory Group members”.

Note 2: The heading to subsection 29(1) is altered by omitting “ASADA Chair” and substituting “Advisory Group Chair”.

67 Subsection 29(2)

Omit “ASADA member (other than the ASADA Chair)” (wherever occurring), substitute “Advisory Group member (other than the Advisory Group Chair)”.

Note: The heading to subsection 29(2) is altered by omitting “ASADA member (other than ASADA Chair)” and substituting “Advisory Group member (other than Advisory Group Chair)”.

68 Subsection 29(3)

Repeal the subsection, substitute:

Qualifications

(3) A person is not eligible for appointment to act as:

- (a) the Advisory Group Chair; or
- (b) an Advisory Group member (other than the Advisory Group Chair);

unless the person is eligible for appointment as an Advisory Group member.

Note: See subsections 27(2) and (3).

69 Division 3 of Part 4 (heading)

Repeal the heading, substitute:

Division 3—Terms and conditions for Advisory Group members

70 Subsection 30(1)

Omit “ASADA member” (wherever occurring), substitute “Advisory Group member”.

71 Subsection 30(2)

Omit “ASADA member”, substitute “Advisory Group member”.

72 Sections 31, 32, 33, 34 and 35

Repeal the sections, substitute:

31 Disclosure of interests to the Minister

An Advisory Group member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the Advisory Group’s function.

32 Disclosure of interests to the Advisory Group

- (1) An Advisory Group member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Advisory Group must disclose the nature of the interest to a meeting of the Advisory Group.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the knowledge of the Advisory Group member.
- (3) The disclosure must be recorded in the minutes of the meeting.
- (4) Unless the Advisory Group otherwise determines, the Advisory Group member:
 - (a) must not be present during any deliberation by the Advisory Group on the matter; and
 - (b) must not take part in any decision of the Advisory Group with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the Advisory Group member:
 - (a) must not be present during any deliberation of the Advisory Group for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting.
- (7) If the CEO attends and participates in a meeting of the Advisory Group, this section applies as if a reference to an Advisory Group member included a reference to the CEO.

33 Outside employment

An Advisory Group member must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties.

34 Leave of absence

- (1) The Minister may grant leave of absence to the Advisory Group Chair on the terms and conditions that the Minister determines.
- (2) The Advisory Group Chair may grant leave of absence to any other Advisory Group member on the terms and conditions that the Advisory Group Chair determines.

73 Subsection 36(1)

Omit "ASADA member", substitute "Advisory Group member".

74 After subsection 36(1)

Insert:

- (1A) The Advisory Group Chair may resign his or her appointment as the Advisory Group Chair without resigning his or her appointment as an Advisory Group member.

75 Section 37

Repeal the section, substitute:

37 Termination of appointment

- (1) The Minister may terminate the appointment of an Advisory Group member for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of an Advisory Group member if:
 - (a) the Advisory Group member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or

- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the Advisory Group member fails, without reasonable excuse, to comply with section 31 or 32; or
- (c) the Advisory Group member engages in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties (see section 33); or
- (d) the Advisory Group member is absent, except on leave of absence, from 3 consecutive meetings of the Advisory Group; or
- (e) the Advisory Group member commits an offence against section 71 or 72.

76 Section 38

Omit "ASADA member", substitute "Advisory Group member".

77 At the end of Part 4

Add:

Division 4—Meetings

39 Holding of meetings

Holding meetings

- (1) A meeting of the Advisory Group may be convened by the CEO only. The CEO may convene a meeting at any time.
- (2) The CEO may attend and participate in a meeting of the Advisory Group.

Procedure of meetings

- (3) Subject to subsection (5), the CEO may, by writing, determine matters relating to the operation of the Advisory Group.
- (4) Subject to subsection (5), if no determination is in force for the purposes of subsection (3), the Advisory Group may operate in the way it determines.

- (5) The Advisory Group Chair must ensure that minutes of meetings are kept.

Legislative instrument

- (6) A determination made under subsection (3) is not a legislative instrument.

78 Parts 5 and 6

Repeal the Parts, substitute:

Part 5—Anti-Doping Rule Violation Panel

Division 1—ADRVP’s establishment and functions

40 Establishment of ADRVP

The Anti-Doping Rule Violation Panel is established by this section.

41 ADRVP’s functions

- (1) The ADRVP has the following functions:
- (a) the functions set out in the NAD scheme;
 - (b) such other functions as are conferred on the ADRVP by this Act or any other law of the Commonwealth;
 - (c) to do anything incidental to or conducive to the performance of any of its functions.

Note: Paragraph (a)—see paragraphs 13(1)(h), (ha), (i) and (l).

Constitutional limits

- (2) Subsection 21(2) applies to the functions of the ADRVP in a corresponding way to the way in which it applies to the functions of the CEO.

Division 2—ADRVP’s membership

42 ADRVP’s membership

The ADRVP consists of at least 4, and not more than 7, members.

43 Appointment of ADRVP members

- (1) Each ADRVP member is to be appointed by the Minister, by written instrument, on a part-time basis.
- (2) The Minister must not appoint a person as an ADRVP member unless:
 - (a) the Minister is satisfied that the person has knowledge of, or experience in, one or more of the following fields:
 - (i) sports medicine;
 - (ii) clinical pharmacology;
 - (iii) sports law;
 - (iv) ethics;
 - (v) investigative practices or techniques; and
 - (b) the person is ordinarily resident in Australia.
- (3) The CEO or an Advisory Group member is not eligible for appointment as an ADRVP member.
- (4) The Minister must appoint one ADRVP member to be the ADRVP Chair.
- (5) The appointment of a person as an ADRVP member or as the ADRVP Chair is not invalid because of a defect or irregularity in connection with the person's appointment.

44 Period of appointment for ADRVP members

An ADRVP member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

45 Acting ADRVP members

- (1) The Minister may appoint a member to act as the ADRVP Chair:
 - (a) during a vacancy in the office of the ADRVP Chair, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the ADRVP Chair:
 - (i) is absent from duty or from Australia; or

- (ii) is, for any reason, unable to perform the duties of the office.
- (2) The Minister may appoint a person to act as an ADRVP member (other than the ADRVP Chair):
 - (a) during a vacancy in the office of an ADRVP member (other than the ADRVP Chair), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when an ADRVP member (other than the ADRVP Chair):
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there is a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

Division 3—Terms and conditions for ADRVP members

46 Remuneration

- (1) An ADRVP member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the ADRVP member is to be paid the remuneration that is prescribed by the regulations.
- (2) An ADRVP member is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

47 Outside employment

An ADRVP member must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties.

48 Disclosure of interests to the Minister

An ADRVP member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the ADRVP's functions.

49 Disclosure of interests to the ADRVP

- (1) An ADRVP member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the ADRVP must disclose the nature of the interest to a meeting of the ADRVP.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the knowledge of the ADRVP member.
- (3) The disclosure must be recorded in the minutes of the meeting.
- (4) Unless the ADRVP otherwise determines, the ADRVP member:
 - (a) must not be present during any deliberation by the ADRVP on the matter; and
 - (b) must not take part in any decision of the ADRVP with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the ADRVP member:
 - (a) must not be present during any deliberation of the ADRVP for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting.

50 ADRVP member to remain at arm's length from deliberations and decisions of sporting administration bodies

An ADRVP member must not take part in any deliberations or decisions of a sporting administration body in relation to a particular matter if the member has participated in any deliberations or decisions of the ADRVP in relation to the matter.

50A Leave of absence

- (1) The Minister may grant leave of absence to the ADRVP Chair on the terms and conditions that the Minister determines.
- (2) The ADRVP Chair may grant leave of absence to another ADRVP member on the terms and conditions that the ADRVP Chair determines.

50B Resignation

- (1) An ADRVP member may resign his or her appointment by giving the Minister a written resignation.
- (2) The ADRVP Chair may resign his or her appointment as the ADRVP Chair without resigning his or her appointment as an ADRVP member.
- (3) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

50C Termination of appointment

- (1) The Minister may terminate the appointment of an ADRVP member for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of an ADRVP member if:
 - (a) the ADRVP member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or

- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the ADRVP member fails, without reasonable excuse, to comply with section 48, 49 or 50; or
- (c) the ADRVP member engages in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties (see section 47); or
- (d) the ADRVP member is absent, except on leave of absence, from 3 consecutive meetings of the ADRVP; or
- (e) the ADRVP member commits an offence against section 71 or 72.

50D Other terms and conditions

An ADRVP member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Division 4—Meetings

50E Holding of meetings

Holding meetings

- (1) The ADRVP is to hold such meetings as are necessary for the performance of its functions.

Procedure of meetings

- (2) Subject to subsection (3), the ADRVP Chair may, by writing, determine matters relating to the operation of the ADRVP.
- (3) The ADRVP Chair must ensure that minutes of meetings are kept.

Legislative instrument

- (4) A determination made under subsection (2) is not a legislative instrument.

79 Paragraph 52(1)(b)

Omit "ASADA", substitute "CEO".

80 Subsection 52(2)

Omit “ASADA”, substitute “CEO”.

81 Subparagraphs 58(3)(d)(iii) and (iv)

Omit “ASADA”, substitute “CEO under contract on behalf of the Commonwealth”.

82 Paragraphs 59(4)(g) and (h)

Omit “ASADA”, substitute “CEO under contract on behalf of the Commonwealth”.

83 Paragraph 67(1)(b)

Omit “ASADA Chair”, substitute “CEO”.

Note: The heading to section 67 is altered by omitting “ASADA’s” and substituting “CEO’s”.

84 Subparagraph 67(1)(d)(i)

Omit “ASADA’s”, substitute “CEO’s”.

85 Subparagraph 67(1)(d)(ii)

Omit “ASADA of its”, substitute “CEO of his or her”.

86 After paragraph 67(1)(d)

Insert:

- (da) the use or further disclosure of the information for the purpose of the performance by the Advisory Group of its function, to the extent that the performance of the function relates to the CEO’s administration of the NAD scheme, is taken to be authorised by law; and
- (db) the use or further disclosure of the information for the purpose of the performance by an advisory committee of its functions, to the extent that the performance of a function relates to the CEO’s administration of the NAD scheme, is taken to be authorised by law; and
- (dc) the use or further disclosure of the information for the purpose of the performance by the ADRVP of its functions under the NAD scheme is taken to be authorised by law; and

87 Paragraph 67(1)(e)

Omit “ASADA’s”, substitute “CEO’s”.

88 Paragraph 67(1)(f)

Omit “ASADA of its”, substitute “CEO of his or her”.

89 After paragraph 67(1)(f)

Insert:

- (fa) the purpose of the performance by the Advisory Group of its function, to the extent that the performance of the function relates to the CEO’s administration of the NAD scheme, is taken to be a permissible purpose referred to in a paragraph of subsection 16(9) of the *Customs Administration Act 1985*; and
- (fb) the purpose of the performance by an advisory committee of its functions, to the extent that the performance of a function relates to the CEO’s administration of the NAD scheme, is taken to be a permissible purpose referred to in a paragraph of subsection 16(9) of the *Customs Administration Act 1985*; and
- (fc) the purpose of the performance by the ADRVP of its functions under the NAD scheme is taken to be a permissible purpose referred to in a paragraph of subsection 16(9) of the *Customs Administration Act 1985*; and

90 Paragraph 67(1)(g)

Omit “ASADA Chair, or to a person acting on the ASADA’s behalf”, substitute “CEO, or to a person acting on the CEO’s behalf”.

91 Subparagraph 67(1)(g)(i)

Omit “or (f)”, substitute “, (f), (fa), (fb) or (fc)”.

92 Subsection 67(2)

Omit “ASADA Chair, or to a person acting on the ASADA’s behalf”, substitute “CEO, or to a person acting on the CEO’s behalf”.

93 Subsections 67(3) and (4)

Omit “ASADA”, substitute “CEO”.

94 At the end of section 67

Add:

- (5) The CEO may disclose protected customs information to the Advisory Group, an advisory committee or the ADRVP for the purpose of any of those bodies performing a function, to the extent that the performance of the function relates to the CEO's administration of the NAD scheme.
- (6) When performing a function, the Advisory Group, an advisory committee or the ADRVP may have regard to protected customs information.
- (7) Subsection (6) does not limit the matters to which the Advisory Group, an advisory committee or the ADRVP may have regard.

95 Subsection 68(1)

Omit "ASADA" (first occurring), substitute "CEO".

Note: The heading to subsection 68(1) is altered by omitting "ASADA" and substituting "CEO".

96 Paragraph 68(1)(a)

Omit "ASADA", substitute "CEO".

97 Paragraph 68(1)(c)

Repeal the paragraph, substitute:

- (c) the CEO is satisfied that the disclosure of the information would not contravene any terms of the authorisation under which the information was disclosed to the CEO, or to a person acting on the CEO's behalf, under section 16 of the *Customs Administration Act 1985*; and

98 Subsection 68(2)

Omit "ASADA" (first occurring), substitute "CEO".

99 Paragraph 68(3)(b)

Omit "ASADA", substitute "CEO".

100 Subsection 68(6)

Omit "ASADA", substitute "CEO".

Note: The heading to subsection 68(6) is altered by omitting "ASADA" and substituting "CEO".

101 Paragraph 69(a)

Repeal the paragraph, substitute:

- (a) the CEO; or
- (aa) an Advisory Group member; or

102 Paragraphs 69(c) and (d)

Omit “ASADA”, substitute “CEO, the ADRVP”.

103 Paragraph 69(e)

Omit “ASADA under section 50”, substitute “CEO under section 24M”.

104 After paragraph 69(f)

Insert:

- (fa) an ADRVP member; or

105 Paragraphs 69(h) and (i)

Repeal the paragraphs, substitute:

- (h) an advisory committee member; or
- (i) an individual attending a meeting of:
 - (i) the Advisory Group; or
 - (ii) an advisory committee.

106 Paragraph 72(2)(g)

Omit “ASADA”, substitute “CEO”.

107 Subsection 74(1)

Omit “The ASADA”, substitute “The CEO”.

108 Subsection 74(1)

Omit “ASADA’s”, substitute “CEO’s”.

109 Subsection 75(1)

Omit “ASADA” (wherever occurring), substitute “CEO”.

Note: The heading to section 75 is altered by omitting “ASADA” and substituting “CEO”.

110 Paragraph 75(1)(a)

Omit “ASADA’s”, substitute “CEO’s”.

111 Subsection 75(2)

Omit “ASADA” (wherever occurring), substitute “CEO”.

112 Paragraph 75(2)(a)

Omit “ASADA’s”, substitute “CEO’s”.

113 Subsection 75(3)

Omit “ASADA”, substitute “CEO”.

114 Sections 76 and 77

Repeal the sections.

115 Paragraph 78(1)(a)

Repeal the paragraph, substitute:

- (a) the CEO;

116 Paragraph 78(1)(c)

Omit “ASADA under section 50”, substitute “CEO under section 24M”.

117 Paragraphs 78(1)(e) and (f)

Omit “ASADA”, substitute “CEO”.

118 After subsection 78(1)

Insert:

- (1A) An Advisory Group member is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith:
 - (a) in the performance or purported performance of the Advisory Group’s function; or
 - (b) in the exercise or purported exercise of any power of the Advisory Group; or
 - (c) in the performance or purported performance of an advisory committee’s function.
- (1B) An ADRVP member is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith:
 - (a) in the performance or purported performance of any function of the ADRVP; or

(b) in the exercise or purported exercise of any power of the ADRVP.

119 Subsection 78(3)

Omit “the ASADA or”.

120 Paragraphs 78(3)(a) and (b)

Omit “ASADA”, substitute “CEO or the ADRVP”.

121 Paragraphs 78(4)(a), (b) and (c)

After “ASADA”, insert “, the CEO, the Advisory Group, the ADRVP”.

122 Paragraph 78(4)(d)

Omit “in connection with the performance by the ASADA of any of its”, substitute “or the CEO in connection with the performance by the CEO of any of his or her”.

123 After paragraph 78(4)(d)

Insert:

- (da) the making of a statement to, or the giving of a document or information to, the ADRVP in connection with the performance by the ADRVP of any of its functions under the NAD scheme;

Australian Sports Commission Act 1989

124 Subsection 7(4A)

Before “Australian”, insert “Chief Executive Officer of the”.

125 Subsection 57A(1)

Repeal the subsection, substitute:

- (1) The Commission may disclose information to the Chief Executive Officer of the Australian Sports Anti-Doping Authority if the information:
- (a) relates to a sports doping and safety matter (within the meaning of the *Australian Sports Anti-Doping Authority Act 2006*); or

- (b) is otherwise relevant to the performance of the functions of the Chief Executive Officer of the Australian Sports Anti-Doping Authority; or
- (c) is otherwise relevant to the performance of the functions of the Anti-Doping Rule Violation Panel.

Note: The heading to section 57A is altered by adding at the end “**or the Anti-Doping Rule Violation Panel**”.

Part 2—Application and transitional provisions

Division 1—Definitions

126 Definitions

In this Part:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

ADRVP has the same meaning as in the new law.

Advisory Group member has the same meaning as in the new law.

ASADA means the body corporate continued in existence by section 20 of the old law as a body corporate under the name Australian Sports Anti-Doping Authority.

ASADA member has the same meaning as in the old law.

CEO has the same meaning as in the new law.

commencement time means the time when this Part commences.

financial liability means a liability to pay a person if the amount, or the method for working out the amount, has been determined.

instrument:

(a) includes:

- (i) a contract, deed, undertaking or agreement; and
- (ii) a notice, authority, order or instruction; and
- (iii) an instrument made under an Act or regulations; but

(b) does not include an Act.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

liability means any liability, duty or obligation, whether actual, contingent or prospective.

new law means the *Australian Sports Anti-Doping Authority Act 2006* as in force immediately after the commencement time.

old law means the *Australian Sports Anti-Doping Authority Act 2006* as in force immediately before the commencement time.

Division 2—Liabilities and legal proceedings

127 Existing financial liabilities

Any financial liabilities of the ASADA that exist immediately before the commencement time are taken, at the commencement time, to be liabilities of the Commonwealth.

128 Substitution of parties to proceedings

- (1) If any proceedings, other than proceedings referred to in subitem (2), to which the ASADA was a party were pending in any court or tribunal immediately before the commencement time, the Commonwealth is substituted for the ASADA, from the commencement time, as a party to the proceedings.
- (2) If any proceedings under subsection 14(4) of the old law were pending in the Administrative Appeals Tribunal immediately before the commencement time, the ADRVP is substituted for the ASADA, from the commencement time, as a party to the proceedings.

Division 3—ASADA members

129 ASADA members

A person who is an ASADA member immediately before the commencement time ceases, immediately after the commencement time, to hold office as an ASADA member by force of this item.

Division 4—References to, and things done by or in relation to, the ASADA or the ASADA members

130 Operation of laws—things done by, or in relation to, the ASADA or the ASADA members

- (1) If, before the commencement time, a thing was done by, or in relation to the ASADA or the ASADA members, then, for the purposes of the operation of any law after the commencement time, the thing is taken to have been done by, or in relation to, the CEO.
- (2) For the purposes of subitem (1), a thing done before the commencement time under a provision amended by Part 1 of this Schedule or by Schedule 2 has effect from that time as if it were done under that

provision as amended. However, this is not taken to change the time at which the thing was actually done.

- (3) The Minister may, by writing, determine that subitem (1):
- (a) does not apply in relation to a specified thing done by, or in relation to, the ASADA or the ASADA members; or
 - (b) applies as if the reference in that subitem to the CEO were a reference to the Commonwealth; or
 - (c) applies as if the reference in that subitem to the CEO were a reference to the ADRVP.

A determination under this subitem has effect accordingly.

- (4) The regulations may provide for a thing specified in a determination under paragraph (3)(a) to be taken to have been done by, or in relation to, a person or body other than the CEO, the Commonwealth or the ADRVP.
- (5) To avoid doubt, for the purposes of this item, doing a thing includes making an instrument.
- (6) A determination made under subitem (3) is not a legislative instrument.

131 References in instruments

- (1) If:
- (a) an instrument is in force immediately before the commencement time; and
 - (b) the instrument contains a reference to the ASADA or the ASADA members;
- the instrument has effect from the commencement time as if the reference to the ASADA or the ASADA members, as the case requires, were a reference to the CEO.
- (2) The Minister may, by writing, determine that subitem (1):
- (a) does not apply in relation to a specified reference; or
 - (b) applies, in relation to a specified reference, as if the reference in that subitem to the CEO were a reference to the Commonwealth; or
 - (c) applies, in relation to a specified reference, as if the reference in that subitem to the CEO were a reference to the ADRVP.
- A determination under this subitem has effect accordingly.

- (3) The regulations may provide that an instrument containing a reference specified in a determination under paragraph (2)(a) has effect from the commencement time as if the reference were a reference to a person or body other than the CEO, the Commonwealth or the ADRVP.
- (4) A determination made under subitem (2) is not a legislative instrument.

Division 5—Transitional arrangements relating to the Anti-Doping Rule Violation Committee

132 Members of the ADRVP

- (1) Subject to subitems (2), (3) and (4), a person who was an ASADA member immediately before the commencement time is taken to have been duly appointed, immediately after the commencement time, as a member of the ADRVP by the Minister under section 43 of the new law.
- (2) Despite section 44 of the new law, a member holds office, after the commencement time, for the period determined, in writing, by the Minister.
- (3) Despite Division 3 of Part 5 of the new law, a member holds office, after the commencement time, on the terms or conditions that are determined by the Minister.
- (4) Subitem (1) does not apply to a person who is:
 - (a) the CEO; or
 - (b) an Advisory Group member.

133 Matters being dealt with by the Anti-Doping Rule Violation Committee to be dealt with by the ADRVP

If, immediately before the commencement time, the Anti-Doping Rule Violation Committee was considering a possible violation of the anti-doping rules, then:

- (a) the ADRVP must, if there is such a violation, make findings relating to the violation; and
- (b) a thing done by, or in relation to, the Committee in relation to the possible violation is taken to have been done by, or in relation to, the ADRVP.

Division 6—Reporting requirements

134 Reporting requirements

Reports for periods ending after the commencement time

- (1) If:
- (a) immediately before the commencement time, a law required the ASADA or the ASADA members to provide a report (whether financial statements or otherwise) for a period; and
 - (b) the period ends after the commencement time;

the CEO must provide the report, as required, for so much of the period as occurs before the commencement time.

- (2) If:
- (a) under subitem (1), the CEO is required to provide a report for a part of a period; and
 - (b) the ASADA is also required to provide a similar report for the remainder of the period;

the CEO may meet the requirements in a single report for the period.

Reports for periods ending before the commencement time

- (3) If:
- (a) a law required the ASADA or the ASADA members to provide a report (whether financial statements or otherwise) for a period that ended before the commencement time; and
 - (b) the report has not been provided by the commencement time;

the CEO must provide the report as required.

Application of law to CEO

- (4) To avoid doubt, if under this item the CEO is required to provide a report under a law, the law applies to the CEO in respect of the report in the same way as the law would have applied to the ASADA or the ASADA members in respect of the report.

Division 7—Miscellaneous

135 Exemption from stamp duty and other State or Territory taxes

No stamp duty or other tax is payable under a law of a State or Territory in respect of, or in respect of anything connected with:

- (a) the transfer of a liability under this Part; or
- (b) the operation of this Part in any other respect.

136 Constitutional safety net—acquisition of property

- (1) If the operation of this Part would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

137 Delegation by Minister

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Part to the CEO.
- (2) In exercising or performing powers or functions under a delegation, the CEO must comply with any directions of the Minister.

138 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Part to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by Part 1 of this Schedule.

Schedule 2—Other amendments

Australian Sports Anti-Doping Authority Act 2006

1 Section 4 (definition of *athlete*)

Repeal the definition, substitute:

athlete means a participant in a sporting activity who is subject to the NAD scheme.

2 Section 4 (paragraph (a) of the definition of *doping method*)

Repeal the paragraph, substitute:

- (a) the manipulation or substitution of any human biological material in a manner that is capable of concealing the use of a drug by the individual concerned; and

3 Section 4 (subparagraph (a)(ii) of the definition of *national sporting organisation*)

Omit “, or is generally recognised,”.

4 Section 4 (definition of *sample*)

Repeal the definition, substitute:

sample means any human biological material.

5 Section 4

Insert:

sports doping and safety matter means:

- (a) a matter relating to drugs and/or doping methods in one or more sporting activities; or
- (b) a matter relating to the safety of athletes.

6 Section 4 (definition of *sports drug and safety matter*)

Repeal the definition.

7 Section 4 (definition of *support person*)

Repeal the definition, substitute:

support person means an individual who works with or treats one or more athletes participating in, or preparing for, sporting activities.

8 Section 9 (note)

Repeal the note, substitute:

Note: For *NAD scheme* or *National Anti-Doping Scheme*, see section 4.

9 Section 10

Repeal the section, substitute:

10 Amending the National Anti-Doping Scheme

(1) The CEO may, by legislative instrument, amend the NAD scheme, so long as:

- (a) the amendment relates to any or all of the following matters:
 - (i) the classes of athletes who are subject to the NAD scheme;
 - (ii) the meaning of *support person* for the purposes of the NAD scheme;
 - (iii) a request to an athlete to keep the CEO informed of where the athlete can be found;
 - (iv) the things that an athlete may do before providing a sample;
 - (v) the things that the CEO may do with a sample;
 - (vi) the disclosure of information, other than information relating to an entry on the register mentioned in paragraph 13(1)(i), that relates, or appears to relate, to a person in connection with a possible breach of the anti-doping rules;
 - (vii) a matter that is ancillary or incidental to one or more of the matters mentioned in subparagraphs (i) to (vi); and
- (b) the amended NAD scheme is about any or all of the following matters:
 - (i) the implementation of the General Anti-Doping Convention or the UNESCO Anti-Doping Convention;
 - (ii) a matter that is ancillary or incidental to one or both of the matters mentioned in subparagraph (i).

Note: For public consultation requirements, see section 11.

(2) To avoid doubt, the regulations may also amend the NAD scheme in relation to a matter mentioned in paragraph (1)(a).

10 Subsection 11(1)

Omit “a section 10 instrument that amends”, substitute “an instrument under subsection 10(1) amending”.

11 Paragraph 21(1)(c)

Omit “sports drug and safety matters”, substitute “sports doping and safety matters”.

12 Paragraph 21(1)(d)

Repeal the paragraph.

13 Paragraphs 21(1)(e), (f), (g), (h), (i) and (j)

Omit “sports drug and safety matters”, substitute “sports doping and safety matters”.

14 Subparagraph 21(1)(k)(iii)

Omit “(including information technology services) relating to sports drug and safety matters”, substitute “(including educational services) relating to sports doping and safety matters”.

15 Subsection 21(1) (note)

Omit “*sports drug and safety matter*”, substitute “*sports doping and safety matter*”.

16 Subparagraph 52(1)(b)(ii)

Omit “sports drug and safety matters”, substitute “sports doping and safety matters”.

17 Paragraph 52(1)(c)

Omit “advice and”.

18 Subparagraph 52(1)(c)(i)

Omit “sports drug and safety matters”, substitute “sports doping and safety matters”.

19 Paragraph 52(1)(d)

Omit “sports drug and safety matters”, substitute “sports doping and safety matters”.

20 Subsection 52(1) (note)

Omit “*sports drug and safety matter*”, substitute “*sports doping and safety matter*”.

21 After paragraph 71(2)(f)

Insert:

- (fa) a disclosure to the body in a State or Territory responsible for the registration of medical practitioners in that State or Territory;
- (fb) a disclosure to a body in a foreign country responsible for the registration of medical practitioners in, or in a part of, that country;
- (fc) a disclosure to an authority of the Commonwealth, a State or a Territory that has functions relating to law enforcement;
- (fd) a disclosure to a national regulatory authority of another country that has national responsibility relating to law enforcement;
- (fe) a disclosure to an international organisation that has functions relating to law enforcement;

22 After paragraph 72(2)(f)

Insert:

- (fa) a disclosure to the body in a State or Territory responsible for the registration of medical practitioners in that State or Territory;
- (fb) a disclosure to a body in a foreign country responsible for the registration of medical practitioners in, or in a part of, that country;
- (fc) a disclosure to an authority of the Commonwealth, a State or a Territory that has functions relating to law enforcement;
- (fd) a disclosure to a national regulatory authority of another country that has national responsibility relating to law enforcement;
- (fe) a disclosure to an international organisation that has functions relating to law enforcement;

*[Minister's second reading speech made in—
House of Representatives on 16 September 2009
Senate on 29 October 2009]*

(177/09)

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