



# **Australian Sports Anti-Doping Authority Amendment Act 2013**

**No. 126, 2013**

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Australian Sports Anti-Doping Authority Amendment Act 2013

No. 126, 2013

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

[Assented to 29 June 2013]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Australian Sports Anti-Doping Authority Amendment Act 2013*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2013
2. Schedules 1 to 3	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 August 2013 (see F2013L01433)

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

### *Australian Sports Anti-Doping Authority Act 2006*

#### **1 Section 4**

Insert:

*civil penalty order* has the meaning given by subsection 73B(4).

#### **2 Section 4**

Insert:

*civil penalty provision* has the meaning given by section 73A.

#### **3 Section 4**

Insert:

*conduct* means:

- (a) an act; or
- (b) a failure to act.

#### **4 Section 4**

Insert:

*disclosure notice* has the meaning given by subsection 13A(1).

#### **5 Section 4**

Insert:

*evidential burden*, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

#### **6 Section 4**

Insert:

*relevant court* means:

- (a) the Federal Court of Australia; or
- (b) the Federal Circuit Court of Australia; or

- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

## **7 After paragraph 13(1)(e)**

Insert:

- (ea) authorise the CEO to request a specified person to do one or more of the following within a specified period:
- (i) attend an interview to answer questions;
  - (ii) give information of a specified kind;
  - (iii) produce documents or things of a specified kind;
- if the CEO reasonably believes that the person has information, documents or things that may be relevant to the administration of the NAD scheme; and

## **8 Paragraph 13(1)(g)**

Repeal the paragraph, substitute:

- (g) authorise the CEO to disclose information, documents or things obtained in relation to the administration of the NAD scheme (including information obtained during investigations of possible violations of the anti-doping rules) for the purposes of, or in connection with, that administration; and

## **9 After section 13**

Insert:

### **13A Power to require information or documents to be given**

- (1) The NAD scheme must authorise the CEO to give a person a written notice (a *disclosure notice*) requiring the person to do one or more of the following within the period specified in the notice:
- (a) attend an interview to answer questions;
  - (b) give information of the kind specified in the notice;
  - (c) produce documents or things of the kind specified in the notice.
- (1A) The NAD scheme must provide that the CEO must not give a disclosure notice to a person unless:
- (a) the CEO declares in writing that the CEO reasonably believes that the person has information, documents or things that



- 
- may be relevant to the administration of the NAD scheme;  
and
- (b) if:
- (i) the person is a registered medical practitioner; and
  - (ii) the notice is given to the person in his or her capacity as a registered medical practitioner;
- the CEO declares in writing that the CEO reasonably believes that the person has been involved, in that capacity, in the commission, or attempted commission, of a possible violation of the anti-doping rules; and
- (c) 3 ADRVP members agree in writing that the belief referred to in paragraph (a) (and, if applicable, paragraph (b)) is reasonable.
- (2) The NAD scheme may make provision in relation to:
- (a) disclosure notices; and
  - (b) the form and conduct of interviews; and
  - (c) the form in which information, documents, things and answers to questions must or may be given.
- (3) Without limiting subsection (2), the NAD scheme must provide that a person who is given a disclosure notice has the right to be notified in writing of the possible consequences of a failure to comply with the disclosure notice.

### **13B CEO may retain and copy documents etc.**

#### *Inspecting and making copies of documents*

- (1) The CEO may:
- (a) inspect a document produced in response to a disclosure notice; and
  - (b) make and retain copies of, or take and retain extracts from, such a document.

#### *Retaining documents and things*

- (2) The CEO may take, and retain for as long as is necessary, possession of a document or thing produced in response to a disclosure notice.

- (3) While the CEO retains the document or thing, he or she must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.

### 13C Failure to comply with disclosure notice

#### *Failure to give information or produce documents in time*

- (1) A person contravenes this subsection if:
- (a) the person is given a disclosure notice; and
  - (b) the notice requires the person to:
    - (i) give information; or
    - (ii) produce documents or things; of a kind specified in the notice; and
  - (c) the person fails to comply with the notice within the period specified in the notice.

Civil penalty: 30 penalty units.

- (2) Subsection (1) does not apply if the person gives the CEO a statutory declaration stating that:
- (a) the person does not possess the information, document or thing; and
  - (b) the person has taken all reasonable steps available to the person to obtain the information, document or thing and has been unable to obtain it.

Note: A person bears an evidential burden in relation to the matter in this subsection: see section 73R.

#### *Failure to attend interview*

- (3) A person contravenes this subsection if:
- (a) the person is given a disclosure notice; and
  - (b) the notice requires the person to attend an interview to answer questions; and
  - (c) the person fails to comply with the notice.

Civil penalty: 30 penalty units.

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*Failure to answer questions*

- (4) A person contravenes this subsection if:
- (a) the person is given a disclosure notice; and
  - (b) the notice requires the person to attend an interview to answer questions; and
  - (c) the person refuses or fails to answer a question.

Civil penalty: 30 penalty units.

**13D Self-incrimination**

- (1) An individual is excused from complying with a requirement to answer a question or to give information if the answer to the question or the information might tend to incriminate the individual or expose the individual to a penalty.
- (1A) A person is not excused from producing a document or thing as required by a disclosure notice given to the person on the ground that the document or thing might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual, none of the following:
- (a) the document or thing produced;
  - (b) the producing of the document or thing;
  - (c) any information, document or thing obtained as a direct or indirect consequence of producing the document or thing;
- is admissible in evidence against the individual in:
- (e) criminal proceedings, other than proceedings for an offence against section 137.1 (false or misleading information) or 137.2 (false or misleading documents) of the *Criminal Code* that relates to this Act; or
  - (f) any proceedings that would expose the individual to a penalty, other than proceedings in connection with this Act or the regulations.
- (3) To avoid doubt, proceedings (however described) before a sporting administration body or the Court of Arbitration for Sport or other sporting tribunal that relate to sports doping and safety matters are proceedings in connection with this Act or the regulations.

**10 After paragraph 14(2)(a)**

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Insert:

- (aa) to attend an interview to answer questions; or
- (ab) to give information; or
- (ac) to produce documents or things; or

### **11 Subsection 24N(1)**

After “powers”, insert “(other than the power to give a disclosure notice)”.

### **12 After subsection 24N(3)**

Insert:

- (3A) The CEO may, by writing, delegate his or her power to give a disclosure notice to a member of the ASADA staff who is an SES employee, or an acting SES employee.

### **13 After Part 8**

Insert:

## **Part 8A—Civil penalty orders**

### **73A *Civil penalty provisions***

A provision of this Act is a *civil penalty provision* if:

- (a) the provision sets out at its foot a pecuniary penalty, or penalties, indicated by the words “Civil penalty”; and
- (b) the provision is a subsection, or a section that is not divided into subsections.

### **73B Civil penalty orders**

*Application for order*

- (1) The CEO may apply to a relevant court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The CEO must make the application within 4 years of the alleged contravention.

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*Court may order person to pay pecuniary penalty*

- (3) If the relevant court is satisfied that the person has contravened the civil penalty provision, the court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines to be appropriate.

Note: Subsection (5) sets out the maximum penalty that the court may order the person to pay.

- (4) An order under subsection (3) is a ***civil penalty order***.

*Determining pecuniary penalty*

- (5) The pecuniary penalty must not be more than:
- (a) if the person is a body corporate—5 times the pecuniary penalty specified for the civil penalty provision; and
  - (b) otherwise—the pecuniary penalty specified for the civil penalty provision.
- (6) In determining the pecuniary penalty, the court must take into account all relevant matters, including:
- (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered because of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court (including a court in a foreign country) to have engaged in any similar conduct.

**73C Civil enforcement of penalty**

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
- (2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

**73D Conduct contravening more than one civil penalty provision**

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Part against a

person in relation to the contravention of any one or more of those provisions.

- (2) However, the person is not liable to more than one pecuniary penalty under this Part in relation to the same conduct.

### **73E Multiple contraventions**

- (1) A relevant court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

Note: For continuing contraventions of civil penalty provisions, see section 73N.

- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

### **73F Proceedings may be heard together**

A relevant court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

### **73G Civil evidence and procedure rules for civil penalty orders**

A relevant court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

### **73H Civil proceedings after criminal proceedings**

A relevant court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

### **73J Criminal proceedings during civil proceedings**

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:

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- (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
  - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise:
- (a) the civil proceedings are dismissed; and
  - (b) costs must not be awarded in relation to the civil proceedings.

### **73K Criminal proceedings after civil proceedings**

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.

### **73L Evidence given in civil proceedings not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:
- (a) the individual previously gave the information or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

### **73M Ancillary contravention of civil penalty provisions**

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision; or

- (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
- (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
- (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
- (e) conspire with others to effect a contravention of a civil penalty provision.

*Civil penalty*

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

Note: Section 73P (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to the extent that proceedings relate to the contravention of subsection (1) of this section.

**73N Continuing contraventions of civil penalty provisions**

- (1) If an act or thing is required under a civil penalty provision to be done:

- (a) within a particular period; or
- (b) before a particular time;

then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:

- (a) within a particular period; or
- (b) before a particular time;

commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

**73P State of mind**

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision, it is not necessary to prove:



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- (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (2) Subsection (1) does not apply to the extent that the proceedings relate to a contravention of subsection 73M(1) (ancillary contravention of civil penalty provisions).
  - (3) Subsection (1) does not affect the operation of section 73Q (mistake of fact).
  - (4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.

### **73Q Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
  - (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

### **73R Exceptions etc. to civil penalty provisions—burden of proof**

If, in proceedings for a civil penalty order against a person for a contravention of a civil penalty provision, the person wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating the civil penalty provision, then the person bears an evidential burden in relation to that matter.

### **73S Civil penalty provisions contravened by employees, agents or officers**

If an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the element must also be attributed to the body corporate.

### **14 After subsection 74(1)**

Insert:

- (1A) Without limiting subsection (1), the report must set out:
- (a) the number of disclosure notices given in the financial year; and
  - (b) the number of proceedings for contraventions of section 13C (failure to comply with disclosure notice) that were commenced or concluded in the financial year; and
  - (c) the number of proceedings concluded in the financial year in which a person was ordered to pay a civil penalty for contravening section 13C.

### **15 At the end of Part 9**

Add:

### **80 Infringement notices for civil penalty provisions**

- (1) The regulations may provide for a person who is alleged to have contravened a civil penalty provision to pay a penalty to the Commonwealth as an alternative to civil proceedings against the person.

- (2) The penalty must not exceed one-fifth of the maximum penalty that a court could impose on the person for a contravention of that provision.

## Schedule 2—Information sharing

### *Australian Postal Corporation Act 1989*

#### **1 At the end of section 90J**

Add:

##### *Disclosure to ASADA*

- (12) The person may disclose the information to the Chief Executive Officer of the Australian Sports Anti-Doping Authority for the purposes of the administration of the NAD scheme (within the meaning of the *Australian Sports Anti-Doping Authority Act 2006*).

### *Australian Sports Anti-Doping Authority Act 2006*

#### **2 Paragraph 68(1)(d)**

Before “the requirements”, insert “unless subsection (5A) applies—”.

#### **3 After subsection 68(5)**

Insert:

- (5A) The requirements of subsections (2) to (5) do not apply to a disclosure of information if the CEO is satisfied that complying with those requirements is likely to prejudice a current investigation into a possible violation of the anti-doping rules.

#### **3A Before subsection 74(2)**

Insert:

- (1B) Without limiting subsection (1), the report must set out the number of times the CEO has exercised the discretion referred to in subsection 68(5A) in relation to protected customs information during the financial year.

#### **4 Application of amendments**

- (1) The amendment made by item 1 of this Schedule applies to disclosures of information made after the commencement of that item, whether the information was obtained before or after that commencement.

- (2) The amendments made by items 2 and 3 of this Schedule apply to disclosures of information made after the commencement of those items, regardless of when the investigation into a possible violation of the anti-doping rules commenced.

## Schedule 3—Other amendments

### *Australian Sports Anti-Doping Authority Act 2006*

#### **1 Section 4 (definition of *anti-doping rules*)**

Repeal the definition, substitute:

*anti-doping rules* has the meaning given by the NAD scheme.

#### **2 Section 4**

Insert:

*finding* has the meaning given by the NAD scheme.

#### **2A Subsection 5(1A)**

Omit “6”, substitute “8”.

#### **3 Paragraph 13(1)(b)**

Repeal the paragraph, substitute:

(b) contain the anti-doping rules; and

#### **4 Paragraph 13(1)(h)**

Omit “such investigations”, substitute “investigations referred to in paragraph (f)”.

#### **5 Paragraph 13(1)(ha)**

Repeal the paragraph.

#### **6 Paragraph 13(1)(j)**

Repeal the paragraph, substitute:

- (j) authorise the CEO to notify athletes, support persons and sporting administration bodies of findings on the register mentioned in paragraph (i); and
- (ja) authorise the CEO to provide recommendations to sporting administration bodies as to the consequences of such findings; and

#### **7 Subparagraph 13(1)(k)(ii)**

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Repeal the subparagraph, substitute:

- (ii) additional information;

## **8 At the end of section 13**

Add:

- (3) The NAD scheme must include a provision (a *limitations provision*) to the effect that an action may be commenced against an athlete or support person in relation to a possible violation of the anti-doping rules within 8 years after the violation is alleged to have occurred.
- (4) The limitations provision prevails over a law of a State or Territory, to the extent of any inconsistency.

## **9 At the end of section 41**

Add:

- (3) To avoid doubt, the ADRVP is not a hearing body within the meaning of Article 8 of the World Anti-Doping Code.

## **9A Section 42**

Omit “7”, substitute “9”.

## **10 Subsection 43(3)**

After “The CEO”, insert “, an ASDMAC member”.

## **11 Section 50**

Repeal the section, substitute:

### **50 Limits on activities of ADRVP members**

- (1) An ADRVP member must not, without the prior written consent of the CEO, take part in any deliberations or decisions of a sporting administration body in relation to a matter relating to, or arising under, the NAD scheme.
- (2) An ADRVP member must not, without the prior written consent of the CEO, provide:
  - (a) information, advice or support to a person; or
  - (b) evidence or information on behalf of a person;

in connection with a matter (a *NAD scheme matter*) relating to, or arising under, the NAD scheme if the person has a matter before the ASDMAC, a sporting administration body, a court or a tribunal in respect of the NAD scheme matter.

## 12 After subsection 54(2)

Insert:

- (2A) An ADRVP member is not eligible for appointment as an ASDMAC member.

## 13 Section 60

Repeal the section, substitute:

### 60 Limits on activities of ASDMAC members

- (1) An ASDMAC member must not, without the prior written consent of the CEO, take part in any deliberations or decisions of a sporting administration body in relation to a matter relating to, or arising under, the NAD scheme.
- (2) An ASDMAC member must not, without the prior written consent of the CEO, provide:
- (a) information, advice or support to a person; or
  - (b) evidence or information on behalf of a person;
- in connection with a matter (a *NAD scheme matter*) relating to, or arising under, the NAD scheme if the person has a matter before the ADRVP, a sporting administration body, a court or a tribunal in respect of the NAD scheme matter.

## 14 Application of amendments

- (1) The amendment made by item 10 applies in relation to ADRVP members appointed after the commencement of that item.
- (2) The amendment made by item 11 applies in relation to conduct engaged in by ADRVP members after the commencement of that item, whether the member was appointed before or after that commencement.
- (3) The amendment made by item 12 applies in relation to ASDMAC members appointed after the commencement of that item.



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- (4) The amendment made by item 13 applies in relation to conduct engaged in by ASDMAC members after the commencement of that item, whether the member was appointed before or after that commencement.

### **15 Validation of ADRVP's findings**

- (1) Subject to subitem (2), the rights and liabilities of all persons are, by force of this item, declared to be, and always to have been, the same as if the amendment made by item 2 had been in force during the period (the *relevant period*):
- (a) starting on 1 January 2010; and
  - (b) ending on the commencement of this item.
- (2) This item does not affect the rights and liabilities arising between parties to a proceeding heard and finally determined by a court before the commencement of this item, to the extent that those rights and liabilities arose from, or were affected by, section 13 of the *Australian Sports Anti-Doping Authority Act 2006*, as in force during the relevant period.

### **16 Transitional regulations**

- (1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) in relation to matters arising from the amendments made by this Schedule.
- (2) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations made under subitem (1) may be expressed to take effect from a date before the regulations are registered under that Act.

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[*Minister's second reading speech made in—  
Senate on 6 February 2013  
House of Representatives on 27 June 2013*]

(9/13)

