

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2006 No. 47**

Issued by the Authority of the Minister for the Arts and Sport

*Australian Sports Anti-Doping Authority Act 2006*

*Australian Sports Anti-Doping Authority Regulations 2006*

The *Australian Sports Anti-Doping Authority Act 2006* (the Act) provides for the establishment of the Australian Sports Anti-Doping Authority ('ASADA'). The Act provides that ASADA not only carries out the functions of the existing Australian Sports Drug Agency ('ASDA'), but with additional responsibilities, including the investigation of potential breaches of anti-doping rules and the presentation of cases against alleged offenders at hearings conducted by the international Court of Arbitration for Sport and/or other sports tribunals.

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.

Section 9 of the Act provides that the regulations must prescribe a scheme about:

- (a) the implementation of the General Anti-Doping Convention;
- (b) if the UNESCO Anti-Doping Convention has entered into force for Australia—the implementation of that Convention;
- (c) ancillary or incidental matters.

Section 4 of the Act provides that the scheme prescribed for the purposes of section 9 is to be known as the National Anti-Doping Scheme (NAD scheme). The NAD scheme provides a detailed framework for the performance of the ASADA's functions. In particular, it:

- sets out anti-doping rules applicable to athletes and support persons;
- sets out sporting administration body rules applicable to sporting administration bodies;
- authorises and requires ASADA to do certain things;
- sets out procedures governing the exercise of ASADA's powers; and
- sets out certain rights of athletes.

The purpose of the Regulations is to prescribe the NAD scheme in accordance with section 9 of the Act.

Division 2 of Part 2 of the Act sets out certain things that the NAD scheme must do. Section 17 of the Act, however, states that Division 2 does not limit the matters in relation to which the NAD scheme may make provision.

Details of the Regulations appear in the Attachment.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day upon which they were registered with the Federal Register of Legislative Instruments.

Section 2 of the Act provides for section 3 to 79 of the Act to commence on a day to be fixed by Proclamation. The proclaimed day was 13 March 2006. Section 4 of the *Acts Interpretation Act 1901* allowed the Regulations to be made (but not to commence) before section 3 to 79 of the Act came into operation.

In the Explanatory Statement the following abbreviations are used:

AAT	Administrative Appeals Tribunal
Act	<i>Australian Sports Anti-Doping Authority Act 2006</i>
ASADA	Australian Sports Anti-Doping Authority
ASC	Australian Sports Commission
ASDA	Australian Sports Drug Agency
ASDMAC	Australian Sports Medical Advisory Committee
NAD scheme	National Anti-Doping Scheme
Public Service Act	<i>Public Service Act 1999</i>

## ATTACHMENT

**DETAILS OF THE AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY  
REGULATIONS 2006****Part 1 – Introductory**Regulation 1 – Name of Regulations

Regulation 1 provides that the name of the Regulations is the *Australian Sports Anti-Doping Authority Regulations 2006*.

Regulation 2 – Commencement

Regulation 2 provides that the Regulations commence on the day they were registered.

**Part 2 – The NAD scheme**Regulation 3 – The NAD scheme

Regulation 3 provides that for section 9 of the Act the NAD scheme is prescribed in Schedule 1.

Regulation 4 – Relevant international anti-doping instruments

Regulation 4 provides that for the definition of “relevant international anti-doping instrument” in section 4 of the Act, the international anti-doping instruments mentioned in Schedule 2 to the Regulations are prescribed.

Regulation 5 – Disclosing information for purposes of drug testing programs

Subsection 71(2) of the Act provides exceptions to the offence set out in subsection 71(1) of disclosing NAD scheme personal information. Paragraph 71(2)(g) of the Act provides that the Regulations may prescribe other exceptions. Regulation 5 prescribes information relating to:

- a) the testing, attempted testing and results of testing of athletes under a drug testing program or under arrangements covered by subsection 13(1) of the Act (which sets out mandatory inclusions in the NAD scheme);
- b) an investigation by ASADA of a possible violation of the anti-doping rules by an athlete or support person; and
- c) decisions of the ASDMAC to approve or refuse to approve the use of drugs for therapeutic purposes.

Subregulation 5(2) provides that ASADA may disclose the above prescribed information to one or more sporting administration bodies for the purpose of one or more drug testing programs. However, ASADA is not be able to disclose the

information unless it has taken reasonable steps to satisfy itself that the information would not be used or disclosed for other purposes.

A drug testing program is defined in subregulation 5(4) to mean a program for the testing of people who participate in sports to determine whether they are using particular drugs or doping methods.

## **Part 3 – ASDMAC meetings and procedures**

### Regulations 6 - 11 - Meetings of ASDMAC

Regulations 6 -11 set out the procedures for the meetings of ADSMAC including how meetings are convened, the quorum for meetings being 3 members, who is to chair meetings, voting and the ability of the Chairman to decide a question if the votes are equal, that meetings may be conducted at ASDMAC's discretion and that minutes and records of resolutions must be kept.

### Regulation 12 - ASDMAC members – fields of sports medicine

Subsection 54(2) of the Act sets out certain matters about which the Minister must be satisfied before he/she appoints a person as an ASDMAC member, including that the person has knowledge of or experience in particular fields. Subparagraph 54(2)(b)(iv) of the Act provides for fields to be specified in regulations. Regulation 12, for subparagraph 54(2)(b)(iv) of the Act, specifies a field as knowledge of sport and experience in the medical management of athletes.

## **Part 4 – Miscellaneous**

### Regulation 13 – Remuneration of ASADA members

Subsection 30(1) of the Act provides for an ASADA member to be paid remuneration determined by the Remuneration Tribunal or, if no determination is in effect, to be paid the remuneration that is prescribed in regulations. Subsection 30(2) provides for an ASADA member to be paid the allowances that are prescribed in the regulations.

Regulation 13 prescribes certain remuneration and allowances for the ASADA Chair, the ASADA Deputy Chair and ASADA members.

## **Schedule 1 – The NAD scheme**

### **Part 1 – Preliminary**

#### Clause 1 – Overview

Subclause 1(1) establishes the NAD scheme as required by section 9 of the Act and sets out the purposes of the NAD scheme. Broadly, the purposes relate to:

- the investigation of possible violations of the anti-doping rules;
- the making of findings related to such investigations;
- the testing of athletes;

- the provision of a fair and just appeals mechanism;
- the establishment of the Register (being a register of all findings related to investigations of possible breaches of the anti-doping rules);
- formalising the role of the ASADA;
- authorising ASADA to present cases on behalf of sporting administration bodies;
- including sporting administration body rules in the NAD scheme; and
- authorising ASADA to publish certain information.

Subclause 1(2) sets out the anti-doping rules. Paragraph 13(1)(b) of the Act provides that the NAD scheme must contain rules (the *anti-doping rules*) applicable to athletes and support persons. The anti-doping rules set out in subclause 1(2) are based on the anti-doping rule violations set out in the World Anti-Doping Code. The anti-doping rules play a central role in the NAD scheme as much of the procedural content set out elsewhere in the scheme is intended to regulate ASADA's investigations into possible breaches of the anti-doping rules by athletes and support persons, ASADA's subsequent findings and possible presentation of cases arising from those findings.

#### Clause 2 – Powers of ASADA

This clause provides, for the avoidance of doubt, that ASADA is authorised to exercise powers under the Act for the NAD scheme, including the powers mentioned in subsections 13(1) and 15(1) of the Act. These subsections set out certain things that the NAD scheme must authorise or require the ASADA to do.

Subclause 2(2) sets out a table to assist the reader to cross reference the required powers of ASADA (ie in subsections 13(1) and 15(1) of the Act) and other required features of the NAD scheme to the relevant clauses that actually make the authorisations or set out the features.

Subclause 2(3) authorises ASADA to exercise powers under the NAD scheme in order to co-operate with a request from a sporting administration body. The term “sporting administration body” is defined in section 4 of the Act. ASADA is only authorised to exercise such powers where the request is reasonably necessary to give effect to the World Anti-Doping Code and relevant international anti-doping instruments. In particular, it is this subclause allows ASADA to exercise powers in response to requests from foreign agencies.

Subclause 2(4) authorises ASADA to exercise powers under the NAD scheme in relation to information about an athlete or support person provided (or obtained and provided) by a sporting administration body upon ASADA's request. ASADA is authorised to exercise powers in relation to such information as if it were information obtained by an investigation by ASADA under the NAD scheme. An example might be where ASADA asked a foreign sporting organisation (which falls within the meaning of sporting administration body and is defined in section 4 of the Act) to provide, or to obtain and provide, information about an Australian athlete who was training overseas.

Subclause 2(5) provides that, in exercising powers or making recommendations under the NAD scheme, ASADA must have regard to the World Anti-Doping Code and other relevant international anti-doping instruments. The reference to making

recommendations refers to the fact that ASADA will make recommendations as to consequences of breaches of the anti-doping rules set out in subclause 1(2).

### Clause 3 – Definitions

This clause sets out definitions for the NAD scheme.

### Clause 4 – Meaning of *athlete*

Clause 4 sets out the classes of people who would be an “athlete” for the NAD scheme. The definition is largely based on the definition of “competitor” in section 2A of the *Australian Sports Drug Agency Act 1990*.

### Clause 5 – Meaning of *receiving support*

This item sets out the circumstances in which a person would be taken to be receiving support from a government or government agency under the NAD scheme. The meaning of receiving support is relevant to the definition of athlete which includes a person who competes in sporting competition and is either receiving support from the Commonwealth or from the Australian Sports Commission or is party to an arrangement where the person will receive such support (see paragraph 4(1)(d)).

### Clause 6 – Meaning of *personal interest*

This clause sets out the circumstances in which a person would be taken to have a personal interest in a matter relating to the NAD scheme. The meaning of personal interest is relevant to clauses 16 and 17 which deal with certain matters relating to conflicts of interest by ASADA representatives or by sporting administration body representatives.

### Clause 7 - Meaning of *fails to comply with a request to provide a sample*

This clause sets out the circumstances in which, for the NAD scheme, an athlete would fail to comply with a request by ASADA to provide a sample.

## **Part 2 – Testing and investigating**

### **Division 2.1 – Drug tests, permitted levels and procedures**

#### Clause 8 – Urine testing under the NAD scheme

This clause provides that urine testing is a procedure to be used in testing under the NAD scheme and that any athlete may be subjected to such testing in order to detect, or to assist in determining, whether the athlete exceeds the level of a drug, shows the presence or use of a drug, or has used a doping method mentioned in the prohibited list. The prohibited list is defined in clause 3 as “the Prohibited List of drugs and doping methods published by the World Anti-doping Agency as in force from time to time...”.

Subclause 8(3) provides that the procedure for urine testing would consist of the requirements of the NAD scheme, the World Anti-Doping Code International Standard

for Testing and, subject to those things, the ASADA's doping control protocols and procedures.

#### Clause 9 – Blood testing under the NAD scheme

This clause replicates item 7, but applies to blood testing rather than urine testing.

### **Division 2.2 – Doping control officers and chaperones**

#### **Subdivision 2.2.1 – ASADA representatives**

#### Clause 10 – Doping control officers

This clause authorises ASADA to appoint doping control officers for the NAD scheme, and requires ASADA to ensure that each doping control officer is given an identity card bearing a recent photograph.

#### Clause 11 – Chaperones

This clause authorises ASADA to appoint chaperones for the NAD scheme. It also provides that a doping control officer is taken to be a chaperone (see item 10 for doping control officers).

#### Clause 12 – Investigators

This clause authorises ASADA to appoint investigators for the NAD scheme.

#### Clause 13 – Blood collection officials

This clause authorises ASADA to approve a person as a blood collection official in certain circumstances.

#### Clause 14 – Identity Cards

This clause requires ASADA to make sure that each chaperone, blood collection official, doping control officer and investigator is given an identity card. The content of such identity cards differs depending on the position of the holder.

#### Clause 15 - Production of identity cards

Clause 15 requires an ASADA representative (defined in clause 3 to include a doping control officer, a chaperone, a blood collection official or an investigator) to produce his or her identity card in certain circumstances. For example, where an ASADA representative made a request of an athlete or support person under the NAD scheme, and the athlete or support person asked the ASADA representative to produce his or her identity card, then the ASADA representative is bound to do so and the athlete or support person is not be required to comply with the request until the ASADA representative produced his or her card. This requirement is potentially relevant to whether or not an athlete or support person breached an anti-doping rule (for example, an athlete might be found not to have failed to comply with a request for a sample – see



paragraph 1(2)(d) – if that request was not validly given because an ASADA representative did not produce an identity card required under clause 15).

#### Clause 16 – Conflict of interest – ASADA representatives

Clause 16 requires ASADA to make sure that the conditions of service of ASADA representatives requires such representatives to report to ASADA any personal interest (defined in clause 6) in the collection or outcome of the testing of a sample, or any other matter relating to the NAD scheme. Subclause 16(2) provides for ASADA to be able to direct another ASADA representative to carry out duties in relation to the matter.

#### **Subdivision 2.2.2 – Sporting administration body representatives**

#### Clause 17 – Conflict of interest – sporting administration body representatives

Clause 17 is similar to clause 16, except that it applies where ASADA asks a sporting administration body under subclause 24(5) to arrange for a person to provide a sample (ie rather than asking the person directly). In this circumstance, subclause 17(2) requires the sporting administration body to include terms in the conditions of service its representatives requiring the representatives to report conflicts of interest to the sporting administration body.

Subclause 17(3) requires ASADA to make sure that, if a conflict of interest is reported to the sporting administration body, that it is able to direct another representative to carry out duties in relation to the matter.

#### **Division 2.3 – Locating athletes**

#### Clause 18 – Request to give location of athlete

Subclause 18(1) provides that ASADA may ask an athlete to keep ASADA informed of where the athlete can be found. Subclause 18(2) provides that such requests must be made orally or by written notice and set out certain things that the request must do.

Subclause 18(3) provides that where ASADA asks an intellectually disabled athlete to keep ASADA informed of where the athlete can be found, then ASADA must give notice of the request to one of the athlete's spouse, parent or guardian, coach, or to a representative of a relevant sporting administration body.

Subclause 18(4) sets out ways in which ASADA may give written notice to a person.

#### Clause 19 – ASADA may ask for help in locating athlete

Clause 19 applies if ASADA was having difficulty finding an athlete in order to ask the athlete to keep ASADA informed of where the athlete can be found. In this circumstance, clause 19 provides for ASADA to be able to ask a relevant sporting administration body or a person who knows or is related to the athlete for help finding the athlete.

#### **Division 2.4 – Requests for samples**

#### Clause 20 – Code procedures to be followed

Clause 20 provides that a request for a sample made under Division 2.4 must comply, or substantially comply, with the procedures for making a request for a sample set out in the International Standard for Testing.

#### Clause 21 – ASADA may ask athlete for samples

Subclause 21(1) provides for ASADA to be able to ask an athlete to provide a sample to detect or assist in determining whether the athlete has used a drug or doping method. Clause 21 also provides for ASADA to be able to ask for additional samples in certain circumstances or to ask an athlete or sporting administration body to provide information relating to a sample.

#### Clause 22 – ASADA may ask sporting administration body to test

This clause provides for ASADA to be able to ask a sporting administration body to arrange for an athlete to be requested to provide a sample, to test a sample or to give ASADA certain information arising out of the making or attempted making of such a request.

#### Clause 23 – ASDMAC etc may ask ASADA to ask athlete for additional samples

This clause provides that in the course of certain investigations, ASDMAC or a TUE committee (as defined in clause 3) may ask ASADA to ask the athlete for one or more additional samples (see also subclauses 21(2) and (3) which provides for ASADA to be able to ask the athlete).

#### Clause 24 – Request to give sample

Clause 24 provides that a request for a sample may be made orally or by written notice. It also sets out certain information that must accompany the request for a sample, require certain notice to third parties in the event of a request to an intellectually disabled athlete (consistent with subclause 18(3) in the context of requests to give location).

#### Clause 25 – ASADA to engage interpreter

This clause requires ASADA, or a sporting administration body at ASADA's request, to ensure that a request to give a sample under clause 24 is understood and provides for communication through an interpreter.

#### Clause 26 – ASADA to pay athlete's expenses

This clause requires ASADA in certain circumstances to pay reasonable travelling expenses incurred by an athlete in order to get to a place to give a sample.

#### Clause 27 – Athlete appears likely to fail to comply

This clause provides for ASADA to tell a sporting administration body in certain circumstances that it appears to ASADA that the athlete is likely to fail to comply with a request to provide a sample. This gives the sporting administration body the chance to try to persuade the athlete to comply. This clause helps ensure that an athlete is given every opportunity to comply and avoid a breach of the relevant anti-doping rule in relation to evasion.

#### Clause 28 – Retired athletes

This clause provides for a retired athlete not to be required to comply with a request under clause 24 to give a sample, in certain circumstances.

### **Division 2.5 – Testing samples**

#### Clause 29 – Code procedures to be followed

Clause 29 provides that a test of a sample made under Division 2.5 must comply, or substantially comply, with the procedures for testing a sample set out in the World Anti-Doping Code and international standards.

#### Clause 30 – ASADA may conduct screening tests on samples

This clause provides for ASADA to use analytical techniques and equipment to test a sample to detect or assist in determining the presence or use of any drug or doping method.

#### Clause 31 – ASADA may ask laboratory to test samples

This clause provides for ASADA to ask an accredited laboratory (defined in clause 3) or an accredited foreign laboratory (defined in section 4 of the Act) to test a sample to detect or assist in determining the presence or use of any drug or doping method. ASADA is able to make such a request regardless of whether it had itself tested the sample (see clause 30).

#### Clause 32 - Investigations by ASADA and analytical investigative bodies

This clause provides for ASADA or a TUE committee (defined in clause 3) to investigate an adverse analytical finding (also defined) for a sample to find out whether the result was caused by naturally occurring levels of the substance. Such an investigation must take into account certain approval for therapeutic use of the drug or doping method.

#### Clause 33 – Retention and Retesting of samples

This clause sets out the mandatory minimum periods for the retention of certain samples by accredited laboratories and provides for ASADA to be able to deal with such samples in certain ways.

### **Division 2.6 – ASADA testing and analysis investigations of athletes – anti-doping rules, rights and ASADA findings**

### **Subdivision 2.6.1 – The Rules, rights of athletes and findings**

#### Clause 34 – Rule: request to inform ASADA of location – notice about athletes rights

Subclause 34 provides that if ASADA requests an athlete to keep ASADA informed of where the athlete can be found (see Division 2.3) for the purpose of being asked to provide a sample (see Division 2.4) in order to detect or assist in determining whether the person has been using a drug or a doping method (see division 2.5) then ASADA must give the athlete notice of the possible consequences of failure to comply with a request. ASADA may give the notice orally or in writing, and must give it when it asks the athlete to keep it informed or as soon as practicable thereafter.

#### Clause 35 – Notice about failure to comply with request to inform ASADA of location

This clause applies where ASADA believes that an athlete may have failed to comply with a request by ASADA under clause 18 to keep ASADA informed of where the athlete can be found. In this case ASADA would, under subclause 35(2), be required as soon as practicable to give the athlete a written notice stating that ASADA proposes to make a finding to that effect and to enter the finding on the Register. The notice must also state that the athlete or a person on the athlete's behalf may, within 7 days either, give a written submission setting out reasonable cause for the failure or waive the right to make a submission.

#### Clause 36 – Submission about failure to comply with request to inform ASADA of location

Clause 36 confers on the athlete the right to make (or waive) a submission, sets out circumstances in which the athlete is taken to have waived the right to make a submission, sets out circumstance where the ASADA may by written notice to the athlete substitute a shorter period than 7 days and sets out circumstances in which the submission period is taken to have ended.

Clause 36 is replicated elsewhere in the Regulations (in relation to making submissions about other possible breaches of the anti-doping rules).

#### Clause 37 – Finding – failure to comply with request to inform ASADA of location

Clause 37 provides that after the submission period ASADA must consider any submissions and make a decision whether or not to enter a finding on the Register (and if the decision is to enter the finding, to do so immediately). Subclause 37(3) requires ASADA to give the athlete a written notice of the decision including details of the entry if one has been made. Such a notice must also state that the athlete has the right to have the decision reviewed before the AAT.

Clause 37 is replicated elsewhere in the Regulations (in relation to ASADA's findings about other matters).

#### Clauses 38, 39, 40 – Athlete not able to be located

Clause 38 applies where ASADA believes that an athlete may not have been able to be located, so that a request for a sample could be made, because the athlete failed to comply with a request to keep ASADA informed of where the athlete could be found. It requires ASADA to provide the athlete with a written notice stating certain things, including that ASADA proposes to make a finding (ie that the athlete was not able to be located because the athlete failed to comply with a request) and that the athlete may within 7 days make a submission setting out reasonable cause for the failure, or may waive the right to make a submission. Clause 38 is largely replicated elsewhere in the Regulations (see for example clauses 41 and 58).

Clause 39 replicates clause 36 but in the context of the athlete not being able to be located. Clause 40 replicates clause 37.

#### Clauses 41, 42, 43 – Evasion of request by ASADA for a sample

Clauses 41, 42 and 43 largely replicate clauses 38, 39 and 40 respectively (ie they set out a rule requiring that a notice about rights be given to an athlete where ASADA believes certain things, confers a right to make a submission in response to the notice and requires ASADA to consider any submissions and make a finding).

The difference is that clauses 41, 42 and 43 apply in the context of possible evasion of receipt of a request by ASADA for a sample, as opposed to clauses 38, 39 and 40 which applies in the context of possible failure to be able to be located.

#### Clause 44 – Rule: request for sample – notice about athletes’ rights etc

This clause operates in the same fashion as clause 34, except it applies if ASADA requests that an athlete give a sample (ie rather than where ASADA requests an athlete to keep ASADA informed of where the athlete can be found).

#### Clause 45 – What athlete may do before giving sample

This clause sets out certain things that an athlete may do before going with a chaperone to a place to give a sample (including arranging for a representative to accompany the athlete).

#### Clause 46 – Right to a representative

This clause allows an athlete to choose a representative to monitor the collection of the sample subject to certain conditions.

#### Clause 47, 48, 49 – Failure to comply with request to provide sample

Clauses 47, 48 and 49 largely replicate clauses 38, 39 and 40 respectively (ie they set out a rule requiring that a notice about rights be given to an athlete where ASADA believes certain things, confer a right to make a submission in response to the notice and require ASADA to consider any submissions and make a finding).

The difference is that clauses 47, 48 and 49 apply in the context of failure to comply with a request by ASADA for a sample, as opposed to clauses 38, 39 and 40 which apply in the context of possible failure to be able to be located.

Clause 50 – What happens if result of test of Part A is an adverse analytical finding

This clause applies where an athlete gave a sample for testing, the result of testing of Part A (as defined) is an adverse analytical finding (as defined) and no valid therapeutic use exemption is in force. In this circumstance, ASADA is required to give the athlete a written notice (known as ‘the information notice’) containing certain things including, where there is a Part B of the sample, setting out relevant processes, the athlete’s options and rights and possible consequences.

Clause 51 – Election to have Part B of sample tested

This clause sets out the process by which an athlete may elect to have Part B (as defined) of a sample tested, certain obligations on ASADA in that event and certain rights of an athlete that does not elect to have Part B of a sample tested.

Clause 52 - Submission about Part A of sample

This clause gives an athlete a right to make a submission to ASADA where ASADA has given the athlete an information notice under subclause 50(2) and there is no Part B of the sample or there is a Part B but the athlete has not elected at all within 7 days to have it tested or does not make an election within 7 days after receiving the notice. The procedural and other details of the athlete’s right to make a submission mirror the other submission provisions contained in Division 2.6.

Clause 53 – Athlete’s rights if Part B of sample is to be tested

This clause applies where ASADA arranges, under subclause 51(3), for Part B of the athlete’s sample to be tested. It sets out certain procedural details and athletes’ rights in relation to the testing.

Clauses 54, 55, 56 – Adverse analytical finding

Clauses 54, 55 and 56 largely replicate clauses 38, 39 and 40 respectively. Clause 54 applies where the result of the testing of Part B of the sample is an adverse analytical finding (as defined in clause 3) and requires ASADA to give the athlete a written notice stating certain things, including setting out the athlete’s right to make a submission. Clause 55 confers on the athlete the right to make a submission (ie the submission mentioned in the notice given to the athlete under clause 54).

Clause 56, consistent with the other provisions in Division 2.6 concerning findings, requires ASADA to consider any submissions and make a decision whether or not to enter a finding on the Register (and if the decision is to enter the finding, to do so immediately). It also requires ASADA to give the athlete a written notice of the decision including details of the entry if one has been made.

Clause 57 – Request may be made on behalf of ASADA

This clause provides that where Part 2 of the Regulations makes provision for a request to be made to an athlete by ASADA then ASADA may make the request or arrange for a sporting administration body to make the request on behalf of ASADA. In the latter case the request is taken to be a request made by ASADA.

#### Clauses 58, 59 60 – Tampering with a sports drug matter

Clauses 58, 59 and 60 largely replicate clauses 38, 39 and 40 (ie they set out a rule requiring that a notice about rights be given to an athlete where ASADA believes certain things, confer a right to make a submission in response to the notice and require ASADA to consider any submissions and make a finding).

The difference is that clauses 58, 59 and 60 apply in the context of possible tampering with a sports drug matter (as defined in clause 3) by an athlete or support person, as opposed to clauses 38, 39 and 40 which apply in the context of possible failure to be able to be located.

#### Clauses 61, 62, 63 – Use of a drug or doping method

Clauses 61, 62 and 63 largely replicate clauses 38, 39 and 40 (ie they set out a rule requiring that a notice about rights be given to an athlete where ASADA believes certain things, confer a right to make a submission in response to the notice and require ASADA to consider any submissions and make a finding).

The difference is that clauses 61, 62 and 63 apply in the context of possible use by an athlete of a drug or doping method.

#### Clauses 64, 65, 66 – Trafficking in a drug or doping method

Clauses 64, 65 and 66 largely replicate clauses 38, 39 and 40 (ie they set out a rule requiring that a notice about rights be given to an athlete or support person where ASADA believes certain things, confer a right to make a submission in response to the notice and require ASADA to consider any submissions and make a finding).

The difference is that clauses 64, 65 and 66 apply in the context of possible trafficking in a drug or doping method by an athlete or support person.

#### Clauses 67, 68, 69 – Possession of a drug or doping method

Clauses 67, 68 and 69 largely replicate clauses 38, 39 and 40 (ie they set out a rule requiring that a notice about rights be given to an athlete or support person where ASADA believes certain things, confer a right to make a submission in response to the notice and require ASADA to consider any submissions and make a finding).

The difference is that clauses 67, 68 and 69 apply in the context of possible possession of a drug or doping method by an athlete or support person.

#### Clauses 70, 71, 72 – Administration of a drug or doping method, or aiding and abetting

Clauses 70, 71 and 72 largely replicate clauses 38, 39 and 40 (ie they set out a rule requiring that a notice about rights be given to an athlete or support person where ASADA believes certain things, confer a right to make a submission in response to the notice and require ASADA to consider any submissions and make a finding).

The difference is that clauses 70, 71 and 72 apply in the context of possible administration of a drug or doping method, or aiding or abetting a violation of any of the anti-doping rules, by an athlete or support person.

### **Subdivision 2.6.2 – Attempts and aiding and abetting violation of the anti-doping rules**

#### Clause 73 – Attempted violations of certain anti-doping rules

Clause 73 applies to an attempted violation of certain specified anti-doping rules, and provide that an athlete or support person who violates a relevant rule must be dealt with by ASADA under the anti-doping rule as if the athlete or support person had violated the anti-doping rule. For example, if an athlete attempts to evade a request for a sample then the athlete would be dealt with under the anti-doping rule that deals with evasions.

Subclause 73(4) provides that acts that are merely preparatory to violation of an anti-doping rule do not constitute an attempt.

#### Clause 74 - Aiding and abetting violations of the anti-doping rules

This clause provides that an athlete or support person who aids, abets, counsels or procures a violation of the anti-doping rules must be dealt with by ASADA under clause 70 (clause 70 applies if ASADA believed that an athlete or support person may have administered a drug or a doping method or aided or abetted a violation of any of the anti-doping rules).

Subclauses 74(2) to 74(5) set out in some detail the meaning of aiding and abetting.

### **Division 2.7 – Other rights of athletes and support persons**

#### Clause 75 – Application of Division

This clause provides that Division 2.7 applies in relation to an athlete or support person if ASADA has entered information about an athlete or support person on the Register or has made recommendations as to the consequences of a finding relating to an investigation.

#### Clause 76 – Notice about entry on Register

This clause requires ASADA to, as soon as practicable after making an entry or recommendation on the Register, give the athlete or support person written notice (which must state the name of each person or organisation to which ASADA has given or proposes to give notice – see Division 2.8).

#### Clause 77 - Athlete or support person may waive rights



This clause provides that, subject to subsection 14(5) of the Act, an athlete or support person may waive his or her rights by written notice or, unless the NAD scheme provides otherwise, orally.

Subsection 14(5) of the Act provides that the NAD scheme must not allow waiver of a right to apply to a court, tribunal or other person or body for review of a decision under the NAD scheme.

## **Division 2.8 – Register of Findings**

### Clause 78 – Establishment and maintenance of Register of Findings

Clause 88 establishes a Register of Findings which ASADA is required to establish under paragraph 13(1)(i) of the Act.

### Clause 79 – Entries about findings

Clause 79 ensures the Register of Findings only applies when ASADA has made a finding in relation to an athlete or support person, concerning the anti-doping rules (see subclause 1(2) above in relation to the rules and clauses 37, 40, 43, 49, 56, 60, 63, 66, 69 and 72 in relation to making findings).

### Clause 80 – Entry of finding on Register

Clause 80 requires that as soon as practicable after ASADA makes a relevant finding, it must enter on the Register the athlete's or support person's name and any information about the athlete or the support person that the NAD scheme requires. This clause ensures that the Register is up to date and contains comprehensive and consistent information. That information is not confined to breaches of the anti-doping rules but could include any matter investigated or any finding or recommendation made by ASADA under the NAD scheme.

### Clause 81 – AAT Review

Clause 81 requires that if ASADA makes an entry on the Register it must give the athlete or support person a written notice of their right to appeal to the AAT for a review of ASADA's decision.

### Clause 82 – Giving notice about entries and recommendations

Clause 82 requires that if ASADA makes an entry on the Register or has made recommendations as to the consequences of a finding in relation to possible breaches of the anti-doping rules, it must within a reasonable time give written notice to:

- a) relevant national sporting organisations;
- b) relevant sporting organisations;
- c) relevant government agencies;
- d) the World Anti-Doping Association and

- e) if the entry is in relation to tampering or attempted tampering, relevant national sporting organisations and sporting organisations in relation to any other athlete or support person whose interests may be affected by that tampering or attempted tampering.

If there has been an entry made on the Register the notice must also include the details of the entry.

Subclause 82(4) adds protections to the notices under the clause such that if any notice or any details contain information that has not been made public, ASADA is not authorised to give that information to a particular body unless ASADA had taken reasonable steps to satisfy itself that the information would not be used or disclosed by the receiving body in a way that would be prejudicial to the athlete or support person. This protection includes that ASADA provide the information in confidence and the receiving body provide written undertakings that the information be treated in confidence.

Subclause 82(5) provides that if such an undertaking is breached ASADA is required to report that breach to the ASC. This requirement allows the ASC to consider such breaches in relation to its funding of or its funding agreements with the relevant breaching body.

#### Clause 83 – Giving information relating to entries to sporting administration bodies

Clause 83 authorises ASADA to give information to sporting administration bodies, either orally or in writing, in relation to particular entries on the Register in circumstances where ASADA made a finding resulting from an investigation into certain specified matters.

Subclause 83(3) adds protections to the giving of information under the clause such that if the information to be given has not been made public, ASADA is not authorised to give that information to a particular sporting administration body unless ASADA has taken reasonable steps to satisfy itself that the information will not be used or disclosed by the receiving body in a way that would be prejudicial to the athlete or support person. This protection includes that ASADA provide the information in confidence and the receiving body provide written undertakings that the information be treated in confidence.

Subclause 83(4) provides that if such an undertaking was breached ASADA is required to report that breach to the ASC. This requirement allows the ASC to consider such breaches in relation to its funding of or its funding agreements with the relevant breaching body.

#### Clause 84 – Giving information to sporting administration bodies if no entry made, or yet made, on register

Clause 84 applies if ASADA has not yet made an entry on the Register but is considering whether to make such an entry. This clause allows ASADA to disclose information to one or more sporting administration bodies if it is considering whether to enter information on the Register.

Subclause 84(4) adds protections to the notices under the clause such that if any notice or any details contain information that has not been made public, ASADA is not authorised to give that information to a particular sporting administration body unless ASADA takes reasonable steps to satisfy itself that the information will not be used or disclosed by the receiving body in a way that would be prejudicial to the athlete or support person. This protection includes that ASADA provide the information in confidence and the receiving body provide written undertakings that the information be treated in confidence.

Subclause 84(5) provides that if such an undertaking was breached ASADA would be required to report that breach to the ASC. This requirement allows the ASC to consider such breaches in relation to its funding of or its funding agreements with the relevant breaching body.

The purpose of the clauses is to allow ASADA to disclose information about matters that could result in an entry being made on the relevant Register to a sporting administration body before the final decision is made to do so. An example of such a situation would be an adverse analytical finding for an athlete days before an international competition. In such circumstances, it is appropriate that ASADA be able to inform the relevant sporting administration body, whilst at the same time ensuring that the information would not be used in a prejudicial manner.

#### Clauses 85 – 89 – Correcting, amending and removing names from the Register

It is important that the Register be accurate and also fair and these clauses would assist in these aims.

Therefore, clause 85 applies if there has been an entry on the Register and the relevant athlete or support person is under 18 years of age when the event happened that caused the entry to be made.

Under clause 85, ASADA is required to remove the relevant personal information from the Register as soon as practicable if:

- a) a relevant sporting administration body has given ASADA written notice that the person is not prevented from taking part, or has not become ineligible to take part in sport competition as a result, whether direct or indirect, of the entry; or
- b) the person is prevented from taking part, or has become ineligible to take part in sport competition for a period of suspension as a result, whether direct or indirect, of the entry. In this case ASADA would be required to remove the relevant personal information as soon as practicable after the period of suspension; or
- c) after a period of suspension the person is disqualified from receiving ASC funding or using ASC facilities. In this case ASADA would be required to remove the relevant personal information as soon as practicable after the period of disqualification.

The policy reason for the inclusion of clause 85 is that athletes and/or support persons should not have to carry the burden of inclusion on the Register for the rest of their lives for transgressions made while under the age of 18 years.

It is also intended that the Register apply exclusively to athletes and support persons as it is not relevant for other persons nor it is within ASADA's powers to apply the NAD scheme and the Register to other persons.

Clause 86 requires ASADA to remove details from the Register if ASADA is satisfied that the person was not an athlete or support person when the relevant event happened. For example, if the entry was about evasion, the relevant event would be when the sample was requested or if the entry was about not providing whereabouts information, the relevant event would be when the whereabouts information was requested.

Clause 87 applies if ASADA becomes aware the Register contains an error because of a mistake, omission or false entry. ASADA also needs to be satisfied the error can be corrected and the error is in the entry and not in the information on which the entry was based. In such circumstances, clause 87 requires ASADA to correct the error as soon as possible.

Clause 88 applies if ASADA becomes aware the Register contains an entry that is incomplete or about which further information has become available, and ASADA is satisfied that information can be added to the entry. In such circumstances, clause 88 requires ASADA to correct the error as soon as possible.

If a correction, amendment or removal of information has been made to the Register, clause 89 requires ASADA to give written notice about such correction, amendment or removal to any person who was given notice about an original entry.

## **Division 2.9 – Disclosure of information under the NAD scheme**

### Clause 90 – Making information on an entry publicly available

Clause 90 authorises ASADA to publish information on the Register if ASADA:

- a) considers publication to be in the public interest; or
- b) has received the consent of the relevant athlete or support person.

In addition, clause 90 only authorises ASADA to publish information under the above circumstances if either a hearing has been completed (by either a sporting administration body or the Court of Arbitration for Sport), and the decision received for that hearing process in relation to ASADA's finding concerning the information, or the athlete or support person had waived their right to such a hearing.

If the athlete or support person elects to have the decision reviewed by the AAT, and the AAT had granted an order under subsection 35(2) of the *Administrative Appeals Tribunal Act 1975* (which provides for private hearings) then clause 90 also requires that the review process has been finally determined before ASADA could publish information.

Subclause 90(2) provides that ASADA would be able to determine the times at which and the manner in which the information is made publicly available.

Clause 91 – Presentation at hearings etc.

Clause 91 authorises ASADA to present a finding on the Register or a recommendation in relation to a finding at a hearing of the Court of Arbitration of Sport or other sporting tribunal, either at the request of a sporting administration body or at ASADA's own initiative. Paragraph 13(1)(k) of the Act requires the NAD scheme to make this authorisation.

**Part 3 – ASDMAC functions**

Clause 92 - Functions of ASDMAC

Clause 92 sets out the functions of ASDMAC as follows:

- 1) to investigate an adverse analytical finding for a sample given by an athlete to determine whether the result was caused by naturally occurring levels of the substance concerned.
- 2) to give approval to an athlete to use a drug or doping method for therapeutic purposes. Any approval must be in accordance with the *International Standard for Therapeutic Use Exemptions* as amended and in force from time to time. Such standards are developed by the World Anti-Doping Agency (WADA) in association with the Code. The purpose of the subclause is to ensure that all therapeutic approvals given by ASDMAC comply with the international standard agreed under the Code. Compliance with the international standard is important because if ASDMAC did not comply with the standard, then under the Code, WADA would be able to reverse ASDMAC's decisions.
- 3) if an athlete has such an approval, to investigate the sample analysis result to find out whether an athlete has complied with the conditions of the approval.
- 4) to disclose to athletes or support persons and any relevant sporting administration body:
  - (a) information arising out of the entry of the name of the athlete or support person on the Register; or
  - (b) information about a test on a sample given by the athlete:
    - (i) carried out by a sporting administration body other than at the request of ASADA; and
    - (ii) that has revealed the presence or use of a drug or doping method.
- 5) to review the procedures adopted by a sporting administration body for approving the use of a drug or doping method for therapeutic purposes if ASADA asks the ASDMAC to do so.
- 6) to investigate an approval for the use of a drug for therapeutic purposes and give its opinion to ASADA if ASADA consults with the ASDMAC in relation to whether an approval for the use of a drug for therapeutic purposes was given by ASDMAC, a similar foreign body or as the result of any appeal or review.

- 7) participate in a review or an appeal that is related directly or indirectly to a decision made by the ASDMAC:
  - (a) to approve the use of a drug for therapeutic purposes; or
  - (b) to refuse to approve the use of a drug for therapeutic purposes.
- 8) if the ASDMAC has taken reasonable steps to satisfy itself that the information disclosed will not be used or disclosed for other purposes, give information to a sporting administration body that:
  - (a) is related to a drug testing program; and
  - (b) is related directly or indirectly to a decision made by the ASDMAC:
    - (i) to approve the use of a drug for therapeutic purposes; or
    - (ii) to refuse to approve the use of a drug for therapeutic purposes.

## **Part 4 – Sporting administration body rules**

### Clause 93 - Sporting administration body rules - powers of ASADA

Clause 93 sets out the sporting administration body rules as required by subsection 15(1) of the Act and ASADA's powers in relation to those rules.

Subclause 93 authorises the ASADA to monitor compliance by sporting administration bodies with the sporting administration body rules, publish reports about the extent of such compliance by sporting administration bodies and to notify the ASC about the extent of such compliance by sporting administration bodies (excluding the ASC which would otherwise be a sporting administration body by definition).

Clause 93 goes to the structure of the anti-doping framework created by the Act. It is not intended that the NAD scheme set out offences which are enforceable in the ordinary sense. Instead, the sporting administration body rules contained in the scheme are mirrored in voluntary arrangements entered into between sporting organisations and the ASC and contained in funding agreements. A breach of a sporting administration body rule in the NAD scheme by a sporting administration body have no direct consequences under the Act or the scheme, but constitute a breach of that sporting administration body's funding agreement with the ASC. Such a breach might have consequences for the provision or amount of funding provided under the agreement.

In addition, it should be noted that some sporting administration bodies may have rules in place that are not fully compliant with the detailed procedures specified in the NAD scheme upon its commencement, although all sporting administration bodies do have WADA compliant rules in place. Consequently, a transitional measure is included in the sporting administration rules which allow sporting administration bodies to continue to have in place their existing WADA compliant anti-doping policies and practices (see rule 1(A)(i) in clause 93) which might not be fully compliant with the NAD Scheme. It is anticipated that this arrangement will come to an end when ASADA makes its first amendment of the NAD scheme, and at that time all sporting administration bodies have anti-doping policies and practices that conform with the requirements of rule 1(a)(ii) ie. be fully WADA and NAD scheme compliant.

The sporting administration body rules are applicable to all sporting administration bodies (see subclause 93(1) and clause 3 which defines “sporting administration body”) and provide that a sporting administration body must:

- (a) at all times have in place, maintain and enforce anti-doping policies and practices:
  - (i) that were in force immediately before the commencement of the NAD scheme; or
  - (ii) that comply with:
    - (A) the mandatory provisions of the World Anti-Doping Code, including the World Anti-Doping Agency International Standards; and
    - (B) the NAD scheme; and
- (b) not adopt its anti-doping policy unless it has been approved by the ASADA; and
- (c) not substantively amend its anti-doping policy unless the amendment has been approved by the ASADA; and
- (d) ensure that at all times it has the constitutional authority to enforce its anti-doping policy; and
- (e) immediately inform the ASADA of any alleged breach of its anti-doping policy and cooperate with any investigation into the matter; and
- (f) organise (not necessarily conduct) a hearing within 4 weeks of receipt of notice of a violation of the anti-doping rules unless the rules governing the hearing prescribe a longer period; and
- (g) provide to the ASADA appropriate details or reports related to investigations, hearings, appeals and sanctions; and
- (h) provide ASADA and the ASC with relevant information in a timely manner, including sporting administration body and International Federation anti-doping policies, policy amendments, policy endorsement and implementation date, athlete whereabouts information and athlete education; and
- (i) ensure that other rules and regulations of the sport do not override the provisions of its anti-doping policy; and
- (j) abide by, implement and enforce its anti-doping policy to the satisfaction of the ASADA; and
- (k) submit to the operations of ASADA; and
- (l) refer all instances of possible violations of the anti-doping rules to ASADA for investigation and cooperate with any investigation, as required; and
- (m) allow ASADA to present anti-doping cases at hearings unless ASADA has approved the sporting administration body presenting its own case; and
- (n) accept any finding by ASADA, ensure an infraction notice is issued in accordance with ASADA’s recommendations in the case of any adverse finding, and enforce penalties imposed in accordance with ASADA’s recommendation; and
- (o) ensure that their members and staff cooperate with ASADA; and
- (p) provide ASADA with relevant information in a timely manner, and

- (q) comply with any other conditions relating to anti-doping and notified to it by the ASC that the ASC is required by legislation or by ASADA to require from sporting organisations to which the ASC provides funding, services and support.

## **Part 5 – Miscellaneous**

### Clause 94 - When notices are presumed to have been received

Clause 94 sets out when a notice is presumed to have been received by an athlete or support person if ASADA sends a notice to such persons under the NAD scheme. Clause 94 also sets out when a notice is presumed to have been received by an athlete or support person if ASADA sends a notice to such persons via the relevant sporting administration body because the notice can't be delivered personally or cannot be sent by post, courier service or facsimile.

### Clause 95 - Disclosing information to sporting administration bodies – non-entry information

Paragraph 13(1)(g) of the Act requires the NAD scheme to authorise certain disclosures. Therefore, clause 95 authorises and sets out when ASADA can disclose information that is not information arising out of an entry on the Register but where the information relates to or appears to relate to any person in connection with the anti-doping rules. Such information includes any possible breaches of those rules and ASADA investigations of such matters.

Subclause 95(2) provides that ASADA disclose the relevant information to sporting administration bodies, the Australian Federal Police (AFP) and the Australian Customs Service (Customs). It is important to be able to disclose this type of information to the AFP and/or Customs for example in the event of trafficking or possession of certain substances.

### Clause 96 - Fees

Subsection 19(1) of the Act requires the NAD scheme to authorise the ASADA and/or the ASDMAC to charge fees for performing their functions under the NAD scheme. Clause 95 refers to an annex which sets out a list of functions and corresponding fees.

## **Schedule 2 International anti-doping arrangements**

Section 4 of the Act defines *relevant international anti-doping instrument* to include agreements to which Australia is a party and are prescribed by the regulations.

Regulation 4 prescribes the following instruments that are set out in Schedule 2:

1. Council of Europe Anti-Doping Convention, signed by Australia on 24 April 1994.
2. International Anti-Doping Arrangement, signed by Australia on 18 April 1996.
3. UNESCO International Convention Against Anti-Doping in Sport.



## **Consultation**

On 7 February 2006, the Department wrote to the Australian Football League (AFL), Cricket Australia (CA) and the National Rugby League (NRL) and their associated players associations advising them on progress with the Government's establishment of the new ASADA, and providing them with an opportunity to provide comment on the outline of the NAD scheme.

On 20 February 2006, the Department again wrote to the above stakeholders, and also to Athletics Australia (AA), Swimming Australia (SA), the Australian Touch Football Association (ATFA) and Landers and Rogers, lawyers, attaching a copy of the draft Regulations and inviting stakeholders to discuss the draft Regulations either in Sydney or Melbourne on 23 and 24 February 2006 respectively.

On 23 and 24 February 2006, the Department met with several of these stakeholders, and amended the Regulations as a result of these consultations.

## **Regulation Impact Statement**

The Office of Regulation Review advised that a Regulation Impact Statement for the ASADA Bill and Regulations was not required. ORR reference is ID 6445.