

EXPLANATORY STATEMENT

Sport Integrity Australia Act 2020

Australian Sports Anti-Doping Authority Amendment (Sport Integrity Australia) Regulations 2020

The *Australian Sports Anti-Doping Authority Amendment (Sport Integrity Australia) Regulations 2020* make consequential amendments to support the implementation of the *Sport Integrity Australia Act 2020* and the *National Sports Tribunal Act 2019* (NST Act), and to continue the Government's implementation of its response to the Review of Australia's Sport Integrity Arrangements.

The *Sport Integrity Australia Act 2020* (as it will be renamed from 1 July 2020) (the Act) provides for the operation of Australia's sports anti-doping arrangements. Australia's anti-doping framework comprises the Act, the *Australian Sports Anti-Doping Authority Regulations 2006* (the principal Regulations) and the National Anti-Doping (NAD) Scheme.

Section 79 of the Act provides for the Governor-General to 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.

The purpose of the regulations is to implement consequential amendments as a result of the NST Act and the Act. The Act will replace the *Australian Sports Anti-Doping Authority Act 2006* from 1 July 2020 as a result of the *Australian Sports Anti-Doping Authority Amendment (Sport Integrity Australia) Act 2020* (the amendment Act), which received Royal Assent on 6 March 2020.

Both the Act and NST Act implement a number of recommendations from the Government's response to the Review of Australia's Sports Integrity Arrangements. The proposed regulations will also implement the Government's commitment to provide the Chief Executive Officer (CEO) of Sport Integrity Australia with flexibility to exercise discretion, as appropriate, with regard to athletes who are neither international-level or national-level athletes (lower-level athletes).

In August 2017, the then Minister for Sport requested a Review of Australia's Sports Integrity Arrangements (Wood Review). The report of the Wood Review was delivered to the Minister in March 2018 and published on 1 August 2018. The Government released its response to the Wood Review on 12 February 2019 and indicated support for numerous recommendations provided in the Wood Review.

A core component of the Government's response is to commit to establish a National Sport Integrity Commission to cohesively draw together and develop existing sports integrity capabilities, knowledge and expertise. The amendment Act will abolish the Australian Sports Anti-Doping Authority (ASADA) and establish Sport Integrity Australia. Sport Integrity Australia will become Australia's national anti-doping organisation (NADO) and administer the NAD Scheme amongst a broader sport integrity remit.

The Government also committed to pilot a two-year trial of a National Sports Tribunal (NST). The NST Act commenced on 19 March 2020 and establishes the NST. The NST has an Anti-Doping Division, a General Division and an Appeals Division.

The Government agreed to empower the Sport Integrity Australia CEO to exercise discretion in respect of lower level athletes to apply more flexible rules, while maintaining compliance with the World Anti-Doping Code (Code). This discretion is currently unavailable as the Code requires a NADO to pursue all possible violations committed by a national-level athlete, and the definition of national-level athlete under the Regulations is broad and captures all athletes. However, the Code provides flexibility for a NADO to pursue and enforce certain non-presence violations committed by athletes below the national level. The proposed Regulations:

- Replace references to ASADA with Sport Integrity Australia
- Include the NST in the definition of ‘sporting tribunal’
- Revise and narrow the definition of national event and national-level athlete to only capture those athletes genuinely competing at this level
- Provide the CEO of Sport Integrity Australia discretion to not pursue participants, other than international-level athletes, national-level athletes, or support persons, for certain non-presence anti-doping rule violations; and
- make minor consequential amendments to the *Australian Crime Commission Regulations 2018*, the *Customs (Prohibited Imports) Regulations 1956* and the *Electoral and Referendum Regulation 2016*. The affected portfolios were consulted and Senior Executive Service approval obtained.

Details of the Regulations are set out in the [Attachment](#).

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

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

The Regulations commence on the later of the day after it is registered, or 1 July 2020.

Authority: Section 79 of the *Sport Integrity Australia Act 2020*
Section 62 of the *Australian Crime Commission Act 2002*
Subsection 270(1) of the *Customs Act 1901*
Section 395 of the *Commonwealth Electoral Act 1918*

Details of the Australian Sports Anti-Doping Authority Amendment (Sport Integrity Australia) Regulations 2020

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Australian Sports Anti-Doping Authority Amendment (Sport Integrity Australia) Regulations 2020*.

Section 2 - Commencement

This section provides for the Regulations to commence on the later of the day after it is registered, or 1 July 2020.

Section 3 - Authority

This section provides that the *Australian Sports Anti-Doping Authority Amendment (Sport Integrity Australia) Regulations 2020* is made under the *Sport Integrity Australia Act 2020*, *Australian Crime Commission Act 2002*, *Customs Act 1901* and *Commonwealth Electoral Act 1918*.

Section 4 - Schedule(s)

This section provides each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1

Part 1 - Name changes

Items 1 – 11 and 13 - 26

These items incorporate three amendments related to the name change from Australian Sports Anti-Doping Authority to Sport Integrity Australia:

- Replace ‘*Australian Sports Anti-Doping Authority Regulations 2006*’, with ‘*Sport Integrity Australia Regulations 2020*’.
- Replace ‘*Australian Sports Anti-Doping Authority Act 2006*’, with ‘*Sport Integrity Australia Act 2020*’.
- Replace ‘ASADA’, with ‘Sport Integrity Australia’.

Item 12– Clause 1.05 of Schedule 1

This item revises clause 1.05 to insert ‘the National Sports Tribunal’ after CAS.

Part 2 – Consequential amendments

Items 27 - 31

These items relate to consequential amendments to the *Australian Crime Commission Regulations 2018*, *Customs (Prohibited Imports) Regulations 1956* and *Electoral and Referendum Regulation 2016*.

The amendments replace ‘*Australian Sports Anti-Doping Authority Act 2006*’, with ‘*Sport Integrity Australia Act 2020*’ in the *Australian Crime Commission Regulations 2018* and *Customs (Prohibited Imports) Regulations 1956*; and to remove reference to ASADA and add Sport Integrity Australia and its function to the *Electoral and Referendum Regulation 2016*.

Schedule 2 – Athlete changes

Item 1 – Clause 1.05 of Schedule 1 (definition of *national-level athlete*)

Clause 1.05 currently provides a definition of *national-level athlete*. This definition as currently drafted is broad and captures all athletes, regardless of the level of competition they compete in, so long as the athlete is a member of a national sporting organisation with an anti-doping policy.

This item omits ‘an event, training camp, exhibition or practice organised or sanctioned by his or her national sporting organisation or professional league’ and substitutes with ‘a sporting event or sporting competition declared under subclause 1.05A(1) and published on Sport Integrity Australia’s website under subclause 1.05A(3).’

Item 2 – After Clause 1.05 of Schedule 1

This item provides that the CEO may, in writing, declare a sporting event or sporting competition for the purposes of the definition of national-level athlete in Clause 1.05.

The item also inserts the criteria for the CEO to consider when declaring a sporting event or competition for the purposes of the definition of national-level athlete. In particular, the CEO must be satisfied the sporting event or competition is administered, approved, or sanctioned by a national sporting organisation, or the sporting event or competition is conducted by another body or person at the national level.

The amendment provides clarity and certainty to identify those athletes who compete at the national-level for the purposes of the National Anti-Doping Scheme.

Item 3 – Subclause 4.07A(1) of Schedule 1

This item repeals the subclause and substitutes a new subclause that provides the CEO of Sport Integrity Australia discretion to not pursue athletes, other than those who are international-level athletes, national-level athletes, for non-presence anti-doping rule violations other than Clause 2.01C and 2.01E. This reflects the requirements of the Code that, where an athlete who competes below the national-level commits a violation

of either presence (2.01A), evasion (2.01C) or tampering (2.01E) the full consequences of the Code must apply.

Item 4 - Before subclause 4.07A(2) of Schedule 1

This item inserts *notification to participant* to provide clarification and highlight the next stage, where notification of a possible non-presence anti-doping rule violation is delivered to the participant under Clause 4.07A.

Schedule 3 – Application and transitional provisions

Item 1 – Clause 7.04-7.09

This item inserts the following clauses to the application and transitional provisions to ensure a smooth transition in the administration of the National Anti-Doping (NAD) Scheme from ASADA to Sport Integrity Australia and provide a seamless process for the application of the NAD Scheme to retired athletes returning to competition.

- Clause 7.04 – Functions and powers of CEO
- Clause 7.05 – Identity cards
- Clause 7.06 – ASADA representatives
- Clause 7.07 – Notices

Each of these clauses provides transitional arrangements to recognise Sport Integrity Australia will replace ASADA as the responsible agency for administration of the NAD Scheme, and provide clarification that where certain items, matters, or processes commenced under the administration of ASADA, they will continue to be recognised as if they were commenced or established by Sport Integrity Australia.

Clause 7.08 provides that, for the purposes of paragraph 5A.01(1)(a) of Schedule 1, any person previously considered a national-level athlete in a registered testing pool, will continue to be considered as such for the purposes of that paragraph. This would ensure such relevant athletes who retired before the commencement of the provision, but return to competition after the commencement of the provision, will be included in the NAD Scheme despite the revised definition of national-level athlete.

Clause 7.09 provides the amended possible non-presence anti-doping rule violation process made to 4.07A of this Schedule by Schedule 2 only applies to evidence or information received on or after the commencement of the provision.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Sports Anti-Doping Authority Amendment (Sport Integrity Australia) Regulations 2020

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The purpose of the regulations is to implement consequential amendments as a result of the *National Sports Tribunal Act 2020* and the *Sport Integrity Australia Act 2020* (Act), due to commence on 1 July 2020. The Act will replace the *Australian Sports Anti-Doping Authority Act 2006* as a result of the Australian Sports Anti-Doping Authority Amendment (Sport Integrity Australia) Bill 2019 (the Bill), which received royal assent on 6 March 2020. The Act will abolish the Australian Sports Anti-Doping Authority, and create Sport Integrity Australia, which will take responsibility for administration of the National Anti-Doping Scheme.

The regulations will also provide the Chief Executive Officer of Sport Integrity Australia discretion to not pursue athletes, other than international-level athletes, national-level athletes, for certain non-presence anti-doping rule violations. This recognises that certain athletes do not receive the same level of education as other athletes who may compete at a higher level, and do not necessarily warrant the full application of consequences available under the World Anti-Doping Code.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms as the amendments are consequential and minor, and create an equitable system that affords greater flexibility to apply more appropriate consequences to lower-level athletes.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.