

EXPLANATORY STATEMENT

Sport Integrity Australia Amendment (World Anti-Doping Code Review) Regulations 2020

The instrument makes regulations to support amendments to the *Sport Integrity Australia Act 2020* (Act) contained in the *Sport Integrity Australia Amendment (World Anti-Doping Code Review) Bill 2020* (Bill), currently before Parliament at the time of preparing this Explanatory Statement, and also align Australia's anti-doping arrangements with revisions to the World Anti-Doping Code (Code) and International Standards (Standards) that come into force on 1 January 2021.

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 Act and the *Sport Integrity Australia Regulations 2020* (Principal Regulations) give effect to Australia's international obligations under the *UNESCO International Convention against Doping in Sport* (Convention). The Convention requires States Parties to implement arrangements that are consistent with the principles of the Code. The Code provides the framework for the operation of global harmonised rules and regulations.

The international sporting community, including the International Olympic Committee and international sporting federations who are signatories to the Code, are committed to updating their anti-doping policies to reflect the revised Code. At the same time, the 180 governments who have ratified the Convention, including Australia, are obligated to align their arrangements with the principles of the revised Code.

Sport Integrity Australia is the Australian Government agency that focuses on the elimination of doping in sport, thereby contributing towards the overall integrity of Australian sport and the health of those who compete in sport. Sport Integrity Australia's powers and functions are specified in the Act and Principal Regulations, including the National Anti-Doping (NAD) Scheme, which comprises Schedule 1 to the Principal Regulations.

In late 2017, the World Anti-Doping Agency (WADA) initiated a comprehensive review of the Code. This review included an extensive four stage consultation process allowing all stakeholders, including members of the international anti-doping community – international sporting federations, national anti-doping organisations, sporting organisations and governments – to discuss proposed revisions to the Code. The Australian Government participated in this review and provided feedback and comments on draft iterations of the Code at each stage of the review. To formulate its position, the Government consulted with NSOs, the then Australian Sports Anti-Doping Authority (now part of Sport Integrity Australia), the Australian Sports Drug Medical Advisory Committee (ASDMAC), Sport Australia, and recognised Australian anti-doping experts.

Revisions to the Code arising from the review were adopted by the international anti-doping community at the World Conference on Doping in Sport in Katowice, Poland on 6 November 2019.

To ensure the continued operation of a globally harmonised anti-doping framework, international sporting federations and governments are now required to amend their own

anti-doping frameworks to align with the revised Code and Standards by 1 January 2021. As a signatory to the Convention, Australia is obligated to amend its anti-doping arrangements to align with the principles of the Code.

The Government introduced the Bill into Parliament on 26 August 2020. The Bill passed the Senate on 8 October 2020 and at the time of this Explanatory Statement's preparation, is before the House of Representative for consideration. Most of the changes to give effect to the Code revisions are made to through the Amending Regulations, and to the anti-doping policies of NSOs. The Amending Regulations implement consequential amendments from the Bill, and substantive amendments to reflect revised Code arrangements.

The Amending Regulations amend the Principal Regulations to implement the following Code revisions:

- Specify the classes of non-participant that are subject to certain anti-doping rules;
- Specify the anti-doping rules that support persons are subject to;
- Create a new anti-doping rule to discourage behaviour that seeks to intimidate a person who seeks to report a possible anti-doping rule violation;
- Provide scope for the Sport Integrity Australia CEO to publish the details of a person's asserted anti-doping rule violation;
- Streamline the notification process to reflect the new International Standard for Results Management;
- Introduce a new national testing pool; and
- Minor technical and cosmetic amendments to reflect wording in the Code

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 Regulations may be exercised.

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

The Regulations commence from the same time as Part 1 of Schedule 1 to the *Sport Integrity Australia Amendment (World Anti-Doping Code Review) Act 2020* commences.

Authority: Section 79 of the
Sport Integrity Australia Act 2020

Details of the *Sport Integrity Australia Amendment (World Anti-Doping Code Review) Regulations 2020*

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Sport Integrity Australia Amendment (World Anti-Doping Code Review) Regulations 2020*.

Section 2 - Commencement

This section provides for the Regulations to commence at the same time as Part 1 of Schedule 1 to the *Sport Integrity Australia Amendment (World Anti-Doping Code Review) Act 2020* commences.

Section 3 - Authority

This section provides that the Regulations are made under the *Sport Integrity Australia Act 2020*.

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 – Amendments

Items 1, 2, 3

Items 1, 2 and 3 make minor consequential amendments to Regulation 5. Subclause 5(2) is not required as those bodies the CEO may disclose information to are already prescribed in Subsection 68B(3) of the Act.

Items 4, 7, 11, 12, 35, 37, 53, 69, 82, 100, 103, 110, 111, 112, 116, 119, 120, 123, 129, 132, 134, 135, 138, 139, 140, 142, 143, 144, 145, 146

These Items make minor and consequential amendments to include the new category of non-participant, where applicable, alongside where athletes and support persons are listed as those persons subject to a particular aspect of the National Anti-Doping (NAD) Scheme.

Item 5 - Paragraph 1.02(1)(b) of Schedule 1

Item 5 makes minor amendments to broaden the areas of research within the CEO's functions in-line with revisions to Article 19.2 of the 2021 World Anti-Doping Code (Code).

Item 6 - Paragraph 1.02(1)(f) of Schedule 1

Item 6 makes minor amendments to remove ‘International Federations’ and replace this text with ‘anti-doping organisations’. This change is supported by the Code which recognises aspects of doping control may be delegated to third parties including anti-doping organisations (importantly, the definition of ‘anti-doping organisation’ under the Code includes International Federations). It is unnecessary to limit the CEO’s delegation of results management to only International Federations and hinders the anti-doping effort. For example, the CEO may wish to delegate results management to the Australian Football League (as allowed by the Code). In this scenario, the AFL meets the definition of anti-doping organisation, but not International Federation.

Item 8 - Subclause 1.02A(1) of Schedule 1

This Item is consequential to Item 126 which repeals Clause 4.20.

Item 9 - Subclause 1.02A(2) of Schedule 1

This Item is consequential to Item 122 and makes a minor amendment to reflect the process for managing results under the International Standard for Results Management (ISRM).

Item 10 - Subclause 1.02A(4) of Schedule 1

This Item is consequential to Item 78, which amends the processes to establish a violation of Clause 2.01K (prohibited association).

Items 13 and 14 – Clause 1.05 of Schedule 1 (definition of *adverse analytical finding*)

These Items make minor technical amendments to the definition of ‘adverse analytical finding’. The amendments do not alter the current operation of the definition, but are required to ensure consistency with the Code and International Standards.

Items 15 and 16 – Clause 1.05 of Schedule 1 (definition of *anti-doping organisation*)

These Items make minor technical amendments to the definition of ‘anti-doping organisation’ to move WADA to the first organisation listed, to reflect the exact wording of the ‘anti-doping organisation’ definition in the Code.

Items 17 and 18 – Clause 1.05 of Schedule 1 (definitions of *A sample and B sample*)

These Items amend the definitions of ‘A sample’ and ‘B sample’ to recognise split samples introduced under Article 6.7 of the Code.

Item 19 - Clause 1.05 of Schedule 1 (note to the definition of *chaperone*)

This Item makes a minor cosmetic amendment to the note to the definition of ‘chaperone’ and does not affect its operative meaning.

Item 20 – Clause 1.05 of Schedule 1 (new definitions of *consequences of anti-doping rule violations and decision limit*)

This Item inserts two new definitions to Clause 1.05, ‘consequences of anti-doping rule violations’ and ‘decision limit’. Each of these terms are defined as they are in the Code. The new definitions are necessary and consequential to Item 54 to 59 which amend the anti-doping rule violation of ‘presence’ at Clause 2.01A, and also consequential to the incorporation of the new ISRM introduced in Item 26.

Item 21 – Clause 1.05 of Schedule 1 (definition of *domestic testing pool*).

This Item amends the definition of ‘domestic testing pool’ to also exclude those athletes who are in the CEO’s new ‘national testing pool’.

Item 22 – Clause 1.05 of Schedule 1 (definition of *doping control*).

This Item amends the definition of ‘doping control’ to refer to the definition of ‘doping control’ in the Code. This ensures consistency between the NAD Scheme and the Code and International Standards, including the new ISRM.

Item 23 – Clause 1.05 of Schedule 1 (definition of *in-competition*).

This Item amends the definition of ‘in-competition’ to refer to the amended definition of ‘in-competition’ in the Code. The ‘in-competition’ period in the Code has been revised to commence from 11:59pm (23:59) the day before the competition.

Item 24 – Clause 1.05 of Schedule 1 (definition of *international-level athlete*).

This Item amends the definition of ‘international-level athlete’ to refer to the definition in the Code. An international-level athlete is defined in the Code to be an athlete who competes in sport at the international-level as defined by each International Federation, consistent with the International Standard for Testing and Investigations (ISTI).

Items 25, 27, 28

These Items make minor and cosmetic amendments to the definitions of three of the International Standards which do not affect each operative meaning.

Item 26 – Clause 1.05 of Schedule 1

This Item inserts a definition for ‘International Standard for Results Management’ and refer to the ISRM as it is amended from time-to-time, including any technical documents issued under the new Standard. This definition is required to support the amendments outlined in Items 98, 99, 100, 101, 102, 104, 107, and 108.

Item 29 – Clause 1.05 of Schedule 1 (definition of *national anti-doping organisation*).

This Item makes a minor amendment to the definition of ‘national anti-doping organisation’ to support the introduction of the ISRM.

Item 30 - Clause 1.05 of Schedule 1 (definition of *national-level athlete*).

This Item amends the definition of ‘national-level athlete’ to also include those athletes in the CEO’s new national testing pool.

Item 31 – Clause 1.05 of Schedule 1

This Item introduces a definition of ‘national testing pool’. This is a new pool of athletes who may be asked for whereabouts information (under new subclause 3.09(1A)) for both in-competition and out-of-competition testing conducted as part of the CEO’s test distribution plan. The inclusion of this new testing pool supports the revised approach to testing pools under the Code and the ISTI.

Item 32, 34, 38

These Items repeal definitions that are no longer used in the NAD Scheme.

Item 33 – Clause 1.05 of Schedule 1 (definition of *relevant sporting administration body*)

This Item makes consequential amendments to the definition of ‘relevant sporting administration body’ as a result of the amended definition of ‘athlete’ in the Principal Legislation to include persons who have competed in sport at any time in the last six months and as a result of the new category of ‘non-participants’.

Item 36 – Clause 1.05 of Schedule 1

This Item introduces a definition of ‘results management’ which refers to ‘results management’ as defined in the Code. This amendment is consequential to support the introduction of the ISRM.

Item 39 – Clause 1.05 of Schedule 1 (definition of *tampering*)

This Item amends the definition of tampering to refer to the definition of tampering in the Code. The 2021 revisions to the Code expand the scope of ‘tampering’ to cover intentional conduct that subverts the ‘doping control’ process but which would not otherwise be included in the definition of ‘prohibited methods’. This now captures engaging in fraudulent conduct during the results management and hearing process, including submitting fraudulent documents or procuring false testimony. The Code revisions also make a number of cosmetic amendments to ‘tampering’ that do not materially affect the operative meaning of the definition, but provide clarity and examples of the conduct that could constitute a tampering violation.

Item 40 – Clause 1.05 of Schedule 1

This Item introduces a definition for ‘technical document’. The amendment clarifies that where the NAD Scheme refers to a technical document, it refers to a technical document issued under an International Standard.

Item 41 – Clause 1.05 (definition of *therapeutic use exemption*)

This Item makes minor amendments to the definition of ‘therapeutic use exemption’ to reflect revisions to the Code. The amendments do not change the definition’s substantive operation.

Item 42 - Clause 1.05 of Schedule 1 (definition of *TUE committee*)

This Item makes cosmetic amendments to the definition of ‘TUE committee’ which do not affect its operative meaning.

Item 43 – Clause 1.05 of Schedule 1 (definition of *whereabouts information*)

This Item makes minor amendments to the definition of whereabouts information that are consequential to the introduction of the new national testing pool.

Items 44, 45, 47 and 48 – Clause 1.06 of Schedule 1

These Items make consequential amendments to Clause 1.06 as a result of the amended definition of ‘athlete’ in the Principal Legislation to include persons who have competed in sport at any time in the last six months.

Item 46 - Subclause 1.06(2) of Schedule 1

This Item makes a consequential amendment to subclause 1.06(2) as a result of the introduction of the CEO's new national testing pool.

Item 49 – Clause 1.07 of Schedule 1

This Item amends Clause 1.07 to clarify that support persons are only subject to certain anti-doping rules, rather than all the anti-doping rules. The revised Code specifies support persons are only subject to anti-doping rules 2.01E, 2.01F, 2.01G, 2.01H, 2.01J, 2.01K and 2.01L.

Item 50– After Clause 1.07 of Schedule 1

Item 50 inserts new Clause 1.07A as a consequential amendment based on amendments in the Principal Legislation that introduce 'non-participants', a new category of persons, who are not athletes or support persons, and who may be subject the NAD Scheme.

Clause 1.07A specifies that non-participants are only subject to certain anti-doping rules. The revised Code specifies 'non-participants' are only subject to anti-doping rules 2.01E, 2.01G, 2.01H, 2.01I, 2.01J, 2.01K and 2.01L.

Item 51 - Paragraph 1.08(2)(b) of Schedule 1

This Item makes a consequential amendment to paragraph 1.08(2)(b) as a result of the amended definition of 'athlete' in the Principal Legislation to include persons who have competed in sport at any time in the last six months.

Items 52, 105, 106, 110, 114, 115, 118

These Items remove references to the word 'possible' from the relevant clauses where the CEO would assert an anti-doping rule violation. Under the revised results management process, which is implemented under the new ISRM, the CEO (where the CEO has, or has accepted results management authority) is responsible for asserting an anti-doping rule violation against a participant or non-participant if the CEO is satisfied there has been an anti-doping rule violation after dealing with the matter in accordance with the ISRM.

As required in the ISRM, the CEO will issue the participant or non-participant with a letter of charge accompanied by a copy of the decision to make the assertion. The letter of charge includes all the relevant information as required in the ISRM, including any consequences the CEO has recommended to the relevant sporting administration body.

Items 54, 55, 56, 57, 58, 59, 60, 62, 63, 64, 67, 70, 72, 73, 76

These Items make minor amendments to the anti-doping rules to reflect revised wording in the Code and do not affect the operative interpretation of the particular anti-doping rule each Item would amend.

Items 61, 63, 66, 68, 71, 74, 77

These Items amend the anti-doping rules to clarify which anti-doping rules apply to which category of person subject to the NAD Scheme (athlete, support person, and non-participant).

Item 65 – Clause 2.01E of Schedule 1

This Item amends Clause 2.01E to make a minor amendment to clarify this anti-doping rule applies to an athlete, support person and non-participant. It also amends this Clause 2.01E to reflect the structure of the Code with ‘tampering’ defined in Clause 1.05.

Item 75 - Clause 2.01J of Schedule 1

This Item amends Clause 2.01J to include ‘attempted complicity’ as a violation of the anti-doping rules to reflect this revision in the Code. The addition of ‘attempted complicity’ slightly broadens those acts currently considered a violation of Clause 2.01J.

The global anti-doping community agreed that those persons who undertake acts that attempt to be complicit in doping are just as culpable as those who are complicit.

Item 78 – Subclauses 2.01K(1) to (9) of Schedule 1

Item 78 amends Clause 2.01K to reflect revisions to prohibited association in the 2021 revisions to the Code. Specifically, the Item removes the requirement for the CEO to give a warning notice to the participant, and include a requirement that the CEO has a burden of proof to establish the participant or non-participant knew of the person’s disqualifying status when they associated with that person.

Item 79 – At the end of Division 2.1 of Part 2 of Schedule 1

This Item introduces the new anti-doping rule which seeks to address any act that threatens or seeks to intimidate a person with the intent of discouraging the person from reporting to authorities a possible anti-doping rule violation, or any act of retaliation against a person who has provided evidence or information to authorities in relation to an alleged breach or possible anti-doping rule violation. The new violation is included in the Code and is a mandatory provision that all signatories must adopt.

The new violation is largely in response to the state-sponsored systemic and institutionalised doping scheme facilitated in Russia. During investigations, former Director of Russia’s WADA-accredited laboratory, Dr Grigory Rodchenkov, gave evidence that he aided in the facilitation of doping and subsequent cover up of Russian athletes under direction from authorities. Since that time, Dr Rodchenkov has been in a witness protection program in the United States.

The global anti-doping community agreed this is behaviour contrary to the elimination of doping and should be penalised if committed.

Item 80 – Paragraph 2.04(f)

This Item makes a consequential amendment to paragraph 2.04(f) as a result of the introduction of the CEO’s new national testing pool.

Item 81 – Paragraph 2.04(o)

This Item makes a minor amendment to paragraph 2.04(o) to also refer to the International Standards in relation to the sporting administration body rule directed at promoting information, education and other anti-doping programs.

Item 83 - Subclause 3.09(1) of Schedule 1 (note)

This Item makes a minor consequential amendment to the note to subclause 3.09(1) as a result of the introduction of the CEO's new national testing pool. The amendment to this note clarifies only a failure by an athlete in the CEO's registered testing to give whereabouts information when requested by the CEO may constitute a possible anti-doping rule violation.

Items 84 and 85

These items insert new subclause 3.09(1A) to allow the CEO to request whereabouts information from athletes in the new CEO's national testing pool. Subclause (5) allows the CEO to deal with a failure to comply with a request in a way that is consistent with the ISTI. Under the ISTI an anti-doping organisation may elevate an athlete to a registered testing pool if they fail to comply with such a request.

Item 86 – At the end of Subclause 3.12(1) of Schedule 1

This Item inserts new paragraph 3.12(1)(g) to allow a sample to be requested, collected and tested for any other purpose covered by Article 6.2 of the revised Code.

Item 87 – After Clause 3.12 of Schedule 1

This Item inserts new Clause 3.12A reflecting revisions to Articles 6.2 and 6.3 of the Code. The revisions allow anti-doping organisations to also use analytical data and doping control information in relation to a sample for anti-doping purposes, including profiling relevant parameters in an athlete's sample as a method of detecting the use of a prohibited substance or method, and research. Anti-Doping research may only be undertaken in compliance with Article 19 of the Code.

Item 88 – New Paragraph 3.16(2)(d) and at the end of Subclause 3.16(2) of Schedule 1 (before the note)

This Item inserts new paragraph 3.16(2)(d) to require a request for a sample to include any other information required under Article 5.4.1 of the ISTI. This Article requires the athlete to be informed of the competent authority requesting the test. This Item would also allow the CEO to include any other information the CEO considers relevant when requesting a sample from an athlete, in addition to the information required to be included under Article 5.4.1 of the ISTI. For example, in exceptional and justified circumstances, if an athlete is required to travel more than 50km to undertake an advance notice test then an offer to pay reasonable costs under clause 3.18 would be included in the request. This approach would provide flexibility for the CEO to include any additional information taking into account the circumstances of the test.

Item 89 – Subclause 3.16(5) of Schedule 1

This Item amends subclause 3.16(5) to be consistent with the ISTI. Article 5.3.1 of the ISTI requires a request to an athlete for a sample to be made with no advance notice except in exceptional or justifiable circumstances.

Item 90 – Subclause 3.19(3) of Schedule 1

This Item amends subclause 3.19(3) to require that the CEO must decide an athlete is not required to give a sample if the CEO is satisfied the athlete is retired.

Item 91 – Subclause 3.20(1) of Schedule 1

This Item amends subclause 3.20(1) to refer to Article 5.4.4 of the revised Code which details the activities an athlete may permitted to do before providing either an in-competition or out-of-competition sample. A chaperone also means a doping control officer as defined under Clause 1.05.

Item 92 – Subclause 3.20(1) of Schedule 1

This Item makes a minor consequential amendment to subclause 3.20(2) as a result of the amendment made in Item 91.

Items 93 and 94

These Items make minor corrective amendments to subclause 3.22(2) that do not affect its operation or interpretation.

Items 95, 96, 97

These Items repeal Clause 3.25 and include the substantive content in Clause 3.24, which would require the CEO must follow the procedures in the Code and International Standards with regard to analysis, re-analysis and retention of samples.

Items 98, 99, 100, 101, 102, 104, 107, 108

These Items amend Part 4 of the Regulations to remove the current results management process for both adverse analytical findings and other possible non-presence anti-doping rule violations. The new process requires the CEO to deal with all possible anti-doping rule violations in accordance with the ISRM where the CEO has, or accepts, results management authority. The ISRM is a new International Standard which outlines globally harmonised procedures, processes, and requirements an anti-doping organisation must undertake when managing possible anti-doping rule violations, including any review and/or investigation undertaken as part of the pre-adjudication phase, and the two-stage notification process involving initial notification and notification of charge. It also deals with the fair and impartial conduct of any hearings and appeals.

A reference to a set or short deadline in the ISRM continues to be a reference to a ‘response period’ defined under Clause 1.05, and the CEO may still withhold details from the initial notification of a possible non-presence anti-doping rule violation if the CEO is satisfied those details may prejudice an investigation.

As stated in the Review of Australia’s Sport Integrity Arrangement (Wood Review), stakeholders find Australia’s anti-doping rule violation (ADRV) results management process overly bureaucratic with too many procedural steps. The Government’s response to the Wood Review implemented legislative reforms to streamline the process. Nonetheless, this amendment would ensure Sport Integrity Australia’s management of results under the NAD Scheme follows the same processes that athletes, support persons and non-participants must go through if they were subject to results management undertaken by their international sporting federation. In this way Sport Integrity Australia’s approach to results management would be consistent with the harmonised global anti-doping approach.

Importantly, participants' and non-participants' rights, such as the opportunity to provide submissions setting out information that would assist the CEO in the CEO's determination of whether to assert an anti-doping rule violation, remain in the new approach, as does the right to B sample analysis for an athlete who has returned an adverse analytical finding.

A new regime for setting a date for B sample analysis has been included in the ISRM to make the process simpler and swifter. Those subject to a possible ADRV are afforded greater flexibility under the ISRM, for example, in certain circumstances, they may admit the violation and accept a reduced sanction in accordance with the Code or, they may, on a 'without prejudice' basis, provide substantial assistance or opt for a 'case resolution agreement' to receive a reduced sanction for early cooperation.

Items 109, 110, 113, 117, 121

These Items amend relevant clauses to require the CEO to make an assertion of an anti-doping rule violation if the CEO is satisfied the person has committed an anti-doping rule violation at the completion of the pre-adjudication phase under the ISRM.

If the CEO decided to make an assertion, the CEO must issue a letter of charge that includes the details required under Article 7.1 of the ISRM to the person accompanied by a copy of the assertion.

Item 120 - Subclause 4.08(5) of Schedule 1

This Item amends subclause 4.08(5) to include the Code requirement that any notice of the CEO's decision not to make an assertion is given to any party with a right to appeal.

Items 122, 124, 125

These Items make minor amendments to the relevant clauses to more clearly reflect the process under the ISRM for notifying relevant parties of the assertion and the letter of charge. Information about the assertion and other details that must be included in a letter of charge are covered under amended subclauses 4.08(3) and (4). Article 7.2 of the ISRM requires this information to be provided simultaneously to other relevant parties. In relation to both participants and non-participants, these parties include each relevant sporting administration body, each relevant government sports agency, and WADA. Upon receipt of this information each of these bodies is subject to strict confidentiality requirements imposed by the Code and the International Standard for the Protection of Privacy and Personal Information (ISPPPI).

Item 126 – Clause 4.20 of Schedule 1

This item repeals Clause 4.20.

Clause 4.20 is no longer required in the NAD Scheme due to strengthened confidentiality requirements contained in the Code, the ISPPPI and reflected in a sporting administration body's anti-doping policy. These requirements ensure the information is only provided to those persons within the organisation with a need to know and remains protected until it may be publicly disclosed in accordance with the Code. Even where information may be publicly disclosed in accordance with Article 14.3.1 of the Code, a sporting administration body may only disclose such information to the extent previously agreed by Sporting Integrity Australia under their anti-doping policy. Under this same provision, Sport Integrity Australia may

refuse to agree to any public disclosure in certain circumstances, such as the conduct of an ongoing investigation.

Sporting administration bodies generally found confidentiality undertakings confusing, duplicitous and adding an unnecessary legal burden to existing obligations to keep information confidential as a requirement under the Code and its International Standards. All the requirements contained in the confidentiality undertakings are replicated in the sport's anti-doping policy. Confidentiality within the NAD Scheme remains protected through Clause 2.04 which requires a sporting administration body to at all times have in place, maintain and enforce anti-doping policies and practices that comply with the mandatory provisions of the Code and International Standards and the NAD scheme and are approved by the Sport Integrity Australia CEO.

Items 127, 128 – Subclauses 4.21(2) and (2A) of Schedule 1

This Item amends Clause 4.21 to remove duplicitous subclauses that are covered under section 68E of the Principal Legislation. Elements of the Clause are retained for the purposes of paragraph 13(1)(g) of the Act, which requires the NAD Scheme to include clauses that allow for the release of certain information obtained in relation to the administration of the NAD scheme for the purposes of, or in connection with that administration. As noted above in relation to Item 229, information disclosed to a sporting administration body would be governed by the strict confidentiality provisions under the Code, which ensure the security and privacy of protected information. These provisions are replicated and strengthened in each sporting administration body's anti-doping policy.

Items 130, 131

These Items amend Clause 4.22 to allow the Sport Integrity Australia CEO to publish information about an assertion where such publication is allowed or required under the Code, the athlete, support person, or non-participant has consented to the disclosure, or the CEO considers publication to be in the public interest. These amendments would remove the restrictions that previously prevented the CEO from publishing information about assertions until the matter was finally resolved. Such restrictions are inconsistent with the public disclosure provisions under Article 14.3 of the Code and have resulted in the Sport Integrity Australia CEO and relevant Australian National Sporting Organisation being prevented from publicly disclosing information that is then published by the relevant international federation (under their Code compliant rules).

Subclause 4.22(1A) limits the CEO's discretion under paragraph 4.22(1)(a) to situations where the person does not recognise the sporting tribunal's jurisdiction, or no sporting tribunal has jurisdiction to hear the matter.

Item 133 - At the end of Division 4.4 of Part 4 of Schedule 1

This Item includes Clause 4.22A which would allow the CEO to publish certain information about a possible anti-doping rule violation in accordance with Article 14.3.1 of the Code and before the CEO makes an assertion of an anti-doping rule violation. Only the identity of the athlete, the prohibited substance or method, the nature of the anti-doping rule violation and any provisional suspension may be published following notification to the athlete or other person and applicable anti-doping organisations. No other specific facts of the case may be

publicly released at this time. As with the example above in relation to Items 231 and 232, where Sport Integrity Australia is managing a matter, where appropriate, the CEO must be permitted to make a statement before the international federation releases the information. This is especially relevant where the athlete is subject to a provisional suspension which must be enforced by the sport.

Item 136 - Subclause 4.23(2) of Schedule 1

This Item is a minor consequential amendment resulting from the amendments made to the results management process to make correct references to specific items.

Item 137 - Paragraph 5A.01(1)(a) of Schedule 1

This Item is a minor consequential amendment resulting from the introduction of the Sport Integrity Australia CEO's national testing pool.

Item 141 - Paragraph 6.01(2)(b) of Schedule 1

This Item inserts service by post within Australia to paragraph 6.01(2)(b). Service by post outside Australia is already covered under paragraph 6.01(2)(c).

Item 147 - In the appropriate location in Part 7 of Schedule 1

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

Clause 7.11 clarifies that the repeal and substitution of subclause 1.06(1) made by Schedule 1 to the *Sport Integrity Australia Amendment (World Anti-Doping Code Review) Regulations 2020* (Amending Regulations) applies in relation to competing in sport that occurs on or after the commencement of this clause.

Clause 7.12 clarifies that the repeal and substitution of clause 1.07 made by Schedule 1 to the Amending Regulations applies in relation to involvement in a sport that occurs on or after the commencement of this clause.

Clause 7.13 clarifies that Clause 1.07A, inserted by Schedule 1 to the Amending Regulations, applies on and after the commencement of this clause in relation to a non-participant, whether the non-participant became bound by the sporting administration body's anti-doping policy before, on or after that commencement.

Clause 7.14 clarifies a number of application and transitional provisions relating to the anti-doping rules, in particular to Clause 2.01D, 2.01E, 2.01F, 2.01G, 2.01H, 2.01J, 2.01K, and 2.01L.

Clause 7.15 clarifies that the amendment of Clause 3.12 made by Schedule 1 to the Amending Regulations applies in relation to a request for a sample made on or after the commencement of this clause.

Clause 3.12A, inserted by Schedule 1 to the Amending Regulations, applies in relation to a sample given on or after the commencement of this clause.

The amendments of Clauses 3.16 and 3.19 made by Schedule 1 to the Amending Regulations apply in relation to a request for a sample made on or after the commencement of this clause.

The amendments of Clause 3.20 made by Schedule 1 to the Amending Regulations apply in relation to a permission given on or after the commencement of this clause.

The amendments of Clause 3.24, and the repeal of Clause 3.25, made by Schedule 1 to the Amending Regulations apply in relation to a sample given on or after the commencement of this clause.

Clause 7.16 clarifies the application and transitional arrangements for results management.

The amendment of Division 4.1 of Part 4 made by Schedule 1 to the Amending Regulations, and the amendments of Divisions 4.3, 4.4 and 4.5 of Part 4 of this Schedule made by Schedule 1 to those regulations, so far as they relate to the amendments covered by paragraph (a) apply in relation to notice the CEO receives, on or after the commencement of these amendments, from a recognised laboratory of an atypical finding or an adverse analytical finding in relation to an A sample provided by an athlete.

The amendments of Division 4.2 of Part 4 made by Schedule 1 to the Amending Regulations; and the amendments of Divisions 4.3, 4.4 and 4.5 of Part 4 made by Schedule 1 to those regulations, so far as they relate to the amendments covered by paragraph (a) apply in relation to evidence or information the CEO receives, on or after the commencement of these amendments, showing a possible non-presence anti-doping rule violation.

The amendments of clause 4.21 made by Schedule 1 to the Amending Regulations apply in relation to the disclosure of information, documents or things on or after the commencement of these amendments, whether the information, documents or things were obtained before, on or after that commencement.

Clause 4.22A, as added by Schedule 1 to the Amending Regulations, applies in relation to a notice referred to in Article 14.3.1 of the World Anti-Doping Code that is provided on or after the commencement of this clause.

Statement of Compatibility with Human Rights

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

SPORT INTEGRITY AUSTRALIA AMENDMENT (WORLD ANTI-DOPING CODE REVIEW) 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 *Sport Integrity Australia Amendment (World Anti-Doping Code Review) Regulations 2020* (Amending Regulations) amend the *Sport Integrity Australia Regulations 2020* (Principal Regulations) to align Australia's anti-doping arrangements with revisions to the World Anti-Doping Code (Code) and International Standards (Standards) that come into force on 1 January 2021.

Australia's anti-doping legislation gives effect to its international obligations under the UNESCO International Convention against Doping in Sport (Convention). The Convention requires States Parties to implement arrangements that are consistent with the principles of the Code. The Code provides the framework for the operation of global harmonised rules and regulations. Australia meets its international obligations through the *Sport Integrity Australia Act 2020* (Act) and the Principal Regulations.

Human rights implications

The Amending Regulations engage Article 17 of the ICCPR – privacy and reputation.

Consequential amendments

The Amending Regulations implement several consequential amendments from the *Sport Integrity Australia (World Anti-Doping Code Review) Act 2020* (Code Review Act), which in turn engaged various human rights. Those amendments are taken as addressed in the Code Review Act's Statement of Compatibility with Human Rights. This includes expanding the scope of the National Anti-Doping (NAD) Scheme to include non-participants (those persons who are not an athlete or support person but are subject to a sporting administration body's anti-doping policy).

Confidential disclosure of information during the pre-adjudication results management phase

The Amending Regulations remove Clause 4.20 from the Principal Regulations. Clause 4.20 is no longer required in the NAD Scheme due to reliance on strict confidentiality requirements contained in the Code, and the International Standard for the Protection of Privacy and Personal Information (ISPPPI).

These confidentiality requirements are adopted and strengthened in a sporting administration body's anti-doping policy and ensure protected information is only provided to those persons within a recipient organisation with a need to know to allow that person to fulfil their obligations under the Code. The information must remain protected until it may be publicly disclosed in accordance with the Code. Even where information may be publicly disclosed

under Article 14.3.1 of the Code, a sporting administration body, under their anti-doping policy, may only disclose such information to the extent previously agreed by Sport Integrity Australia. Sport Integrity Australia may refuse to agree to any public disclosure in certain circumstances, such as the conduct of an ongoing investigation.

Sporting administration bodies generally found confidentiality undertakings, as required by Clause 4.20, confusing, duplicitous and adding an unnecessary legal burden to existing and identical obligations to keep information confidential as a requirement under the Code and its International Standards.

Confidentiality within the NAD scheme remains protected through Clause 2.04 which requires a sporting administration body to at all times have in place, maintain and enforce anti-doping policies and practices that comply with the mandatory provisions of the Code and International Standards and the NAD scheme and are approved by the Sport Integrity Australia CEO.

This measure is reasonable and necessary to ensure protected information is managed in a clear and appropriate manner that achieves a balanced, consistent, and proportionate outcome with respect to privacy rights.

Disclosure of information in connection with or for the purposes of the NAD Scheme

Section 68 of the Act allows the CEO of Sport Integrity Australia to disclose protected information to those bodies identified in Subsection 68B(3) for the purposes of the Act. Clause 4.21 provides that information may be disclosed to those same bodies for the purposes of or in connection with the NAD Scheme in furtherance of paragraph 13(1)(g) of the Act. The amendments to this Clause 4.21 are reasonable, necessary and proportionate to streamline and clarify the disclosure provisions under the Act and Principal Regulations as they remove duplicitous subclauses that are covered under section 68B of the Act, while still satisfying paragraph 13(1)(g) of the Act.

As noted above, information disclosed to a sporting administration body is governed by the strict confidentiality provisions under the Code and ISPPPI, which ensure the security and privacy of protected information. As also noted above, these provisions are adopted and strengthened in each sporting administration body's anti-doping policy.

Discretion to publish information about a possible anti-doping rule violation and an assertion of an anti-doping rule violation once notice is provided to the participant or non-participant

The Amending Regulations provide the Sport Integrity Australia CEO the discretion to publish information relating to assertions if:

- a) the CEO considers the publication to be in the public interest, or
- b) the publication is required or permitted by the Code, or
- c) the participant or non-participant to whom the information relates has consented to the publication.

With regard to paragraph (a), the Amending Regulations retain existing safeguards in the Principal Regulations to limit the CEO's discretion to publish information if the CEO considers the publication in the public interest. The CEO may only publish information if (i) the participant or non-participant has refused to recognise the jurisdiction of a sporting

tribunal to conduct a hearing process in relation to the assertion to which the information relates, or (ii) no sporting tribunal has jurisdiction to conduct a hearing process in relation to the assertion to which the information relates, unless the information could be disclosed under Sections 68C-E of the Act.

With regard to paragraph (b), some of the previous limitations have been removed to allow the CEO to publish details of an assertion where such publication is required or permitted by the Code.

The Amending Regulations also provide the Sport Integrity Australia CEO the discretion to publish information relating to an adverse analytical finding or other possible non-presence anti-doping rule violation following initial notification to the athlete or other person and to the applicable anti-doping organisations in accordance with Article 14.3.1 of the Code.

Article 14.3.1 of the Code permits publication of certain details about a possible anti-doping rule violation but only after notice is provided; to the athlete, support person, or non-participant and simultaneously to applicable anti-doping organisations, including the international federation and the World Anti-Doping Agency (WADA). The only information that may be published under this Article 14.3.1 is the person's name, the prohibited substance or method, the nature of the violation and whether the person is subject to a provisional suspension. Article 14.3.6 further safeguards disclosure at this stage by prohibiting any further public comment on the specific facts of any pending case (as opposed to a general description of process and science) except in response to public comments attributed to, or based on, information provided by the person or their entourage or other representatives (as replicated under Section 68E of the Act).

The objective of publication is to ensure the integrity of sporting competitions by enabling the global sporting community, and in particular sporting organisations and other athletes and support persons, to accurately ascertain individuals who are ineligible to compete or perform any other official function (such as coach, or work in an administrative capacity) within sport due to a provisional suspension based on a possible anti-doping rule violation.

Athletes who compete in sport despite their provisional suspension (generally because organisers may not be aware they are serving a suspension) can prevent legitimate competitors from winning awards, accolades or prize money, create an uneven playing field, and encroach on the rights of clean athletes to compete in sport free from doping. In most cases, athletes have little recourse to retrieve lost earnings or accolades when such rewards are improperly awarded to athletes who should not have competed. In addition, if athlete support persons who have committed an anti-doping rule violation are not publicised, they may continue to improperly influence athletes and others within the sporting community. In addition, publication is necessary as an athlete may breach the anti-doping rules if that athlete associates with a person who has disqualifying status.

These are compelling public interest reasons why the right to privacy in these situations is not absolute and must give way to ensure an appropriate balance is struck between the rights of the individual and the rights of other athletes, and other interested parties. The measure is a reasonable, necessary and proportionate response as it seeks to ensure other members of the sporting community are not adversely affected by the actions of a person who is provisionally suspended or asserted to have committed an anti-doping rule violation. It is also in the interests of all parties that the organisation responsible for managing results is also responsible for exercising any discretion to publish information about a matter in line with the Code. For example, there have been recent cases where the CEO of the then Australian Sports Anti-Doping Authority (ASADA), was prohibited from confirming the imposition of a

provisional suspension on an Australian athlete. That information was then published by the relevant international federation in accordance with the federation's own Code compliant rules.

This process represents a proportionate response to balancing the rights of the athlete, or other person to have their matter dealt with fairly and confidentially with the rights of the sporting community to compete in drug free sport. To further ensure the proportionality of the measure, the long-standing practice of Sport Integrity Australia, and the former ASADA, is to remove the publication once the athlete or athlete support person's period of ineligibility has, or would have, expired. This ensures the publication does not last beyond the intended objective. Further safeguards exist for minors, protected persons and recreational athletes. Under Article 14.3.7 of the Code (replicated under Section 19A of the Act) public disclosure is optional proportionate to the facts and circumstances of the case.

National Testing Pool

The Amending Regulations introduce a new National Testing Pool (NTP) which allows the Sport Integrity Australia CEO to request whereabouts information from an athlete for the purposes of sample collection. The CEO may already require this information from an athlete by placing that athlete on the Registered Testing Pool (RTP). However, this is onerous for both the athlete and Sport Integrity Australia and can lead to a potential breach of the anti-doping rules if the athlete inadvertently provides incorrect information.

The NTP is a testing pool sitting between the RTP and the Domestic Testing Pool in the pyramid structure of testing pools prescribed under the Code and International Standard for Testing and Investigations (ISTI). The top tier is the RTP which includes athletes who are subject to the greatest amount of testing and as a result the most onerous athlete whereabouts requirements. The tier below is the NTP which includes athletes from whom some whereabouts information is required to locate and test the athlete out-of-competition at least once a year. The Amending Regulations allow the Sport Integrity Australia CEO to request an athlete's overnight address and the details of regular training activity, being the minimum requirement under the ISTI. Unlike the RTP, the athlete does not need to provide a 60-minute testing window.

The measure is a proportionate response as it provides a flexible approach for both the Sport Integrity Australia CEO and an athlete to provide whereabouts information that the CEO may already request via the RTP. It is reasonable and necessary as it balances the collection of whereabouts information with the likelihood of conducting a test. If an athlete in the NTP fails to comply with a request for whereabouts information they may be elevated to the RTP or sent a warning letter. The request for whereabouts information and consequences for failing to comply, represent a reasonable, necessary and proportionate response to enable various levels of testing to occur under Sport Integrity Australia's test distribution plan.

Conclusion

This Regulation is compatible with human rights as it promotes rights and to the extent that it limits rights, these limitations are reasonable, necessary and proportionate to achieving a legitimate objective.