

**Swimming Australia Limited**

**ANTI-DOPING POLICY**

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## ARTICLE 1 RATIONALE

- 1.1 SAL condemns doping as fundamentally contrary to the spirit of sport.
- Anti-doping programs, including documents such as this Anti-Doping Policy, seek to preserve what is intrinsically valuable about sport. The Essence of sport at all levels in Australia upholds the principles of Fairness, Respect, Responsibility and Safety.
- 1.2 The purpose of this Anti-Doping Policy and the anti-doping programs which it supports are:
- To protect *Athletes'* fundamental right to participate in doping-free sport and thus promote health, fairness and equality for *Athletes* worldwide; and
  - To ensure harmonised, coordinated and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping.

## ARTICLE 2 POWERS OF SAL AND ASADA

- 2.1 Under the *ASADA Act 2006* and the *NAD scheme* established under that Act, ASADA has the legislative authority to:
- investigate possible violations of the anti-doping rules under the *ASADA Act 2006* and the *NAD scheme* for *Athletes* and *Athlete Support Personnel* under the jurisdiction of SAL;
  - make findings in relation to such investigations;
  - notify the *Athlete*, *Athlete Support Personnel*, SAL and other bodies specified in the *ASADA Act 2006* and the *NAD scheme* of its findings and its recommendations as to the consequences of such findings; and
  - present its findings and its recommendations as to consequences at hearings of CAS and other *Tribunals*. ASADA has the authority to do this either at SAL's request or on its own initiative.
- 2.2 SAL has a responsibility to encourage and promote competition free from *Prohibited Substances* and *Methods* and to prevent doping practices in sport. To facilitate this object, SAL refers its anti-doping functions and powers ("anti-doping functions") to ASADA. This includes all functions and powers relating to the issuing of an infraction notice, the convening of a hearing, the presentation of allegations of an anti-doping rule violation at a hearing and all matters incidental thereto.
- 2.3 SAL also recognises the authority of ASADA to investigate possible anti-doping rule violations. SAL may carry out its own investigative functions provided SAL does so under the direction and in coordination with any investigation being carried out by ASADA.

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- 2.4** SAL refers its anti-doping functions to ASADA on the basis that:
- any investigations undertaken by ASADA, unless specifically requested by SAL, will be at no cost to SAL;
  - SAL will immediately advise ASADA of all possible anti-doping rule violations and will, as may reasonably be required by ASADA, assist, cooperate and liaise with ASADA in relation to any investigation or hearing;
  - SAL will accept ASADA's findings on such investigations, and its recommendations as to the consequences of such findings; and
  - ASADA will provide such reports to SAL on ASADA's conduct of the above anti-doping functions as may be agreed between ASADA and SAL and subject to the ASADA Act and the NAD scheme.
- 2.5** ASADA will perform and conduct anti-doping functions and powers in accordance with the ASADA Act 2006, the NAD scheme<sup>1</sup> and this Anti-Doping Policy.
- 2.6** SAL will recognise and enforce any sanction applied by CAS and/or other *Tribunals* in respect of an anti-doping rule violation, or recommendation of ASADA where a hearing has been waived.
- 2.7** *Athletes, Athlete Support Personnel, Members* and other *Persons* bound by this Anti-Doping Policy should be aware of, and are bound by, this referral of anti-doping functions to ASADA and shall assist and cooperate with ASADA in the conduct of its anti-doping functions.

### **2.8 Incorporation of IF Anti-Doping Rules.**

SAL shall comply with FINA's Anti-Doping Policy in so far as it is consistent with SAL's obligations under the ASADA Act 2006 and the NAD scheme. Any procedural rules necessary to effectively implement this Anti-Doping Policy shall be deemed to be included. The rules of each *Member* organisation shall specifically provide that all *Athletes, Athlete Support Personnel* and other *Persons* under the jurisdiction of the *Member* shall be bound by this Anti-Doping Policy.

Where a *Participant* is bound by FINA's Anti-Doping Policy as well as this Anti-Doping Policy, the *Participant* shall be bound to, and have obligations in respect of, both policies simultaneously.

## **ARTICLE 3 SCOPE**

This Anti-Doping Policy applies to:

- 3.1** *Athletes*;
- 3.2** *Athlete Support Personnel*;
- 3.3** *Members*;
- 3.4** Employees and contractors of SAL; and
- 3.5** Any other *Person* who has agreed to be bound by this Anti-Doping Policy.

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<sup>1</sup> In May 2008, the ASADA Act 2006 and NAD scheme were available at [www.asada.gov.au](http://www.asada.gov.au).

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This Anti-Doping Policy shall apply to each *Participant* in the activities of SAL or any of its *Member* organisations by virtue of the *Participant's* membership, accreditation, or participation in SAL, its *Members*, or their activities or *Events*.

This Anti-Doping Policy shall apply to all *Doping Controls* over which SAL has jurisdiction.

### ARTICLE 4 ROLES AND RESPONSIBILITIES

#### 4.1 Athletes

*Athletes* must:

- 4.1.1 Be knowledgeable of and comply with all anti-doping policies and rules applicable to them. This includes, but may not be limited to this Anti-Doping Policy and the *FINA* Anti-Doping Rules; and the *National Anti-Doping (NAD)* Scheme.
- 4.1.2 Be aware of whether they are in *FINA's* and/or *ASADA's Registered Testing Pools* and comply with the requirements of any such membership;
- 4.1.3 Read and understand the *Prohibited List* as it relates to them;
- 4.1.4 Be available for *Sample* collection and provide accurate and up-to-date whereabouts information for this purpose when identified for inclusion in a *Registered Testing Pool*;
- 4.1.5 Take full responsibility, in the context of anti-doping, for what they ingest, *Use* and *Possess*;
- 4.1.6 Inform medical personnel of their obligations not to *Use* or *Possess Prohibited Substances* and *Prohibited Methods* and ensure that any medical treatment received does not violate anti-doping policies and rules applicable to them;
- 4.1.7 Attend anti-doping education as directed by SAL and/or as appropriate. Failure to attend an anti doping education session shall be no excuse for an alleged anti-doping rule violation, nor shall it mitigate culpability of the *Athlete* in determining sanction;
- 4.1.8 Immediately refer information about possible anti-doping rule violations to *ASADA*;
- 4.1.9 Assist, cooperate and liaise with *ASADA* and other *Anti-Doping Organisations* in relation to the conduct of any investigation or hearing into an alleged anti-doping rule violation;
- 4.1.10 Be available for *Sample* collection and provide accurate and up-to-date whereabouts information on a regular basis, even if not a regular *Member* of SAL, if required by the conditions of eligibility established by SAL, the AOC, the APC, *FINA*, *ACGA*, *Major Event Organisers* or as applicable; and
- 4.1.11 Accept that ignorance of this Anti-Doping Policy, the *Code* or the *Prohibited List* is not an excuse from an alleged anti-doping rule violation, and shall not mitigate culpability in sanction.

## 4.2 Athlete Support Personnel

*Athlete Support Personnel* must:<sup>2</sup>

- 4.2.1 Be knowledgeable of and comply with all anti-doping policies and rules applicable to them or the *Athletes* whom they support. This includes, but may not be limited to: this Anti-Doping Policy and *FINA's* Anti-Doping Policy;
- 4.2.2 Support and assist *Anti-Doping Organisations*, including *ASADA* to conduct *Doping Control*;
- 4.2.3 Use their influence on *Athletes'* values and behaviour to foster anti-doping attitudes;
- 4.2.4 Immediately refer information about possible anti-doping rule violations to *ASADA*; and
- 4.2.5 Assist, cooperate and liaise with *ASADA*, *SAL* and other *Anti-Doping Organisations* in relation to the conduct of any investigation or hearing into an alleged anti-doping rule violation.

## 4.3 SAL

*SAL* will:

- 4.3.1 Acknowledge *ASADA's* functions and powers under the *ASADA Act 2006* and the *NAD scheme* established under that Act and will cooperate with *ASADA* and facilitate the execution of these functions and powers as reasonably required by *ASADA*;
- 4.3.2 Adopt and implement an Anti-Doping Policy and rules that conform with the *Code*, the *ASADA Act 2006*, the *NAD scheme*, *FINA*, *ASC*, *AOC*, *APC*, and *ACGA* requirements as applicable;
- 4.3.3 Require as a condition of membership that the policies, rules and programs of *Member* organisations are in compliance with the *Code*, the *ASADA Act 2006*, the *NAD scheme*, *FINA*, *AOC*, *APC*, *ACGA*, *ASC* rules as applicable and this Anti-Doping Policy (which requirement may be fulfilled by adopting this Anti-Doping Policy);
- 4.3.4 Require all *Athletes* and *Athlete Support Personnel* within *SAL's* jurisdiction to recognise and be bound by this Anti-Doping Policy;
- 4.3.5 Make reasonable efforts to make this Anti-Doping Policy available to *Athletes*, *Athlete Support Personnel*, *Members* and any other *Person* who has agreed to be bound by this Anti-Doping Policy<sup>3</sup>;
- 4.3.6 Ensure that at all times it has the authority to enforce this Anti-Doping Policy;

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<sup>2</sup> Note: It is recognised that *Athlete Support Personnel* in certain professions may be subject to legal obligations with respect to confidentiality and disclosure. Guidance on obligations to act should be sought from *ASADA*. In seeking this guidance appropriate confidentiality will be maintained.

<sup>3</sup> [Swimming Australia Anti-Doping Policy](#).

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- 4.3.7 Abide by, implement and enforce this Anti-Doping Policy to the satisfaction of ASADA;
- 4.3.8 Obtain ASADA's prior written approval for any amendments to this Anti-Doping Policy and advise ASADA of any change to the FINA Anti-Doping Policy;
- 4.3.9 Develop and implement, in consultation with ASADA and FINA, comprehensive programs and education initiatives about pure performance in sport;
- 4.3.10 Support the initiatives of and cooperate with ASADA, other *Anti-Doping Organisations* and other sporting organisations to assist the achievement of pure performance in sport;
- 4.3.11 Use its best efforts to assist *Athletes* to fulfil their responsibilities under this Anti-Doping Policy, including providing accurate and up-to-date *Athlete* whereabouts information to ASADA and FINA;
- 4.3.12 Support and assist *Anti-Doping Organisations* including ASADA to conduct *Doping Control*, including the provision of information relating to *Registered Testing Pools* as requested;
- 4.3.13 Where required, act in accordance with this Anti-Doping Policy upon the receipt of a reported anti-doping rule violation; and notification by ASADA of an entry onto the ASADA Register in respect of an *Athlete*, *Athlete Support Personnel*, *Member*, or other *Person* bound by this Anti-Doping Policy, in consultation with ASADA;
- 4.3.14 Immediately refer all instances of possible anti-doping rule violations to ASADA for investigation;
- 4.3.15 Assist, cooperate, and liaise with ASADA and other *Anti-Doping Organisations* including in relation to the conduct of any investigations or hearing into an alleged anti-doping rule violation;
- 4.3.16 Act in a discreet and confidential manner in discharging its obligations under this Policy;
- 4.3.17 Require *Athletes* who are not regular *Members* of the SAL or one of its *Member* organisations to be: bound by this Anti-Doping Policy; available for *Sample* collection; and provide accurate and up-to-date whereabouts information if required by the conditions for eligibility established by ASADA, SAL, the AOC, the APC, ACGA, FINA or *Major Event Organisations*, as applicable;
- 4.3.18 Not disclose or use any information about a person who is alleged to have, or has committed an anti-doping rule violation except as permitted under the ASADA Act 2006, the *NAD scheme* and the *Code*;
- 4.3.19 Recognise and enforce any sanction applied by the CAS and/or other *Tribunals* in respect of an anti-doping rule violation, or recommendation of ASADA where a hearing has been waived;
- 4.3.20 Withhold some or all funding, during any period of his or her *Ineligibility*, to any *Athlete* or *Athlete Support Personnel* who has committed an anti-doping rule violation; and
- 4.3.21 Withhold some or all funding to its *Members* that are not in compliance with the *Code* and this Anti-Doping Policy.

#### 4.4 ASADA

- 4.4.1 ASADA will carry out its functions and powers in accordance with the *ASADA Act 2006* and the *NAD scheme*, as published from time to time, and/or as referred by SAL under this Policy. This includes but is not limited to:
- 4.4.2 Coordinating results management processes, issuing infraction notices, convening hearings, presenting allegations of *Anti-Doping Rule Violations* at hearings and all matters incidental thereto unless otherwise agreed between the parties and outlined in this Policy;
- 4.4.3 Providing and promoting the adoption and implementation of anti-doping policies and rules that conform with the *Code*, the *ASADA Act 2006* and the *NAD scheme*;
- 4.4.4 Coordinating the administration of national *Registered Testing Pools* and all *Athlete* whereabouts requirements in consultation with *NSOs*;
- 4.4.5 Requesting *Athletes* to provide *Samples* and *Testing*, or arranging *Testing of Samples*;
- 4.4.6 Investigating possible anti-doping rule violations;
- 4.4.7 Making findings in relation to such investigations;
- 4.4.8 Notifying the *Athlete*, *Athlete Support Personnel*, SAL and other organisations required to be notified under the *Code*, the *ASADA Act 2006* and the *NAD scheme* of its findings and its recommendations as to the consequences of such findings;
- 4.4.9 Notifying the results of hearings and all relevant incidental matters to relevant bodies including SAL and FINA, as agreed between the parties and outlined in this Policy. Any notification will be subject to the *ASADA Act 2006*, *NAD scheme* and privacy legislation;
- 4.4.10 Monitoring *NSOs*' compliance with their Anti-Doping Policies and notifying the *NSO* and the *ASC* about the extent of this compliance;
- 4.4.11 Publishing reports about the extent of *NSOs*' compliance with their Anti-Doping Policies; and
- 4.4.12 Developing and implementing, and encouraging the sporting community to develop, implement and support, comprehensive programs and education initiatives about pure performance in sport.

#### 4.5 Breaches of Roles and Responsibilities

Where an *Athlete*, *Athlete Support Personnel* or other *Member* bound by this Anti-Doping Policy breaches his or her responsibilities under this Anti-Doping Policy but the breach does not amount to an anti-doping rule violation, SAL may treat the breach as an infringement of SAL's Code of Conduct, or similar framework, and apply penalties in accordance with SAL rules.

## ARTICLE 5 DEFINITION OF DOPING

Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Article 2.1 through Article 2.8 of the Code and Article 6.1 through 6.8 of this Policy.

## ARTICLE 6 ANTI-DOPING RULE VIOLATIONS

*Athletes* or other *Persons* shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the *Prohibited List*.

The following constitute anti-doping rule violations:<sup>4</sup>

### 6.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.

- 6.1.1 It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body. *Athletes* are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their *Samples*. Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on the *Athlete's* part be demonstrated in order to establish an anti-doping violation under Article 6.1.<sup>5</sup>

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<sup>4</sup> Comment 'a' to Article 6: the purpose of Article 6 is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules has been violated.

<sup>5</sup> Comment to Article 6.1.1: For purposes of anti-doping rule violations involving the presence of a *Prohibited Substance* (or its *Metabolites* or *Markers*), the Code (and therefore this Policy) adopts the rule of strict liability which was found in the Olympic Movement Anti-Doping Code ("OMADC") and the vast majority of pre-Code anti-doping rules. Under the strict liability principle, an *Athlete* is responsible, and an anti-doping rule violation occurs, whenever a *Prohibited Substance* is found in an *Athlete's Sample*. The violation occurs whether or not the *Athlete* intentionally or unintentionally Used a *Prohibited Substance* or was negligent or otherwise at fault. If the positive *Sample* came from an *In-Competition* test, then the results of that *Competition* are automatically invalidated (Article 18 (Automatic Disqualification of Individual Results)). However, the *Athlete* then has the possibility to reduce sanctions if the *Athlete* can demonstrate that he or she was not at fault or significant fault (Article 19.6 (Elimination or Reduction of period of Ineligibility Based on Exceptional Circumstances)) or in certain circumstances did not intend to enhance his or her sport performance (Article 19.5 (Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances)).

The strict liability rule for the finding of a *Prohibited Substance* in an *Athlete's Sample*, with a possibility that sanctions may be modified based on specified criteria, provides a reasonable balance between effective anti-doping enforcement for the benefit of all "clean" *Athletes* and fairness in the exceptional circumstance where a *Prohibited Substance* entered an *Athlete's* system through *No Fault* or *Negligence* or *No Significant Fault* or *Negligence* on the *Athlete's* part. It is important to emphasize that while the determination of whether the anti-doping rule violation has occurred is based on strict liability, the imposition of a fixed period of *Ineligibility* is not automatic. The strict liability principle set forth in the Code has been consistently upheld in the decisions of CAS.

- 6.1.2** Sufficient proof of an anti-doping rule violation under Article 6.1 is established by either of the following: presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in the *Athlete's A Sample* where the *Athlete* waives analysis of the *B Sample* and the *B Sample* is not analysed; or, where the *Athlete's B Sample* is analysed and the analysis of the *Athlete's B Sample* confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the *Athlete's A Sample*.<sup>6</sup>
- 6.1.3** Excepting those substances for which a quantitative reporting threshold is specifically identified in the *Prohibited List*, the presence of any quantity of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample* shall constitute an anti-doping rule violation.
- 6.1.4** As an exception to the general rule of Article 6.1, the *Prohibited List* or *International Standards* may establish special criteria for the evaluation of *Prohibited Substances* that can also be produced endogenously.
- 6.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.**<sup>7</sup>
- 6.2.1** It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body. Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on the *Athlete's* part be demonstrated in order to establish an anti-doping rule violation for *Use* of a *Prohibited Substance* or a *Prohibited Method*.
- 6.2.2** The success or failure of the *Use* or *Attempted Use* of a *Prohibited Substance* or *Prohibited Method* is not material. It is sufficient that the *Prohibited Substance* or *Prohibited Method* was *Used* or *Attempted* to be *Used* for an anti-doping rule violation to be committed.<sup>8</sup>

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<sup>6</sup> Comment to Article 6.1.2: The Anti-Doping Organisation with results management responsibility may in its discretion choose to have the *B Sample* analysed even if the *Athlete* does not request the analysis of the *B Sample*.

<sup>7</sup> Comment to Article 6.2: It has always been the case that *Use* or *Attempted use* of a *Prohibited Substance* or *Prohibited Method* may be established by any reliable means. As noted in the Comment to Article 7.2 (*Methods of Establishing Facts and Presumptions*), unlike the proof required to establish an anti-doping rule violation under Article 6.1, *Use* or *Attempted use* may also be established by other reliable means such as admissions by the *Athlete*, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, or other analytical information which does not otherwise satisfy all the requirements to establish "Presence" of a *Prohibited Substance* under Article 6.1. For example, *Use* may be established based upon reliable analytical data from the analysis of an *A Sample* (without confirmation from an analysis of a *B Sample*) or from the analysis of a *B Sample* alone where the Anti-Doping Organisation provides a satisfactory explanation for the lack of confirmation in the other *Sample*.

<sup>8</sup> Comment to Article 6.2.2: Demonstrating the "Attempted Use" of a *Prohibited Substance* requires proof of intent on the *Athlete's* part. The fact that intent may be required to prove this particular anti-doping rule violation does not undermine the strict liability principle established for violations of Article 6.1 and violations of Article 6.2 in respect of *Use* of a *Prohibited Substance* or *Prohibited Method*.

An *Athlete's Use* of a *Prohibited Substance* constitutes an anti-doping rule violation unless such substance is not prohibited *Out-of-Competition* and the *Athlete's Use* takes place *Out-of-Competition*. (However, the presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in a *Sample* collected *In-Competition* is a violation of Article 6.1 (*Presence* of a *Prohibited Substance* or its *Metabolites* or *Markers*) regardless of when that substance might have been administered.)

- 6.3 Refusing or failing without compelling justification to submit to Sample collection after notification as authorised in applicable anti-doping rules, or otherwise evading Sample collection.**<sup>9</sup>
- 6.4 Violation of applicable requirements regarding Athlete availability for Out-of Competition Testing, including failure to file required whereabouts information and Missed Tests which are declared based on rules which comply with the International Standard for Testing. Any combination of three Missed Tests and/or Filing Failures within an eighteen-month period as determined by Anti-Doping Organisations with jurisdiction over the Athlete shall constitute an anti-doping rule violation.**<sup>10</sup>
- 6.5 Tampering or Attempted Tampering with any part of Doping Control.**<sup>11</sup>
- 6.6 Possession of Prohibited Substances and Prohibited Methods.**
- 6.6.1 Possession by an Athlete In-Competition of any Prohibited Method or any Prohibited Substance, or Possession by an Athlete Out-of-Competition of any Prohibited Method or any Prohibited Substance which is prohibited Out-of-Competition unless the Athlete establishes that the Possession is pursuant to a therapeutic use exemption granted in accordance with Article 9 (Therapeutic Use) or other acceptable justification.**<sup>12</sup>
- 6.6.2 Possession by an Athlete Support Personnel In-Competition of any Prohibited Method or any Prohibited Substance, or Possession by an Athlete Support Personnel Out-of-Competition of any Prohibited Method or any Prohibited Substance which is prohibited Out-of-Competition in connection with an Athlete, Competition or training, unless the Athlete Support Personnel establishes that the Possession is pursuant to a therapeutic use exemption granted to an Athlete in accordance with Article 9 (Therapeutic Use) or other acceptable justification.**<sup>13</sup>
- 6.7 Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method.**

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<sup>9</sup> Comment to Article 6.3: Failure or refusal to submit to Sample collection after notification was prohibited in almost all pre-Code anti-doping rules. This Article expands the typical pre-Code rule to include “otherwise evading Sample collection” as prohibited conduct. Thus, for example, it would be an anti-doping rule violation if it were established that an Athlete was hiding from a Doping Control official to evade notification or Testing. A violation of “refusing or failing to submit to Sample collection” may be based on either intentional or negligent conduct of the Athlete, while “evading” Sample collection contemplates intentional conduct by the Athlete.

<sup>10</sup> Comment to Article 6.4: Separate Whereabouts Filing Failures and Missed Tests declared under the rules of the Athlete’s International Federation, ASADA or any other Anti-Doping Organisation with authority to declare Whereabouts Filing Failures and Missed Tests in accordance with the International Standard for Testing shall be combined in applying this Article. In appropriate circumstances, Missed Tests or Filing Failures may also constitute an anti-doping rule violation under Article 6.3 or Article 6.5.

<sup>11</sup> Comment to Article 6.5: This Article prohibits conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. For example, altering identification numbers on a Doping Control form during Testing, breaking the B bottle at the time of B Sample analysis or providing fraudulent information to an Anti-Doping Organisation.

<sup>12</sup> Comment to Article 6.6.1 and 6.6.2: Acceptable justification would not include, for example, buying or Possessing a Prohibited Substance for purposes of giving it to a friend or relative, except under justifiable medical circumstances where that Person had a physician’s prescription, eg buying insulin for a diabetic child.

<sup>13</sup> Comment to Article 6.6.2: Acceptable justification would include, for example, a team doctor carrying Prohibited Substances for dealing with acute and emergency situations.

- 6.8 Administration or Attempted administration to any Athlete In-Competition of any Prohibited Method or Prohibited Substance, or administration or Attempted administration to any Athlete Out-of-Competition of any Prohibited Method or any Prohibited Substance that is prohibited Out-of-Competition, or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any Attempted anti-doping rule violation.<sup>14</sup>

## ARTICLE 7 PROOF OF DOPING

### 7.1 Burdens and Standards of Proof.

ASADA or SAL shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether ASADA or SAL has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where this Anti-Doping Policy places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Articles 19.5 and 19.7 where the Athlete must satisfy a higher burden of proof.<sup>15</sup>

### 7.2 Methods of Establishing Facts and Presumptions.

Facts related to anti-doping rule violations may be established by any reliable means, including admissions.<sup>16</sup> The following rules of proof shall be applicable in doping cases:

- 7.2.1 WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.

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<sup>14</sup> Comment 'b' to Article 6: The Code does not make it an anti-doping rule violation for an Athlete or other Person to work or associate with Athlete Support Personnel who are serving a period of Ineligibility. However, a Sporting Organisation may adopt its own rules which prohibit such conduct.

<sup>15</sup> Comment to Article 7.1: this standard of proof required to be met by the Anti-Doping Organisation is comparable to the standard which is applied in most countries to cases involving professional misconduct. It has also been widely applied by courts and hearing panels in doping cases. See, for example, the CAS decision in N, J, Y, W v FINA, CAS 98/208, 22 December 1998.

<sup>16</sup> Comment to Article 7.2: For example, an Anti-Doping Organisation may establish an anti-doping rule violation under Article 6.2 (Use or Attempted Use of a Prohibited Substance or Prohibited Method) based on the Athlete's admissions, the credible testimony of third Persons, reliable documentary evidence, reliable analytical data from either an A or B Sample as provided in the Comments to Article 6.2, or conclusions drawn from the profile of a series of the Athlete's blood or urine Samples.

If the *Athlete* or other *Person* rebuts the preceding presumption by showing that a departure from the *International Standard* for Laboratories occurred which could reasonably have caused the *Adverse Analytical Finding*, then ASADA or SAL shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding*.<sup>17</sup>

- 7.2.2** Departures from any other *International Standard* or other anti-doping rule or policy which did not cause an *Adverse Analytical Finding* or other anti-doping rule violation shall not invalidate such results. If the *Athlete* or other *Person* establishes that a departure from another *International Standard* or other anti-doping rule or policy which could reasonably have caused the *Adverse Analytical Finding* or other anti-doping rule violation occurred, then ASADA or SAL shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding* or the factual basis for the anti-doping rule violation.
- 7.2.3** The facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction which is not the subject of a pending appeal shall be irrebuttable evidence against the *Athlete* or other *Person* to whom the decision pertained of those facts unless the *Athlete* or other *Person* establishes that the decision violated principles of natural justice.
- 7.2.4** The hearing panel in a hearing on an anti-doping rule violation may draw an inference adverse to the *Athlete* or other *Person* who is asserted to have committed an anti-doping rule violation based on the *Athlete's* or other *Person's* refusal, after a request made in a reasonable time in advance of the hearing, to appear at the hearing (either in person or telephonically as directed by the hearing panel) and to answer questions from the hearing panel or the *Anti-Doping Organisation* asserting the anti-doping rule violation.<sup>18</sup>

## ARTICLE 8 THE PROHIBITED LIST

### 8.1 Incorporation of the *Prohibited List*.

This Policy incorporates the *Prohibited List*<sup>19</sup> which is published and revised by WADA as described in Article 4.1 of the *Code* and changes from time to time. If WADA has expanded the *Prohibited List* for FINA, this Policy incorporates the *Prohibited List* as so expanded.

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<sup>17</sup> Comment to Article 7.2.1: The burden is on the *Athlete* or other *Person* to establish, by a balance of probability, a departure from the *International Standard* for Laboratories that could reasonably have caused the *Adverse Analytical Finding*. If the *Athlete* or other *Person* does so, the burden shifts to the *Anti-Doping Organisation* to prove to the comfortable satisfaction of the hearing panel that the departure did not cause the *Adverse Analytical Finding*.

<sup>18</sup> Comment to Article 7.2.4: Drawing an adverse inference under these circumstances has been recognised in numerous CAS decisions.

<sup>19</sup> In May 2008, the *WADA Prohibited List* was accessible on the internet through the website of the World Anti-Doping Agency ([www.wada-ama.org](http://www.wada-ama.org)).

## 8.2 Publication and Revision of the *Prohibited List*.

Unless provided otherwise in the *Prohibited List* or a revision, the *Prohibited List* and revisions shall go into effect under this Policy three (3) months after publication of the *Prohibited List* by WADA or as amended by WADA from time to time without requiring any further action by ASADA or SAL.

## 8.3 Prohibited Substances and Prohibited Methods Identified on the Prohibited List

### 8.3.1 *Prohibited Substances and Prohibited Methods*

The *Prohibited List* shall identify those *Prohibited Substances* and *Prohibited Methods* which are prohibited as doping at all times (both *In-Competition* and *Out-of-Competition*) because of their potential to enhance performance in future *Competitions* or their masking potential and those substances and methods which are prohibited *In-Competition* only. *Prohibited Substances* and *Prohibited Methods* may be included in the *Prohibited List* by general category (eg, anabolic agents) or by specific reference to a particular substance or method.<sup>20</sup>

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<sup>20</sup> Comment to Article 8.3.1: There will be one *Prohibited List*. The substances which are prohibited at all times would include masking agents and those substances which, when Used in training, may have long-term performance enhancing effects such as anabolics. All substances and methods on the *Prohibited List* are prohibited *In-Competition*. *Out-of-Competition Use* (Article 6.2) of a substance which is only prohibited *In-Competition* is not an anti-doping rule violation unless an Adverse Analytical Finding for the substance or its Metabolites is reported for a Sample collected *In-Competition* (Article 6.1).

There will be only one document called the “*Prohibited List*”. WADA may add additional substances or methods to the *Prohibited List* for particular sports (eg the inclusion of beta-blockers for shooting) but this will also be reflected on the single *Prohibited List*. A particular sport is not permitted to seek exemption from the basic list of *Prohibited Substances* (eg eliminating anabolics from the *Prohibited List* for “mind sports”). The premise of this decision is that there are certain basic doping agents which anyone who chooses to call himself or herself an Athlete should not take.

### 8.3.2 Specified Substances

For purposes of the application of Article 19 (Sanctions on Individuals), all *Prohibited Substances* shall be "Specified Substances" except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the *Prohibited List*. *Prohibited Methods* shall not be Specified Substances.<sup>21</sup>

### 8.3.3 New Classes of *Prohibited Substances*

In the event WADA expands the *Prohibited List* by adding a new class of *Prohibited Substances* in accordance with Article 4.1 of the *Code*, WADA's Executive Committee shall determine whether any or all *Prohibited Substances* within the new class of *Prohibited Substances* shall be considered Specified Substances under Article 8.3.2.

## 8.4 Criteria for Including Substances and Methods on the *Prohibited List*.

As provided in Article 4.3.3 of the *Code*, WADA's determination of the *Prohibited Substances* and *Prohibited Methods* that will be included on the *Prohibited List* and the classification of substances into categories on the *Prohibited List* is final and shall not be subject to challenge by an *Athlete* or other *Person* based on an argument that the substance or method was not a masking agent or did not have the potential to enhance performance, represent a health risk or violate the spirit of sport.<sup>22</sup>

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<sup>21</sup> Comment to Article 8.3.2: In drafting the *Code* there was considerable debate among stakeholders over the appropriate balance between inflexible sanctions which promote harmonisation in the application of the rules and more flexible sanctions which better take into consideration the circumstances of each individual case. This balance continued to be discussed in various CAS decisions interpreting the *Code*. After three years experience with the *Code*, the strong consensus of stakeholders is that while the occurrence of an anti-doping rule violation under Articles 6.1 (Presence of a *Prohibited Substance* or its *Metabolites* or *Markers*) and 6.2 (Use of a *Prohibited Substance* or *Prohibited Method*) should still be based on the principle of strict liability, the *Code* sanctions should be made more flexible where the *Athlete* or other *Person* can clearly demonstrate that he or she did not intend to enhance sport performance. The change to Article 8.3 and related changes to Article 19 provide this additional flexibility for violations involving many *Prohibited Substances*. The rules set forth in Article 19.6 (Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances) would remain the only basis for eliminating or reducing a sanction involving anabolic steroids and hormones, as well as the stimulants and the hormone antagonists and modulators so identified on the *Prohibited List*, or *Prohibited Methods*.

<sup>22</sup> Comment to Article 8.4: The question of whether a substance meets the criteria in Article 8.4 (Criteria for Including Substances and Methods on the *Prohibited List*) in a particular case cannot be raised as a defence to an anti-doping rule violation. For example, it cannot be argued that the *Prohibited Substance* detected would not have been performance enhancing in that particular sport. Rather, doping occurs when a substance on the *Prohibited List* is found in an *Athlete's Sample*. Similarly, it cannot be argued that a substance listed in the class of anabolic agents does not belong in that class.

## ARTICLE 9 THERAPEUTIC USE

### 9.1 International Standard for TUEs

Any *Athlete* with a documented medical condition requiring the *Use* of a *Prohibited Substance* or a *Prohibited Method* must request a *Therapeutic Use Exemption (TUE)* in accordance with the *Code*, the *International Standard for TUEs* and this Policy.<sup>23</sup>

### 9.2 International-Level Athletes

*International-Level Athletes* or any other *Athlete* who is entered in an *International Event* with documented medical conditions requiring the *Use* of a *Prohibited Substance* or a *Prohibited Method* must request a *TUE* from *FINA* (regardless of whether the *Athlete* previously has received a *TUE* from *ASDMAC* or another *TUE Committee*). *Athletes* who have been identified as included in *FINA's Registered Testing Pool* may only obtain *TUEs* in accordance with the rules of *FINA*.<sup>24</sup>

### 9.3 National-Level Athletes

*Athletes* who are not in *FINA's Registered Testing Pool* but are in *ASADA's Registered Testing Pool* or *Domestic Testing Pool* with documented medical conditions requiring the *Use* of a *Prohibited Substance* or a *Prohibited Method* must request a *TUE* from *ASDMAC*.

### 9.4 Other Athletes

*Athletes* who are not in *FINA's* or *ASADA's Registered Testing Pool, Domestic Testing Pool* or have not otherwise been notified by *ASADA*, in accordance with the *NAD scheme*, that they require *TUEs* prior to *Use* of a *Prohibited Substance* or a *Prohibited Method*, may submit applications to *ASDMAC* for approval of a *TUE* in accordance with the procedures of *ASDMAC*.

### 9.5 TUE Applications

**9.5.1** *Athletes* should submit applications for *TUEs* no less than 21 days before they require the approval (eg prior to a *National Event*), except for retroactive *TUEs* under Article 9.5.2.

**9.5.2** An application for a *TUE* will not be considered for retroactive approval except in cases where:

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<sup>23</sup> *International-Level Athletes* or *Athletes* entering an *International Event* should seek guidance on the process for seeking a *TUE* from the *WADA* website at <http://www.wada-ama.org> or *FINA's* website at [http://www.fina.org/project/index.php?option=com\\_content&task=view&id=70&Itemid=129](http://www.fina.org/project/index.php?option=com_content&task=view&id=70&Itemid=129). National level athletes should seek guidance from the *ASDMAC* website at <http://www.asdmac.org.au>.

<sup>24</sup> Unless provided otherwise by the rules of an *IF* or an agreement with an *IF*, *ASDMAC* does not have the authority under the *Code* to grant *TUEs* to *International-Level Athletes* or for *International Events*.

- (a) emergency treatment or treatment of an acute medical condition was necessary; or
- (b) due to exceptional circumstances, there was insufficient time or opportunity for an *Athlete* to submit, or a *TUE* Committee to consider, an application prior to *Doping Control*; or
- (c) *ASDMAC* procedures, in accordance with the *Code* and the *International Standard for Testing*, provide for retroactive approval.

**9.5.3** An *Athlete* may not apply to more than one body for a *TUE* at the same time. Applications must be in accordance with the *International Standard for TUEs* and the procedures of FINA or *ASDMAC* as appropriate.

## **9.6 Reporting of TUEs**

The granting of any *TUE* by *ASDMAC* for an *Athlete* in *ASADA's Registered Testing Pool* shall be promptly reported to *WADA*.

## **9.7 Review of TUEs**

- 9.7.1** *WADA*, on its own initiative, may review at any time the granting of a *TUE* to any *International Level Athlete* in *FINA's Registered Testing Pool* or national-level *Athlete* who is included in *ASADA's Registered Testing Pool*. Further, upon the request of any such *Athlete* who has been denied a *TUE*, *WADA* may review such denial. If *WADA* determines that such granting or denial of a *TUE* did not comply with the *International Standard for TUEs*, *WADA* may reverse the decision.
- 9.7.2** An *Athlete* who is denied a *TUE* by *ASDMAC* must seek review by *WADA* of the decision before any appeal may be commenced under Article 21.4.
- 9.7.3** If, contrary to the requirements of the *Code*, *FINA* does not have a process in place where *Athletes* may request *TUEs*, an *International-Level Athlete* may request *WADA* to review the application as if it had been denied.

## **ARTICLE 10 ATHLETE WHEREABOUTS REQUIREMENTS**

### **10.1 Requirement for Whereabouts Information**

- 10.1.1** All *Athletes* identified for inclusion in a *Registered Testing Pool* must provide accurate whereabouts information to the relevant *Anti-Doping Organisation/s* in accordance with the *Code* and *International Standards*, the *NAD scheme*, *FINA's Anti-Doping Policy* and this Policy, and to keep this information updated at all times.
- 10.1.2** *ASADA* shall coordinate the identification of *Athletes* in its *Registered Testing Pool* and the collecting of current location information and shall submit these to *WADA*. Information may also be shared with *FINA*. This information shall be maintained by those bodies in strict confidence at all times and shall be used exclusively for purposes of planning, coordinating or conducting *Testing* or establishing anti-doping rule violations under Article 6.4.

## 10.2 International-Level and National-Level Athletes

- 10.2.1** Any *Athlete* included in FINA's *Registered Testing Pool* must provide whereabouts information in accordance with the applicable requirements as set out in the *International Standard for Testing* and determined by FINA.
- 10.2.2** Any *Athlete* included in ASADA's *Registered Testing Pool* must provide whereabouts information in accordance with the applicable requirements as set out in the *International Standard for Testing*, the *NAD scheme* and as determined by ASADA.
- 10.2.3** Where an *Athlete* has been designated for inclusion in both FINA's and ASADA's *Registered Testing Pools*, the *Athlete* may only be required to provide whereabouts information to ASADA. ASADA will then be responsible for notifying FINA that it is receiving the *Athlete*'s whereabouts information and for sharing the relevant information with FINA and other relevant *Anti-Doping Organisations* in accordance with the *Code* and the *International Standard for Testing*. *Athletes* will be advised by ASADA or SAL if FINA is accepting athlete whereabouts information collected from ASADA and that therefore they need only submit whereabouts to ASADA, and must consent to the sharing of this information.
- 10.2.4** An *Athlete* who has been designated for inclusion in ASADA's *Registered Testing Pool* shall continue to be subject to the whereabouts requirements of ASADA unless and until:
- (a) he or she retires from *Competition* in accordance with Article 11; or
  - (b) he or she has been given written notice by ASADA that he or she is no longer designated for inclusion in the ASADA's *Registered Testing Pool*.

## 10.3 Whereabouts Failures

- 10.3.1** In accordance with Article 6.4, an *Athlete* in a *Registered Testing Pool* will be deemed to have committed an anti-doping rule violation if he or she commits a total of three (3) *Whereabouts Failures* (which may be three *Filing Failures*, or three *Missed Tests*, or any combination of *Filing Failures* and *Missed Tests* adding up to three in total) in any eighteen (18) month period. This 18 month period is a rolling period that starts to run on each date that an *Athlete* commits a *Whereabouts Failure*.
- 10.3.2** More than one *Anti-Doping Organisation* may have jurisdiction to *Test* an *Athlete* who has been designated for inclusion in a *Registered Testing Pool*. For the purposes of Article 10.3.1 above and in accordance with Article 23, ASADA shall recognise and respect *Filing Failures* and *Missed Tests* declared by other *Anti-Doping Organisations* pursuant to the *International Standard for Testing*, and those *Filing Failures* and *Missed Tests* shall be combined for the purposes of Article 6.4. As a consequence, any *Athlete* who commits any three *Whereabouts Failures* in any 18 month period shall be deemed to have committed an anti-doping rule violation under Article 6.4, irrespective of which *Anti-Doping Organisation/s* have/has declared the *Whereabouts Failures* in question.

**ARTICLE 11 RETIREMENT AND RETURN TO COMPETITION**

**11.1 International-Level Athletes**

**11.1.1** An *Athlete* who has been identified by FINA for inclusion in its *Registered Testing Pool* shall be subject to FINA's retirement and return to *Competition* requirements, to the exclusion of article 11.2 below.

**11.1.2** *Athletes* wishing to retire should contact SAL to determine if they are in FINA's *Registered Testing Pool* and therefore are required to follow FINA's procedures. SAL shall immediately notify ASADA of the retirement or reinstatement of any *Athlete* in FINA's *Registered Testing Pool* and provide copies of the correspondence from FINA confirming this retirement/reinstatement.

**11.2 National level Athletes**

*Athletes* in ASADA's *Registered Testing Pool* or *Domestic Testing Pool* shall be subject to the following requirements:

**11.2.1** An *Athlete* who wants to retire from *Competition* must do so by notifying SAL by fully completing and forwarding to SAL the FINA "RETIREMENT NOTIFICATION FORM". SAL will forward this form on to ASADA. Retirement notifications that are not fully completed will not be accepted and will be returned to the *Athlete* for completion. An *Athlete's* retirement date will be the date ASADA receives the fully completed retirement notification.

**11.2.2** Upon receipt of a notification in accordance with Article 11.2.1, ASADA will, as soon as reasonably practicable, provide the *Athlete* and their NSO with a written confirmation of the *Athlete's* retirement.

**11.2.3** Retirement does not:

- (a) excuse the *Athlete* from giving a *Sample* requested on or before their retirement date, or a *Sample* required as part of an investigation commenced prior to their retirement date;
- (b) excuse the *Athlete* from assisting, cooperating and liaising with ASADA and other *Anti-Doping Organisations* in relation to the conduct of any investigation or hearing into an alleged anti-doping rule violation;
- (c) prevent the analysis of a *Sample* given by the *Athlete* on or before their retirement date;
- (d) affect the results of *Testing* under (a) or (b) above;
- (e) exempt the *Athlete* from this Policy in relation to an anti-doping rule violation committed on or before their retirement date; or
- (f) affect ASADA's power to conduct results management (see Article 15.10).

**11.2.4** An *Athlete* who has retired in accordance with Article 11.2.1 and who wishes to return to *Competition*, must do so by notifying SAL by fully completing and forwarding the ASADA "REQUEST FOR REINSTATEMENT FORM"

(reinstatement request)<sup>25</sup>. SAL will forward this form to ASADA. Reinstatement requests that are not fully completed will not be accepted and will be returned to the *Athlete* for completion. The *Athlete's* reinstatement request date will be the date ASADA receives the fully completed reinstatement request. SAL will make the decision whether to reinstate an *Athlete* in consultation with ASADA.

**11.2.5** Upon receipt of notification in accordance with Article 11.2.4, ASADA will, as soon as reasonably practicable:

- (a) provide the *Athlete* with a written confirmation of the outcome of the *Athlete's* reinstatement request; and
- (b) if the reinstatement request is approved by SAL, provide SAL with a written confirmation of ASADA's acceptance of the *Athlete's* reinstatement.

**11.2.6** If reinstatement is granted then this Policy will apply to the *Athlete* from the date of their reinstatement request. An *Athlete* who is reinstated pursuant to Article 11.2.4 may not compete in *Competitions* and *Events* conducted by or under the auspices of SAL for a period of six (6) months from the date of the reinstatement request.

**11.2.7** An *Athlete* must be available for unannounced *Out-of-Competition Testing* in accordance with this Policy from the date of their reinstatement request. Being available for *Out-of-Competition Testing* means that an *Athlete* has complied with any request by an *Anti-Doping Organisation* to provide a *Sample*, and any *Athlete* who is designated for inclusion in FINA's or ASADA's *Registered Testing Pool* has complied with whereabouts requirements set out in Article 10.

**11.2.8** Decisions of SAL in relation to the reinstatement request of an *Athlete* may be appealed to CAS or a *Tribunal* specified in Article 21 by the *Athlete* or ASADA.

## ARTICLE 12 TESTING

### 12.1 Submit to *Testing*

All *Athletes* must comply with any request for *Testing* by an *Anti-Doping Organisation* with *Testing* jurisdiction, including ASADA.

### 12.2 Standards for *Testing*

*Anti-Doping Organisations* with *Testing* jurisdiction shall conduct such *Testing* in conformity with the *International Standard* for *Testing* in force at the time of *Testing*.

### 12.3 Selection of *Athletes* for *Testing*

**12.3.1** Where required by FINA, SAL or a *Major Event Organisation*, *Athletes* shall be selected for *Testing In-Competition* in accordance with the applicable rules of FINA or the *Major Event Organisation*.

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In May 2008, the ASADA REQUEST FOR REINSTATEMENT FORM was accessible on the internet through the website of the *Australian Sports Anti-Doping Authority* ([www.asada.gov.au](http://www.asada.gov.au)).

**12.3.2** Notwithstanding any other regulations, ASADA may test any *Athlete*, any time, anywhere, in accordance with the *Code*, the *ASADA Act* and the *NAD scheme*.

## **ARTICLE 13 ANALYSIS OF SAMPLES**

*Samples* collected under this Policy shall be analysed in accordance with the following principles:

### **13.1 Use of WADA Approved Analysis**

For the purposes of Article 6.1 (Presence of a *Prohibited Substance* or its *Metabolites* or *Markers*), *Samples* will be analysed only in WADA-accredited laboratories or as otherwise approved by WADA.

### **13.2 Purpose of Collection and Analysis of Samples**

*Samples* shall be analysed to detect *Prohibited Substances* and *Prohibited Methods* identified on the *Prohibited List* and other substances as may be directed by WADA pursuant to Article 4.5 of the *Code* (WADA's Monitoring Program), or to assist an *Anti-Doping Organisation* in profiling relevant parameters in an *Athlete's* urine, blood or other matrix, including DNA or genomic profiling, for anti-doping purposes.

### **13.3 Research on Samples**

No *Sample* may be used for any purpose other than as described in Article 13.2 without the *Athlete's* written consent. *Samples* used for purposes other than Article 13.2 shall have any means of identification removed such that they cannot be traced back to a particular *Athlete*.

### **13.4 Standards for Sample Analysis and Reporting**

Laboratories shall analyse *Samples* and report results in conformity with the *International Standard* for Laboratories.

### **13.5 Retesting Samples**

A *Sample* may be reanalysed for the purpose of Article 13.2 at any time exclusively at the direction of the *Anti-Doping Organisation* that initiated the *Sample* collection or WADA. The circumstances and conditions for retesting *Samples* shall conform to the requirements of the *International Standard* for Laboratories.

## **ARTICLE 14 INVESTIGATIONS**

**14.1** When any *Person* bound by this Policy has information relevant to a possible anti-doping rule violation, that *Person* must immediately pass such information to ASADA. The *Person* must act in a discreet and confidential manner in discharging their obligations under this

Policy. The deliberate or wilful withholding of information relevant to a potential anti-doping rule violation from ASADA by an *Athlete* or other *Person* may constitute an anti-doping rule violation or a breach to be dealt with under SAL's rules.

- 14.2 Where an investigation is required to determine whether an anti-doping rule violation may have occurred under this Policy, ASADA will conduct the investigation in accordance with the Australian Government Investigations Standard, the *Code*, relevant *International Standards*, the *ASADA Act 2006* and the *NAD scheme*, as in force from time to time..
- 14.3 Where ASADA believes it is appropriate to do so, ASADA may, in its discretion, advise SAL of an ASADA investigation. ASADA may also consult affected/interested parties about their participation in any investigation. Any disclosure of information regarding an investigation will be in accordance with the *Code*, the *ASADA Act 2006*, the *NAD scheme*, the *Privacy Act 1988* and the Australian Government Investigations Standard, as in force from time to time.
- 14.4 SAL may, with prior written agreement from ASADA, carry out its own investigation into the matter or related matters, provided SAL does so in coordination with any investigation being undertaken by ASADA and seeks ASADA's input into such investigation;
- 14.5 All *Persons* bound by this Anti-Doping Policy and SAL must assist, cooperate, and liaise with ASADA in relation to any investigation into an alleged anti-doping rule violation.

#### ARTICLE 15 RESULTS MANAGEMENT

- 15.1 ASADA and SAL will recognise the results of laboratory analysis of *Samples* conducted by WADA-accredited laboratories in accordance with the *International Standard for Testing*.
- 15.2 SAL must recognise any determination or finding by ASADA or another *Anti-Doping Organisation* that an anti-doping rule violation may have occurred.
- 15.3 ASADA shall manage the results of all potential anti-doping rule violations under this Anti-Doping Policy in accordance with Article 7 of the *Code*, the *ASADA Act 2006* and the *NAD scheme*, as in force from time to time.
- 15.4 ASADA will conduct any follow up investigation and be responsible for notification of an alleged anti-doping rule violation and all matters incidental thereto, in accordance with the *Code*, the *ASADA Act 2006* and the *NAD scheme*, as in force from time to time.
- 15.5 ASADA will issue an infraction notice. ASADA will advise SAL and any other relevant parties that ASADA is issuing an infraction notice prior to issuing the infraction notice.
- 15.6 The infraction notice shall:
  - 15.6.1 notify the *Person* of the anti-doping rule/s which appear/s to have been violated and the basis for the violation;
  - 15.6.2 enclose a copy of this Policy or the web site address where this Policy can be located;
  - 15.6.3 state that the *Person* has a right to a hearing in relation to the alleged anti-doping rule violation; and

- 15.6.4** state that if the *Person* does not respond within 14 days of receipt of the infraction notice,<sup>26</sup> or another period of time as agreed by ASADA, they will be deemed to have waived their right to a hearing and SAL, in consultation with ASADA and other relevant parties, where applicable, may apply a sanction in accordance with Article 19.
- 15.6.5** be copied to SAL and other relevant parties in accordance with the *Code* and the *NAD scheme*.
- 15.7** ASADA, SAL and any other relevant parties will only disclose or use information about a *Person* who is alleged to have, or has committed an anti-doping rule violation as permitted under the *Code*, the *ASADA Act 2006*, the *NAD scheme* and the Confidentiality Undertaking signed between ASADA and SAL.
- 15.8** ASADA may refer the matter to hearing in accordance with Article 17 unless the *Person* in writing acknowledges that they have admitted the anti-doping rule violation, and waives the right to a hearing in relation to whether the *Person* committed an anti-doping rule violation and what sanction will apply.
- 15.9** If the *Person* does not respond within 14 days,<sup>26</sup> or another period of time as agreed by ASADA, a hearing can be held in absentia or SAL, in consultation with ASADA and other relevant parties, where applicable, may apply a sanction in accordance with Article 19.
- 15.10** If an *Athlete* or other *Person* retires while a results management process is underway, ASADA retains jurisdiction to complete its results management process. If an *Athlete* or other *Person* retires before any results management process has begun, so long as ASADA would have had results management jurisdiction over the *Athlete* or other *Person* at the time the *Athlete* or other *Person* committed an anti-doping rule violation, ASADA will have jurisdiction to conduct results management.<sup>27</sup>

## ARTICLE 16 PROVISIONAL SUSPENSIONS

### 16.1 **Mandatory Provisional Suspension after A Sample Adverse Analytical Finding**

Where an A Sample Adverse Analytical Finding is received for a *Prohibited Substance* other than a Specified Substance, SAL, in consultation with ASADA, will promptly impose a *Provisional Suspension* on the *Athlete*.

### 16.2 **Optional Provisional Suspension based on A Sample Adverse Analytical Finding for Specified Substances or other anti-doping rule violations**

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<sup>26</sup> See the *NAD scheme* for details of when a notice from ASADA is deemed to have been received.

<sup>27</sup> *Comment to Article 15.10: Conduct by an Athlete or other Person before the Athlete or other Person was subject to the jurisdiction of any Anti-Doping Organisation would not constitute an anti-doping rule violation but could be a legitimate basis for denying the Athlete or other Person membership in a Sporting Organisation.*

Where an A *Sample Adverse Analytical Finding* is received for a Specified Substance or SAL receives initial notification about another anti-doping rule violation, SAL, in consultation with ASADA, may impose a *Provisional Suspension* on the *Athlete*, *Athlete Support Personnel* or other *Person* at any time prior to the final hearing as described in Article 17.

### 16.3 Provisional or Expedited Hearing

**16.3.1** A *Provisional Suspension* may not be imposed unless the *Athlete* or other *Person* is given either: (a) an opportunity for a *Provisional Hearing* either before imposition of the *Provisional Suspension* or on a timely basis after imposition of the *Provisional Suspension*; or (b) an opportunity for an expedited hearing in accordance with Article 17 on a timely basis after imposition of a *Provisional Suspension*.

**16.3.2** ASADA will convene any *Provisional Hearing* and will present the case at any *Provisional Hearing* unless otherwise agreed between the parties.

### 16.4 B Sample Analysis Not Confirming A Sample Analysis

If a *Provisional Suspension* is imposed based on an A *Sample Adverse Analytical Finding* and a subsequent B *Sample* analysis does not confirm the A *Sample* analysis, then the *Athlete* will not be subject to any further *Provisional Suspension* on account of a violation of Article 6.1 (Presence of a *Prohibited Substance* or its *Metabolites* or *Markers*). In circumstances where the *Athlete* (or the *Athlete's* team if applicable) has been removed from a *Competition* based on a violation of Article 6.1 and the subsequent B *Sample* analysis does not confirm the A *Sample* analysis, if, without otherwise affecting the *Competition*, it is still possible for the *Athlete* or team to be reinserted, the *Athlete* or team may continue to take part in the *Competition*.

### 16.5 Public Disclosure of Provisional Suspension

As a general rule, the *Provisional Suspension* of a *Person* under this Policy will not be *Publicly Disclosed*. However, subject to Article 22.1.2, ASADA or SAL may, if they consider it appropriate, *Publicly Disclose* the reasons for the *Provisional Suspension* so long as such disclosure will not be unfairly prejudicial to the interests of the *Person*. ASADA and the *Athlete* must be consulted prior to any such disclosure by SAL and ASADA must provide consent to the disclosure.

## ARTICLE 17 RIGHT TO A FAIR HEARING

### 17.1 Fair Hearings.

Any *Person* who is asserted to have committed an anti-doping rule violation under this Anti-Doping Policy is entitled to be provided with a hearing process. Such hearing process shall address whether an anti-doping rule violation was committed and, if so, the appropriate *Consequences*. All hearings conducted pursuant to this Article 17 will respect the following principles:

- 17.1.1 a timely hearing;
- 17.1.2 a fair and impartial hearing body;
- 17.1.3 the right to representation at the *Person's* own expense;
- 17.1.4 the right to be informed in a fair and timely manner of the asserted anti-doping rule violation;
- 17.1.5 the right to respond to the asserted anti-doping rule violation and resulting *Consequences*;
- 17.1.6 the right of each party to present evidence, including the right to call and question witnesses (subject to the hearing body's discretion to accept testimony by telephone or written submission);
- 17.1.7 the *Person's* right to an interpreter at the hearing, with the hearing panel to determine the identity, and responsibility for the cost, of the interpreter; and
- 17.1.8 a timely, written, reasoned decision, specifically including an explanation of the reason(s) for any period of *Ineligibility*.

Subject to these principles, the hearing will be conducted in the manner that the hearing body determines is appropriate, with as little formality and technicality, and as quickly, as proper consideration of the issue permits.

### 17.2 Event Hearings

Hearings held in connection with *Events* may be conducted by an expedited process as permitted by the rules of the relevant *Anti-Doping Organisation* and the hearing panel.

### 17.3 Expedited Hearings

Hearings pursuant to this Article shall be completed as soon as reasonably practicable. Matters may be marked for expedited or 'urgent' hearing where required. Factors to be considered when determining whether or not a matter should be marked for expedited hearing include but are not limited to the proximity of upcoming *Events* or *Competitions*, including training and qualifying for such *Events* or *Competitions*, the nature of the anti-doping rule violation, and whether or not a *Provisional Suspension* has been imposed.

#### 17.4 Waiver of Hearing

The right to a hearing may be waived either expressly or by the *Athlete's* or other *Person's* failure to challenge ASADA's assertion that an anti-doping rule violation has occurred within the specific time period provided in Article 15 (Results Management). Where no hearing occurs, ASADA shall submit to the organisations described in Article 17.6 a reasoned decision explaining the action taken.

#### 17.5 ASADA to Conduct Hearings

**17.5.1** ASADA will convene the hearing and present the case at the hearing in accordance with the procedures of ASADA and CAS or the *Tribunal*.

**17.5.2** ASADA will wait 14 days (or a shorter period agreed between ASADA and the *Person*) after sending an infraction notice and then may appoint to conduct the hearing:

- (a) the CAS; or
- (b) another *Tribunal* approved by ASADA.

**17.5.3** Each party shall bear in equal proportions any upfront fee of the CAS or *Tribunal* (excluding the initial CAS application fee which shall be borne by the party applying). Should it be found that no anti-doping rule violation has been committed, ASADA shall reimburse the *Athlete* or other *Person* their portion of the upfront fee. Each party shall otherwise bear their own costs.

#### 17.6 Right to Attend Hearings

SAL, FINA, the ASC, the AOC, APC, ACGA where applicable, relevant SIS/SAS and WADA shall have the right to attend hearings as an observer or interested affected party. It shall be the duty of ASADA to inform those relevant parties of such right to attend as an observer or interested/affected party as applicable. If those parties fail to respond to such notification within 14 days, they shall be taken to have waived their right to so participate.

#### 17.7 CAS/Tribunal Determination

**17.7.1** CAS or the *Tribunal* will determine:

- (a) if the *Person* has committed a violation of this Anti-Doping Policy;
- (b) if so, what *Consequences* will apply (including the start date for any period of *Ineligibility*); and
- (c) any other issues such as, but not limited to, reimbursement of costs and funding.

**17.7.2** *Consequences* will be in accordance with Article 19.

**17.7.3** CAS or the *Tribunal* shall have discretion, where fairness requires, to establish an instalment plan for repayment of any funding or costs awarded pursuant to Article 17.7.1(c). For the avoidance of doubt, the schedule of payments pursuant to such plan may extend beyond any period of *Ineligibility* imposed upon the *Person*.

**17.8 Written Decision**

CAS or the *Tribunal* will give the parties a written statement of:

**17.8.1** the findings of the hearing and brief reasons for the findings;

**17.8.2** what *Consequences* (if any) will apply; and

**17.8.3** any other issues such as, but not limited to, reimbursement of costs and funding.

**17.9 Public Disclosure of Hearing Outcomes**

ASADA shall report the outcome of all anti-doping rule violations in accordance with the *Code*, the *ASADA Act 2006* and the *NAD scheme*, as in force from time to time.

**17.10 Appeals and Review**

**17.10.1** Decisions by CAS or the *Tribunal* at first instance may be appealed as provided in Article 21.

**17.10.2** Decisions by CAS or the *Tribunal* at first instance shall not be subject to further administrative review at the national level except as provided in Article 21 or required by applicable law.

**17.11 Use of Information Arising During Hearings**

If, during a hearing, a party to the hearing process implicates a third party in a potential anti-doping rule violation, then ASADA may use any such information that arises as a result of the CAS or *Tribunal* process without having to first seek the permission of CAS, the *Tribunal* or the parties. This clause overrides R43 of the CAS Code of Sports-related Arbitration to the extent of any inconsistency.

## ARTICLE 18 AUTOMATIC DISQUALIFICATION OF INDIVIDUAL RESULTS

An anti-doping rule violation in *Individual Sports* in connection with an *In-Competition* test automatically leads to *Disqualification* of the result obtained in that *Competition* with all resulting *Consequences*, including forfeiture of any medals, points and prizes.<sup>28</sup>

## ARTICLE 19 SANCTIONS ON INDIVIDUALS

### 19.1 *Disqualification of Results in the Event During which an Anti-Doping Rule Violation Occurs.*

An anti-doping rule violation occurring during or in connection with an *Event* may, upon the decision of the ruling body of the *Event*, lead to *Disqualification* of all of the *Athlete's* individual results obtained in that *Event* with all *Consequences*, including forfeiture of all medals, points and prizes, except as provided in Article 19.1.1.<sup>29</sup>

**19.1.1** If the *Athlete* establishes that he or she bears *No Fault or Negligence* for the violation, the *Athlete's* individual results in the other *Competitions* shall not be *Disqualified* unless the *Athlete's* results in *Competitions* other than the *Competition* in which the anti-doping rule violation occurred were likely to have been affected by the *Athlete's* anti-doping rule violation.

### 19.2 *Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods.*

The period of *Ineligibility* imposed for a violation of Article 6.1 (Presence of a *Prohibited Substance* or its *Metabolites* or *Markers*), Article 6.2 (*Use or Attempted Use* of a *Prohibited Substance* or *Prohibited Method*) or Article 6.6 (*Possession of Prohibited Substances and Prohibited Methods*) shall be as follows, unless the conditions for eliminating or reducing the period of *Ineligibility*, as provided in Articles 19.5 and 19.6, or the conditions for increasing the period of *Ineligibility*, as provided in Article 19.7, are met:

First violation: Two (2) years' *Ineligibility*.<sup>30</sup>

<sup>28</sup> Comment to Article 18: When an *Athlete* wins a gold medal with a *Prohibited Substance* in his or her system, that is unfair to the other *Athletes* in that competition regardless of whether the gold medallist was at fault in any way. Only a "clean" *Athlete* should be allowed to benefit from his or her competitive results.

For *Team Sports*, see Article 20 (*Consequences to Teams*). In sports which are not *Team Sports* but where awards are given to teams, *Disqualification* or other disciplinary action against the team when one or more team members have committed an anti-doping rule violation shall be as provided in the applicable rules of the International Federation.

<sup>29</sup> Comment to Article 19.1: Whereas Article 18 (*Automatic Disqualification of Individual Results*) *Disqualifies* the result in a single *Competition* in which the *Athlete* tested positive (eg the 100 metre backstroke), this Article may lead to *Disqualification* of all results in all races during the *Event* (eg the FINA World Championships). Factors to be included in considering whether to *Disqualify* other results in an *Event* might include, for example, the severity of the *Athlete's* anti-doping rule violation and whether the *Athlete* tested negative in the other *Competitions*.

<sup>30</sup> Comment to Article 19.2: Harmonisation of sanctions has been one of the most discussed and debated areas of anti-doping. Harmonisation means that the same rules and criteria are applied to assess the unique facts of each case. Arguments against requiring harmonisation of sanctions are based on differences

### 19.3 *Ineligibility for Other Anti-Doping Rule Violations*

The period of *Ineligibility* for anti-doping rule violations other than as provided in Article 19.2 shall be as follows:

- 19.3.1** For violations of Article 6.3 (Refusing or Failing to Submit to *Sample Collection*) or Article 6.5 (*Tampering with Doping Control*), the *Ineligibility* period shall be two (2) years unless the conditions provided in Article 19.6, or the conditions provided in Article 19.7, are met.
- 19.3.2** For violations of Articles 6.7 (*Trafficking or Attempted Trafficking*) or 6.8 (Administration or *Attempted Administration of a Prohibited Substance or Prohibited Method*), the period of *Ineligibility* imposed shall be a minimum of four (4) years up to lifetime *Ineligibility* unless the conditions provided in Article 19.6 are met. An anti-doping rule violation involving a *Minor* shall be considered a particularly serious violation and, if committed by *Athlete Support Personnel* for violations other than Specified Substances referenced in Article 8.3.2, shall result in lifetime *Ineligibility* for *Athlete Support Personnel*. In addition, significant violations of Articles 6.7 or 6.8 which may also violate non-sporting laws and regulations, shall be reported to the competent administrative, professional or judicial authorities.<sup>31</sup>
- 19.3.3** For violations of Article 6.4 (*Whereabouts Filing Failures* and/or *Missed Tests*), the period of *Ineligibility* shall be at a minimum one (1) year and at a maximum two (2) years based on the *Athlete's* degree of fault.<sup>32</sup>

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between sports including, for example, the following: in some sports the Athletes are professionals making a sizable income from the sport and in others the Athletes are true amateurs; in those sports where an Athlete's career is short (eg artistic gymnastics) a two-year Disqualification has a much more significant effect on the Athlete than in sports where careers are traditionally much longer (eg equestrian and shooting); in Individual Sports, the Athlete is better able to maintain competitive skills through solitary practice during Disqualification than in other sports where practice as part of a team is more important. A primary argument in favour of harmonisation is that it is simply not right that two Athletes from the same country who test positive for the same Prohibited Substance under similar circumstances should receive different sanctions only because they participate in different sports. In addition, flexibility in sanctioning has often been viewed as an unacceptable opportunity for some sporting organisations to be more lenient with dopers. The lack of harmonisation of sanctions has also frequently been the source of jurisdictional conflicts between International Federations and National Anti-Doping Organisations.

<sup>31</sup> Comment to Article 19.3.2: Those who are involved in doping Athletes or covering up doping should be subject to sanctions which are more severe than the Athletes who test positive. Since the authority of Sporting Organisations is generally limited to *Ineligibility* for credentials, membership and other sport benefits, reporting Athlete Support Personnel to competent authorities is an important step in the deterrence of doping.

<sup>32</sup> Comment to Article 19.3.3: The sanction under Article 19.3.3 shall be two years where all three Filing Failures or Missed Tests are inexcusable. Otherwise, the sanction shall be assessed in the range of two years to one year, based on the circumstances of the case.

#### 19.4 Additional Sanction.

- 19.4.1** SAL, the ASC, AOC, APC, ACGA and/or any relevant State or Territory Institute or Academy of Sport may, where applicable, require the *Athlete* or other *Person* to repay all funding and grants received from the relevant body, subsequent to the occurrence of the anti-doping rule violation. CAS or a *Tribunal* can make a determination of this following submissions from the relevant parties. However, no financial sanction may be considered a basis for reducing the period of *Ineligibility* or other sanction which would otherwise be applicable under this Policy. Repayment of funding and grants may be made a condition of reinstatement.
- 19.4.2** CAS or a *Tribunal* may determine, in addition to applying a sanction in accordance with this Article 19, that a *Person* who has committed an anti-doping rule violation, is required to go to counselling for a specified period as a condition of reinstatement.
- 19.4.3** Where the hearings or appeals panel determines that an employee or contractor of SAL has committed an anti-doping rule violation, the relevant SAL will take disciplinary action against the employee or contractor.

#### 19.5 Elimination or Reduction of the Period of *Ineligibility* for Specified Substances under Specific Circumstances.

Where an *Athlete* or other *Person* can establish how a Specified Substance entered his or her body or came into his or her *Possession* and that such Specified Substance was not intended to enhance the *Athlete's* sport performance or mask the *Use* of a performance-enhancing substance, the period of *Ineligibility* found in Article 19.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of *Ineligibility* from future *Events*, and at a maximum, two (2) years of *Ineligibility*.

To justify any elimination or reduction, the *Athlete* or other *Person* must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the *Use* of a performance-enhancing substance. The *Athlete's* or other *Person's* degree of fault shall be the criterion considered in assessing any reduction of the period of *Ineligibility*.<sup>33</sup>

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<sup>33</sup> *Comment to Article 19.5: Specified Substances are not necessarily less serious agents for purposes of sports doping than other Prohibited Substances (for example, a stimulant that is listed as a Specified Substance could be very effective to an Athlete In Competition); for that reason, an Athlete who does not meet the criteria under this Article would receive a two-year period of Ineligibility and could receive up to a four-year period of Ineligibility under Article 19.7. However, there is a greater likelihood that Specified Substances, as opposed to other Prohibited Substances, could be susceptible to a credible, non-doping explanation. This Article applies only in those cases where the hearing panel is comfortably satisfied by the objective circumstances of the case that the Athlete in taking or Possessing a Prohibited Substance did not intend to enhance his or her sport performance. Examples of the type of objective circumstances which in combination might lead a hearing panel to be comfortably satisfied of no performance-enhancing intent would include: the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete's open Use or disclosure of his or her Use of the Specified Substance; and a contemporaneous medical records file substantiating the non sport-related prescription for the Specified Substance. Generally, the greater the potential performance-enhancing benefit, the higher the burden on the Athlete to prove lack of an intent to enhance sport performance.*

**19.6 Elimination or Reduction of Period of *Ineligibility* Based on Exceptional Circumstances.**

**19.6.1 *No Fault or Negligence***

If an *Athlete* establishes in an individual case that he or she bears *No Fault or Negligence*, the otherwise applicable period of *Ineligibility* shall be eliminated. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Sample* in violation of Article 6.1 (Presence of *Prohibited Substance*), the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* eliminated. In the event this Article is applied and the period of *Ineligibility* otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of *Ineligibility* for multiple violations under Article 19.8.

**19.6.2 *No Significant Fault or Negligence***

If an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Significant Fault or Negligence*, then the otherwise applicable period of *Ineligibility* may be reduced, but the reduced period of *Ineligibility* may not be less than one-half of the period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this Article may be no less than eight (8) years. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Specimen* in violation of Article 6.1 (Presence of *Prohibited Substance*), the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* reduced.<sup>34</sup>

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*While the absence of intent to enhance sport performance must be established to the comfortable satisfaction of the hearing panel, the Athlete may establish how the Specified Substance entered the body by a balance of probability.*

*In assessing the Athlete's or other Person's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article. It is anticipated that the period of Ineligibility will be eliminated entirely in only the most exceptional cases.*

<sup>34</sup> *Comment to Articles 19.6.1 and 19.6.2: The Code provides for the possible reduction or elimination of the period of Ineligibility in the unique circumstance where the Athlete can establish that he or she had No Fault or Negligence, or No Significant Fault or Negligence, in connection with the violation. This approach is consistent with basic principles of human rights and provides a balance between those Anti-Doping Organisations that argue for a much narrower exception, or none at all, and those that would reduce a two-year suspension based on a range of other factors even when the Athlete was admittedly at fault. These Articles apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. Article 19.6.2 may be applied to any anti-doping rule violation even though it will be especially difficult to meet the criteria for a reduction for those anti-doping rule violations where knowledge is an element of the violation.*

*Articles 19.6.1 and 19.6.2 are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases.*

*To illustrate the operation of Article 19.6.1, an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or*

**19.6.3** *Substantial Assistance* in Discovering or Establishing Anti-Doping Rule Violations

CAS or the *Tribunal* may, prior to a final appellate decision under Article 21 or the expiration of the time to appeal, suspend a part of the period of *Ineligibility* imposed in an individual case where the *Athlete* or other *Person* has provided *Substantial Assistance* to ASADA, another *Anti-Doping Organisation*, criminal authority or professional disciplinary body which results in ASADA or another *Anti-Doping Organisation* discovering or establishing an anti-doping rule violation by another *Person* or which results in a criminal or disciplinary body discovering or establishing a criminal offence or the breach of professional rules by another *Person*. After a final appellate decision under Article 21 or the expiration of time to appeal, ASADA and SAL may suspend a part of the otherwise applicable period of *Ineligibility* but only with the approval of WADA and FINA. The extent to which the otherwise applicable period of *Ineligibility* may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the *Athlete* or other *Person* and the significance of the *Substantial Assistance* provided by the *Athlete* or other *Person* to the effort to eliminate doping in sport. No more than three-quarters of the otherwise applicable period of *Ineligibility* may be suspended. If the otherwise applicable period of *Ineligibility* is a lifetime, the non-suspended period under this section must be no less than eight (8) years. If any part of the otherwise applicable period of *Ineligibility* is suspended under this Article, the body so suspending it shall promptly provide a written justification for its decision to each *Anti-Doping Organisation* having a right to appeal the decision. If any part of the suspended period of *Ineligibility* is subsequently reinstated because the *Athlete* or other *Person* has failed to provide the *Substantial Assistance* which was anticipated, the *Athlete* or other *Person* may appeal the reinstatement pursuant to Article 21.<sup>35</sup>

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*Negligence in the following circumstances: (a) a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 6.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach, or other Person within the Athlete's circle of associates. (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.) For purposes of assessing the Athlete's or other Person's fault under Articles 19.6.1 and 19.6.2, the evidence considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article.*

*While Minors are not given special treatment per se in determining the applicable sanction, certainly youth and lack of experience are relevant factors to be assessed in determining the Athlete's or other Person's fault under Article 19.6.2, as well as Articles 19.3.3, 19.5 and 19.6.1.*

*Article 19.6.2 should not be applied in cases where Articles 19.3.3 or 19.5 apply, as those Articles already take into consideration the Athlete's or other Person's degree of fault for purposes of establishing the applicable period of Ineligibility.*

<sup>35</sup> Comment to Article 19.6.3: *The cooperation of Athletes, Athlete Support Personnel and other Persons who acknowledge their mistakes and are willing to bring other anti-doping rule violations to light is important to clean sport.*

**19.6.4** Admission of an Anti-Doping Rule Violation in the Absence of Other Evidence.

Where an *Athlete* or other *Person* voluntarily admits the commission of an anti-doping rule violation before having received notice of a *Sample* collection which could establish an anti-doping rule violation (or, in the case of an anti-doping rule violation other than Article 6.1, before receiving first notice of the admitted violation pursuant to Article 15.5) and that admission is the only reliable evidence of the violation at the time of admission, then the period of *Ineligibility* may be reduced, but not below one-half of the period of *Ineligibility* otherwise applicable.<sup>36</sup>

**19.6.5** Where an *Athlete* or Other *Person* Establishes Entitlement to Reduction in Sanction Under More than One Provision of this Article.

Before applying any reduction or suspension under Articles 19.6.2, 19.6.3 or 19.6.4, the otherwise applicable period of *Ineligibility* shall be determined in accordance with Articles 19.2, 19.3, 19.5 and 19.7. If the *Athlete* or other *Person* establishes entitlement to a reduction or suspension of the period of *Ineligibility* under two or more of Articles 19.6.2, 19.6.3 or 19.6.4, then the period

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*Factors to be considered in assessing the importance of the Substantial Assistance would include, for example, the number of individuals implicated, the status of those individuals in the sport, whether a scheme involving Trafficking under Article 6.7 or administration under Article 6.8 is involved and whether the violation involved a substance or method which is not readily detectible in Testing. The maximum suspension of the Ineligibility period shall only be applied in very exceptional cases. An additional factor to be considered in connection with the seriousness of the anti-doping rule violation is any performance-enhancing benefit which the Person providing Substantial Assistance may be likely to still enjoy. As a general matter, the earlier in the results management process the Substantial Assistance is provided, the greater the percentage of the otherwise applicable period of Ineligibility may be suspended.*

*If the Athlete or other Person who is asserted to have committed an anti-doping rule violation claims entitlement to a suspended period of Ineligibility under this Article in connection with the Athlete's or other Person's waiver of a hearing under Article 17.4 (Waiver of Hearing), the ASADA shall determine whether a suspension of a portion of the period of Ineligibility is appropriate under this Article. If the Athlete or other Person claims entitlement to a suspended period of Ineligibility before the conclusion of a hearing under Article 17 on the anti-doping rule violation, the hearing panel shall determine whether a suspension of a portion of the otherwise applicable period of Ineligibility is appropriate under this Article at the same time the hearing panel decides whether the Athlete or other Person has committed an anti-doping rule violation. If a portion of the period of Ineligibility is suspended, the decision shall explain the basis for concluding the information provided was credible and was important to discovering or proving the anti-doping rule violation or other offense. If the Athlete or other Person claims entitlement to a suspended period of Ineligibility after a final decision finding an anti-doping rule violation has been rendered and is not subject to appeal under Article 21, but the Athlete or other Person is still serving the period of Ineligibility, the Athlete or other Person may apply to ASADA to consider a suspension in the period of Ineligibility under this Article. Any such suspension of the otherwise applicable period of Ineligibility shall require the approval of WADA and FINA. If any condition upon which the suspension of a period of Ineligibility is based is not fulfilled, SAL, in consultation with ASADA, shall reinstate the period of Ineligibility which would otherwise be applicable. Decisions rendered by SAL and/or ASADA under this Article may be appealed pursuant Article 21.*

*This is the only circumstance under the Code where the suspension of an otherwise applicable period of Ineligibility is authorized.*

<sup>36</sup> *Comment to Article 19.6.4: This Article is intended to apply when an Athlete or other Person comes forward and admits to an anti-doping rule violation in circumstances where no Anti-Doping Organization is aware that an anti-doping rule violation might have been committed. It is not intended to apply to circumstances where the admission occurs after the Athlete or other Person believes he or she is about to be caught.*

of *Ineligibility* may be reduced or suspended, but not below one-quarter of the otherwise applicable period of *Ineligibility*.<sup>37</sup>

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<sup>37</sup> Comment to Article 19.6.5: The appropriate sanction is determined in a sequence of four steps. First, the hearing panel determines which of the basic sanctions (Article 19.2, Article 19.3, Article 19.5 or Article 19.7) applies to the particular anti-doping rule violation. In a second step, the hearing panel establishes whether there is a basis for suspension, elimination or reduction of the sanction (Articles 19.6.1 through 19.6.4). Note, however, not all grounds for suspension, elimination or reduction may be combined with the provisions on basic sanctions. For example, Article 19.6.2 does not apply in cases involving Articles 19.3.3 or 19.5, since the hearing panel, under Articles 19.3.3 and 19.5, will already have determined the period of *Ineligibility* based on the Athlete's or other Person's degree of fault. In a third step, the hearing panel determines under Article 19.6.5 whether the Athlete or other Person is entitled to elimination, reduction or suspension under more than one provision of Article 19.6. Finally, the hearing panel decides on the commencement of the period of *Ineligibility* under Article 19.10.

The following four examples demonstrate the proper sequence of analysis:

Example 1.

Facts: An Adverse Analytical Finding involves the presence of an anabolic steroid; the Athlete promptly admits the anti-doping rule violation as asserted; the Athlete establishes No Significant Fault (Article 19.6.2); and the Athlete provides Substantial Assistance (Article 19.6.3).

Application of Article 19:

1. The basic sanction would be two years under Article 19.2. (Aggravating Circumstances (Article 19.7) would not be considered because the Athlete promptly admitted the violation. Article 19.5 would not apply because a steroid is not a Specified Substance.)
2. Based on No Significant Fault alone, the sanction could be reduced up to one-half of the two years. Based on Substantial Assistance alone, the sanction could be reduced up to three-quarters of the two years.
3. Under Article 19.6.5, in considering the possible reduction for No Significant Fault and Substantial Assistance together, the most the sanction could be reduced is up to three-quarters of the two years. Thus, the minimum sanction would be a six-month period of *Ineligibility*.
4. Under Article 19.10.2, because the Athlete promptly admitted the anti-doping rule violation, the period of *Ineligibility* could start as early as the date of Sample collection, but in any event the Athlete would have to serve at least one-half of the *Ineligibility* period (minimum three months) after the date of the hearing decision.

Example 2.

Facts: An Adverse Analytical Finding involves the presence of an anabolic steroid; aggravating circumstances exist and the Athlete is unable to establish that he did not knowingly commit the anti-doping rule violation; the Athlete does not promptly admit the anti-doping rule violation as alleged; but the Athlete does provide Substantial Assistance (Article 19.6.3).

Application of Article 19:

1. The basic sanction would be between two and four years *Ineligibility* as provided in Article 19.7.
2. Based on Substantial Assistance, the sanction could be reduced up to three-quarters of the maximum four years.
3. Article 19.6.5 does not apply.
4. Under Article 19.10.2, the period of *Ineligibility* would start on the date of the hearing decision.

Example 3.

Facts: An Adverse Analytical Finding involves the presence of a Specified Substance; the Athlete establishes how the Specified Substance entered his body and that he had no intent to enhance his sport performance; the Athlete establishes that he had very little fault; and the Athlete provides Substantial Assistance (Article 19.6.3).

Application of Article 19:

1. Because the Adverse Analytical Finding involved a Specified Substance and the Athlete has satisfied the other conditions of Article 19.5, the basic sanction would fall in the range between a reprimand and two years Ineligibility. The hearing panel would assess the Athlete's fault in imposing a sanction within that range. (Assume for illustration in this example that the panel would otherwise impose a period of Ineligibility of eight months.)
2. Based on Substantial Assistance, the sanction could be reduced up to three-quarters of the eight months. (No less than two months.) No Significant Fault (Article 19.2) would not be applicable because the Athlete's degree of fault was already taken into consideration in establishing the eight-month period of Ineligibility in step 1.
3. Article 19.6.5 does not apply.
4. Under Article 19.10.2, because the Athlete promptly admitted the anti-doping rule violation, the period of Ineligibility could start as early as the date of Sample collection, but in any event, the Athlete would have to serve at least half of the Ineligibility period after the date of the hearing decision. (Minimum one month.)

Example 4.

Facts: An Athlete who has never had an Adverse Analytical Finding or been confronted with an anti-doping rule violation spontaneously admits that he intentionally Used multiple Prohibited Substances to enhance his performance. The Athlete also provides Substantial Assistance (Article 19.6.3).

Application of Article 19:

1. While the intentional Use of multiple Prohibited Substances to enhance performance would normally warrant consideration of aggravating circumstances (Article 19.7), the Athlete's spontaneous admission means that Article 19.7 would not apply. The fact that the Athlete's Use of Prohibited Substances was intended to enhance performance would also eliminate the application of Article 19.5 regardless of whether the Prohibited Substances Used were Specified Substances. Thus, Article 19.2 would be applicable and the basic period of Ineligibility imposed would be two years.
2. Based on the Athlete's spontaneous admissions (Article 19.6.4) alone, the period of Ineligibility could be reduced up to one-half of the two years. Based on the Athlete's Substantial Assistance (Article 19.6.3) alone, the period of Ineligibility could be reduced up to three-quarters of the two years.
3. Under Article 19.6.5, in considering the spontaneous admission and Substantial Assistance together, the most the sanction could be reduced would be up to three-quarters of the two years. (The minimum period of Ineligibility would be six months.)
4. If Article 19.6.4 was considered by the hearing panel in arriving at the minimum six-month period of Ineligibility at step 3, the period of Ineligibility would start on the date the hearing panel imposed the sanction. If, however, the hearing panel did not consider the application of Article 19.6.4 in reducing the period of Ineligibility in step 3, then under Article 19.10.2, the commencement of the period of Ineligibility could be started as early as the date the anti-doping rule violation was committed, provided that at least half of that period (minimum of three months) would have to be served after the date of the hearing decision.

**19.7** Aggravating Circumstances Which May Increase the Period of *Ineligibility*.

If ASADA or SAL establishes in an individual case involving an anti-doping rule violation other than violations under Article 6.7 (*Trafficking* or *Attempted Trafficking*) and 6.8 (*Administration* or *Attempted Administration*) that aggravating circumstances are present which justify the imposition of a period of *Ineligibility* greater than the standard sanction, then the period of *Ineligibility* otherwise applicable shall be increased up to a maximum of four (4) years unless the *Athlete* or other *Person* can prove to the comfortable satisfaction of the hearing panel that he or she did not knowingly commit the anti-doping rule violation.

An *Athlete* or other *Person* can avoid the application of this Article by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation by ASADA or SAL.<sup>38</sup>

**19.8** Multiple Violations

**19.8.1** Second Anti-Doping Rule Violation

For an *Athlete's* or other *Person's* first anti-doping rule violation, the period of *Ineligibility* is set forth in Articles 19.2 and 19.3 (subject to elimination, reduction or suspension under Articles 19.5 or 19.6, or to increase under Article 19.7). For a second anti-doping rule violation the period of *Ineligibility* shall be within the range set forth in the table below.<sup>39</sup>

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<sup>38</sup> Comment to Article 19.7: Examples of aggravating circumstances which may justify the imposition of a period of *Ineligibility* greater than the standard sanction are: the *Athlete* or other *Person* committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the *Athlete* or other *Person* Used or Possessed multiple Prohibited Substances or Prohibited Methods or Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of *Ineligibility*; the *Athlete* or *Person* engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation.

For the avoidance of doubt, the examples of aggravating circumstances described in this Comment to Article 19.7 are not exclusive and other aggravating factors may also justify the imposition of a longer period of *Ineligibility*. Violations under Articles 6.7 (*Trafficking* or *Attempted Trafficking*) and 6.8 (*Administration* or *Attempted Administration*) are not included in the application of Article 19.7 because the sanctions for these violations (from four years to lifetime *Ineligibility*) already build in sufficient discretion to allow consideration of any aggravating circumstance.

<sup>39</sup> Comment to Article 19.8.1: The table is applied by locating the *Athlete's* or other *Person's* first anti-doping rule violation in the left-hand column and then moving across the table to the right to the column representing the second violation. By way of example, assume an *Athlete* receives the standard period of *Ineligibility* for a first violation under Article 19.2 and then commits a second violation for which he receives a reduced sanction for a Specified Substance under Article 19.5. The table is used to determine the period of *Ineligibility* for the second violation. The table is applied to this example by starting in the left-hand column and going down to the fourth row which is "St" for standard sanction, then moving across the table to the first column which is "RS" for reduced sanction for a Specified Substance, thus resulting in a 2-4 year range for the period of *Ineligibility* for the second violation. The *Athlete's* or other *Person's* degree of fault shall be the criterion considered in assessing a period of *Ineligibility* within the applicable range.

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Second Violation First Violation	RS	FFMT	NSF	St	AS	TRA
RS	1-4	2-4	2-4	4-6	8-10	10-life
FFMT	1-4	4-8	4-8	6-8	10-life	life
NSF	1-4	4-8	4-8	6-8	10-life	life
St	2-4	6-8	6-8	8-life	life	life
AS	4-5	10-life	10-life	life	life	life
TRA	8-life	life	life	life	life	life

Definitions for purposes of the second anti-doping rule violation table:

**RS** (Reduced sanction for Specified Substance under Article 19.5): The anti-doping rule violation was or should be sanctioned by a reduced sanction under Article 19.5 because it involved a Specified Substance and the other conditions under Article 19.5 were met.<sup>40</sup>

**FFMT** (*Filing Failures and/or Missed Tests*): The anti-doping rule violation was or should be sanctioned under Article 19.3.3 (*Filing Failures and/or Missed Tests*).

**NSF** (Reduced sanction for *No Significant Fault or Negligence*): The anti-doping rule violation was or should be sanctioned by a reduced sanction under Article 19.6.2 because *No Significant Fault or Negligence* under Article 19.6.2 was proved by the *Athlete*.

**St** (Standard sanction under Articles 19.2 or 19.3.1): The anti-doping rule violation was or should be sanctioned by the standard sanction of two (2) years under Articles 19.2 or 19.3.1.

**AS** (Aggravated sanction): The anti-doping rule violation was or should be sanctioned by an aggravated sanction under Article 19.7 because *ASADA* or *SAL* established the conditions set forth under Article 19.7.

**TRA** (*Trafficking or Attempted Trafficking* and administration or *Attempted* administration): The anti-doping rule violation was or should be sanctioned by a sanction under Article 19.3.2.

### 19.8.2 Application of Articles 19.6.3 and 19.6.4 to Second Anti-Doping Rule Violation

Where an *Athlete* or other *Person* who commits a second anti-doping rule violation establishes entitlement to suspension or reduction of a portion of the period of *Ineligibility* under Article 19.6.3 or Article 19.6.4, the hearing panel shall first determine the otherwise applicable period of *Ineligibility* within the range established in the table in Article 19.8.1, and then apply the appropriate suspension or reduction of the period of *Ineligibility*. The remaining period of *Ineligibility*, after applying any suspension or reduction under Articles 19.6.3 and

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<sup>40</sup> Comment to Article 19.8.1 RS Definition: See Article 25.4 of the Code with respect to application of Article 19.8.1 to pre-Code anti-doping rule violations.

19.6.4, must be at least one-fourth of the otherwise applicable period of *Ineligibility*.

### 19.8.3 Third Anti-Doping Rule Violation

A third anti-doping rule violation will always result in a lifetime period of *Ineligibility*, except if the third violation fulfils the condition for elimination or reduction of the period of *Ineligibility* under Article 19.5 or involves a violation of Article 6.4 (*Filing Failures* and/or *Missed Tests*). In these particular cases, the period of *Ineligibility* shall be from eight (8) years to life ban.

### 19.8.4 Additional rules for Certain Potential Multiple Violations

- (a) For purposes of imposing sanctions under Article 19.8, an anti-doping rule violation will only be considered a second violation if ASADA or SAL can establish that the *Athlete* or other *Person* committed the second anti-doping rule violation after the *Athlete* or other *Person* received notice pursuant to Article 15 (Results Management), or after ASADA made reasonable efforts to give notice, of the first anti-doping rule violation; if ASADA or SAL cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction; however, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Article 19.7).
- (b) If, after the resolution of a first anti-doping rule violation, ASADA discovers facts involving an anti-doping rule violation by the *Athlete* or other *Person* which occurred prior to notification regarding the first violation, then SAL shall impose an additional sanction based on the sanction that could have been imposed if the two violations would have been adjudicated at the same time. Results in all *Competitions* dating back to the earlier anti-doping rule violation will be *Disqualified* as provided in Article 19.9. To avoid the possibility of a finding of aggravating circumstances (Article 19.7) on account of the earlier-in-time but later-discovered violation, the *Athlete* or other *Person* must voluntarily admit the earlier anti-doping rule violation on a timely basis after notice of the violation for which he or she is first charged. The same rule shall also apply when ASADA discovers facts involving another prior violation after the resolution of a second anti-doping rule violation.<sup>41</sup>

### 19.8.5 Multiple Anti-Doping Rule Violations During an Eight-Year Period

For purposes of Article 19.8, each anti-doping rule violation must take place within the same eight-year period in order to be considered multiple violations.

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<sup>41</sup> *Comment to Article 19.8.4: In a hypothetical situation, an Athlete commits an anti-doping rule violation on January 1, 2008, which the Anti-Doping Organization does not discover until December 1, 2008. In the meantime, the Athlete commits another anti-doping rule violation on March 1, 2008, and the Athlete is notified of this violation by the Anti-Doping Organization on March 30, 2008, and a hearing panel rules on June 30, 2008 that the Athlete committed the March 1, 2008 anti-doping rule violation. The later-discovered violation which occurred on January 1, 2008 will provide the basis for aggravating circumstances because the Athlete did not voluntarily admit the violation in a timely basis after the Athlete received notification of the later violation on March 30, 2008.*

**19.9 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation.**

In addition to the automatic *Disqualification* of the results in the *Competition* which produced the positive *Sample* under Article 18 (Automatic *Disqualification* of Individual Results), all other competitive results obtained from the date a positive *Sample* was collected (whether *In-Competition* or *Out-of-Competition*), or other anti-doping rule violation occurred, through the commencement of any *Provisional Suspension* or *Ineligibility* period, shall, unless fairness requires otherwise, be *Disqualified* with all of the resulting *Consequences* including forfeiture of any medals, points and prizes.

**19.9.1** As a condition of regaining eligibility after being found to have committed an anti-doping rule violation, the *Athlete* must first repay all prize money forfeited under this Article.

**19.9.2 Allocation of Forfeited Prize Money**

Unless the rules of FINA provide that forfeited prize money shall be reallocated to other *Athletes*, it shall be allocated first to reimburse the collection expenses of the *Anti-Doping Organisation* that performed the necessary steps to collect the prize money back, then to reimburse the expenses of ASADA and/or SAL in conducting results management in the case, with the balance, if any allocated in accordance with FINA rules.<sup>42</sup>

**19.10 Commencement of Ineligibility Period.**

Except as provided below, the period of *Ineligibility* shall start on the date of the hearing decision providing for *Ineligibility* or, if the hearing is waived, on the date *Ineligibility* is accepted or otherwise imposed. Any period of *Provisional Suspension* (whether imposed or voluntarily accepted) shall be credited against the total period of *Ineligibility* imposed.<sup>43</sup>

**19.10.1 Delays Not Attributable to the Athlete or other Person**

Where there have been substantial delays in the hearing process or other aspects of *Doping Control* not attributable to the *Athlete* or other *Person*, CAS or the *Tribunal* determining the sanction may start the period of *Ineligibility* at an earlier date commencing as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred.

**19.10.2 Timely Admission**

Where the *Athlete* or other *Person* promptly (which, in all events, for an *Athlete* means before the *Athlete* competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by ASADA, the period of *Ineligibility* may start as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the *Athlete* or other *Person* shall serve at least one-half of the

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<sup>42</sup> Comment to Article 19.9.2: Nothing in the Code or this Policy precludes clean Athletes or other Persons who have been damaged by the actions of a Person who has committed an anti-doping rule violation from pursuing any right which they would otherwise have to seek damages from such Person.

<sup>43</sup> Comment to Article 19.10: The text of Article 10.9 of the Code, upon which this Article is based, has been revised to make clear that delays not attributable to the Athlete, timely admission by the Athlete and Provisional Suspension are the *only* justifications for starting the period of Ineligibility earlier than the date of the hearing decision. This amendment corrects inconsistent interpretation and application of the previous text.

period of *Ineligibility* going forward from the date the *Athlete* or other *Person* accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed.<sup>44</sup>

**19.10.3** If a *Provisional Suspension* is imposed and respected by the *Athlete*, then the *Athlete* shall receive a credit for such period of *Provisional Suspension* against any period of *Ineligibility* which may ultimately be imposed.

**19.10.4** If an *Athlete* voluntarily accepts a *Provisional Suspension* in writing from ASADA or SAL and thereafter refrains from competing, the *Athlete* shall receive a credit for such period of voluntary *Provisional Suspension* against any period of *Ineligibility* which may ultimately be imposed. A copy of the *Athlete's* voluntary acceptance of a *Provisional Suspension* shall be provided promptly to each party entitled to receive notice of a potential anti-doping rule violation under the *Code*.<sup>45</sup>

**19.10.5** No credit against a period of *Ineligibility* shall be given for any time period before the effective date of the *Provisional Suspension* or voluntary *Provisional Suspension* regardless of whether the *Athlete* elected not to compete or was suspended by his or her team.

## **19.11 Status During *Ineligibility*.**

### **19.11.1 Prohibition Against Participation During *Ineligibility***

No *Athlete* or other *Person* who has been declared *Ineligible* may, during the period of *Ineligibility*, participate in any capacity in a *Competition* or activity (other than authorised anti-doping education or rehabilitation programs) authorised or organised by any *Signatory*, *Signatory's* member organisation or a club or other member organisation of a *Signatory's* member organisation, FINA, SAL or its *Members*, or in *Competitions* authorised or organised by any professional league or any international- or national-level *Event* organisation. This would include, for example:

- a. practising/training with a national, state or club team;
- b. acting as a coach or sport official;
- c. selection in any representative team;
- d. competing in any *Competition/Events*;
- e. receiving, directly or indirectly, funding or assistance from SAL;
- f. use of official SAL or *Member* facilities;
- g. holding any position with SAL.

An *Athlete* or other *Person* subject to a period of *Ineligibility* longer than four (4) years may, after completing four (4) years of the period of *Ineligibility*, participate in local sport events in a sport other than the sport in which the *Athlete* or other *Person* committed the anti-doping rule violation, but only so long as the local sport event is not at a level that could otherwise qualify such *Athlete* or other *Person* directly or indirectly to compete in (or accumulate points toward) a national championship or *International Event*.

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<sup>44</sup> Comment to Article 19.10.2: This Article shall not apply where the period of *Ineligibility* already has been reduced under Article 19.6.4 (Admission of an Anti-Doping Rule Violation in the Absence of Other Evidence).

<sup>45</sup> Comment to Article 19.10.4: An *Athlete's* voluntary acceptance of a *Provisional Suspension* is not an admission by the *Athlete* and shall not be used in any way as to draw an adverse inference against the *Athlete*.

An *Athlete* or other *Person* subject to a period of *Ineligibility* shall remain subject to *Testing*.<sup>46</sup>

**19.11.2** Violation of the Prohibition of Participation During *Ineligibility*

Where an *Athlete* or other *Person* who has been declared *Ineligible* violates the prohibition against participation during *Ineligibility* described in Article 19.11.1, the results of such participation shall be *Disqualified* and the period of *Ineligibility* which was originally imposed shall start over again as of the date of the violation. The new period of *Ineligibility* may be reduced under Article 19.6.2 if the *Athlete* or other *Person* establishes he or she bears *No Significant Fault or Negligence* for violating the prohibition against participation. The determination of whether an *Athlete* or other *Person* has violated the prohibition against participation, and whether a reduction under Article 19.6.2 is appropriate, shall be made by the *Anti-Doping Organisation* whose results management led to the imposition of the initial period of *Ineligibility*.<sup>47</sup>

**19.11.3** Withholding of Financial Support during *Ineligibility*

In addition, for any anti-doping rule violation not involving a reduced sanction for Specified Substances as described in Article 19.5, some or all sport-related financial support or other sport-related benefits received by such *Person* will be withheld by SAL.

**19.12 Reinstatement Testing.**

As a condition to regaining eligibility at the end of a specified period of *Ineligibility*, an *Athlete* must, during any period of *Provisional Suspension* or *Ineligibility*, make him or herself available for *Out-of-Competition Testing* by ASADA and any other *Anti-Doping Organisation* having *Testing* jurisdiction, and must, if requested, provide current and accurate whereabouts information as provided in Article 10. If an *Athlete* subject to a period of *Ineligibility* retires from sport and is removed from *Registered Testing Pools* and later seeks reinstatement, the *Athlete* shall not be eligible for reinstatement until the *Athlete* has notified ASADA (in accordance with Article 11.2.4) and has been subject to *Out-of-Competition Testing* for a period of time equal to the longer of the period set forth in Article 11.2.6 or the period of *Ineligibility* remaining as of the date the *Athlete* had retired.

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<sup>46</sup> Comment to Article 19.11.1: For example, an ineligible *Athlete* cannot participate in a training camp, exhibition or practice organised by SAL or a club which is a Member of SAL. Further, an ineligible *Athlete* may not compete in a non-Signatory professional league (e.g., the National Hockey League, the National Basketball Association, etc.), Events organized by a non-Signatory International Event organisation or a non-Signatory national-level event organization without triggering the consequences set forth in Article 19.11.2. Sanctions in one sport will also be recognized by other sports (see Article 23 Mutual Recognition).

<sup>47</sup> Comment to Article 19.11.2: If an *Athlete* or other *Person* is alleged to have violated the prohibition against participation during a period of *Ineligibility*, ASADA shall determine whether the *Athlete* or other *Person* violated the prohibition and, if so, whether the *Athlete* or other *Person* has established grounds for a reduction in the restarted period of *Ineligibility* under Article 19.6.2. Decisions rendered by ASADA under this Article may be appealed pursuant to Article 21.

Where an *Athlete Support Personnel* or other *Person* substantially assists an *Athlete* in violating the prohibition against participation during *Ineligibility*, SAL may appropriately impose sanctions under its own disciplinary rules for such assistance.

### 19.13 Imposition of Financial Sanctions

SAL may provide for financial sanctions on account of anti-doping rule violations in its rules. However, no financial sanction may be considered a basis for reducing the period of *Ineligibility* or other sanction which would otherwise be applicable under this *Policy* or the *Code*.<sup>48</sup>

## ARTICLE 20 CONSEQUENCES TO TEAMS<sup>49</sup>

### 20.1 Testing of Team Sports

Where more than one member of a team in a *Team Sport* has been notified of an anti-doping rule violation under Article 6 in connection with an *Event*, the ruling body for the *Event* shall conduct appropriate *Target Testing* of the team during the *Event Period*.

### 20.2 Consequences for Team Sports

If more than two members of a team in a *Team Sport* are found to have committed an anti-doping rule violation during an *Event Period*, the ruling body of the *Event* shall impose an appropriate sanction on the team (eg, loss of points, *Disqualification* from a *Competition* or *Event*, or other sanction) in addition to any *Consequences* imposed upon the individual *Athletes* committing the anti-doping rule violations.

### 20.3 Event Ruling Body May Establish Stricter *Consequences* for *Team Sports*

The ruling body for an *Event* may elect to establish rules for the *Event* which impose *Consequences* for *Team Sports* stricter than those in Article 20.2 for purposes of the *Event*.<sup>50</sup>

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<sup>48</sup> *Comment to Article 20.13: For example, if a hearing panel were to find in a case that the cumulative effect of the sanction applicable under the Code and a financial sanction provided in the rules of SAL would result in too harsh a consequence, then SAL's financial sanction, not the other Code sanctions (e.g., Ineligibility and loss of results), would give way.*

<sup>49</sup> This Article may be entirely inapplicable for some NSOs that have no *Competitions* or *Events* where *Athletes* compete together as a team. For those NSOs, this Article should simply read "Article 20 intentionally left blank", or be deleted and all other articles renumbered accordingly. Where the article is inserted, the wording must be adopted without substantive change.

<sup>50</sup> *Comment to Article 20.3: For example, the International Olympic Committee could establish rules which would require Disqualification of a team from the Games of the Olympiad based on a lesser number of anti-doping rule violations during the period of the Games of the Olympiad.*

**ARTICLE 21 APPEALS<sup>51</sup>**

**21.1 Decisions Subject to Appeal.**

Decisions made under this Anti-Doping Policy may be appealed as set forth below in Articles 21.2 through 21.4. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise. Before an appeal is commenced, any post-decision review authorised in the *NAD Scheme* or Article 17.10 must be exhausted.

**21.1.1 WADA Not Required to Exhaust Internal Remedies**

Where *WADA* has a right to appeal under this Article 21 and no other party has appealed a final decision within the process set out in this Anti-Doping Policy, *WADA* may appeal such decision directly to *CAS* without having to exhaust other remedies set out in this Policy.<sup>52</sup>

**21.2 Appeals from Decisions Regarding Anti-Doping Rule Violations, Consequences, and Provisional Suspensions.**

A decision that an anti-doping rule violation was committed, a decision imposing *Consequences* for an anti-doping rule violation, or a decision that no anti-doping rule violation was committed; a decision that an anti-doping rule violation proceeding cannot go forward for procedural reasons (including, for example, prescription); a decision under Article 19.11.2 (Violation of the Prohibition of Participation during *Ineligibility*); a decision that *ASADA* or *SAL* lacks jurisdiction to rule on an alleged anti-doping rule violation or its *Consequences*; a decision by *ASADA* or *SAL* not to bring forward an *Adverse Analytical Finding* or an *Atypical Finding* as an anti-doping rule violation after an investigation under Article 15; and a decision to impose a *Provisional Suspension* as a result of a *Provisional Hearing* or in violation of Article 16.3, may be appealed exclusively as provided in this Article 21.2.

**21.2.1 Appeals Involving *International-Level Athletes***

In cases arising from participation in an *International Event* or in cases involving *International-Level Athletes*, the decision may be appealed exclusively to *CAS* in accordance with the provisions applicable before such court. Any such appeal will apply Articles 5, 6, 7, 8, 18 and 19 of this Policy.<sup>53</sup>

**21.2.2** In cases involving *Athletes* who do not have a right to appeal under Article 21.2.1, the appeal shall be to either:

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<sup>51</sup> *Comment to Article 21: The object of the Code and this Policy is to have anti-doping matters resolved through fair and transparent internal processes with a final appeal. Anti-doping decisions by Anti-Doping Organisations are made transparent in Article 22. Specified Persons and organizations, including WADA, are then given the opportunity to appeal those decisions. Note that the definition of interested Persons and organisations with a right to appeal under Article 21 does not include Athletes, or their federations, who might benefit from having another competitor disqualified.*

<sup>52</sup> *Comment to Article 21.1.1: Where a decision has been rendered before the final stage of an Anti-Doping Organisation's process (for example, a first hearing) and no party elects to appeal that decision to the next level of the Anti-Doping Organisation's process (e.g., the Managing Board), then WADA may bypass the remaining steps in the Anti-Doping Organisation's internal process and appeal directly to CAS.*

<sup>53</sup> *Comment to Article 21.2.1: CAS decisions are final and binding except for any review required by law applicable to the annulment or enforcement of arbitral awards.*

- the CAS Appeals Division; or
- a *Tribunal*, constituted differently than for the original hearing;

and shall respect the following principles:

- a timely hearing;
- a fair, impartial and independent hearing body;
- the right to be represented by a counsel at the *Person's* expense; and
- a timely, written, reasoned decision.

Any such appeal will apply Articles 5, 6, 7, 8, 18 and 19 of this Policy.

- (a) The determination of the appeals body will be final and binding on the parties to the appeal and no *Person* may institute or maintain proceedings in any court or tribunal other than the appeals body set out in this Article 21.2.2.
- (b) ASADA or SAL must inform any *Person* or organisation informed of the original determination the outcome of any appeal within seven (7) days of the release by the appeals body of the written decision of the appeal.

#### **21.2.3** *Persons Entitled to Appeal – International-Level Athletes*

In cases under Article 21.2.1, the following parties shall have the right to appeal to the CAS:

- (a) the *Athlete* or other *Person* who is the subject of the decision being appealed;
- (b) the other party to the case in which the decision was rendered;
- (c) FINA;
- (d) ASADA;
- (e) the *International Olympic Committee* or *International Paralympic Committee*, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games; and
- (f) WADA.

#### **21.2.4** *Persons Entitled to Appeal – non International-Level Athletes*

In cases under Article 21.2.2, the parties having the right to appeal to the appeals body shall be as provided in the *NAD Scheme* but, at a minimum, shall include the following parties:

- (a) the *Athlete* or other *Person* who is the subject of the decision being appealed;
- (b) the other party to the case in which the decision was rendered;
- (c) SAL;
- (d) FINA;
- (e) ASADA; and
- (f) WADA.

For cases under Article 21.2.2, ASADA, WADA and FINA shall also have the right to appeal to CAS with respect to the decision of the appeals body if the appeals body is not CAS. Any party filing an appeal shall be entitled to assistance from CAS to obtain all relevant information from the *Anti-Doping Organisation* whose decision is being appealed and the information shall be provided if CAS so directs.

#### **21.2.5 Appeals From Provisional Suspensions**

Notwithstanding any other provision herein, the only *Person* who may appeal from a *Provisional Suspension* is the *Athlete* or other *Person* upon whom the *Provisional Suspension* is imposed.

### **21.3 Failure to Render a Timely Decision by an Anti-Doping Organisation**

Where, in a particular case, an *Anti-Doping Organisation* fails to render a decision with respect to whether an anti-doping rule violation was committed within a reasonable deadline set by WADA, WADA may elect to appeal directly to CAS as if the *Anti-Doping Organisation* had rendered a decision finding no anti-doping rule violation.<sup>54</sup>

### **21.4 Appeals from Decisions Granting or Denying a Therapeutic Use Exemption.**

**21.4.1** Decisions by WADA reversing the grant or denial of a TUE may be appealed exclusively to CAS by the *Athlete* or ASDMAC or other TUE Committee whose decision was reversed. Decisions denying TUEs which are not reversed by WADA, may be appealed by *International-Level Athletes* to CAS and by other *Athletes* to the appeals body described in Article 21.2.2. If the appeals body reverses the decision to deny a TUE, that decision may be appealed to the CAS by WADA. Before an appeal is commenced under this Article, any review of the TUE as authorised in Articles 9.7 and 17.10 must be exhausted.

**21.4.2** When WADA, ASDMAC, or other TUE Committee fails to take action on a properly submitted TUE application within a reasonable time, the failure to decide may be considered a denial for purposes of the appeal rights provided in this Article.

### **21.5 Time for Filing Appeals.**

**21.5.1** The time to file an appeal to CAS or the *Tribunal* shall be within twenty one (21) days of the release by the original hearing body of the written decision of the initial hearing.

**21.5.2** The filing deadline for an appeal or intervention filed by ASADA or WADA shall be the later of:

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<sup>54</sup> *Comment to Article 21.3: Given the different circumstances of each anti-doping rule violation investigation and results management process, it is not feasible to establish a fixed time period for an Anti-Doping Organisation to render a decision before WADA may intervene by appealing directly to CAS. Before taking such action, however, WADA will consult with the Anti-Doping Organisation and give the Anti-Doping Organisation an opportunity to explain why it has not yet rendered a decision. Nothing in this Article prohibits an International Federation from also having rules which authorize it to assume jurisdiction for matters in which the results management performed by one of its National Federations has been inappropriately delayed.*

- (a) Twenty-one (21) days after the last day on which any other party in the case could have appealed; or
- (b) Twenty-one (21) days after ASADA's or WADA's receipt of the complete file relating to the decision.

## ARTICLE 22 CONFIDENTIALITY AND REPORTING

### 22.1 Confidentiality

- 22.1.1 The identity of any *Athlete* or other *Person* who is asserted to have committed an anti-doping rule violation may only be *Publicly Disclosed* by ASADA, or SAL after consultation with ASADA, in accordance with the *Code*, the *ASADA Act 2006*, the *NAD scheme* and the terms of the Confidentiality Undertaking signed between ASADA and SAL.
- 22.1.2 ASADA or SAL, or any official of either, will not publicly comment on the specific facts of a pending case (as opposed to general description of process and science) except in response to public comments attributed to the *Athlete*, other *Person* or their representatives.

### 22.2 Public Disclosure

- 22.2.1 No later than twenty (20) days after it has been determined in a hearing in accordance with Article 17 that an anti-doping rule violation has occurred and the time to appeal such decision has expired, or such hearing has been waived and the time to appeal the decision has expired, or the assertion of an anti-doping rule violation has not been challenged in a timely fashion, ASADA must *Publicly Disclose* at least: the disposition of the anti-doping matter including the sport, the anti-doping rule violated, the name of the *Athlete* or other *Person* committing the violation, the *Prohibited Substance* or *Prohibited Method* involved and the *Consequences* imposed. ASADA must also *Publicly Disclose* within twenty (20) days appeal decisions concerning anti-doping rule violations. ASADA will also, within the time period for publication, send all hearing and appeal decisions to WADA. SAL may also elect to make a public statement in relation to the matter, following consultation with ASADA.
- 22.2.2 In any case where it is determined, after a hearing or appeal, that the *Athlete* or other *Person* did not commit an anti-doping rule violation, the decision may be *Publicly Disclosed* only with the consent of the *Athlete* or other *Person* who is the subject of the decision. ASADA will use reasonable efforts to obtain such consent, and if consent is obtained, will *Publicly Disclose* the decision in its entirety or in such redacted form as the *Athlete* or other *Person* may approve.

## ARTICLE 23 MUTUAL RECOGNITION

- 23.1 Subject to the right to appeal provided in Article 21, the *Testing*, *TUEs* and hearing results or other final adjudications of any *Signatory* to the *Code* which are consistent

with the *Code* and are within that *Signatory's* authority, shall be recognised and respected by SAL.

- 23.2** SAL may recognise the same determinations of other bodies which have not accepted the *Code* if the rules of those bodies are otherwise consistent with the *Code*. On being advised of such determination, SAL shall take all necessary action to render the determination effective.

#### **ARTICLE 24 STATUTE OF LIMITATIONS**

No action may be commenced under this Policy against an *Athlete* or other *Person* for an anti-doping rule violation contained in this Policy unless such action is commenced within eight (8) years from the date the violation is asserted to have occurred.

#### **ARTICLE 25 INTERPRETATION OF THE CODE**

- 25.1** The official text of the *Code* shall be maintained by WADA and shall be published in English and French. In the event of any conflict between the English and French versions, the English version shall prevail.
- 25.2** The comments annotating various provisions of the *Code* shall be used to interpret the *Code*.
- 25.3** The *Code* shall be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of the *Signatories* or governments.
- 25.4** The headings used for the various Parts and Articles of the *Code* are for convenience only and shall not be deemed part of the substance of the *Code* or to affect in any way the language of the provisions to which they refer.
- 25.5** The *Code* shall not apply retrospectively to matters pending before the date the *Code* is accepted by a *Signatory* and implemented in its rules. However, pre-*Code* anti-doping rule violations would continue to count as "First violations" or "Second violations" for purposes of determining sanctions under Article 10 of the *Code* for subsequent post-*Code* violations.
- 25.6** The Purpose, Scope and Organization of the World Anti-Doping Program and the *Code* and APPENDIX I DEFINITIONS shall be considered integral parts of the *Code*.

#### **ARTICLE 26 AMENDMENT AND INTERPRETATION OF POLICY**

- 26.1** This Policy may be amended from time to time by SAL subject to ASADA approval. A copy of the amended Policy must be provided to ASADA.
- 26.2** This Policy has been adopted pursuant to the applicable provisions of the *Code* and shall be interpreted in a manner that is consistent with applicable provisions of the *Code*.
- 26.3** Words in the singular include the plural and vice versa.
- 26.4** A *Person* includes a body corporate.

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- 26.5** Words not defined in this policy have the meaning ascribed to them in the *Code* unless a contrary meaning appears from the context.
- 26.6** Reference to “including” and similar words are not words of limitation.
- 26.7** Minor irregularities in the application of this Policy which cannot be reasonably be considered to have affected the determination of an anti-doping rule violation will not affect such determination.

## APPENDIX 1 DEFINITIONS

ACGA means the Australian Commonwealth Games Association Inc, the national body responsible for Commonwealth Games operations, publicity and development in Australia (an incorporated association and a non-profit organisation).

ADAMS means the Anti-Doping Administration and Management System, a Web-based database management tool for data entry, storage, sharing, and reporting designed to assist stakeholders and WADA in their anti-doping operations in conjunction with data protection legislation.

Adverse Analytical Finding means a report from a laboratory or other WADA-approved entity that, consistent with the *International Standard* for Laboratories and related Technical Documents, identifies in a *Sample* the presence of a *Prohibited Substance* or its *Metabolites* or *Markers* (including elevated quantities of endogenous substances) or evidence of the *Use of a Prohibited Method*.

Anti-Doping Organisation means a *Signatory* that is responsible for adopting rules for initiating, implementing or enforcing any part of the *Doping Control* process. This includes, for example, the *International Olympic Committee*, the *International Paralympic Committee*, other *Major Event Organisations* that conduct *Testing* at their *Events*, *WADA*, *International Federations*, and *National Anti-Doping Organisations*.

AOC means the Australian Olympic Committee Inc, an incorporated association with responsibility for selecting, sending and funding Australian teams to the Olympic Summer and Winter Games.

APC means the Australian Paralympic Committee Inc, the peak national body responsible for Australia's elite athletes with a disability at Summer and Winter Paralympic Games.

ASADA means, where the context requires based on the functions, powers and responsibilities conferred under the ASADA Act:

- (a) The CEO of ASADA appointed under the ASADA Act;
- (b) Australian Sports Anti doping Authority established under the ASADA Act; or
- (c) The Anti Doping Rule Violation Panel (ADRVP) established under the ASADA Act.

ASADA Act means the *Australian Sports Anti-Doping Authority Act 2006* as amended from time to time, and includes the *ASADA Regulations* and any statutory or subordinate legislative instrument that replaces or supersedes the *Australian Sports Anti-Doping Authority Act 2006* and /or the *ASADA Regulations* for time to time.

ASADA Register means the register of findings maintained by ASADA under the *ASADA Act 2006* and the *NAD scheme*.

ASADA Regulations means *Australian Sports Anti-Doping Authority Regulations 2006*, as amended from time to time (and which includes, for the avoidance of doubt, the *NAD Scheme* promulgated by those regulations).

ASC means the Australian Sports Commission, an Australian Government body established under the *Australian Sports Commission Act 1989* (Cth), and includes the Australian Institute of Sport.

ASDMAC means the Australian Sports Drug Medical Advisory Committee, Australia's *TUE* Committee, established by the *Australian Sports Drug Agency Act 1990* and continued by the *ASADA Act 2006*.

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*Athlete* means any *Person* who participates in sport at the international level (as defined by each International Federation), the national level (as defined by each *National Anti-Doping Organisation*, including but not limited to those *Persons* in its *Registered Testing Pool*), and any other competitor in sport who is otherwise subject to the jurisdiction of any *Signatory* or other sports organisation accepting the *Code*. All provisions of the *Code*, including, for example, *Testing* and *TUEs*, must be applied to international- and national-level competitors. For the purposes of this Policy, '*Athlete*' includes any participant in sporting activity who is a *Member* of SAL, or a *Member* organisation of SAL, and meets the definition of *Athlete* under the *Code* and/or the *NAD scheme* as in force from time to time.

*Athlete Support Personnel* means any coach, trainer, manager, agent, team staff, official, medical or para-medical personnel, parent or any other *Person* working with, treating or assisting an *Athlete* participating in or preparing for sports *Competition*.

*Attempt* means purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation. Provided, however, there shall be no anti-doping rule violation based solely on an *Attempt* to commit a violation if the *Person* enunciates the *Attempt* prior to it being discovered by a third party not involved in the *Attempt*.

*Atypical Finding* means a report from a laboratory or other WADA-approved entity which requires further investigation as provided by the *International Standard* for Laboratories or related Technical Documents prior to the determination of an *Adverse Analytical Finding*.

*CAS* means the Court of Arbitration for Sport (Oceania Registry).

*Code* means the World Anti-Doping *Code* adopted by the Foundation Board of WADA on 17 November 2007 at Madrid; or if the *Code* has been amended, the *Code* as so amended.

*Competition* means a single race, match, game or singular athletic contest. For example, a basketball game or the finals of the Olympic 100-metre race in athletics. For stage races and other athletic contests where prizes are awarded on a daily or other interim basis the distinction between a *Competition* and an *Event* will be as provided in the rules of the applicable *International Federation*.

*Consequences of Anti-Doping Rules Violations* means an *Athlete's* or other *Person's* violation of an anti-doping rule may result in one or more of the following:

- (a) *Disqualification* means the *Athlete's* results in a particular *Competition* or *Event* are invalidated, with all resulting consequences including forfeiture of any medals, points and prizes;
- (b) *Ineligibility* means the *Athlete* or other *Person* is barred for a specified period of time from participating in any *Competition* or other activity or funding as provided in Article 19; and
- (c) *Provisional Suspension* means the *Athlete* or other *Person* is barred temporarily from participating in any *Competition* prior to the final decision at a hearing conducted under Article 17 (Right to a Fair Hearing).

*Disqualification* see *Consequences of Anti-Doping Rules Violations* above.

*Domestic Testing Pool* means the pool of *Athletes* established by ASADA who are not part of ASADA's *Registered Testing Pool* but who are subject to both *In-Competition* and *Out-of-Competition Testing* as part of ASADA's test distribution plan.

*Doping Control* means all steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in between such as provision of whereabouts information, *Sample* collection and handling, laboratory analysis, *TUEs*, results management and hearings.

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Event means a series of individual *Competitions* conducted together under one ruling body (e.g., the Olympic Games, FINA World Championships, or Pan American Games).

Event Period means the time between the beginning and end of an *Event*, as established by the ruling body of the *Event*.

Filing Failure means a failure by an *Athlete* to file current and accurate whereabouts information in accordance with the rules of an *IF* and/or *ASADA*.

FINA Means the Federation Internationale de Natation.

In-Competition means, unless provided otherwise in the rules of an *International Federation* or other relevant *Anti-Doping Organisation*, the period commencing twelve hours before a *Competition* in which the *Athlete* is scheduled to participate through the end of such *Competition* and the *Sample* collection process related to such *Competition*.

Independent Observer Program means a team of observers, under the supervision of *WADA*, who observe and may provide guidance on the *Doping Control* process at certain *Events* and report on their observations.

Ineligibility see *Consequences of Anti-Doping Rules Violations* above.

Individual Sport means any sport that is not a *Team Sport*.

International Event means an *Event* where the *International Olympic Committee*, the *International Paralympic Committee*, an *International Federation*, a *Major Event Organisation*, or another international sport organisation is the ruling body for the *Event* or appoints the technical officials for the *Event*.

International Federation (IF) means an *International Federation* recognised by the International Olympic Committee or General Assembly of International Sports Federations (GAISF) as the entity responsible for governing that sport internationally.

International-Level Athlete means *Athletes* designated by one or more *International Federations* as being within the *Registered Testing Pool* for an *International Federation*.

International Standard means a standard adopted by *WADA* in support of the *Code* as updated from time to time. Compliance with an *International Standard* (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the *International Standard* were performed properly. *International Standards* shall include any Technical Documents issued pursuant to the *International Standard*.

Major Event Organisations means the continental associations of *National Olympic Committees* and other international multi-sport organisations that function as the ruling body for any continental, regional or other *International Event*.

Marker means a compound, group of compounds or biological parameter(s) that indicates the Use of a *Prohibited Substance* or *Prohibited Method*.

Member means a *Person* who, or a body which, is a *Member* of *SAL*; a *Person* who, or body which, is affiliated with *SAL*; or a *Person* who is a member of a body which is a *Member* of or affiliated with *SAL*.

Metabolite means any substance produced by a biotransformation process.

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Minor means a natural *Person* who has not reached the age of majority as established by the applicable laws of his or her country of residence (in Australia, any natural *Person* under the age of 18 years).

Missed Test means a failure by an *Athlete* to be available for *Testing* on any given day at the location and time specified in the 60-minute timeslot identified in his or whereabouts information for that day, in accordance with the rules of FINA and/or ASADA.

National Anti-Doping Organisation (NADO) means the entity(ies) designated by each country as possessing the primary authority and responsibility to adopt and implement anti-doping rules, direct the collection of *Samples*, the management of test results, and the conduct of hearings, all at the national level. This includes an entity which may be designated by multiple countries to serve as regional *Anti-Doping Organisation* for such countries. If this designation has not been made by the competent public authority(ies), the entity shall be the country's *National Olympic Committee* or its designee. In Australia, the *NADO* as designated by the Australian Government is ASADA.

National Anti-Doping (NAD) scheme means the *NAD scheme* as defined under the ASADA Act 2006 as amended from time to time.

National Event means a sport *Event* involving international- or national-level *Athletes* that is not an *International Event*.

National Olympic Committee (NOC) means the organisation recognised by the *International Olympic Committee*. The term *National Olympic Committee* shall also include the National Sport Confederation in those countries where the National Sport Confederation assumes typical *National Olympic Committee* responsibilities in the anti-doping area.

National Paralympic Committee (NPC). Means the organisation recognised by the *International Paralympic Committee*. The term *National Paralympic Committee* shall also include the National Sport Confederation in those countries where the National Sport Confederation assumes typical *National Paralympic Committee* responsibilities in the anti-doping area.

National Sporting Organisation (NSO) means a national or regional entity which is a *Member* of or is recognised by an *International Federation* as the entity governing that *International Federation's* sport in that nation or region, or a body recognised by the ASC as a *National Sporting Organisation*, and includes a *National Sporting Organisation* for the Disabled.

No Advance Notice means a *Doping Control* which takes place with no advance warning to the *Athlete* and where the *Athlete* is continuously chaperoned from the moment of notification through *Sample* provision.

No Fault or Negligence means an *Athlete's* establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had *Used* or been administered the *Prohibited Substance* or *Prohibited Method*.

No Significant Fault or Negligence means an *Athlete's* establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for *No Fault or Negligence*, was not significant in relationship to the anti-doping rule violation.

Out-of-Competition means any *Doping Control* which is not *In-Competition*.

Participant means any *Athlete* or *Athlete Support Personnel*.

Person means a natural *Person* or an organisation or other entity.

Possession means the actual, physical *Possession*, or the constructive *Possession* (which shall be found only if the *Person* has exclusive control over the *Prohibited Substance* or *Prohibited Method* or the premises in which a *Prohibited Substance* or *Prohibited Method* exists); provided, however, that if the *Person* does not have exclusive control over the *Prohibited Substance* or *Prohibited Method* or the premises in which a *Prohibited Substance* or *Prohibited Method* exists, constructive *Possession* shall only be found if the *Person* knew about the presence of the *Prohibited Substance* or *Prohibited Method* and intended to exercise control over it. Provided, however, there shall be no anti-doping rule violation based solely on *Possession* if, prior to receiving notification of any kind that the *Person* has committed an anti-doping rule violation, the *Person* has taken concrete action demonstrating that the *Person* never intended to have *Possession* and has renounced *Possession* by explicitly declaring it to an *Anti-Doping Organisation*. Notwithstanding anything to the contrary in this definition, the purchase (including by any electronic or other means) of a *Prohibited Substance* or *Prohibited Method* constitutes *Possession* by the *Person* who makes the purchase.<sup>55</sup>

Prohibited List means the List identifying the *Prohibited Substances* and *Prohibited Methods* which is published and revised by WADA as described in Article 4.1 of the *Code* as updated from time to time.

Prohibited Method means any method so described on the *Prohibited List*.

Prohibited Substance means any substance so described on the *Prohibited List*.

Provisional Hearing means, for purposes of Article 16, an expedited abbreviated hearing occurring prior to a hearing under Article 17 (Right to a Fair Hearing) that provides the *Athlete* with notice and an opportunity to be heard in either written or oral form.

Provisional Suspension see *Consequences of Anti-Doping Violations* above.

Publicly Disclose or Publicly Report means to disseminate or distribute information to the general public or *Persons* beyond those *Persons* entitled to earlier notification in accordance with Article 14 of the *Code*.

Registered Testing Pool means the pool of top level *Athletes* established separately by each *International Federation* and *National Anti-Doping Organisation* who are subject to both *In-Competition* and *Out-of-Competition Testing* as part of that *International Federation's* or *National Anti-Doping Organisation's* test distribution plan. Each *International Federation* shall publish a list which identifies those *Athletes* included in its *Registered Testing Pool* either by name or by clearly defined, specific criteria.

SAL means Swimming Australia Ltd.

Sample or Specimen means any biological material collected for the purposes of *Doping Control*.<sup>56</sup>

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<sup>55</sup> *Comment to Possession: Under this definition, steroids found in an Athlete's car would constitute a violation unless the Athlete establishes that someone else used the car; in that event, ASADA or SAL must establish that, even though the Athlete did not have exclusive control over the car, the Athlete knew about the steroids and intended to have control over the steroids. Similarly, in the example of steroids found in a home medicine cabinet under the joint control of an Athlete and spouse, ASADA or SAL must establish that the Athlete knew the steroids were in the cabinet and that the Athlete intended to exercise control over the steroids.*

<sup>56</sup> *Comment to Sample or Specimen: It has sometimes been claimed that the collection of blood Samples violates the tenets of certain religious or cultural groups. It has been determined that there is no basis for any such claim.*

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Signatories means those entities signing the Code and agreeing to comply with the Code, including the *International Olympic Committee, International Federations, International Paralympic Committee, National Olympic Committees, National Paralympic Committees, Major Event Organisations, National Anti-Doping Organisations, and WADA.*

SIS/SAS means an Australian State Institute of Sport or State Academy of Sport, being the state or territory institute or academy of sport, jointly or severally, as appropriate.

Sporting Administration Body has the same meaning as in the *ASADA Act 2006.*

Sporting Organisation has the same meaning as in the *ASADA Act 2006.*

Substantial Assistance. For the purposes of Article 19.6.3, a *Person* providing *Substantial Assistance* must:

- (1) fully disclose in a signed written statement all information he or she possesses in relation to anti-doping rule violations, and;
- (2) fully cooperate with the investigation and adjudication of any case related to that information, including for example, presenting testimony at a hearing if requested to do so by ASADA, SAL or a hearing panel.

Further, the information provided must be credible and must comprise an important part of any case which is initiated or, if no case is initiated, must have provided a sufficient basis on which a case could have been brought.

Support Persons means the same as "*Athlete Support Personnel*".

Tampering means altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing, misleading or engaging in any fraudulent conduct to alter results or prevent normal procedures from occurring; or providing fraudulent information to an *Anti-Doping Organisation*.

Target Testing means selection of *Athletes* for *Testing* where specific *Athletes* or groups of *Athletes* are selected on a non-random basis for *Testing* at a specified time.

Team Sport means a sport in which the substitution of *Athletes* is permitted during a *Competition*.

Testing means the parts of the *Doping Control* process involving test distribution planning, *Sample* collection, *Sample* handling, and *Sample* transport to the laboratory.

Trafficking means selling, giving, transporting, sending, delivering or distributing a *Prohibited Substance* or *Prohibited Method* (either physically or by any electronic or other means) by an *Athlete, Athlete Support Personnel* or any other *Person* subject to the jurisdiction of an *Anti-Doping Organisation* to any third party; provided, however, this definition shall not include the actions of 'bona fide' medical personnel involving a *Prohibited Substance* used for genuine and legal therapeutic purposes or other acceptable justification, and shall not include actions involving *Prohibited Substances* which are not prohibited in *Out-of-Competition Testing* unless the circumstances as a whole demonstrate such *Prohibited Substances* are not intended for genuine and legal therapeutic purposes.

Tribunal means a body approved by ASADA which shall convene from time to time to hear allegations of anti-doping rule violations against *Athletes, Athlete Support Personnel* and other *Persons* in order to: determine whether an anti-doping rule violation has occurred; determine appropriate sanctions where an anti-doping rule violation is found to have been committed; and to hear appeals, except in the case where an appeal must be to the CAS. In the case of an appeal, and where the CAS is not being used for appeals, a new *Tribunal* will be convened, i.e., no members of the *Tribunal* at the original hearing will hear the appeal.

TUE means Therapeutic Use Exemption, granted in accordance with the *International Standard* for Therapeutic Use Exemptions.

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UNESCO Convention means the International Convention Against Doping in Sport adopted by the 33<sup>rd</sup> session of the UNESCO General Conference on October 19, 2005 including any and all amendments adopted by the States parties to the Convention and the Conference of Parties to the International Convention Against Doping in Sport.

Use means the utilisation, application, ingestion, injection or consumption by any means whatsoever of any *Prohibited Substance* or *Prohibited Method*.

WADA. Means the World Anti-Doping Agency.

Whereabouts Failure means a *Filing Failure* or a *Missed Test*.