



19 February 2020

Jeanette Radcliffe  
Committee Secretary  
Community Affairs Legislation Committee (Sen)  
E: community.affairs.sen@aph.gov.au

Dear Ms Radcliffe

**Inquiry into the Australian Sports Anti-Doping Authority Amendment (Enhancing Australia's Anti-Doping Capability) Bill 2019**

Below, please find our corrections to the transcript and our replies to the questions on notice.

**Corrections to the transcript**

Attached are pages 4, 8, and 10 of the transcript with our corrections.

We note that at page 8, what I sought to convey was that the ADRVP had been a check on the CEO. The proposed legislation both removes the check on the CEO and lowers the standard that the CEO must meet. (We do not oppose abolishing the ADRVP because it lengthens the process).

**Questions on Notice**

**1. What examples are there of property that has been taken as part of a disclosure notice as evidence of actions being taken or otherwise, whether it's documents, notes, etc.**

We have attached two redacted disclosure notices. The Players Association whose members received the notices asked not to be identified.

All of the anti-doping provisions require athletes to provide ASADA information. Some, like the FFA antidoping code, specifically require players to produce "*mobile phone, other personal electronic device and computer, as well as access to any cloud based storage used in association with those devices, so that it may be imaged and examined by forensic experts to assist with an investigation being conducted pursuant to this ADP in relation to any suspected ADRV*".

## 2. The extent to which athletes have already given up their rights against self-incrimination.

We note that our players' associations currently have language in the anti-doping codes applicable to their members that abrogate the athletes' rights against self-incrimination and that the abrogation of the right was imposed rather than collectively bargained.

We note that where integrity formats have been formed with players' association consultation, such as in Cricket and Basketball, the right against self-incrimination is protected in relevant integrity provisions. Arguably the privilege section of the Basketball Australia Integrity Framework, which negates any provision abrogating the right in a code falling within the Framework (such as the anti-doping code), would allow a player to exercise the right.

We further note that the AFL's 2015 Antidoping Code (the one currently on the AFLPA website) did not abrogate the right against self-incrimination. The 2015 Code was superseded by the 2019 Code in which the right is abrogated.

## 3. Examples of Legal Aid Services for Athletes

The following are examples of organisations that provide legal assistance in the UK: [Sports Resolutions UK](#), Canada: [Sport Dispute Resolution Centre of Canada Scheme](#) and New Zealand: [Sports Tribunal of New Zealand](#). The US provides advice on doping matters through the Office of the Athlete Ombudsman: [The Office of the Athlete Ombudsman](#), but not legal representation.

We note that: 1) the Macolin Convention to which Australia became a signatory as part of the enhanced integrity legislation was negotiated within the Council of Europe and 2) the Council of Europe's 2017 *Recommendation on ensuring the independence of hearing panels (bodies) and promoting fair trial in anti-doping cases*: [Council of Europe Recommendation](#) provides at clause 2(c) that states should consider establishing a legal aid mechanism in order to ensure access to legal counsel.

If you need anything further, please ask me.

Faithfully yours,

Laura Sigal  
Deputy General Secretary

**HOLMES, Mr Jacob, General Secretary, Australian Athletes' Alliance**

**SIGAL, Ms Laura, Deputy General Secretary, Australian Athletes' Alliance**

[09:47]

**CHAIR:** Welcome. Thank you for participating in the committee's hearing today. If you would like to make a brief opening statement I will ask you to do that now and then we will ask you some questions.

**Mr Holmes:** Chair Askew and members of the committee, thank you for the opportunity to speak today about an issue of substantial importance to the Australian Athletes' Alliance. For context, the Australian Athletes' Alliance is the peak body for professional athletes in Australia and comprises the AFL Players Association, the Australian Cricketers' Association, the Australian Basketball Players' Association, the Australian Netball Players' Association, Professional Footballers Australian, Rugby League Players Association and the Rugby Union Players' Association. In that group we represent more than 4,000 male and female athletes in elite sport—and I emphasise this point—who are most interested in ensuring the competitions they compete in are free from corruption and cheating. After all, a clean athlete—and I was one of them once—has the most to lose from drug cheats: a place in the team, a medal, a competition or championship trophy. We are definitely not here to make it easy on drug cheats.

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But we think it is important to view the proposed legislative changes in the context of antidoping burdens already on athletes when they are employed in sport. As a former professional basketball player and being fortunate enough to wave the towel when winning a Commonwealth Games gold medal in 1986, I am acutely aware of the burdens placed on athletes. Bear with me on this. Whether it be urinating in a cup, with your top above your head and pants below your ankles, with someone else watching, whether it is someone rocking up to your house at 6:00 in the morning to ask you for a drug test, or whether it's being accountable for your whereabouts every day of every week of an entire year, and if that changes making sure you make them if you happen to stay at a friend's house. Scarily, should a contaminated substance unintentionally enter your system, which is always a fear of mine, you could potentially be up for a charge, or at least defending yourself for thousands of dollars of costs to lower the degree of fault. Should that unintentional act be deemed negligent, I could have been deprived of my sporting career, not to mention the irreparable damage it did to my reputation and the removal of my ability to be a part of my sport, which I've been with for my whole life.

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To be honest, all of these I accepted as part and parcel of the system we operate in, part and parcel of being an athlete protecting the best interests of sport and the integrity of the sport I played in. However, what we're seeing now in the legislation and particularly in the proposed bill is that it seeks to increase these already pretty substantial burdens as well as, in our opinion, decrease the accountability that national sporting organisations and others have to the athletes, who I think we should have at the forefront of this, obviously with a bias towards that.

In simple terms, the bill proposes to do four things that we have an issue with: (1) to lower the standard for when personal information should be disclosed and privacy can be invaded, (2) to remove the basic human right of the privilege against self-incrimination, (3) to remove the right to hold those in governance of sport accountable for their actions if they're devoid of a duty of care and (4) make it more difficult for athletes to inspect the information that the enforcement has against them. All of this is in addition to lack of focus, we believe, that the legislation has on safeguarding and protecting the athletes and their human and legal rights. This should be the starting point—respect and protection of the human rights of all involved in sport and particularly the athletes.

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With this in mind, I'll briefly go through the four areas in our submission, and then I can take some questions. In our belief, the current standard of 'reasonable belief' should not be diminished to 'reasonably sufficient' for a disclosure notice. Currently the CEO may issue a disclosure notice only if they reasonably believe that a person has information that may be relevant to the National Anti-Doping Scheme and the ADRVP agrees that the CEO's belief is reasonable. The bill not only eliminates the check of the CEO's power with the ADRVP but also lowers the standard that the CEO has to apply down from 'reasonable belief' to 'reasonable suspicion'. We accept that the elimination of ADRVP as a process may be beneficial. However, we object to the lowering of the standard for issuance of disclosure notices. The breadth of information that we're talking about is extremely broad. And given the significant burden that is placed on a person to deliver this information, we believe that a reasonable belief is a standard that should be upheld. A suspicion, which is really tantamount to a hunch, just isn't far enough for us.

"reasonable suspicion"

It should not be harder for athletes to review documents held against them. Simply, this should be done when it's convenient and accessible for the athlete. Especially with the many semi-professional athletes we have in our sports, with the growth of female players, to have it only at the direction of the CEO seems odd and inappropriate. Considering that the athletes' training schedules are fixed during their competition and their travel and, as I said,

**Senator SIEWERT:** That's where I wanted to go next—the issue around belief and suspicion. For the alliance, what's the difference that you see between belief and suspicion?

**Mr Holmes:** That's a pretty legal question. I'll refer to Laura for that.

**Ms Sigal:** Belief is pretty much what it says—that someone actually believes that it's going to lead to something. Whereas a suspicion is more of a hunch, like, 'I think it could but not really sure.' We think that, if someone's going to the burden of handing over their phone and their computer and all of this information, then it has to be more than a hunch; there has to be a belief that handing over that information will provide sufficient evidence of a violation, not that there's a hunch that it might. We're not against the removal of ~~that~~ <sup>the</sup> layer in between, but that layer, to some extent, checks the CEO's power. Here we're removing the safeguard and lowering the standard, so that's part of the problem as well. ADIR VP

**Senator HUGHES:** Can I get clarification. What are you referring to with handing over your phone or computer? I thought we were talking about a test?

**Ms Sigal:** For a disclosure notice, one of the things that you can be required to disclose is to provide your computer and provide information. Those are the things that a disclosure notice can demand.

**Senator HUGHES:** What's that got to do with drugs in sport?

**Senator SIEWERT:** I presume it's because—

**Senator HUGHES:** I don't understand how what's on your computer can relate to drug testing in sport.

**Ms Sigal:** Drug testing isn't the only way that violations of the code are found. It could be that someone says, 'I know that so and so is selling steroids.' If there was enough there for someone to have a reasonable belief that looking at that person's computer, for instance, would provide evidence of the sale of steroids—

**Senator HUGHES:** I would assume that would be a police matter rather than a matter for a drug testing organisation. That's a very, very different matter.

**Ms Sigal:** But that's still in the ASADA Act.

**CHAIR:** How often does that happen or how often has that happened?

**Ms Sigal:** I don't know. I'll have to check.

**Senator HUGHES:** I think we're having a bit of a leap there.

**Senator SIEWERT:** I'll follow that up. Can you take on notice if that has occurred and what level of information to date has been requested from your members? For your members, what other things have occurred in terms of disclosure notice? What other examples—

**Senator HUGHES:** Actual examples, like what—

**Senator SIEWERT:** Hang on. Can you let me finish? What examples are there of property that has been taken as part of a disclosure notice as evidence of actions being taken or otherwise, whether it's documents, notes—things like that.

**Ms Sigal:** Sure. I know ASADA is going to be testifying as well. That something that might be asked of them as well.

**Senator SIEWERT:** Thank you. That would be appreciated. You touched on the issue around education. It's something that you think should be included more in the bill. What level of awareness do athletes have of what is required under the act and the issue around self-incrimination and that point about, going back to the contracts, where they sign away their right to privilege against self-incrimination?

**Mr Holmes:** The education space—I'll go on the record as saying this—is extremely difficult. It has to be, because it's an extremely complex system we're talking about. I've played for 15 years in Australia and I have been out for five, and I've got a handle of it but I wouldn't say I'm an expert, and I've reviewed it more than most people. It's an extremely difficult situation.

With the education, currently the enforcement body is the educator. As an athlete, you view that as being similar to the police coming in to give you the education session. That's great, but I also might want to ask questions. I might want to be investigative about what is going on. I may want to have the ability to have an off-the-side conversation about stuff. I don't know that that top-down approach is the most effective way. For me, it's establishing the ability for us to be peer to peer with the athletes. That is obviously where the line sits: the athletes speak to the athletes about, 'Here are examples of where you can get yourself into dangerous situations.'

**Senator McCARTHY:** When would be an appropriate time for drug education and training?

**Mr Holmes:** It's very dependent—that's the thing. As an athletes association, we understand and work with the athletes on when would be best in their schedule. We already attend club visits, where we do that work. We could work with other associations and other codes on when's the appropriate time in a camp when we can have space and have discussions and allow them to actually come back.

**Senator McCARTHY:** So you want to flip it so that, instead of ASADA having that call, it's you guys saying, 'This is what works best for the athletes.' Is that what you mean?

**Mr Holmes:** I think it's working with ASADA on how an education model is rolled out. It actually includes peer-to-peer education. I'm not saying, 'Take away the compliance and the hard information about what can happen,' but let's work on: 'How does that situation come to be? How do you actually put yourself in a vulnerable position?' Let's try and talk about athletes that may have been there before and talk with them about how we could do that.

**Senator McCARTHY:** Lastly, you also mention in your submission—in relation to support, representation and legal advice—that you believe the provision of a legal aid service within the new integrity in sport framework is essential. Do you want to give us some further details in relation to why you think that?

**Mr Holmes:** I think it's absolutely critical, when we're talking about the level of sophistication of the legislation and the requirements that athletes have to comply with, that we then provide them with the support and access when they are issued with a disclosure notice or are having questions about what happens now, because this process, even if you take away some of the cumbersome areas of it, is still a serious process. No matter the education you do, you're never going to be across it all. You're always going to have questions. Athletes aren't lawyers, and lawyers aren't always specific on the antidoping bill. So to provide access to actually get specific advice to support yourself through a process like this—especially when we're talking about a body that is now extremely powerful and broad ranging—we should have also a provision in there for the athletes: 'When this happens, here's where you can turn. Here's an independent body that you can speak to, that can provide you with advice and support you through the process, and you won't be up for tens of thousands of dollars of cost for that.'

**Senator McCARTHY:** Are there any examples that you can show us or refer us to that you've seen, either around Australia or around the world, that we should look at, in terms of that independent legal body?

**Mr Holmes:** Not that I know of.

**Senator McCARTHY:** Could you take that on notice.

**Mr Holmes:** Yes.

**CHAIR:** We've got 60 seconds for Senator Hughes to ask a question or two.

**Senator HUGHES:** You mentioned that you played professional basketball for 15 years. How often were you tested?

**Mr Holmes:** Wow, that is a good question. I couldn't give you a specific number. I was in the national team squad for around 15 years. It would have been over 10 times, for sure.

**Senator HUGHES:** Less than once a year.

**Mr Holmes:** Potentially. I was also not always in the team. My understanding is that, the further you went in the process of being in the national team, the more tests you went through. I can take it in notice and check my records, but there was a substantial amount of testing.

**CHAIR:** Thank you very much for coming along today and providing evidence. We have given you a bit of homework to come back with—the questions on notice. We are reporting on Monday 24 February, so we would appreciate it if responses to questions on notice could be provided to the secretariat by Wednesday 19 February.

**Senator SIEWERT:** Chair, I've got a couple more questions I might put on notice.

**CHAIR:** Okay, you'll provide those through the secretariat?

**Senator SIEWERT:** Yes.

**CHAIR:** Okay, Mr Holmes and Ms Sigal, those will come through to you as well. Thank you very much for your time.



Australian Government

Australian Sports  
Anti-Doping Authority

## AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY ACT 2006

### Notice to produce documents or things

Issued under Schedule 1, clause 3.26B(1)(c), of the *Australian Sports Anti-Doping Authority Regulations 2006*

To:

I, David Sharpe APM OAM, Chief Executive Officer of the Australian Sports Anti-Doping Authority (ASADA), believe on reasonable grounds, that you have documents or things that may be relevant to the administration of the National Anti-Doping Scheme being documents or things that may be relevant to the ASADA investigation into possible anti-doping rule violations.

Pursuant to clause 3.26B(1)(c) of Schedule 1 of the Regulations, I REQUIRE you to produce documents or thing specified in Schedule 1 of the Notice by the time and date specified in this Notice:

Time:

Date:

Location:

Method of production: Delivering the documents or things to the CEO ASADA, given to Karen Smith, Principal Investigator for ASADA or any appointed investigator for ASADA.

#### **You are not excused from complying on the ground of self-incrimination**

You are not excused from producing a document or thing on the ground that the document or thing might tend to incriminate you or expose you to a penalty.

However, none of the following:

- the document or thing produced;
- the producing of the document or thing;
- any information, document or thing obtained as a direct or indirect consequence of producing the document or thing

is admissible in evidence against you in:

- criminal proceedings, other than proceedings for an offence against section 137.1 or section 137.2 of the *Criminal Code Act 1995* (Cth) that relates to this Act, or
- any proceedings that would expose you to a penalty, other than proceedings in connection with the *Australian Sports Anti-Doping Authority Act 2006* (Cth) or regulations made under

that Act. Proceedings (however described) before a sporting administration body or the Court of Arbitration for Sport or other sporting tribunal that relate to sports doping and safety matters are proceedings in connection with the Act or regulations made under the Act.

#### **If you do not possess a document or thing**

If you do not possess a document or thing specified in the Schedule and have taken all reasonable steps available to you to obtain the document or thing and have been unable to obtain it, you may give the CEO a statutory declaration stating those matters.

Please note there are possible consequences if you do not comply with this notice. See heading titled, 'Possible consequences if you do not comply with this Notice' below.

#### **Possible consequences if you do not comply with this Notice**

##### ***Civil penalty***

Failure to comply with this Notice is a contravention of a civil penalty provision under section 13C(1) of the Act. A contravention of section 13C(1) carries a civil penalty equal to 30 'penalty units' (or 150 penalty units if the person is a body corporate). One penalty unit is equal to \$210.

If you fail to comply with this Notice:

- the CEO may apply to a court for an order that you pay the Commonwealth a penalty for the contravention; or
- a person authorised by the CEO may give you an Infringement Notice for the contravention, requiring payment of a penalty to the Commonwealth.

##### ***Civil penalty proceedings***

If a court is satisfied that a person has contravened a civil penalty provision, the court may impose a penalty which it determines to be appropriate. It may impose a maximum penalty equal to 30 penalty units for each contravention (or 150 penalty units if the person is a body corporate).

Under Part 8A of the Act (which applies the civil penalty enforcement provisions in Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) (RP Act)), and in accordance with section 93 of the RP Act:

- the obligation to give information of the kind specified in this Notice continues until the information is given in accordance with this Notice, even if the time and date for compliance has passed, and
- a person who contravenes section 13C(1) of the Act, commits a separate contravention on each day during which the contravention continues.

This means that if you do not comply with this Notice when required, you will commit a contravention on that day and a separate contravention on each subsequent day that you do not comply with the Notice. Each separate contravention may attract a penalty of 30 penalty units (or, in the case of a body corporate, 150 penalty units).

A copy of Part 8A of the Act and Part 4 of the RP Act is **attached** to this Notice.

### ***Infringement Notice***

Instead of the CEO bringing civil penalty proceedings, a person authorised by the CEO may give a person who is alleged to have contravened section 13C(1) an Infringement Notice under Part 8B of the Act. An Infringement Notice requires the payment of a penalty directly to the Commonwealth. The amount of the penalty must be the lesser of:

- one-fifth of the maximum penalty a court could impose for the alleged contravention or contraventions (see above), and
- 12 penalty units if the person is an individual or 60 units if the person is a body corporate.

A copy of Part 8B of the Act and Part 5 of the RP Act is **attached** to this Notice.

### ***Offences***

Section 137.1 of the *Criminal Code Act 1995* makes it an offence in certain circumstances to knowingly provide false or misleading information. The offence is punishable on conviction by imprisonment for not more than 12 months.

Section 137.2 of the *Criminal Code Act 1995* makes it an offence in certain circumstances to knowingly provide false or misleading documents. The offence is punishable on conviction by imprisonment for not more than 12 months.

Section 149.1 of the *Criminal Code Act 1995* makes it an offence in certain circumstances to obstruct, hinder, intimidate or resist a Commonwealth public official in the performance of his or her functions as a Commonwealth public official. The offence is punishable on conviction by imprisonment for not more than 2 years.

A copy of sections 137.1, 137.2 and 149.1 is **attached** to this Notice.

### **HOW TO CONTACT ASADA**

The contact person for this Notice is Principal Investigator Karen Smith.

Ms Karen Smith may be contacted:

- by telephone on 02 6222 4242 or
- by email at karen.smith@asada.gov.au or
- by sending written correspondence to PO Box 1744, Fyshwick ACT 2609

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### **Interpretation**

In this Notice, including the Schedule to this Notice, unless the contrary intention appears:

"CEO" means the Chief Executive Officer of ASADA.

"document" means any record of information, and includes:

- a) anything on which there is writing; and
- b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and



c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and

d) a map, plan, drawing or photograph.

"document or thing" means the document or thing specified in Schedule 1 of this Notice;

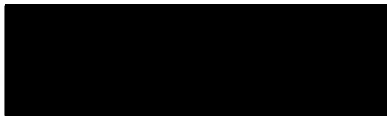
"person" includes a body corporate, whether a corporation or not;

"Prohibited substance" means a substance so described, or a substance in a class of substances so described, on the list identifying prohibited substances and prohibited methods published by the World Anti-Doping Agency, as in force from time to time;

"the Act" means the *Australian Sports Anti-Doping Authority Act 2006* (Cth);

"the Regulations" means the *Australian Sports Anti-Doping Authority Regulations 2006* (Cth);

the singular includes the plural and the plural includes the singular.



David Sharpe APM OAM  
Chief Executive Officer  
Australian Sports Anti-Doping Authority  
Dated:

## SCHEDULE 1 - SPECIFIED DOCUMENTS OR THINGS

The following documents and things are sought from

- any and all mobile telephones reasonably in the possession of, or control of, or used by, including but not limited to the mobile telephone associated with the telephone number ;
- any Microsoft, Android or IOS tablets reasonably in the possession of, or control of, or used by, including but not limited to Apple Pads, Samsung Galaxy tablets and like devices;
- any computer reasonably in the possession of, control of, or used by, ;
- any prohibited substances reasonably in the possession or control of ;
- any packaging or thing, reasonably in the possession or control of including but not limited to syringes, vials, tablets, bottles, sharps containers or injecting solutions associated with a prohibited substance or which contained a prohibited substance; and
- any documents, electronic or otherwise reasonably in the possession or control of and in connection with prohibited substances or methods, such as but not limited to the research of prohibited substances or methods, the ordering of prohibited substances or methods including but not limited to cocaine, and any records documenting or recording doping cycles, such as diary, spreadsheets and/or calendar records.

## LEGISLATION RELEVANT TO NOTICE

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

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

- (1) The NAD scheme must authorise the CEO to give a person a written notice (a **disclosure notice**) requiring the person to do one or more of the following within the period specified in the notice:
  - (a) attend an interview to answer questions;
  - (b) give information of the kind specified in the notice;
  - (c) produce documents or things of the kind specified in the notice.
- (1A) The NAD scheme must provide that the CEO must not give a disclosure notice to a person unless:
  - (a) the CEO declares in writing that the CEO reasonably believes that the person has information, documents or things that may be relevant to the administration of the NAD scheme; and
  - (b) if:
    - (i) the person is a registered medical practitioner; and
    - (ii) the notice is given to the person in his or her capacity as a registered medical practitioner;the CEO declares in writing that the CEO reasonably believes that the person has been involved, in that capacity, in the commission, or attempted commission, of a possible violation of the anti-doping rules; and
  - (c) 3 ADRVP members agree in writing that the belief referred to in paragraph (a) (and, if applicable, paragraph (b)) is reasonable.
- (2) The NAD scheme may make provision in relation to:
  - (a) disclosure notices; and
  - (b) the form and conduct of interviews; and
  - (c) the form in which information, documents, things and answers to questions must or may be given.
- (3) Without limiting subsection (2), the NAD scheme must provide that a person who is given a disclosure notice has the right to be notified in writing of the possible consequences of a failure to comply with the disclosure notice.

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

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

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

##### *Retaining documents and things*

- (2) The CEO may take, and retain for as long as is necessary, possession of a document or thing produced in response to a disclosure notice.
- (3) While the CEO retains the document or thing, he or she must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.

### 13C Failure to comply with disclosure notice

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

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

Civil penalty: 30 penalty units.

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

Note: A person bears an evidential burden in relation to a matter in subsection (2) (see section 96 of the Regulatory Powers Act)

#### *Failure to attend interview*

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

Civil penalty: 30 penalty units.

#### *Failure to answer questions*

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

Civil penalty: 30 penalty units.

### 13D Self-incrimination

- (1) An individual is excused from complying with a requirement to answer a question or to give information if the answer to the question or the information might tend to incriminate the individual or expose the individual to a penalty.
- (1A) A person is not excused from producing a document or thing as required by a disclosure notice given to the person on the ground that the document or thing might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual, none of the following:
- (a) the document or thing produced;
  - (b) the producing of the document or thing;
  - (c) any information, document or thing obtained as a direct or indirect consequence of producing the document or thing;
- is admissible in evidence against the individual in:
- (e) criminal proceedings, other than proceedings for an offence against section 137.1 (false or misleading information) or 137.2 (false or misleading documents) of the *Criminal Code* that relates to this Act; or

(f) any proceedings that would expose the individual to a penalty, other than proceedings in connection with this Act or the regulations.

- (3) To avoid doubt, proceedings (however described) before a sporting administration body or the Court of Arbitration for Sport or other sporting tribunal that relate to sports doping and safety matters are proceedings in connection with this Act or the regulations.

## Part 8A—Civil penalty orders

### 71 Simplified outline of this Part

This Part applies the Regulatory Powers Act to enable the CEO to enforce civil penalty provisions. Orders may be sought from a court in relation to contraventions of such provisions.

### 72 Civil penalty provisions

#### *Enforceable civil penalty provisions*

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

**Note:** Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

#### *Authorised applicant*

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the CEO, on behalf of the Commonwealth, is an authorised applicant in relation to the civil penalty provisions of this Act.

#### *Relevant court*

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) the Federal Court of Australia;
  - (b) the Federal Circuit Court of Australia;
  - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

#### *Extension to external Territories*

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

## Part 8B—Infringement notices

### 73A Simplified outline of this Part

This Part applies the Regulatory Powers Act to enable the CEO to issue an infringement notice in relation to the alleged contravention of a civil penalty provision.

## 73B Infringement notices

### *Provisions subject to an infringement notice*

- (1) A civil penalty provision of this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

### *Infringement officer*

- (2) For the purposes of Part 5 of the Regulatory Powers Act, each of the following persons is an infringement officer in relation to the provisions mentioned in subsection (1):
- (a) the CEO;
  - (b) a person authorised by the CEO for the purposes of this paragraph.

### *Relevant chief executive*

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the CEO is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (4) The CEO may, in writing, delegate the CEO's powers and functions under Part 5 of the Regulatory Powers Act as the relevant chief executive in relation to the provisions mentioned in subsection (1) to:
- (a) a member of the ASADA staff; or
  - (b) an individual whose services are made available to the CEO under section 24M.
- (5) A delegate must comply with any written directions of the CEO.

### *Extension to external Territories*

- (6) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

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

### **Schedule 1**

#### **Division 3.4A—Request to attend interview, give information or produce documents**

##### **3.26B Requirement**

### *Authority to give disclosure notice*

- (1) The CEO is authorised to give a person a written notice (a **disclosure notice**) requiring the person to do one or more of the following within the period specified in the notice:
- (a) attend an interview to answer questions;
  - (b) give information of the kind specified in the notice;
  - (c) produce documents or things of the kind specified in the notice.

Note: See subsection 13A(1) of the Act.

- (2) The CEO must not give a disclosure notice to the person unless:
- (a) the CEO declares in writing that the CEO reasonably believes that the person has information, documents or things that may be relevant to the administration of the NAD scheme; and
  - (b) if:
    - (i) the person is a registered medical practitioner; and

(ii) the notice is given to the person in his or her capacity as a registered medical practitioner;

the CEO declares in writing that the CEO reasonably believes that the person has been involved, in that capacity, in the commission, or attempted commission, of a possible violation of the anti-doping rules; and

(c) 3 ADRVP members agree in writing that the belief mentioned in paragraph (a) (and, if applicable, paragraph (b)) is reasonable.

Note: See subsection 13A(1A) of the Act.

(3) A person who is given a disclosure notice has the right to be notified in writing of the possible consequences of a failure to comply with the notice.

Note: See subsection 13A(3) of the Act.

*Administration relating to disclosure notice*

(4) For paragraph 13A(2)(a) of the Act:

(a) the agreement of an ADRVP member under paragraph (2)(c) may be given in electronic form; and

(b) a disclosure notice may be in electronic form; and

(c) the CEO may give a disclosure notice by electronic means.

*Content of disclosure notice*

(5) For paragraph 13A(2)(a) of the Act, a disclosure notice must include the following:

(a) the name of the person to whom the notice is given (the **recipient**);

(b) a statement that the recipient is required to do one or more of the following:

(i) attend an interview to answer questions;

(ii) give information of the kind specified in the notice;

(iii) produce documents or things of the kind specified in the notice;

(c) the possible consequences of a failure to comply with the notice;

(d) information about how to contact the ASADA.

Note: ASADA will be able to discuss with the recipient the general purpose of the interview and other administrative arrangements about the interview.

...

(8) If the disclosure notice requires the recipient to give information, the notice must also include the following information:

(a) a statement that the recipient must give the information to the CEO by the date, or the time and date, specified in the notice;

(b) a statement that if the recipient is an individual, the recipient is excused from complying with a requirement to give the information if the information might tend to incriminate the recipient or expose the recipient to a penalty;

(c) a statement that if the recipient:

(i) is an individual; and

(ii) does not possess information specified in the notice; and

(iii) has taken all reasonable steps available to the recipient to obtain the information and has been unable to obtain it;

the recipient may give the CEO a statutory declaration stating those matters;

(d) a statement that if the recipient:

(i) is not an individual; and

(ii) does not possess information specified in the notice; and

(iii) has taken all reasonable steps available to the recipient to obtain the information and has been unable to obtain it;

an individual acting for the recipient may give the CEO a statutory declaration stating those matters.

Note: Section 13D of the Act relates to protections against self-incrimination.

## **Crimes Act 1914**

### **4AA Penalty units**

(1) In a law of the Commonwealth or a Territory Ordinance, unless the contrary intention appears:

**penalty unit** means \$210.

(1A) The Attorney-General must cause a review of the amount of a penalty unit to be conducted as soon as possible after each third anniversary of the day an alteration of the amount of a penalty unit last came into force.

(2) In this section:

**Territory Ordinance** means an ordinance that:

(a) was made under an Act providing for the acceptance, administration or government of a Territory other than the Territory of Norfolk Island; and

(b) has not become an enactment of the Australian Capital Territory;

and includes a regulation made under such an ordinance.

**Indexation of penalty unit**

(3) On 1 July 2020 and each third 1 July following that day (an indexation day), the dollar amount mentioned in subsection (1) is replaced by the amount worked out using the following formula:

$$\frac{\text{Indexation factor for the indexation day}}{\text{Index number for the reference quarter}} \times \frac{\text{Dollar amount immediately before the indexation day}}{\text{Index number for the base quarter}}$$

(4) The indexation factor for an indexation day is the number worked out using the following formula:

$$\frac{\text{index number for the reference quarter}}{\text{Index number for the base quarter}}$$

where:

**base quarter** means the March quarter 3 years before the reference quarter.

**Index number**, for a quarter, means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.

**March quarter** means a quarter ending on 31 March.

**reference quarter** means the March quarter immediately before the indexation day.

(5) An indexation factor is to be calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

(6) Amounts worked out under subsection (3) are to be rounded to the nearest whole dollar (rounding 50 cents upwards).

(7) Calculations under subsection (4):

(a) are to be made using only the index numbers published in terms of the most recently published index reference period; and

(b) are to be made disregarding index numbers that are published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).



*Application of indexed penalty unit*

(8) If the dollar amount mentioned in subsection (1) is increased in accordance with subsection (3), the increased amount only applies to offences committed on or after the indexation day.

**Criminal Code Act 1995**

**Division 137—False or misleading information or documents**

**137.1 False or misleading information**

- (1) A person is guilty of an offence if:
- (a) the person gives information to another person; and
  - (b) the person does so knowing that the information:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the information is misleading; and
  - (c) any of the following subparagraphs applies:
    - (i) the information is given to a Commonwealth entity;
    - (ii) the information is given to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;
    - (iii) the information is given in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

- (1A) Absolute liability applies to each of the subparagraph (1)(c)(i), (ii) and (iii) elements of the offence.

- (2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

- (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

- (4) Subsection (1) does not apply as a result of subparagraph (1)(c)(i) if, before the information was given by a person to the Commonwealth entity, the Commonwealth entity did not take reasonable steps to inform the person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3).

- (5) Subsection (1) does not apply as a result of subparagraph (1)(c)(ii) if, before the information was given by a person (the **first person**) to the person mentioned in that subparagraph (the **second person**), the second person did not take reasonable steps to inform the first person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).

- (6) For the purposes of subsections (4) and (5), it is sufficient if the following form of words is used:  
"Giving false or misleading information is a serious offence".

#### 137.2 False or misleading documents

- (1) A person is guilty of an offence if:
- (a) the person produces a document to another person; and
  - (b) the person does so knowing that the document is false or misleading; and
  - (c) the document is produced in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

- (2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

- (3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
- (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
  - (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

#### 149.1 Obstruction of Commonwealth public officials

- (1) A person is guilty of an offence if:
- (a) the person knows that another person is a public official; and
  - (b) the first-mentioned person obstructs, hinders, intimidates or resists the official in the performance of the official's functions; and
  - (c) the official is a Commonwealth public official; and
  - (d) the functions are functions as a Commonwealth public official.

Penalty: Imprisonment for 2 years.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew:
- (a) that the official was a Commonwealth public official; or
  - (b) that the functions were functions as a Commonwealth public official.
- (3) For the purposes of this section, it is immaterial whether the defendant was aware that the public official was performing the official's functions.
- (4) Section 15.3 (extended geographical jurisdiction—category C) applies to an offence against subsection (1).
- (5) The definition of **duty** in section 130.1 does not apply to this section.
- (6) In this section:

**function:**

- (a) in relation to a person who is a public official—means any authority, duty, function or power that is conferred on the person as a public official; or
- (b) in relation to a person who is a Commonwealth public official—means any authority, duty, function or power that is conferred on the person as a Commonwealth public official.

**Regulatory Powers (Standard Provisions) Act 2014**

**Part 4 – Civil penalty provisions**

**Division 1 – Outline and operation of this Part**

**77 Simplified outline**

The following is a simplified outline of this Part:

This Part creates a framework for the use of civil penalties to enforce civil penalty provisions.

For this Part to operate for the purposes of that framework, a civil penalty provision must be made enforceable under this Part. This is done by another Act.

Civil penalty orders may be sought from a court in relation to contraventions of civil penalty provisions.

This Part also contains some rules of general application in relation to civil penalty provisions (such as the state of mind that must be proved and the defence of mistake of fact).

**78 Purposes and operation of this Part**

- (1) The principal purposes of this Part are to create a framework for the use of civil penalties to enforce civil penalty provisions.
- (2) However, for this Part to operate, a civil penalty provision must be made enforceable under this Part.

**79 Enforceable civil penalty provisions**

- (1) A provision is **enforceable** under this Part if:
  - (a) it is a civil penalty provision, as defined in subsection (2); and
  - (b) an Act provides that the civil penalty provision is enforceable under this Part.
- (2) A provision of an Act or a legislative instrument is a **civil penalty provision** if:
  - (a) either:
    - (i) the provision sets out at its foot a pecuniary penalty, or penalties, indicated by the words “Civil penalty”; or
    - (ii) another provision of an Act or a legislative instrument provides that the provision is a civil penalty provision, or that a person is liable to a civil penalty if the person contravenes the provision; and
  - (b) the provision is:
    - (i) a subsection, or a section that is not divided into subsections; or
    - (ii) a subregulation, or a regulation that is not divided into subregulations; or
    - (iii) a subclause (however described) of a Schedule to an Act or of a legislative instrument; or
    - (iv) a clause (however described) of a Schedule to an Act, or of a legislative instrument, that is not divided into subclauses.

## 80 *Authorised applicant*

- (1) A person is an ***authorised applicant*** for the purposes of exercising powers under this Part in relation to the contravention of a civil penalty provision if an Act provides that the person is an authorised applicant in relation to the civil penalty provision for the purposes of this Part.
- (2) A person who is an ***authorised applicant*** for the purpose of exercising powers mentioned in subsection (1) is also an ***authorised applicant*** for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is an authorised applicant in relation to a civil penalty provision for the purposes of this Part by:
  - (a) providing that a person of a specified class is an authorised applicant in relation to the civil penalty provision for those purposes; or
  - (b) authorising another person to specify that a person, or a person of a specified class, is an authorised applicant in relation to the civil penalty provision for those purposes.

## 81 *Relevant court*

A court is a ***relevant court*** for the purposes of exercising powers under this Part in relation to the contravention of a civil penalty provision, if an Act provides that the court is a relevant court in relation to the civil penalty provision for the purposes of this Part.

## Division 2 – Obtaining a civil penalty order

### 82 *Civil penalty orders*

#### *Application for order*

- (1) An authorised applicant may apply to a relevant court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The authorised applicant must make the application within 6 years of the alleged contravention.

#### *Court may order person to pay pecuniary penalty*

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

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

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

#### *Determining pecuniary penalty*

- (5) The pecuniary penalty must not be more than:
  - (a) if the person is a body corporate—5 times the pecuniary penalty specified for the civil penalty provision; and
  - (b) otherwise—the pecuniary penalty specified for the civil penalty provision.

- (6) In determining the pecuniary penalty, the court must take into account all relevant matters, including:
- (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered because of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court (including a court in a foreign country) to have engaged in any similar conduct.

### **83 Civil enforcement of penalty**

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

### **84 Conduct contravening more than one civil penalty provision**

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Part against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under this Part in relation to the same conduct.

### **85 Multiple contraventions**

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

Note: For continuing contraventions of civil penalty provisions, see section 93.

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

### **86 Proceedings may be heard together**

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

### **87 Civil evidence and procedure rules for civil penalty orders**

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

## **Division 3 – Civil proceedings and criminal proceedings**

### **88 Civil proceedings after criminal proceedings**

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

### **89 Criminal proceedings during civil proceedings**

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

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

#### 90 Criminal proceedings after civil proceedings

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

#### 91 Evidence given in civil proceedings not admissible in criminal proceedings

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

### Division 4 – Miscellaneous

#### 92 Ancillary contravention of civil penalty provisions

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision; or
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (e) conspire with others to effect a contravention of a civil penalty provision.

##### *Civil penalty*

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

Note: Section 94 (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to the extent that proceedings relate to the contravention of subsection (1).

#### 93 Continuing contraventions of civil penalty provisions

- (1) If an act or thing is required under a civil penalty provision to be done:
- (a) within a particular period; or
  - (b) before a particular time;
- then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
- (a) within a particular period; or
  - (b) before a particular time;
- commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

#### **94 State of mind**

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision, it is not necessary to prove:
- (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (2) Subsection (1) does not apply to the extent that the proceedings relate to a contravention of subsection 92(1) (which is about ancillary contravention of civil penalty provisions).
- (3) Subsection (1) does not affect the operation of section 95 (which is about mistake of fact).
- (4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.

#### **95 Mistake of fact**

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

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

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

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

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

**Part 5 – Infringement notices**  
**Division 1 – Outline and operation of this Part**

**98 Simplified outline**

The following is a simplified outline of this Part:

This Part creates a framework for the use of infringement notices where an infringement officer reasonably believes that a provision has been contravened.

For this Part to operate, a provision must be made subject to an infringement notice under this Part. This is to be done by another Act.

A person can be given an infringement notice in relation to a contravention of a provision that is subject to an infringement notice under this Part. The provision may be a strict liability offence or a civil penalty provision, or both.

A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person for a contravention of a provision subject to an infringement notice under this Part. If the person does not choose to pay the amount, proceedings can be brought against the person in relation to the contravention.

**99 Purpose and operation of this Part**

- (1) The principal purpose of this Part is to create a framework for the use of infringement notices where an infringement officer reasonably believes that a provision has been contravened.
- (2) However, for this Part to operate, a provision of an Act or a legislative instrument must be made subject to an Infringement notice under this Part.

**100 Provisions subject to Infringement notices**

A provision that is an offence of strict liability or a civil penalty provision in an Act or a legislative instrument is **subject to an infringement notice** under this Part if an Act provides that the provision is subject to an infringement notice under this Part.

**101 Infringement officer**

- (1) A person is an **Infringement officer** for the purposes of exercising powers under this Part in relation to a contravention of a provision if an Act provides that the person is an **infringement officer** in relation to that provision for the purposes of this Part.
- (2) A person who is an **Infringement officer** for the purpose of exercising powers mentioned in subsection (1) is also an **Infringement officer** for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is an **infringement officer** in relation to a provision for the purposes of this Part by:
  - (a) providing that a person of a specified class is an **infringement officer** in relation to the provision for the purposes of this Part; or
  - (b) authorising another person to specify that a person, or a person of a specified class, is an **infringement officer** in relation to the provision for the purposes of this Part.



## 102 Relevant chief executive

- (1) A person is the **relevant chief executive** for the purposes of exercising powers under this Part in relation to a contravention of a provision if an Act provides that the person is the relevant chief executive in relation to that provision for the purposes of this Part.
- (2) A person who is the **relevant chief executive** for the purpose of exercising powers mentioned in subsection (1) is also the **relevant chief executive** for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is the relevant chief executive in relation to a provision for the purposes of this Part by:
  - (a) providing that a person who holds a specified office is the relevant chief executive in relation to the provision for the purposes of this Part; or
  - (b) authorising another person to specify that a person, or a person who holds a specified office, is the relevant chief executive in relation to the provision for the purposes of this Part.

## Division 2 – Infringement notices

### 103 When an infringement notice may be given

- (1) If an infringement officer believes on reasonable grounds that a person has contravened a provision subject to an infringement notice under this Part, the infringement officer may give to the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.
- (4) An infringement officer may give a person a single infringement notice relating to multiple contraventions of a single provision if:
  - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
  - (b) the person fails or refuses to do that thing within that period or before that time; and
  - (c) the failure or refusal occurs on more than 1 day; and
  - (d) each contravention is constituted by the failure or refusal on one of those days.

**Note:** For continuing offences, see subsection 4K(2) of the *Crimes Act 1914*. For continuing contraventions of civil penalty provisions, see section 93 of this Act.

- (5) If a single provision can constitute both a civil penalty provision and an offence provision, the infringement notice must relate to the provision as an offence provision.

### 104 Matters to be included in an infringement notice

- (1) An infringement notice must:
  - (a) be identified by a unique number; and
  - (b) state the day on which it is given; and
  - (c) state the name of the person to whom the notice is given; and
  - (d) state the name and contact details of the person who gave the notice, and that the person is an infringement officer for the purposes of issuing the infringement notice; and
  - (e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:
    - (i) the provision that was allegedly contravened; and

- (ii) the maximum penalty that a court could impose for each contravention, if the provision were contravened; and
    - (iii) the time (if known) and day of, and the place of, each alleged contravention; and
  - (f) state the amount that is payable under the notice; and
  - (g) give an explanation of how payment of the amount is to be made; and
  - (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn):
    - (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or
    - (ii) if the provision is an offence provision that can also constitute a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a civil penalty order will not be brought, in relation to the alleged contravention; or
    - (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order will not be brought in relation to the alleged contravention; and
  - (i) state that payment of the amount is not an admission of guilt or liability; and
  - (j) state that the person may apply to the relevant chief executive to have the period in which to pay the amount extended; and
  - (k) state that the person may choose not to pay the amount and, if the person does so:
    - (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
    - (ii) if the provision is an offence provision and can also constitute a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or
    - (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
  - (l) set out how the notice can be withdrawn; and
  - (m) state that if the notice is withdrawn:
    - (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
    - (ii) if the provision is an offence provision and can also constitute a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or
    - (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
  - (n) state that the person may make written representations to the relevant chief executive seeking the withdrawal of the notice.
- (2) If the notice relates to only one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the lesser of:
- (a) one-fifth of the maximum penalty that a court could impose on the person for that contravention; and
  - (b) 12 penalty units where the person is an individual, or 60 penalty units where the person is a body corporate.
- (3) If the notice relates to more than one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the lesser of:
- (a) one-fifth of the amount worked out by adding together the maximum penalty that a court could impose on the person for each alleged contravention; and
  - (b) either:
    - (i) if the person is an individual—the number of penalty units worked out by multiplying the number of alleged contraventions by 12; or
    - (ii) if the person is a body corporate—the number of penalty units worked out by multiplying the number of alleged contraventions by 60.

Note: Under section 103, a single infringement notice may only deal with multiple contraventions if they are contraventions of a single provision continuing over a period.

(4) Subsections (2) and (3) do not apply if another Act expressly provides otherwise.

#### 105 Extension of time to pay amount

- (1) A person to whom an infringement notice has been given may apply to the relevant chief executive for an extension of the period referred to in paragraph 104(1)(h).
- (2) If the application is made before the end of that period, the relevant chief executive may, in writing, extend that period. The relevant chief executive may do so before or after the end of that period.
- (3) If the relevant chief executive extends that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 104(1)(h) is taken to be a reference to that period so extended.
- (4) If the relevant chief executive does not extend that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 104(1)(h) is taken to be a reference to the period that ends on the later of the following days:
  - (a) the day that is the last day of the period referred to in paragraph 104(1)(h);
  - (b) the day that is 7 days after the day the person was given notice of the relevant chief executive's decision not to extend.
- (5) The relevant chief executive may extend the period more than once under subsection (2).

#### 106 Withdrawal of an infringement notice

##### *Representations seeking withdrawal of notice*

- (1) A person to whom an infringement notice has been given may make written representations to the relevant chief executive seeking the withdrawal of the notice.

##### *Withdrawal of notice*

- (2) The relevant chief executive may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the relevant chief executive:
  - (a) must take into account any written representations seeking the withdrawal that were given by the person to the relevant chief executive; and
  - (b) may take into account the following:
    - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision subject to an infringement notice under this Part that is included in the same Act or legislative instrument as the provision in relation to which the infringement notice is given;
    - (ii) the circumstances of the alleged contravention;
    - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision subject to an infringement notice under this Part if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
    - (iv) any other matter the relevant chief executive considers relevant.

##### *Notice of withdrawal*

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:

- (a) the person's name and address; and
- (b) the day the infringement notice was given; and
- (c) the identifying number of the infringement notice; and
- (d) that the infringement notice is withdrawn; and
- (e) that:
  - (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
  - (ii) if the provision is an offence provision and can also constitute a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or
  - (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention.

*Refund of amount if infringement notice withdrawn*

- (5) If:
  - (a) the relevant chief executive withdraws the infringement notice; and
  - (b) the person has already paid the amount stated in the notice;
 the Commonwealth must refund to the person an amount equal to the amount paid.

**107 Effect of payment of amount**

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 104(1)(h):
  - (a) any liability of the person for the alleged contravention is discharged; and
  - (b) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may not be prosecuted in a court for the alleged contravention; and
  - (c) if the provision is an offence provision and can also constitute a civil penalty provision—the person may not be prosecuted in a court, and proceedings seeking a civil penalty order may not be brought, in relation to the alleged contravention; and
  - (d) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may not be brought in relation to the alleged contravention; and
  - (e) the person is not regarded as having admitted guilt or liability for the alleged contravention; and
  - (f) if the provision is an offence provision—the person is not regarded as having been convicted of the alleged offence.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

**108 Effect of this Part**

This Part does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or
- (b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Part if:
  - (i) the person does not comply with an infringement notice given to the person for the contravention; or
  - (ii) an infringement notice is not given to the person for the contravention; or
  - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or

- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice under this Part.



**Australian Government**  
**Australian Sports**  
**Anti-Doping Authority**

**AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY ACT 2006**

**Notice to give Information**

Issued under Schedule 1, clause 3.26B(1)(b), of the *Australian Sports Anti-Doping Authority Regulations 2006*

To:

I, David Sharpe APM OAM, Chief Executive Officer, of the Australian Sports Anti-Doping Authority (ASADA), believe, on reasonable grounds, that you have information that may be relevant to the administration of the National Anti-Doping scheme being information that may be relevant to the ASADA investigation into possible anti-doping rule violations.

Pursuant to clause 3.26B(1)(b) of Schedule 1 of the Regulations, I REQUIRE you to give the information specified in Schedule 1 of the Notice by the time and date specified in this Notice:

Time:

Date:

Location:

Method of production: verbally where possible, and in all other circumstances in writing to the CEO ASADA, given to Karen Smith, Principal Investigator for ASADA or any ASADA appointed investigator.

You are excused from complying with the requirement to give the information if the information might tend to incriminate you or expose you to a penalty.

If you do not possess the information and have taken all reasonable steps available to you to obtain the information and have been unable to obtain it, you may give the CEO a statutory declaration stating those matters.

Please note there are possible consequences if you do not comply with this notice. See heading titled, 'Possible consequences if you do not comply with this Notice' below.

## **Possible consequences if you do not comply with this Notice**

### ***Civil penalty***

Failure to comply with this Notice is a contravention of a civil penalty provision under section 13C(1) of the Act. A contravention of section 13C(1) carries a civil penalty equal to 30 'penalty units' (or 150 penalty units if the person is a body corporate). One penalty unit is equal to \$210.

If you fail to comply with this Notice:

- the CEO may apply to a court for an order that you pay the Commonwealth a penalty for the contravention; or
- a person authorised by the CEO may give you an Infringement Notice for the contravention, requiring payment of a penalty to the Commonwealth.

### ***Civil penalty proceedings***

If a court is satisfied that a person has contravened a civil penalty provision, the court may impose a penalty which it determines to be appropriate. It may impose a maximum penalty equal to 30 penalty units for each contravention (or 150 penalty units if the person is a body corporate).

Under Part 8A of the Act (which applies the civil penalty enforcement provisions in Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) (RP Act)), and in accordance with section 93 of the RP Act:

- the obligation to give information of the kind specified in this Notice continues until the information is given in accordance with this Notice, even if the time and date for compliance has passed, and
- a person who contravenes section 13C(1) of the Act, commits a separate contravention on each day during which the contravention continues.

This means that if you do not comply with this Notice when required, you will commit a contravention on that day and a separate contravention on each subsequent day that you do not comply with the Notice. Each separate contravention may attract a penalty of 30 penalty units (or, in the case of a body corporate, 150 penalty units).

A copy of Part 8A of the Act and Part 4 of the RP Act is **attached** to this Notice.

### ***Infringement Notice***

Instead of the CEO bringing civil penalty proceedings, a person authorised by the CEO may give a person who is alleged to have contravened section 13C(1) an Infringement Notice under Part 8B of the Act. An Infringement Notice requires the payment of a penalty directly to the Commonwealth. The amount of the penalty must be the lesser of:

- one-fifth of the maximum penalty a court could impose for the alleged contravention or contraventions (see above), and
- 12 penalty units if the person is an individual or 60 units if the person is a body corporate.

A copy of Part 8B of the Act and Part 5 of the RP Act is **attached** to this Notice.

### **Offences**

Section 137.1 of the *Criminal Code Act 1995* makes it an offence in certain circumstances to knowingly provide false or misleading information. The offence is punishable on conviction by imprisonment for not more than 12 months.

Section 137.2 of the *Criminal Code Act 1995* makes it an offence in certain circumstances to knowingly provide false or misleading documents. The offence is punishable on conviction by imprisonment for not more than 12 months.

Section 149.1 of the *Criminal Code Act 1995* makes it an offence in certain circumstances to obstruct, hinder, intimidate or resist a Commonwealth public official in the performance of his or her functions as a Commonwealth public official. The offence is punishable on conviction by imprisonment for not more than 2 years.

A copy of sections 137.1, 137.2 and 149.1 is **attached** to this Notice.

### **HOW TO CONTACT ASADA**

The contact person for this Notice is Principal Investigator Karen Smith

Ms Karen Smith may be contacted:

- by telephone on 02 62224242 or
- by email at karen.smith@asada.gov.au or
- by sending written correspondence to PO Box 1744, Fyshwick ACT 2609

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### **Interpretation**

In this Notice, including the Schedule to this Notice, unless the contrary intention appears:

"CEO" means the Chief Executive Officer of ASADA;

"information" means the information specified in Schedule 1 of this Notice;

"person" includes a body corporate, whether a corporation or not;

"the Act" means the *Australian Sports Anti-Doping Authority Act 2006* (Cth);

"the Regulations" means the *Australian Sports Anti-Doping Authority Regulations 2006* (Cth);

the singular includes the plural and the plural includes the singular.



David Sharpe APM OAM  
Chief Executive Officer  
Australian Sports Anti-Doping Authority  
Dated:



## SCHEDULE 1 - SPECIFIED INFORMATION

### 1) Pursuant to this Notice, you must give the following information:

Any passwords, usernames or access codes required to access:

- any telecommunication devices reasonably in the possession or control of, or used by including but not limited to those devices associated with telecommunication service ;
- any computer, tablet, electronic device, documents, email accounts, iTunes account/s and instant messaging accounts, including but not limited to imessage, wickr, WhatsApp, Facebook messenger and alike, reasonably in the possession or control of, or used by ; and
- any computer, tablet, electronic device, documents, email accounts, reasonably in the possession or control of, or used by

## LEGISLATION RELEVANT TO NOTICE

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

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

- (1) The NAD scheme must authorise the CEO to give a person a written notice (a *disclosure notice*) requiring the person to do one or more of the following within the period specified in the notice:
  - (a) attend an interview to answer questions;
  - (b) give information of the kind specified in the notice;
  - (c) produce documents or things of the kind specified in the notice.
- (1A) The NAD scheme must provide that the CEO must not give a disclosure notice to a person unless:
  - (a) the CEO declares in writing that the CEO reasonably believes that the person has information, documents or things that may be relevant to the administration of the NAD scheme; and
  - (b) if:
    - (i) the person is a registered medical practitioner; and
    - (ii) the notice is given to the person in his or her capacity as a registered medical practitioner;the CEO declares in writing that the CEO reasonably believes that the person has been involved, in that capacity, in the commission, or attempted commission, of a possible violation of the anti-doping rules; and
  - (c) 3 ADRVP members agree in writing that the belief referred to in paragraph (a) (and, if applicable, paragraph (b)) is reasonable.
- (2) The NAD scheme may make provision in relation to:
  - (a) disclosure notices; and
  - (b) the form and conduct of interviews; and
  - (c) the form in which information, documents, things and answers to questions must or may be given.
- (3) Without limiting subsection (2), the NAD scheme must provide that a person who is given a disclosure notice has the right to be notified in writing of the possible consequences of a failure to comply with the disclosure notice.

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

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

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

##### *Retaining documents and things*

- (2) The CEO may take, and retain for as long as is necessary, possession of a document or thing produced in response to a disclosure notice.
- (3) While the CEO retains the document or thing, he or she must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.

### 13C Failure to comply with disclosure notice

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

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

Civil penalty: 30 penalty units.

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

Note: A person bears an evidential burden in relation to a matter in subsection (2) (see section 96 of the Regulatory Powers Act)

#### *Failure to attend interview*

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

Civil penalty: 30 penalty units.

#### *Failure to answer questions*

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

Civil penalty: 30 penalty units.

### 13D Self-incrimination

- (1) An individual is excused from complying with a requirement to answer a question or to give information if the answer to the question or the information might tend to incriminate the individual or expose the individual to a penalty.
- (1A) A person is not excused from producing a document or thing as required by a disclosure notice given to the person on the ground that the document or thing might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual, none of the following:
- (a) the document or thing produced;
  - (b) the producing of the document or thing;
  - (c) any information, document or thing obtained as a direct or indirect consequence of producing the document or thing;
- is admissible in evidence against the individual in:
- (e) criminal proceedings, other than proceedings for an offence against section 137.1 (false or misleading information) or 137.2 (false or misleading documents) of the *Criminal Code* that relates to this Act; or

- (f) any proceedings that would expose the individual to a penalty, other than proceedings in connection with this Act or the regulations.
- (3) To avoid doubt, proceedings (however described) before a sporting administration body or the Court of Arbitration for Sport or other sporting tribunal that relate to sports doping and safety matters are proceedings in connection with this Act or the regulations.

## Part 8A—Civil penalty orders

### 71 Simplified outline of this Part

This Part applies the Regulatory Powers Act to enable the CEO to enforce civil penalty provisions. Orders may be sought from a court in relation to contraventions of such provisions.

### 72 Civil penalty provisions

#### *Enforceable civil penalty provisions*

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

**Note:** Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

#### *Authorised applicant*

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the CEO, on behalf of the Commonwealth, is an authorised applicant in relation to the civil penalty provisions of this Act.

#### *Relevant court*

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) the Federal Court of Australia;
  - (b) the Federal Circuit Court of Australia;
  - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

#### *Extension to external Territories*

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

## Part 8B—Infringement notices

### 73A Simplified outline of this Part

This Part applies the Regulatory Powers Act to enable the CEO to issue an infringement notice in relation to the alleged contravention of a civil penalty provision.

## 73B Infringement notices

### *Provisions subject to an infringement notice*

- (1) A civil penalty provision of this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

### *Infringement officer*

- (2) For the purposes of Part 5 of the Regulatory Powers Act, each of the following persons is an infringement officer in relation to the provisions mentioned in subsection (1):
- (a) the CEO;
  - (b) a person authorised by the CEO for the purposes of this paragraph.

### *Relevant chief executive*

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the CEO is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (4) The CEO may, in writing, delegate the CEO's powers and functions under Part 5 of the Regulatory Powers Act as the relevant chief executive in relation to the provisions mentioned in subsection (1) to:
- (a) a member of the ASADA staff; or
  - (b) an individual whose services are made available to the CEO under section 24M.
- (5) A delegate must comply with any written directions of the CEO.

### *Extension to external Territories*

- (6) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

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

### **Schedule 1**

#### **Division 3.4A—Request to attend interview, give information or produce documents**

#### **3.26B Requirement**

##### *Authority to give disclosure notice*

- (1) The CEO is authorised to give a person a written notice (a **disclosure notice**) requiring the person to do one or more of the following within the period specified in the notice:
- (a) attend an interview to answer questions;
  - (b) give information of the kind specified in the notice;
  - (c) produce documents or things of the kind specified in the notice.

Note: See subsection 13A(1) of the Act.

- (2) The CEO must not give a disclosure notice to the person unless:
- (a) the CEO declares in writing that the CEO reasonably believes that the person has information, documents or things that may be relevant to the administration of the NAD scheme; and
  - (b) if:
    - (i) the person is a registered medical practitioner; and

- (ii) the notice is given to the person in his or her capacity as a registered medical practitioner;
- the CEO declares in writing that the CEO reasonably believes that the person has been involved, in that capacity, in the commission, or attempted commission, of a possible violation of the anti-doping rules; and
- (c) 3 ADRVP members agree in writing that the belief mentioned in paragraph (a) (and, if applicable, paragraph (b)) is reasonable.

Note: See subsection 13A(1A) of the Act.

- (3) A person who is given a disclosure notice has the right to be notified in writing of the possible consequences of a failure to comply with the notice.

Note: See subsection 13A(3) of the Act.

*Administration relating to disclosure notice*

- (4) For paragraph 13A(2)(a) of the Act:
  - (a) the agreement of an ADRVP member under paragraph (2)(c) may be given in electronic form; and
  - (b) a disclosure notice may be in electronic form; and
  - (c) the CEO may give a disclosure notice by electronic means.

*Content of disclosure notice*

- (5) For paragraph 13A(2)(a) of the Act, a disclosure notice must include the following:
  - (a) the name of the person to whom the notice is given (the *recipient*);
  - (b) a statement that the recipient is required to do one or more of the following:
    - (i) attend an interview to answer questions;
    - (ii) give information of the kind specified in the notice;
    - (iii) produce documents or things of the kind specified in the notice;
  - (c) the possible consequences of a failure to comply with the notice;
  - (d) information about how to contact the ASADA.

Note: ASADA will be able to discuss with the recipient the general purpose of the interview and other administrative arrangements about the interview.

...

- (8) If the disclosure notice requires the recipient to give information, the notice must also include the following information:
  - (a) a statement that the recipient must give the information to the CEO by the date, or the time and date, specified in the notice;
  - (b) a statement that if the recipient is an individual, the recipient is excused from complying with a requirement to give the information if the information might tend to incriminate the recipient or expose the recipient to a penalty;
  - (c) a statement that if the recipient:
    - (i) is an individual; and
    - (ii) does not possess information specified in the notice; and
    - (iii) has taken all reasonable steps available to the recipient to obtain the information and has been unable to obtain it;
 the recipient may give the CEO a statutory declaration stating those matters;
  - (d) a statement that if the recipient:
    - (i) is not an individual; and
    - (ii) does not possess information specified in the notice; and
    - (iii) has taken all reasonable steps available to the recipient to obtain the information and has been unable to obtain it;
 an individual acting for the recipient may give the CEO a statutory declaration stating those matters.

Note: Section 13D of the Act relates to protections against self-incrimination.

## Crimes Act 1914

### 4AA Penalty units

(1) In a law of the Commonwealth or a Territory Ordinance, unless the contrary intention appears:

**penalty unit** means \$210.

(1A) The Attorney-General must cause a review of the amount of a penalty unit to be conducted as soon as possible after each third anniversary of the day an alteration of the amount of a penalty unit last came into force.

(2) In this section:

**Territory Ordinance** means an ordinance that:

- (a) was made under an Act providing for the acceptance, administration or government of a Territory other than the Territory of Norfolk Island; and
  - (b) has not become an enactment of the Australian Capital Territory;
- and includes a regulation made under such an ordinance.

**Indexation of penalty unit**

(3) On 1 July 2020 and each third 1 July following that day (an indexation day), the dollar amount mentioned in subsection (1) is replaced by the amount worked out using the following formula:

$$\frac{\text{Indexation factor for the indexation day}}{\text{Index number for the base quarter}} \times \text{Dollar amount immediately before the indexation day}$$

(4) The indexation factor for an indexation day is the number worked out using the following formula:

$$\frac{\text{Index number for the reference quarter}}{\text{Index number for the base quarter}}$$

where:

**base quarter** means the March quarter 3 years before the reference quarter.

**index number**, for a quarter, means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.

**March quarter** means a quarter ending on 31 March.

**reference quarter** means the March quarter immediately before the indexation day.

(5) An indexation factor is to be calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

(6) Amounts worked out under subsection (3) are to be rounded to the nearest whole dollar (rounding 50 cents upwards).

(7) Calculations under subsection (4):

(a) are to be made using only the index numbers published in terms of the most recently published Index reference period; and

(b) are to be made disregarding index numbers that are published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

*Application of indexed penalty unit*

(8) If the dollar amount mentioned in subsection (1) is increased in accordance with subsection (3), the increased amount only applies to offences committed on or after the indexation day.

**Criminal Code Act 1995**

**Division 137—False or misleading information or documents**

**137.1 False or misleading information**

- (1) A person is guilty of an offence if:
- (a) the person gives information to another person; and
  - (b) the person does so knowing that the information:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the information is misleading; and
  - (c) any of the following subparagraphs applies:
    - (i) the information is given to a Commonwealth entity;
    - (ii) the information is given to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;
    - (iii) the information is given in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

- (1A) Absolute liability applies to each of the subparagraph (1)(c)(i), (ii) and (iii) elements of the offence.

- (2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

- (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

- (4) Subsection (1) does not apply as a result of subparagraph (1)(c)(i) if, before the information was given by a person to the Commonwealth entity, the Commonwealth entity did not take reasonable steps to inform the person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3).

- (5) Subsection (1) does not apply as a result of subparagraph (1)(c)(ii) if, before the information was given by a person (the *first person*) to the person mentioned in that subparagraph (the *second person*), the second person did not take reasonable steps to inform the first person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).



- (6) For the purposes of subsections (4) and (5), it is sufficient if the following form of words is used:  
"Giving false or misleading information is a serious offence".

#### 137.2 False or misleading documents

- (1) A person is guilty of an offence if:
- (a) the person produces a document to another person; and
  - (b) the person does so knowing that the document is false or misleading; and
  - (c) the document is produced in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

- (2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

- (3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
- (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
  - (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

#### 149.1 Obstruction of Commonwealth public officials

- (1) A person is guilty of an offence if:
- (a) the person knows that another person is a public official; and
  - (b) the first-mentioned person obstructs, hinders, intimidates or resists the official in the performance of the official's functions; and
  - (c) the official is a Commonwealth public official; and
  - (d) the functions are functions as a Commonwealth public official.

Penalty: Imprisonment for 2 years.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew:

- (a) that the official was a Commonwealth public official; or
- (b) that the functions were functions as a Commonwealth public official.

- (3) For the purposes of this section, it is immaterial whether the defendant was aware that the public official was performing the official's functions.

- (4) Section 15.3 (extended geographical jurisdiction—category C) applies to an offence against subsection (1).

- (5) The definition of *duty* in section 130.1 does not apply to this section.

- (6) In this section:

**function:**

- (a) in relation to a person who is a public official—means any authority, duty, function or power that is conferred on the person as a public official; or
- (b) in relation to a person who is a Commonwealth public official—means any authority, duty, function or power that is conferred on the person as a Commonwealth public official.

**Regulatory Powers (Standard Provisions) Act 2014**

**Part 4 – Civil penalty provisions**

**Division 1 – Outline and operation of this Part**

**77 Simplified outline**

The following is a simplified outline of this Part:

This Part creates a framework for the use of civil penalties to enforce civil penalty provisions.

For this Part to operate for the purposes of that framework, a civil penalty provision must be made enforceable under this Part. This is done by another Act.

Civil penalty orders may be sought from a court in relation to contraventions of civil penalty provisions.

This Part also contains some rules of general application in relation to civil penalty provisions (such as the state of mind that must be proved and the defence of mistake of fact).

**78 Purposes and operation of this Part**

- (1) The principal purposes of this Part are to create a framework for the use of civil penalties to enforce civil penalty provisions.
- (2) However, for this Part to operate, a civil penalty provision must be made enforceable under this Part.

**79 Enforceable civil penalty provisions**

- (1) A provision is **enforceable** under this Part if:
  - (a) it is a civil penalty provision, as defined in subsection (2); and
  - (b) an Act provides that the civil penalty provision is enforceable under this Part.
- (2) A provision of an Act or a legislative instrument is a **civil penalty provision** if:
  - (a) either:
    - (i) the provision sets out at its foot a pecuniary penalty, or penalties, indicated by the words “Civil penalty”; or
    - (ii) another provision of an Act or a legislative instrument provides that the provision is a civil penalty provision, or that a person is liable to a civil penalty if the person contravenes the provision; and
  - (b) the provision is:
    - (i) a subsection, or a section that is not divided into subsections; or
    - (ii) a subregulation, or a regulation that is not divided into subregulations; or
    - (iii) a subclause (however described) of a Schedule to an Act or of a legislative instrument; or
    - (iv) a clause (however described) of a Schedule to an Act, or of a legislative instrument, that is not divided into subclauses.

## 80 Authorised applicant

- (1) A person is an **authorised applicant** for the purposes of exercising powers under this Part in relation to the contravention of a civil penalty provision if an Act provides that the person is an authorised applicant in relation to the civil penalty provision for the purposes of this Part.
- (2) A person who is an **authorised applicant** for the purpose of exercising powers mentioned in subsection (1) is also an **authorised applicant** for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is an authorised applicant in relation to a civil penalty provision for the purposes of this Part by:
  - (a) providing that a person of a specified class is an authorised applicant in relation to the civil penalty provision for those purposes; or
  - (b) authorising another person to specify that a person, or a person of a specified class, is an authorised applicant in relation to the civil penalty provision for those purposes.

## 81 Relevant court

A court is a **relevant court** for the purposes of exercising powers under this Part in relation to the contravention of a civil penalty provision, if an Act provides that the court is a relevant court in relation to the civil penalty provision for the purposes of this Part.

## Division 2 – Obtaining a civil penalty order

### 82 Civil penalty orders

#### *Application for order*

- (1) An authorised applicant may apply to a relevant court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The authorised applicant must make the application within 6 years of the alleged contravention.

#### *Court may order person to pay pecuniary penalty*

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

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

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

#### *Determining pecuniary penalty*

- (5) The pecuniary penalty must not be more than:
  - (a) If the person is a body corporate—5 times the pecuniary penalty specified for the civil penalty provision; and
  - (b) otherwise—the pecuniary penalty specified for the civil penalty provision.

- (6) In determining the pecuniary penalty, the court must take into account all relevant matters, including:
- (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered because of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court (including a court in a foreign country) to have engaged in any similar conduct.

### **83 Civil enforcement of penalty**

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

### **84 Conduct contravening more than one civil penalty provision**

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Part against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under this Part in relation to the same conduct.

### **85 Multiple contraventions**

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

Note: For continuing contraventions of civil penalty provisions, see section 93.

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

### **86 Proceedings may be heard together**

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

### **87 Civil evidence and procedure rules for civil penalty orders**

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

## **Division 3 – Civil proceedings and criminal proceedings**

### **88 Civil proceedings after criminal proceedings**

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

### **89 Criminal proceedings during civil proceedings**

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

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

#### 90 Criminal proceedings after civil proceedings

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

#### 91 Evidence given in civil proceedings not admissible in criminal proceedings

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

### Division 4 – Miscellaneous

#### 92 Ancillary contravention of civil penalty provisions

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision; or
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (e) conspire with others to effect a contravention of a civil penalty provision.

##### *Civil penalty*

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

Note: Section 94 (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to the extent that proceedings relate to the contravention of subsection (1).

#### 93 Continuing contraventions of civil penalty provisions

- (1) If an act or thing is required under a civil penalty provision to be done:
- (a) within a particular period; or
  - (b) before a particular time;
- then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
- (a) within a particular period; or
  - (b) before a particular time;
- commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

#### **94 State of mind**

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision, it is not necessary to prove:
- (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (2) Subsection (1) does not apply to the extent that the proceedings relate to a contravention of subsection 92(1) (which is about ancillary contravention of civil penalty provisions).
- (3) Subsection (1) does not affect the operation of section 95 (which is about mistake of fact).
- (4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.

#### **95 Mistake of fact**

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

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

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

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

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

**Part 5 – Infringement notices**  
**Division 1 – Outline and operation of this Part**

**98 Simplified outline**

The following is a simplified outline of this Part:

This Part creates a framework for the use of infringement notices where an infringement officer reasonably believes that a provision has been contravened.

For this Part to operate, a provision must be made subject to an infringement notice under this Part. This is to be done by another Act.

A person can be given an infringement notice in relation to a contravention of a provision that is subject to an infringement notice under this Part. The provision may be a strict liability offence or a civil penalty provision, or both.

A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person for a contravention of a provision subject to an infringement notice under this Part. If the person does not choose to pay the amount, proceedings can be brought against the person in relation to the contravention.

**99 Purpose and operation of this Part**

- (1) The principal purpose of this Part is to create a framework for the use of infringement notices where an infringement officer reasonably believes that a provision has been contravened.
- (2) However, for this Part to operate, a provision of an Act or a legislative instrument must be made subject to an infringement notice under this Part.

**100 Provisions *subject to infringement notices***

A provision that is an offence of strict liability or a civil penalty provision in an Act or a legislative instrument is ***subject to an infringement notice*** under this Part if an Act provides that the provision is subject to an infringement notice under this Part.

**101 *Infringement officer***

- (1) A person is an ***infringement officer*** for the purposes of exercising powers under this Part in relation to a contravention of a provision if an Act provides that the person is an infringement officer in relation to that provision for the purposes of this Part.
- (2) A person who is an ***infringement officer*** for the purpose of exercising powers mentioned in subsection (1) is also an ***infringement officer*** for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is an infringement officer in relation to a provision for the purposes of this Part by:
  - (a) providing that a person of a specified class is an infringement officer in relation to the provision for the purposes of this Part; or
  - (b) authorising another person to specify that a person, or a person of a specified class, is an infringement officer in relation to the provision for the purposes of this Part.

## 102 Relevant chief executive

- (1) A person is the *relevant chief executive* for the purposes of exercising powers under this Part in relation to a contravention of a provision if an Act provides that the person is the relevant chief executive in relation to that provision for the purposes of this Part.
- (2) A person who is the *relevant chief executive* for the purpose of exercising powers mentioned in subsection (1) is also the *relevant chief executive* for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is the relevant chief executive in relation to a provision for the purposes of this Part by:
  - (a) providing that a person who holds a specified office is the relevant chief executive in relation to the provision for the purposes of this Part; or
  - (b) authorising another person to specify that a person, or a person who holds a specified office, is the relevant chief executive in relation to the provision for the purposes of this Part.

## Division 2 – Infringement notices

### 103 When an infringement notice may be given

- (1) If an infringement officer believes on reasonable grounds that a person has contravened a provision subject to an infringement notice under this Part, the infringement officer may give to the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.
- (4) An infringement officer may give a person a single infringement notice relating to multiple contraventions of a single provision if:
  - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
  - (b) the person fails or refuses to do that thing within that period or before that time; and
  - (c) the failure or refusal occurs on more than 1 day; and
  - (d) each contravention is constituted by the failure or refusal on one of those days.

Note: For continuing offences, see subsection 4K(2) of the *Crimes Act 1914*. For continuing contraventions of civil penalty provisions, see section 93 of this Act.

- (5) If a single provision can constitute both a civil penalty provision and an offence provision, the infringement notice must relate to the provision as an offence provision.

### 104 Matters to be included in an infringement notice

- (1) An infringement notice must:
  - (a) be identified by a unique number; and
  - (b) state the day on which it is given; and
  - (c) state the name of the person to whom the notice is given; and
  - (d) state the name and contact details of the person who gave the notice, and that the person is an infringement officer for the purposes of issuing the infringement notice; and
  - (e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:
    - (i) the provision that was allegedly contravened; and



- (ii) the maximum penalty that a court could impose for each contravention, if the provision were contravened; and
  - (iii) the time (if known) and day of, and the place of, each alleged contravention; and
  - (f) state the amount that is payable under the notice; and
  - (g) give an explanation of how payment of the amount is to be made; and
  - (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn):
    - (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or
    - (ii) if the provision is an offence provision that can also constitute a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a civil penalty order will not be brought, in relation to the alleged contravention; or
    - (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order will not be brought in relation to the alleged contravention; and
  - (i) state that payment of the amount is not an admission of guilt or liability; and
  - (j) state that the person may apply to the relevant chief executive to have the period in which to pay the amount extended; and
  - (k) state that the person may choose not to pay the amount and, if the person does so:
    - (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
    - (ii) if the provision is an offence provision and can also constitute a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or
    - (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
  - (l) set out how the notice can be withdrawn; and
  - (m) state that if the notice is withdrawn:
    - (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
    - (ii) if the provision is an offence provision and can also constitute a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or
    - (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
  - (n) state that the person may make written representations to the relevant chief executive seeking the withdrawal of the notice.
- (2) If the notice relates to only one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the lesser of:
- (a) one-fifth of the maximum penalty that a court could impose on the person for that contravention; and
  - (b) 12 penalty units where the person is an individual, or 60 penalty units where the person is a body corporate.
- (3) If the notice relates to more than one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the lesser of:
- (a) one-fifth of the amount worked out by adding together the maximum penalty that a court could impose on the person for each alleged contravention; and
  - (b) either:
    - (i) if the person is an individual—the number of penalty units worked out by multiplying the number of alleged contraventions by 12; or
    - (ii) if the person is a body corporate—the number of penalty units worked out by multiplying the number of alleged contraventions by 60.

Note: Under section 103, a single infringement notice may only deal with multiple contraventions if they are contraventions of a single provision continuing over a period.

(4) Subsections (2) and (3) do not apply if another Act expressly provides otherwise.

#### 105 Extension of time to pay amount

- (1) A person to whom an infringement notice has been given may apply to the relevant chief executive for an extension of the period referred to in paragraph 104(1)(h).
- (2) If the application is made before the end of that period, the relevant chief executive may, in writing, extend that period. The relevant chief executive may do so before or after the end of that period.
- (3) If the relevant chief executive extends that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 104(1)(h) is taken to be a reference to that period so extended.
- (4) If the relevant chief executive does not extend that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 104(1)(h) is taken to be a reference to the period that ends on the later of the following days:
  - (a) the day that is the last day of the period referred to in paragraph 104(1)(h);
  - (b) the day that is 7 days after the day the person was given notice of the relevant chief executive's decision not to extend.
- (5) The relevant chief executive may extend the period more than once under subsection (2).

#### 106 Withdrawal of an infringement notice

##### *Representations seeking withdrawal of notice*

- (1) A person to whom an infringement notice has been given may make written representations to the relevant chief executive seeking the withdrawal of the notice.

##### *Withdrawal of notice*

- (2) The relevant chief executive may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the relevant chief executive:
  - (a) must take into account any written representations seeking the withdrawal that were given by the person to the relevant chief executive; and
  - (b) may take into account the following:
    - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision subject to an infringement notice under this Part that is included in the same Act or legislative instrument as the provision in relation to which the infringement notice is given;
    - (ii) the circumstances of the alleged contravention;
    - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision subject to an infringement notice under this Part if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
    - (iv) any other matter the relevant chief executive considers relevant.

##### *Notice of withdrawal*

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:

- (a) the person's name and address; and
- (b) the day the infringement notice was given; and
- (c) the identifying number of the infringement notice; and
- (d) that the infringement notice is withdrawn; and
- (e) that:
  - (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
  - (ii) if the provision is an offence provision and can also constitute a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or
  - (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention.

*Refund of amount if infringement notice withdrawn*

- (5) If:
  - (a) the relevant chief executive withdraws the infringement notice; and
  - (b) the person has already paid the amount stated in the notice;
 the Commonwealth must refund to the person an amount equal to the amount paid.

**107 Effect of payment of amount**

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 104(1)(h):
  - (a) any liability of the person for the alleged contravention is discharged; and
  - (b) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may not be prosecuted in a court for the alleged contravention; and
  - (c) if the provision is an offence provision and can also constitute a civil penalty provision—the person may not be prosecuted in a court, and proceedings seeking a civil penalty order may not be brought, in relation to the alleged contravention; and
  - (d) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may not be brought in relation to the alleged contravention; and
  - (e) the person is not regarded as having admitted guilt or liability for the alleged contravention; and
  - (f) if the provision is an offence provision—the person is not regarded as having been convicted of the alleged offence.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

**108 Effect of this Part**

This Part does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or
- (b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Part if:
  - (i) the person does not comply with an infringement notice given to the person for the contravention; or
  - (ii) an infringement notice is not given to the person for the contravention; or
  - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or

- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice under this Part.

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