Australian Sports Commission

Illicit Drugs in Sport Policy

Effective from 1 October 2010
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>3</td>
</tr>
<tr>
<td>1. Position statement</td>
<td>3</td>
</tr>
<tr>
<td>2. Objectives</td>
<td>4</td>
</tr>
<tr>
<td>3. Application</td>
<td>4</td>
</tr>
<tr>
<td>4. Roles and responsibilities</td>
<td>5</td>
</tr>
<tr>
<td>5. Illicit Drugs In Sport Policy personnel</td>
<td>8</td>
</tr>
<tr>
<td>6. Education Program</td>
<td>8</td>
</tr>
<tr>
<td>7. <em>List of Prohibited Illicit Drugs</em></td>
<td>9</td>
</tr>
<tr>
<td>8. <em>Illicit Drugs Breaches</em></td>
<td>9</td>
</tr>
<tr>
<td>9. Proof of Breach</td>
<td>9</td>
</tr>
<tr>
<td>10. Therapeutic Use Exemptions</td>
<td>10</td>
</tr>
<tr>
<td>11. Testing</td>
<td>10</td>
</tr>
<tr>
<td>12. Right to a Fair Hearing</td>
<td>12</td>
</tr>
<tr>
<td>13. Consequences of Breach</td>
<td>15</td>
</tr>
<tr>
<td>14. Appeals</td>
<td>18</td>
</tr>
<tr>
<td>15. Privacy, Confidentiality and Disclosure</td>
<td>19</td>
</tr>
<tr>
<td>16. Limitations of Action</td>
<td>20</td>
</tr>
<tr>
<td>17. Investigations</td>
<td>20</td>
</tr>
<tr>
<td>18. Amendment and Interpretation</td>
<td>20</td>
</tr>
<tr>
<td>19. Definitions</td>
<td>21</td>
</tr>
</tbody>
</table>

Historical Document
Introduction

The Australian Sports Commission (ASC) aims to deter the use of illicit drugs by those involved in Australian sport. The ASC prides itself on upholding the principles of Australian sport - fairness, respect, responsibility and safety.

This Policy operates in conjunction with, as applicable, the ASC Code of Conduct, the Australian Institute of Sport (AIS) Athlete Scholarship Agreement, the ASC Anti-Doping Policy and other relevant agreements and policies. As such, this Policy is an important part of a comprehensive set of behavioural standards, responsibilities and practices. The ASC Code of Conduct, the AIS Athlete Scholarship Agreement and other agreements contain the obligation to comply with applicable ASC policies and procedures.

In the event of a matter that constitutes a breach or possible breach of both this Policy and the ASC Anti-Doping Policy, the ASC Anti-Doping Policy prevails.

An individual who is investigated or sanctioned under this Policy may also be investigated and sanctioned under the ASC Code of Conduct, the AIS Athlete Scholarship Agreement or other agreement (as applicable).

As at the date of this Policy, copies of Department of Health and Ageing (DoHA) documents can be found on the DoHA website www.health.gov.au.

As at the date of this Policy, copies of ASC documents, including the ASC Code of Conduct, can be found on the ASC website www.ausport.gov.au and/or by request from the ASC’s Human Resources Section.

The List of Prohibited Illicit Drugs can be found on the ASC website.

Definitions of terms used in this Policy can be found in Article 19.

1. Position statement

1.1. The use of illicit drugs is harmful to Athletes. The ASC seeks to educate Athletes to deter the use of illicit drugs. Further, the use of illicit drugs by Athletes can bring the ASC and sport into disrepute and sets a poor example for other members of the community who view Athletes as role models.

1.2. The ASC aims to deter the use of illicit drugs in sport and increase education for Athletes in relation to the potential harms of the use of illicit drugs.

1.3. This Policy is designed to deter the uptake of illicit drug use and reduce the drug-related harm to individuals, families and stakeholders of the ASC and the broader community.
1.4. The ASC will adopt a management approach which, in the first instance, focuses on education and counselling in addressing the use of illicit drugs in the Out-of-Competition context. However, for cases of repeated use where counselling and education have not been effective, escalating sanctions will be applied.

1.5. Some illicit drugs may be legitimately used under the supervision of a physician for a clinically justified purpose. Such use must be consistent with the Therapeutic Use provisions in Article 10 of this Policy.

1.6. The ASC has adopted and implemented an ASC Anti-Doping Policy which conforms to the World Anti-Doping Code. The World Anti-Doping Agency Prohibited List includes illicit drugs which are prohibited In-Competition. This Policy differs from the ASC Anti-Doping Policy in that it addresses the Out-of-Competition use of illicit drugs.

2. Objectives

2.1. The ASC is committed to deterring the use of illicit drugs in sport through:
   a) tailored education programs, including the use of positive role models;
   b) detecting and deterring the use of illicit drugs by Athletes through an Out-of-Competition illicit drugs Testing program, and
   c) effective education, counselling and sanctions as appropriate for Athletes identified as using illicit drugs.

3. Application

3.1. This Policy applies to:
   a) Athletes who are AIS Athlete Scholarship Holders;
   b) Athlete Support Personnel who are recipients of ASC financial assistance or are contractors of the ASC and who are working with, treating or assisting AIS Athlete Scholarship Holders;
   c) employees and Board Members of the ASC; and
   d) any other Persons who have agreed to be bound by this Policy.

3.2. Where a Person bound by this Policy breaches his or her obligations under this Policy, including an Illicit Drugs Breach, such breach may also constitute a breach of the ASC Code of Conduct, AIS Athlete Scholarship Agreement or other relevant agreement between that Person and the ASC, and sanctions under the ASC Code of Conduct, AIS Athlete Scholarship Agreement or other relevant agreement may apply.
3.3. Where a Person is bound by the ASC Anti-Doping Policy in addition to this Policy, the Person shall be bound by, and have obligations in respect of, both policies simultaneously. In the event of any inconsistency, the ASC Anti-Doping Policy prevails. In the event of a matter that constitutes a breach or possible breach of both the ASC Anti-Doping Policy and this Policy, the ASC Anti-Doping Policy prevails.

3.4. Where a Person is bound by an applicable NSO illicit drugs policy and/or anti-doping policy in addition to this Policy, the Person shall be bound by, and have obligations in respect of all applicable policies simultaneously, provided that under no circumstances will any other policy reduce a Person’s obligations under this Policy. A breach of this Policy may also constitute a breach of such other policy.

3.5. Nothing in this Policy limits the application of Commonwealth, State and Territory laws to illicit drugs issues or the ability of the ASC to refer such issues to the police or other relevant authorities.

4. Roles and responsibilities

4.1. **Athletes**

Athletes must:

4.1.1. be knowledgeable of and comply with all rules applicable to them under this Policy;

4.1.2. use their influence on other Athletes to reinforce the education messages regarding illicit drugs;

4.1.3. read and understand the List of Prohibited Illicit Drugs as it relates to them and keep up to date with any changes to the List of Prohibited Illicit Drugs;

4.1.4. be available for Sample Collection and provide accurate and up-to-date location information for this purpose when identified for inclusion in the Testing Pool;

4.1.5. take responsibility, in the context of this Policy, for what they use, ingest or otherwise consume;

4.1.6. assist, cooperate and liaise with the ASC and, if applicable, their NSO in relation to the conduct of any investigation or hearing into a suspected or alleged Illicit Drugs Breach;

4.1.7. act in a discreet and confidential manner in discharging their obligations under this Policy;
4.1.8. understand their obligations under any other illicit drugs policies and anti-doping policies they are bound to comply with, including understanding how such additional obligations differ from their obligations under this Policy;

4.1.9. inform medical personnel of their obligations not to use Prohibited Illicit Drugs and ensure that any medical treatment received does not result in a breach of this Policy; and

4.1.10. attend illicit drug education as directed by the ASC and as otherwise appropriate and understand that failure to attend shall be no excuse for an alleged Illicit Drug Breach and shall not mitigate culpability of the Athlete in determining sanction.

4.2. **Athlete Support Personnel**

Athlete Support Personnel must:

4.2.1. be knowledgeable of and comply with all rules applicable to them under this Policy or to the Athletes whom they are working with, treating or assisting;

4.2.2. support and assist the ASC and, if applicable, the relevant NSO to conduct Testing;

4.2.3. read and understand the List of Prohibited Illicit Drugs as it relates to them or to the Athletes whom they are working with, treating or assisting and keep up to date with any changes to the List of Prohibited Illicit Drugs;

4.2.4. use their influence on Athletes to reinforce the education messages regarding illicit drugs;

4.2.5. assist, cooperate and liaise with the ASC and, if applicable, the relevant NSO in relation to the conduct of any investigation or hearing into a suspected or alleged Illicit Drugs Breach;

4.2.6. act in a discreet and confidential manner in discharging their obligations under this Policy; and

4.2.7. understand their obligations under any other illicit drugs policies and anti-doping policies they are bound to comply with, including understanding how such additional obligations differ from their obligations under this Policy.
4.3. **Employees and Board Members**

Employees and *Board Members* of the ASC must:

4.3.1. be knowledgeable of and comply with all rules applicable to them under this Policy;

4.3.2. where applicable, use their influence on *Athletes* to reinforce the education messages regarding illicit drugs;

4.3.3. assist, cooperate and liaise with the ASC and, if applicable, the relevant *NSO* in relation to the conduct of any investigation or hearing into an alleged *Illicit Drugs Breach*; and

4.3.4. comply with the confidentiality obligations and privacy practices set out in Article 15.

4.4. **ASC**

The ASC will:

4.4.1. abide by, implement and enforce this Policy;

4.4.2. develop and implement appropriate illicit drug education programs and initiatives for *Persons* bound by this Policy;

4.4.3. use reasonable endeavours to assist all those to whom this Policy applies to understand their responsibilities under this Policy;

4.4.4. appoint one or more *Testing Agencies* to conduct *Testing* and *Sample Analysis* under this Policy;

4.4.5. coordinate the administration of a *Testing Pool* and *Athlete Location* requirements;

4.4.6. at its discretion investigate any suspected *Illicit Drug Breaches* under this Policy;

4.4.7. coordinate results management procedures in accordance with the *Results Management Standards* as applicable;

4.4.8. make findings in relation to alleged *Illicit Drug Breaches*;

4.4.9. issue breach notices in relation to alleged *Illicit Drug Breaches*;

4.4.10. appoint *Tribunals* to conduct hearings under this Policy;

4.4.11. convene hearings before the *Tribunals*;

4.4.12. present its findings and its recommendations before the *Tribunals*;
4.4.13. make reasonable efforts to make this Policy and the List of Prohibited Illicit Drugs available to Athletes, Athlete Support Personnel, employees, Board Members and any other Persons who have agreed to be bound by this Policy;

4.4.14. ensure that at all times it has the authority to enforce this Policy;

4.4.15. adopt confidentiality and privacy practices as set out in Article 15; and

4.4.16. obtain DoHA approval for any amendments to this Policy or the List of Prohibited Illicit Drugs.

5. Illicit Drugs In Sport Policy personnel

5.1. The ASC will appoint appropriate personnel to administer this Policy.

6. Education Program

6.1. The ASC will develop and implement appropriate education programs and initiatives for the ASC consistent with the Education and Action Plan.

6.2. The education programs will promote the key messages of the Education and Action Plan to identified target groups and will be delivered through mediums suitable to the target audiences. These programs and initiatives will reflect key messages such as:

   a) illicit drug use is harmful;
   b) illicit drug use can affect your sporting performance - in or out of competition, during the off-season, or on the weekend;
   c) illicit drug use can affect your reputation and sporting career;
   d) illicit drug use can affect your sports team;
   e) illicit drug use can impact on the community who support you;
   f) participating in sport supports a healthy lifestyle.

6.3. The ASC will incorporate information relating to this Policy and any related Testing program, including the List of Prohibited Illicit Drugs, into the education programs. In particular, this information will be included for education provided to those groups of Athletes included in the Testing Pool.

6.4. The ASC will provide information about, and referrals to, counselling and support programs in relation to illicit drugs in the education programs. These programs may be face to face or an on-line service as appropriate.
7. **List of Prohibited Illicit Drugs**

7.1. The drugs prohibited under this Policy will be specified in the *List of Prohibited Illicit Drugs*.

7.2. Any modifications to the *List of Prohibited Illicit Drugs* must be approved by firstly DoHA and then the ASC Board. The modified *List* will come into effect on the date three months after approval of the modified *List* by the ASC Board.

7.3. The ASC will make reasonable efforts to inform Athletes, Athlete Support Personnel and any other Persons who have agreed to be bound by this Policy of any changes to the *List of Prohibited Illicit Drugs*.

8. **Illicit Drugs Breaches**

8.1. Each of the following constitutes an *Illicit Drug Breach* under this Policy:

8.1.1. An *Athlete* breaches this Policy if the *Athlete* returns a *Positive Analytical Finding* for any *Prohibited Illicit Drug* or its *Metabolites* or *Markers*.

8.1.2. An *Athlete* breaches this Policy if the *Athlete* refuses to submit, or without compelling justification *Fails to Submit*, to *Sample Collection* after notification by a *Testing Agency*, or otherwise evades or attempts to evade *Sample Collection*.

8.1.3. A *Person* breaches this Policy if the *Person* *Tampers*, or attempts to *Tamper*, with any part of *Sample Collection* or any other part of *Testing*.

8.2. The ASC will issue a written notice of breach to the *Person* whom the ASC alleges has committed an *Illicit Drugs Breach*.

9. **Proof of Breach**

9.1. **Burdens and Standards of Proof**

9.1.1. The ASC shall have the burden of establishing that an *Illicit Drugs Breach* has occurred.

9.1.2. The standard of proof shall be whether the ASC has established an *Illicit Drugs Breach* to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation which is made (if hearing has not been waived). This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.
9.1.3. Where this Policy places the burden of proof upon the Athlete or other Person alleged to have committed an Illicit Drug Breach to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

9.2. Methods of Establishing Facts and Presumptions

9.2.1. Facts related to an Illicit Drug Breach may be established by any reliable means, including admissions.

9.2.2. The following rules of proof shall be applicable with respect to Positive Analytical Findings:

a) The respective Testing Agency is presumed to have conducted Sample Collection, Sample handling and Sample transport in accordance with the Testing Standards and Sample Analysis in accordance with Australian Standards 4308. The Athlete may rebut this presumption by establishing that a departure from the Testing Standards or Australian Standards 4308 (as applicable) occurred.

b) If the Athlete rebuts the preceding presumption by showing that a departure from the Testing Standards or Australian Standards 4308 (as applicable) occurred, then the ASC shall have the burden to establish that such departure did not cause the Positive Analytical Finding.

10. Therapeutic Use Exemptions

10.1. The ASC shall consider any Therapeutic Use issues, including Therapeutic Use Exemptions (TUEs), cross references of existing TUEs and potential retroactive TUEs, in accordance with the Results Management Standards.

11. Testing

11.1. Authority to Test

11.1.1. All Athletes included in the Testing Pool must submit to Out-of-Competition Sample Collection as determined by the ASC at any time or place, with or without advance notice by a Testing Agency.

11.1.2. Without limitation to Article 11.1.1, the ASC intends that Sample Collection will usually be conducted either:

a) in conjunction with a sport related activity such as, but not limited to, training sessions, recovery sessions, team/squad camps, meetings, functions or other sport activities; or

b) at AIS residences.
11.1.3. Without limitation to Article 11.1.1, all Athletes agree to submit to Target Testing as determined by the ASC at its discretion or as required under Article 13 as a consequence of an Illicit Drugs Breach.

11.2. Testing Standards

11.2.1. All Testing will be conducted in accordance with the Testing Standards.

11.3. Testing Pool

11.3.1. The ASC’s Testing Pool will consist of all Athletes who are AIS Athlete Scholarship Holders at the time of Testing.

11.4. Athlete Location requirements

11.4.1. The ASC will determine the Athlete Location information it requires in order to conduct Sample Collection.

11.4.2. Where possible, the ASC will endeavour to utilise existing information possessed by the ASC, such as information contained in the AIS athlete database, in order to conduct Sample Collection.

11.4.3. When requested, Athletes in the Testing Pool must provide sufficient Athlete Location information to permit reasonable Out-of-Competition Sample Collection.

11.4.4. The ASC will inform Athletes in the Testing Pool of any additional Athlete Location information required from the Athletes and the Athletes must provide such information to the ASC. Such information may include (if not already possessed or confirmed by the ASC):

a) home address;
b) home, work and mobile phone numbers;
c) regular training venues and times (club, state, national and individual);
d) regular sport meeting/function venues and times
e) other information as required by the ASC.

11.5. Testing Agency

11.5.1. The ASC will appoint one or more Testing Agencies to conduct Testing and Sample Analysis under this Policy.

11.5.2. The ASC may, from time to time, appoint additional Testing Agencies to conduct Testing and Sample Analysis under this Policy.
11.5.3. The ASC may, from time to time, terminate the appointment of Testing Agencies at its discretion.

11.6. Selection of Athletes for Sample Collection

11.6.1. The ASC or a Testing Agency may select any Athlete in the Testing Pool for Sample Collection.

11.6.2. Without limitation to Article 11.6.1, the ASC may select any Athlete in the Testing Pool for Target Testing at the ASC’s discretion or as required under Article 13 as a consequence of an Illicit Drugs Breach.

11.6.3. If an Athlete has been notified for doping control by ASADA or another Anti-Doping Organisation to occur at the same time as proposed Sample Collection from the Athlete, the anti-doping testing takes precedence, in which case the ASC or Testing Agency may select alternative Athletes for Sample Collection under this Policy.

11.7. Sample Analysis

11.7.1. Samples will be analysed in a laboratory of a Testing Agency or its agent or subcontractor in accordance with Australian Standards 4308.

11.7.2. Samples will be analysed for the presence of Prohibited Illicit Drugs and their Metabolites and Markers.

11.8. Results Management

11.8.1. The ASC will coordinate results management procedures following Testing under this Policy in accordance with the Results Management Standards. The other provisions of this Policy will prevail over the Results Management Standards in the event of any inconsistency.

11.9. Co-operation with NSOs

11.9.1. The ASC may at any time conduct any or all of its Testing program, including the appointment of Testing Agencies, in conjunction with one or more NSOs, with results able to be utilised by both the ASC and such NSOs under their respective policies.

12. Right to a Fair Hearing

12.1. Any Athlete who is alleged to have committed an Illicit Drugs Breach under this Policy is entitled to be provided with a hearing. Such hearing shall address whether an Illicit Drugs Breach occurred and, if so, the appropriate consequences in accordance with Article 13. All hearings conducted pursuant to this Policy will respect the following principles:
a) a timely hearing;
b) a fair and impartial hearing body;
c) the right to representation at the Athlete’s own expense;
d) the right to be informed in a fair and timely manner of the alleged Illicit Drugs Breach;
e) the right to respond to the alleged Illicit Drugs Breach and resulting consequences;
f) the right of each party to present evidence, including the right to call and question witnesses (subject to the hearing body’s discretion to accept testimony by telephone or written submission);
g) the Athlete’s right to an interpreter at the hearing, with the hearing body to determine the identity of, and responsibility for the cost of, the interpreter; and
h) a timely, written, reasoned decision.

12.2. Subject to the principles in Article 12.1, the hearing will be conducted in the manner that the hearing body determines is appropriate, with as little formality and technicality, and as quickly, as proper consideration of the issue permits.

12.3. The ASC will convene the hearing and present the case at the hearing.

12.4. After not less than 14 days after sending a breach notice (or a shorter period agreed between the ASC and the Athlete), the ASC will appoint a Tribunal to conduct the hearing.

12.5. At the discretion of the ASC, the Tribunal may be the CAS.

12.6. An alleged Illicit Drugs Breach under this Policy may also constitute an alleged breach of the Athlete’s NSO’s illicit drugs policy (where applicable). In such case, the ASC and the NSO may agree to convene a single hearing of the matter for the purposes of both policies, provided that such hearing is conducted in a manner not inconsistent with either policy.

12.7. Waiving of Hearing

12.7.1. An Athlete may expressly waive a right to a hearing by written notice to the ASC.

12.7.2. An Athlete will be deemed to have waived a right to a hearing by failing to respond to a breach notice or failing to appear at a scheduled hearing.
12.7.3. If an Athlete waives his or her right to a hearing, then the ASC may immediately refer the Athlete to a counselling program and impose at its discretion any or all other applicable Sanctions and other consequences without convening the Tribunal.

12.8. **Tribunal Determination**

12.8.1. The Tribunal will determine:

a) if the Athlete has committed an Illicit Drug Breach;

b) if so, what Sanctions will apply (to the extent that the Tribunal has jurisdiction and discretion under Article 13), in addition to the mandatory counselling and Target Testing; and

c) any other relevant issues referred to it by the ASC such as, but not limited to, reimbursement of costs.

12.8.2. Any Sanctions must be in accordance with Article 13.

12.9. The Tribunal will give the ASC a written statement of:

a) the findings of the hearing and brief reasons for the findings;

b) to the extent that the Tribunal has jurisdiction and discretion under Article 13, what Sanctions will apply (in addition to the mandatory counselling and Target Testing); and

c) any other relevant issues such as, but not limited to, reimbursement of costs.

12.10. Hearings pursuant to this Policy shall be completed as soon as reasonably practicable.

12.11. Decisions by the Tribunal may be appealed to the CAS as provided in Article 14.

12.12. Decisions by the CAS shall not be subject to further administrative review except as provided in Article 14 or as required by applicable national law.

12.13. The ASC may invite ASADA, the Athlete’s NSO, and, if relevant, the Athlete’s SIS/SAS, AOC, APC and/or ACGA as applicable to attend a hearing as an observer or interested/affected party.

12.14. If, during a hearing, a party to the hearing process implicates a third party to an Illicit Drugs Breach or possible Anti-Doping Rule Violation then the ASC may use any information that arises as a result of the Tribunal process without having to first seek the permission of the parties. This Article overrides R43 of the CAS Code of Sports-related Arbitration to the extent of any inconsistency.
12.15. Any hearing application fee will be paid for by the ASC. The appeal application fee will be paid for by the party lodging the appeal. Each party shall otherwise bear their own costs, except where the Tribunal makes a direction in relation to reimbursement of costs.

13. Consequences of Breach

13.1. Any Athlete who is found to have committed an Illicit Drugs Breach under this Policy shall:

13.1.1. For a first Illicit Drugs Breach:
   a) undertake a counselling program; and
   b) be subject to Target Testing under this Policy.

13.1.2. For a second Illicit Drug Breach:
   a) undertake a second counselling program;
   b) be subject to Target Testing under this Policy; and
   c) subject to Article 13.6.2, 13.7 and 13.8, receive a suspension of all ASC benefits (including AIS scholarship benefits) for not less than four weeks.

13.1.3. For a third Illicit Drug Breach:
   a) undertake a third counselling program;
   b) be subject to Target Testing under this Policy; and
   c) subject to Articles 13.6.2, 13.7 and 13.8, receive a suspension of all ASC benefits (including AIS scholarship benefits) for not less than eight weeks.

13.1.4. For a fourth or subsequent Illicit Drug Breach:
   a) subject to Articles 13.6.2, 13.7 and 13.8, have his or her AIS scholarship terminated; and
   b) be referred to further counselling.

13.2. An Athlete’s Illicit Drugs Breach under this Policy will also constitute a breach of the Athlete’s AIS Athlete Scholarship Agreement. The Sanctions and other consequences under this Policy are not to be limited or reduced by the existence or application of the AIS Athlete Scholarship Agreement. Sanctions under the AIS Athlete Scholarship Agreement may be applied by the ASC independently of Sanctions under this Policy.

13.3. An Athlete’s Illicit Drugs Breach under this Policy may also constitute a breach of the Athlete’s NSO’s illicit drugs policy (where applicable). The Sanctions and other consequences under this Policy are not to be limited or reduced by the existence or application of such other policy. Sanctions under such other policy may be applied by the NSO independently of Sanctions under this Policy.
13.4. An Athlete found to have committed a breach of this Policy other than an Illicit Drugs Breach shall not have Sanctions or other consequences imposed under this Policy, rather such breach of this Policy will be dealt with under the AIS Athlete Scholarship Agreement and/or other agreement between the Athlete and the ASC that requires the Athlete’s compliance with this Policy.

13.5. Any Person other than an Athlete found to have committed an Illicit Drugs Breach or other breach under this Policy shall not have Sanctions or other consequences imposed under this Policy, rather such breach of this Policy will be dealt with under the ASC Code of Conduct and/or other agreement between the Person and the ASC that requires the Person’s compliance with this Policy.

13.6. Reference to Counselling Programs

13.6.1. The ASC will refer any Athlete found to have committed an Illicit Drugs Breach to a suitable drug counselling program.

13.6.2. An Athlete in the Testing Pool may refer himself or herself to the ASC for a referral to drug counselling at any time. If an Athlete has self-referred for such assistance prior to being selected for Testing and is subsequently found to have committed an Illicit Drug Breach from such Testing, any otherwise applicable Sanctions may be reduced.

13.6.3. Self-referral for counselling as described in Article 13.6.2 does not negate the result of any Testing or attempted Testing.

13.6.4. Counselling programs will be arranged by the ASC in consultation with the Athlete and will be provided by registered psychologists, who may be AIS staff psychologists or external psychologists.¹

13.6.5. The ASC will respect the privacy of the Athlete in arranging the Athlete’s attendance and participation in a counselling program.

13.6.6. The ASC is entitled to confirm with the respective psychologist whether or not the Athlete has undertaken the counselling program arranged by the ASC.

¹ The ASC recognises that a psychologist may owe the Athlete a legal duty of confidentiality in certain circumstances.
13.7. **Elimination or Reduction of Sanctions Based on Exceptional Circumstances**

13.7.1. If an **Athlete** establishes in an individual case involving a second or subsequent **Illicit Drugs Breach** that he or she bears **No Fault or Negligence** for the **Illicit Drug Breach**, then the otherwise applicable **Sanctions** shall be eliminated. When a **Prohibited Illicit Drug** or its **Markers** or **Metabolites** is detected in an **Athlete’s Sample**, the **Athlete** must also establish how the **Prohibited Illicit Drug** entered his or her system in order to have the **Sanctions** eliminated. In the event this Article 13.7.1 is applied and the otherwise applicable **Sanctions** are eliminated, the **Illicit Drugs Breach** shall not be considered as an earlier **Illicit Drugs Breach** for the limited purpose of determining the **Sanctions** for any subsequent **Illicit Drugs Breaches**. The **Athlete** must still undergo the prescribed counselling program and **Target Testing**.

13.7.2. If an **Athlete** establishes in an individual case involving a second or subsequent **Illicit Drugs Breach** that he or she bears **No Significant Fault or Negligence**, then the otherwise applicable **Sanctions** may be reduced. The **Athlete** must still undergo the prescribed counselling program and **Target Testing**.

13.8. **Rules and Timing for Potential Multiple Breaches**

13.8.1. For the purposes of Article 13, a second or subsequent **Illicit Drugs Breach** may be considered separately to the first or earlier **Illicit Drugs Breach** only if the **ASC** can establish that the **Athlete** committed the second or subsequent **Illicit Drugs Breach** after the **Athlete** received notice, or after the **ASC** made a reasonable attempt to give notice, of the first or earlier **Illicit Drugs Breach** - if the **ASC** cannot establish this, the **Illicit Drugs Breaches** shall be considered as one single **Illicit Drugs Breach**.

13.8.2. For the purposes of imposing **Sanctions** under Article 13, an **Illicit Drugs Breach** must have occurred within four years of the date of a previous **Illicit Drugs Breach** in order to be considered a second or subsequent **Illicit Drugs Breach**.

13.9. **Commencement of Sanctions**

13.9.1. Subject to Article 13.9.2, any **Sanction** imposed on an **Athlete** shall take immediate effect on the date of the hearing decision or, if the hearing is waived, on the date specified by the **ASC**.
13.9.2. Where required by fairness, such as delays in the hearing process or other aspects of the Testing and results management process not attributable to the Athlete, or where an Athlete has stood themselves down from receiving ASC benefits pending the outcome of the Tribunal hearing, the Tribunal imposing a suspension of ASC benefits may start the suspension at an earlier date commencing as early as the date of notification.

13.10. Status During Suspension

13.10.1. No Athlete suspended from receiving ASC benefits may, during the period of suspension, compete in or participate in any Competition or Event authorised or organised by the ASC, or otherwise represent the ASC in any other Competition or Event as a competitor or in any coaching or other athlete support role.

13.11. Reinstatement

13.11.1. As a condition to regaining eligibility for ASC benefits (including the revoked rights described in Article 13.10.1) at the end of a suspension period as a consequence of an Illicit Drugs Breach, an Athlete must:

a) during the suspension period, make him or herself available for further Sample Collection by the ASC and must provide current and accurate location information as required under Article 11.4;

b) have completed the required counselling program to the ASC’s satisfaction; and

c) have complied with any other obligations imposed by the hearing body.

14. Appeals

14.1. Decisions made by the Tribunal under Article 12 may be appealed to the CAS Appeals Division as set out in this Article 14. Such decisions include a decision that an Illicit Drugs Breach was committed by an Athlete, a decision imposing a Sanction on an Athlete, a decision that no Illicit Drugs Breach was committed by an Athlete, and a decision that the ASC lacks jurisdiction in relation to an alleged Illicit Drugs Breach or its consequences. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise.

14.2. Both the Athlete being the subject of a decision and the ASC have the right to appeal to the CAS Appeals Division.

14.3. These decisions may be appealed exclusively to the CAS Appeals Division and resolved definitively in accordance with the Code of Sports-related Arbitration.
14.4. The determination of the CAS Appeals Division will be final and binding on the parties to the appeal and no party may institute or maintain proceedings in any court or tribunal other than the CAS Appeals Division.

14.5. The ASC must inform any Person informed of the original determination the outcome of any appeal within seven days of the release by the CAS Appeals Division of the written decision of the appeal.

14.6. The time to file an appeal to the CAS Appeals Division shall be within 21 days of the release by the Tribunal of the written decision of the initial hearing.

15. Privacy, Confidentiality and Disclosure

15.1. Privacy

15.1.1. The ASC will adopt privacy practices consistent with, to the extent applicable to the ASC, the Privacy Act and in so doing will consider the Privacy Guidelines.

15.2. Confidentiality

15.2.1. The ASC and its employees and Board Members will keep confidential and not disclose information regarding an alleged or established Illicit Drugs Breach, including the identity of the Person alleged or found to have committed such breach, except to the extent:
   a) permitted under Article 15.3 or elsewhere in this Policy;
   b) permitted under another applicable ASC policy or agreement with the relevant Person;
   c) required for the purposes of administering and enforcing this Policy;
   d) required by law;
   e) in the public domain;
   f) authorised by the relevant Person.

15.3. Disclosure

15.3.1. The ASC may inform the following organisations of any Positive Analytical Finding, any notification of an alleged Illicit Drugs Breach, any finding of an Illicit Drugs Breach or any other details of the results management process or hearing process with respect to any Athlete or other Person subject to this Policy:
   a) ASADA;
   b) if the Person is a member of an NSO or an NSO team, the Person’s NSO;
c) if the Person is a SIS/SAS scholarship holder, the Person’s SIS/SAS;

d) where relevant, the AOC, APC and/or ACGA;

e) without limitation to Article 3.5, police, customs or other relevant authorities.

15.3.2. The ASC may at any time disclose details of an alleged or established Illicit Drugs Breach in a manner that does not identify any individual as the Person alleged or found to have committed the Illicit Drugs Breach.

16. Limitations of Action

16.1. No action may be commenced under this Policy against an Athlete or other Person for an alleged Illicit Drugs Breach unless such action is commenced within two years from the date the alleged Illicit Drugs Breach occurred. For the avoidance of doubt, this Article does not restrict any right of the ASC to take action at any time under the AIS Athlete Scholarship Agreement, ASC Code of Conduct and/or other agreement between the Person and the ASC.

17. Investigations

17.1. The ASC may at its discretion at any time conduct an investigation into whether an Illicit Drugs Breach or other breach of this Policy has occurred.

17.2. A Person who is investigated under this Policy may also be investigated in relation to the same matter under the ASC Anti-Doping Policy, AIS Athlete Scholarship Agreement and/or ASC Code of Conduct, where applicable.

17.3. An investigation for the purposes of this Policy may also serve as an investigation under the ASC Anti-Doping Policy, AIS Athlete Scholarship Agreement and/or the ASC Code of Conduct, where applicable.

18. Amendment and Interpretation

18.1. This Policy may be amended from time to time by the ASC, subject to DoHA approval. A copy of the amended Policy must be provided to DoHA.

18.2. This Policy shall be interpreted as an independent and autonomous text and not by reference to existing law or statutes.

18.3. The headings used for the various Parts and Articles of this Policy are for convenience only and shall not be deemed to be part of the substance of this Policy or to affect in any way the interpretation of this Policy.

18.4. Definitions of terms used in this Policy can be found in Article 19. The Definitions shall be considered an integral part of this Policy. Another grammatical form of a defined term has a corresponding meaning.
18.5. Words in the singular include the plural and vice versa.

18.6. Reference to “including” and similar words are not words of limitation.

18.7. Minor irregularities in the application of this Policy which cannot be reasonably considered to have affected the determination of an Illicit Drugs Breach will not affect such determination.

18.8. This Policy shall apply from its specified effective date.

19. Definitions

In this Policy, the following terms have the following definitions:

**AIS:** The Australian Institute of Sport, a division of the ASC.

**AIS Athlete Scholarship Agreement:** An agreement entered between the ASC and an AIS Athlete Scholarship Holder under which the ASC agrees to provide an AIS scholarship to the AIS Athlete Scholarship Holder.

**AIS Athlete Scholarship Holder:** A Person who has accepted an offer of an athlete scholarship under an AIS sports program.

**Anti-Doping Organisation:** As defined in the ASC Anti-Doping Policy.

**Anti-Doping Rule Violation:** An anti-doping rule violation as defined in Article 6 of the ASC Anti-Doping Policy or under the corresponding provisions of the anti-doping policy of an NSO.

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

**APC:** The Australian Paralympic Committee Inc., the peak national body responsible for Australia’s elite Athletes with a disability at Summer and Winter Paralympic Games.

**ASADA:** The Australian Sports Anti-Doping Authority, established under the ASADA Act.

**ASADA Act:** The Australian Sports Anti-Doping Authority Act 2006 (Cwlth), as amended from time to time.

**ASC:** The Australian Sports Commission, established under the ASC Act. Includes the AIS.

**ASC Act:** The Australian Sports Commission Act 1989 (Cwlth), as amended from time to time.
**ASC Anti-Doping Policy:** The ASC’s Anti-Doping Policy, as amended from time to time.

**ASC Code of Conduct:** The ASC’s Code of Conduct, as amended from time to time.

**Athlete:** Includes any participant in a sporting activity who is an AIS Athlete Scholarship Holder.

**Athlete Location:** Information relating to an Athlete in a Testing Pool required by the ASC in order to allow the ASC to arrange Sample Collection from the Athlete, including the Athlete’s Out-of-Competition locations.

**Athlete Support Personnel:** Any coach, trainer, manager, agent, team staff member, official, scientist, medical or para-medical or other personnel working with, treating or assisting an Athlete preparing for or participating in sporting activities.

**Australian Standards 4308:** Australian Standards (AS)/New Zealand Standards (NZS) 4308:2008 (Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine), as amended from time to time.

**Board Member:** The members of the ASC, as defined in the ASC Act.

**CAS:** The Court of Arbitration for Sport (Oceania Registry).

**CAS Appeals Division:** The Court of Arbitration for Sport (Oceania Registry) Appeals Arbitration Division.

**Competition:** A single race, match, game or singular athletic contest.

**DoHA:** The Commonwealth Department of Health and Ageing, or any Commonwealth department or agency assuming that Department’s role under this Policy.


**Event:** A series of individual Competitions conducted together under one ruling body.

**Fails to Submit:** Failure to submit to Sample Collection or failure to comply with Sample Collection procedures, including:

a) Failure to provide a Sample as required; or

b) Failure to complete or sign any form required.
**IF:** An International Federation recognised by the International Olympic Committee or General Assembly of International Sports Federations as the entity responsible for governing that sport internationally.

**Illicit Drugs Breach:** Any of the three categories of breach specified in Article 8.1 of this Policy.

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

**List of Prohibited Illicit Drugs:** The list identifying the illicit drugs prohibited under this Policy as made available on the ASC website, as amended from time to time in accordance with Article 7.2 of this Policy.

**Metabolites:** Any substance produced by a biotransformation process.

**Markers:** A compound, group of compounds or biological parameter/s that indicates the use, ingestion or consumption of a Prohibited Illicit Drug.

**No Fault or Negligence:** An Athlete establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had used, ingested or otherwise consumed the Prohibited Illicit Drug.

**No Significant Fault or Negligence:** An Athlete establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the Positive Analytical Finding.

**NSO:** National Sporting Organisation, a body recognised by the ASC as an Australian national sporting organisation and includes a national sporting organisation for people with a disability.

**Out-of-Competition:** Any period of time where an Athlete is not In-Competition.

**Person:** A natural person, body corporate, organisation or other entity.

**Positive Analytical Finding:** The presence in a Sample of a Prohibited Illicit Drug or its Metabolites or Markers.

**Privacy Act:** The Privacy Act 1988 (Cwlth), as amended from time to time.

**Privacy Guidelines:** The Guidelines on Privacy and Illicit Drug Testing in Sport as determined by DoHA, as amended from time to time and accessible through the DoHA website www.health.gov.au.

**Prohibited Illicit Drug:** A drug listed on the List of Prohibited Illicit Drug.
**Results Management Standards**: The Illicit Drugs in Sport – National Education and Action Plan – Results Management Standards as determined by DoHA, as amended from time to time and accessible through the DoHA website www.health.gov.au. A reference in the document to an NSO will be read as a reference to the ASC as applicable.

**Sample**: Any biological material collected for the purposes of Sample Analysis.

**Sample Analysis**: Analysis of Samples for the presence of Prohibited Illicit Drugs and their Metabolites or Markers.

**Sample Collection**: The process of collecting biological material for the purpose of Sample Analysis.

**Sanctions**: Suspension of all ASC benefits (including AIS scholarship benefits) or termination of AIS scholarship.

**SIS/SAS**: An Australian State or Territory institute or academy of sport.

**Tamper**: Causing, arranging or participating in any of the following in relation to any part of Sample Collection or any other part of Testing:

a) Altering, or attempting to alter, for an improper purpose or in an improper way;

b) Bringing, or attempting to bring, improper influence to bear;

c) Interfering, or attempting to interfere, improperly;

d) Obstructing, misleading or engaging in any fraudulent conduct to alter results or prevent normal procedures from occurring, or attempting to so obstruct, mislead or engage in such conduct; or

e) Providing, or attempting to provide, fraudulent information.

**Target Testing**: The selection of Athletes for Sample Collection where specific Athletes, or groups of Athletes, are selected on a non-random basis for Sample Collection at a specified time.

**Testing**: The parts of the process of testing in relation to Prohibited Illicit Drugs involving test distribution planning, Sample Collection, Sample handling, and Sample transport to the laboratory.

**Testing Agency**: An illicit drugs testing agency endorsed by DoHA and appointed by the ASC.

**Testing Pool**: The pool of Athletes established by the ASC who are subject to Sample Collection as part of the ASC’s Test Distribution Plan.

**Test Distribution Plan**: The number, timing and spread of Sample Collection to be conducted on the Testing Pool to ensure an efficient and effective allocation of Testing resources.
**Testing Standards:** The Illicit Drugs in Sport – National Education and Action Plan – Testing Standards as determined by DoHA, as amended from time to time and accessible through the DoHA website www.health.gov.au. A reference in the document to an NSO will be read as a reference to the ASC as applicable.

**Therapeutic Use:** Provision for the legitimate use of a Prohibited Illicit Drug.

**Therapeutic Use Exemption (TUE):** An exemption for the legitimate use of a Prohibited Illicit Drug.

**Tribunal:** The body appointed by the ASC for the purposes of conducting a hearing pursuant to Article 12.