

2008-2009

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY AMENDMENT
BILL 2009**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Sport, the Hon. Kate Ellis MP)

AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY AMENDMENT BILL 2009

OUTLINE

The purpose of the Bill is to amend the *Australian Sports Anti-Doping Authority Act 2006* (ASADA Act) to reflect new structural and governance arrangements for the Australian Sports Anti-Doping Authority (ASADA), and to make incidental amendments which flow from the changes to the Code and reflect ASADA's operational circumstances.

ASADA is the key implementation agency for Australia's anti-doping program and supports the Government in coordinating the harmonisation of anti-doping efforts with State and Territory governments and national sporting organisations. ASADA also plays a significant role internationally in providing support and leadership to other anti-doping organisations. The changes introduced by this Bill will ensure the efficacy of Australia's anti-doping program is maintained and reinforce Australia's continued commitment to the international anti-doping effort.

The Bill allows for the implementation of key recommendations arising from an independent review of the ASADA that was commissioned by the Department of Health and Ageing and undertaken during the latter half of 2008. The review found that ASADA is not operating under optimal structural and governance arrangements, and that some changes were required to enable a clearer identification and understanding of the ASADA's main operational functions.

Since its formation in 2006, ASADA has operated under *Financial Management and Accountability Act 1997* (FMA Act) arrangements, but has also performed some functions that are more conventionally found in *Commonwealth Authorities and Companies Act 1997* (CAC Act) agencies. These hybrid arrangements have resulted in some confusion and uncertainty as to how the functions of the ASADA should best be managed and it is intended that such uncertainties could be rectified by revising ASADA's governance arrangements to better align with those of a standard FMA agency.

Creation of a CEO position

Central to these revisions will be the creation of a new ASADA Chief Executive Officer (CEO) position, which will replace the office of the ASADA Chair. The CEO will govern and manage the agency in a way that promotes the efficient, effective and ethical use of Commonwealth resources. The CEO will have responsibility for directing ASADA in carrying out its functions under the ASADA Act, and will also assume the financial and management responsibilities expected of a CEO and Head of Agency under the FMA and Public Service Acts respectively. Remuneration for the CEO position will be determined by the Remuneration Tribunal.

Formation of an Advisory Group

In addition, an Advisory Group will be formed to provide advice to the ASADA CEO on sports doping matters. Members of the Advisory Group will be appointed by the Minister for Sport and will have specialist skills that will include, but not be limited to: education, stakeholder services, sports medicine, pharmacology, sports law, ethics and investigations. Unlike the current ASADA members (whose offices will be removed under the amended legislation), the Advisory Group will have purely advisory functions and will not be able to adjudicate on matters, implement decisions,

enter into contracts, charge fees for its services, or assume responsibility for managing ASADA financial or staffing matters.

Establishment of an Anti-Doping Rule Violation Panel

The final major change enacted by this Bill involves the establishment of an Anti-Doping Rule Violation Panel (ADRVP). Under current arrangements ASADA's function of making findings on possible violations of the anti-doping rules is performed by a sub-grouping of the ASADA members, informally known as the Anti-Doping Rule Violation Committee (ADRVC).

The main reason for establishing the ADRVP under the ASADA Act as a distinct new body is that it is appropriate for the quasi-judicial function of deliberating on anti-doping rule violations to be dealt with separately from the broader issues of anti-doping with which the CEO and the Advisory Group would be concerned. The new ADRVP will consist of members with specialist skills (e.g. sports law, sports medicine, pharmacology, etc).

In operational terms, ASADA will investigate a potential violation and will advise the ADRVP when an individual has a case to answer. The ADRVP will then deliberate on the matter, before making a finding (to be included on a register of findings) on whether or not a rule violation has occurred and reporting that finding back to ASADA. It will then fall to ASADA to inform the individual concerned, and his/her sporting organisation, of the violation and ensure that appropriate action is taken in response to the breach.

To avoid any perception of conflict of interest, the ADRVP will not include the ASADA CEO, Advisory Group appointees or ASADA staff among its membership.

Transitional arrangements are provided by the Bill to ensure the ADRVP is able to perform required functions, currently exercised by the ADRVC, that are prescribed in the *Australian Sports Anti-Doping Regulations 2006* (ASADA Regulations).

Incidental amendments

The Bill also includes a number of incidental amendments to ensure the ASADA Act remains consistent with the World Anti-Doping Code, which was recently revised on 1 January 2009. For example, references to "sports drugs" have been revised to "sports doping" to reflect that "doping" accounts for both substances and methods used by athletes, whereas "drugs" only accounts for substances. Changes have also been made to a series of definitions contained in the ASADA Act, along with refinements to provisions surrounding the protection and conditions of disclosure of organisational and personal information.

In addition, transitional arrangements will be put in place to enable ASADA and the ADRVP to carry out their functions under the National Anti-Doping (NAD) Scheme. These arrangements are necessary, as legislative amendments to the NAD Scheme will not be possible prior to the commencement of the Bill.

The Bill will commence on 1 January 2010.

Financial Impact Statement

There is no financial impact associated with this Bill.

GLOSSARY

ADRVC – Anti-Doping Rule Violation Committee

ADRVP – Anti-Doping Rule Violation Panel

AG – Advisory Group

AI Act – *Acts Interpretation Act 1901*

ASADA – Australian Sports Anti-Doping Authority

ASADA Act – *Australian Sports Anti-Doping Authority Act 2006*

ASADA Regulations – *Australian Sports Anti-Doping Authority Regulations 2006*

ASC Act – *Australian Sports Commission Act 1989*

ASDMAC – Australian Sports Drug Medical Advisory Committee

CAC Act – *Commonwealth Authorities and Corporations Act 1997*

CEO – Chief Executive Officer

FMA Act – *Financial Management and Accountability Act 1997*

FOI Act – *Freedom of Information Act 1982*

LI Act – *Legislative Instruments Act 2003*

Minister – Commonwealth Minister for Sport

NAD Scheme – National Anti-Doping Scheme

PS Act – *Public Service Act 1999*

RT Act – *Remuneration Tribunal Act 1973*

AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY AMENDMENT BILL 2009

NOTES ON CLAUSES

Clause 1 Short Title

This clause provides for the Bill, once enacted, to be cited as the *Australian Sports Anti-Doping Authority Amendment Act 2009*.

Clause 2 Commencement

This clause provides that the Bill will commence on 1 January 2010.

Clause 3 Schedule(s)

This clause provides that each Act that is specified in a Schedule to this Bill is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item has effect according to its terms. Schedule 1 to the Bill amends the ASADA Act and the *Australian Sports Commission Act 1989* (ASC Act), and provides transitional and application provisions, in respect of the governance arrangements. Schedule 2 makes other amendments to the ASADA Act.

SCHEDULE 1—GOVERNANCE

PART 1— AMENDMENTS

Australian Sports Anti-Doping Authority Act 2006

Item 1 Section 3

This item removes the simplified outline from section 3 of the ASADA Act. As the simplified outline provides summary information that is easily gleaned from the table of contents, there was no strong need to keep the outline in the legislation.

Items 2 to 16

These items make changes to section 4 of the ASADA Act which sets out the definition of terms used in the Act.

Item 2 inserts a definition of **ADRVP**. This definition provides for the recognition of the Anti-Doping Rule Violation Panel, established by the Minister under new section 40, to make findings on possible anti-doping rule violations.

Item 3 inserts a definition of **ADRVP Chair**. This definition provides for the recognition of a person who is appointed by the Minister to act in the capacity of chairperson of the ADRVP, established by the Minister under new section 40, to make findings on possible anti-doping rule violations.

Item 4 inserts a definition of **ADRVP member**. This definition provides for the recognition of a person who is appointed by the Minister to act in the capacity of member of the ADRVP, established by the Minister under new section 40, to make findings on possible anti-doping rule violations. The ADRVP Chair is also included as a member of the ADRVP.

Item 5 inserts a definition of *advisory committee*. This definition provides for the recognition of committees that may be formed under new section 24P, from sub-groupings of the newly established Advisory Group (AG), by the ASADA CEO, to assist him or her with sports doping matters.

Item 6 inserts a definition of *advisory committee member*. This definition is needed to enable an eligible individual to be recognised as a member of an advisory committee formed by the ASADA CEO, from a sub-group of the newly established AG.

Item 7 inserts a definition of *Advisory Group*. This definition provides for the recognition of an AG, established by the Minister under new section 25, to advise the ASADA CEO on sports doping matters.

Item 8 inserts a definition of *Advisory Group Chair*. This definition allows for the recognition of a person who is appointed by the Minister to act in the capacity of chairperson of the AG, established by the Minister under new section 25, to advise the ASADA CEO on sports doping matters.

Item 9 inserts a definition of *Advisory Group member*. This definition provides for the recognition of a person who is appointed by the Minister to act in the capacity of member of the AG, established by the Minister under new section 25, to advise the ASADA CEO on sports doping matters. The AG Chair is also included as a member of the AG.

Item 10 removes the definition of *ASADA Chair*. This change is necessary, as the position of ASADA Chair will be removed and replaced with the newly created position of ASADA CEO.

Item 11 removes the definition of *ASADA Deputy Chair*. This definition is necessary, as the position of ASADA Deputy Chair will cease to exist.

Item 12 removes the definition of *ASADA member*. This definition is necessary, as the offices of the ASADA members will cease to exist.

Item 13 changes the definition of *ASADA staff* to reflect that the ASADA staff, as a collective group, will constitute the broader ASADA agency (together with the ASADA CEO). Under current arrangements, the ASADA staff constitutes the broader ASADA agency together with the ASADA Chair. This change is made necessary by the removal of the office of ASADA Chair to make way for the newly created ASADA CEO position.

Item 14 inserts a definition of *CEO*. This definition is required to allow for recognition of the individual appointed to the position of ASADA CEO by the Minister under new section 24A.

Item 15 relates to the definition of *sporting administration body*, which under the current ASADA Act broadly describes the various sporting organisations with which ASADA interacts as part of its key function of administering the NAD Scheme. ASADA itself is not included under this definition of sporting administration body and, as the ADRVP and the AG are also part of the legislative framework for implementation of the NAD Scheme; this item makes clear that the ADRVP and the AG are also excluded from the definition.

Item 16 deals with the definition of *vacancy*, which in the current ASADA Act covers the offices held by ASADA members and members of the Australian Sports Drug Medical Advisory Committee (ASDMAC), which is the specialist body responsible principally for approving Therapeutic Use Exemptions to enable an athlete to use a prohibited substance or prohibited method for therapeutic purposes. As the offices of the ASADA members are being removed under the amendments to the ASADA Act, this item refines the definition of vacancy so that it only has meaning in relation to the office of an ASDMAC, ADRVP or AG member.

Items 17 to 19 Subsection 5(1)

Section 5 of the ASADA Act outlines that:

- a vacancy for the office of ASADA member will exist where less than seven persons hold such office (including the ASADA Chair and Deputy Chair); and
- a vacancy for the office of ASDMAC member will exist where less than seven persons hold such office (including the ASDMAC Chair).

With the removal of the ASADA members, these items revise the provisions for a vacancy under the ASADA Act so that they cover the offices of ASDMAC, ADRVP and AG members.

Items 20 to 22 Subsections 11(1) and (2)

Section 11 of the ASADA Act obliges the ASADA (constituted by the ASADA Chair and the ASADA staff) to seek, and take into consideration the responses to, public consultation on any changes it wishes to make to the NAD Scheme by legislative instrument. With the office of the ASADA Chair ceasing to exist, changes are required to subsections 11(1) and (2) to make clear that the ASADA CEO will be responsible for seeking, and responding to, public consultation for the purpose of amending the NAD Scheme.

Items 23 to 35 Subsection 13(1)

Section 13 of the ASADA Act makes clear that the NAD Scheme must incorporate rules that authorise the ASADA (constituted by the ASADA Chair and ASADA staff) to exercise a range of anti-doping functions relating to, and in some cases involving the participation of, athletes and/or their support persons.

With the office of the ASADA Chair being removed under amendments to the ASADA Act, changes are required to section 13 to clarify that the ASADA CEO will be responsible for anti-doping functions that include:

- requesting an athlete to keep ASADA informed of his/her whereabouts (paragraph 13(1)(c), item 23);
- requesting an athlete to provide a sample and arranging for the testing of the sample (paragraphs 13(1)(d) and (e), item 24);
- investigating possible anti-doping rule violations and disclosing information obtained during the investigation of possible doping breaches for the purposes of, or in connection with, the investigation (paragraphs 13(1)(f) and (g), item 24);
- notifying athletes, their support persons, and sporting administration bodies of the findings resulting from these investigations and of any recommendations relating to the consequences of these findings (paragraph 13(1)(j) and subparagraph 13(1)(j)(ii), items 28 and 29 respectively);
- presenting findings documented on a register of findings (to be maintained by the ADRVP) and any recommendations relating to the consequences of these findings at sporting tribunal hearings, either at the request of a sporting administration

body or on the CEO's own initiative (paragraph 13(1)(k) and subparagraphs 13(1)(k)(ii) and (iv), items 30, 31 and 32 respectively); and

- publishing information on or about the register of findings, subject to the conditions set out in section 13 (paragraph 13(1)(m), item 34).

A further amendment will also be made to paragraph 13(1)(m)(i) to allow the CEO to publish information on and relating to the register of findings where such publication is consistent with the World Anti-Doping Code.

It should be noted here that the Australian Government cannot be a signatory to the World Anti-Doping Code. However, it commits to the "principles" of the Code by ratifying the UNESCO International Convention Against Doping in Sport (UNESCO Convention).

In addition, changes to the ASADA Act will see responsibility for investigating possible violations of the anti-doping rules being conferred on the ASADA CEO, while responsibility for making findings relating to such investigations will be vested in the ADRVP. As such, section 13 also makes clear that the ADRVP will be tasked with exercising the following anti-doping functions:

- making findings on possible anti-doping rule violations (paragraph 13(1)(h), item 25);
- making recommendations as to the consequences of such findings (new paragraph 13(1)(ha), item 26);
- establishing and maintaining a register of such findings (paragraph 13(1)(i), item 27); and
- making or removing entries on the register (paragraph 13(1)(l), item 33).

Items 36 to 38 Subsections 14(2), (3) and (4)

Section 14 of the ASADA Act currently sets out the rights of an athlete or support person in relation to certain powers and functions of the ASADA. The revisions to section 14 contained in items 36 to 38 clarify that under the revised ASADA governance arrangements some of these powers and functions will now rest with the CEO (in the case of requesting athletes to provide a sample or to keep the CEO informed of where the athlete can be found) and some with the ADRVP (in the case of a decision to enter the name and particulars of an athlete or support person on the register of findings).

Items 39 to 41 Subsections 15(1) and (2)

Section 15 of the ASADA Act makes clear that sporting administration bodies must adopt anti-doping rules, and that ASADA must monitor compliance to these rules and notify the Australian Sports Commission (ASC) of any issues relating to non-compliance.

With the office of the ASADA Chair ceasing to exist, changes are required to paragraphs 15(1)(b), (c) and (d) and 15(2)(c) to clarify that the ASADA CEO will be responsible for monitoring sporting administration body compliance with anti-doping rules, notifying the ASC about the extent of sporting administration body compliance with anti-doping rules, and publishing reports relating to the extent of this compliance.

Changes to paragraph 15(2)(d) will clarify that the sporting administration body rules should contain rules about sporting administration bodies taking action in response to

the ADRVP's findings relating to investigations of possible violations of the anti-doping rules.

Item 42 Paragraph 18(a)

The ASADA Act presently allows for decisions of an administrative nature under the NAD Scheme to be made by the ASADA (constituted by the ASADA Chair and ASADA staff), ASDMAC, or any other body provided with this power under provisions included in the ASADA Regulations.

Revisions to paragraph 18(a) recognise that this power must be shifted from the outgoing ASADA Chair to the incoming ASADA CEO and extended to the newly established ADRVP.

Item 43 Subsection 19(1)

Allowances have been made in the existing ASADA Act for the ASADA (constituted by the ASADA Chair and ASADA staff) to charge fees, where required, for functions performed by ASADA under the NAD Scheme. This item substitutes a new subsection 19(1) to reflect the removal of the office of the ASADA Chair, shifting the capacity to charge fees to the ASADA CEO.

Item 44 Part 3 (heading)

This item replaces the heading of Part 3 to reflect that the powers and functions of ASADA will now be carried out by the ASADA CEO and the ASADA staff (with the removal of the office of the ASADA Chair), while the liabilities of ASADA will now vest in the Commonwealth.

The heading of Part 3 was previously "ASADA's establishment, functions, powers and liabilities".

Item 45 Section 20

When ASADA was originally established in 2006 it retained some elements attributable to the CAC Act, including its operational status as a body corporate, enabling ASADA to sue or be sued in its own name. As ASADA is being divested of its CAC Act elements; will no longer be a body corporate; and is moving to a conventional FMA Act operating model, section 20 is being amended.

New section 20 provides for the establishment of the ASADA.

New section 20A provides that the ASADA consists of the CEO and the ASADA staff, and a note to this section assists the reader by making clear that the ASADA does not have a legal identity that is separate from the Commonwealth.

New section 20B emphasises that the primary function of the ASADA is to assist the ASADA CEO in the performance of his or her duties.

New section 20C affords the ASADA the privileges and immunities of the Crown.

This item also inserts new Part 3A, Division 1, section 20D which provides for a CEO of the ASADA.

Items 46 to 58 Sections 21, 22, 23 and 24

New Part 3A (heading and new section 20D inserted by item 44) describes the office of the ASADA CEO and prescribes the functions and powers associated with this

position, along with provisions relating to the appointment of the CEO and the terms of office associated with this appointment.

Section 21 details the various functions of the ASADA that have been the responsibility of the ASADA (constituted by the ASADA Chair and ASADA staff) under present arrangements in the ASADA Act. Responsibility for several of these functions will now sit with the ASADA CEO and subsection 21(1) and (2) and paragraphs 21(1)(a), (b) and (m) and 21(2)(n) are amended to reflect this (items 46, 47, 50, 52 and 53).

A new provision has been inserted at 21(1)(ja) which obliges ASADA to cooperate with counterpart organisations found in foreign countries within the broader Oceania region (in particular, ASADA's counterpart agency in New Zealand), where these organisations have functions that are the same as or similar to the functions performed by the ASADA CEO (item 48).

New functions added to paragraph 21(1)(k) will compel the ASADA CEO to make necessary resources and facilities available to the AG that is being formed for the purpose of assisting him or her with sports doping matters, as well as for the ADRVP. New subparagraphs 21(1)(ka) and (kb) deal with the provision of resources and facilities to the AG and ADRVP (item 49).

The addition of new subsection 21(1A) obliges the ASADA CEO to take into account advice, where it is provided by the AG, in performing his or her functions or exercising his or her powers (item 51). It should be noted that this clause does not oblige the CEO to act in accordance with such advice, but only to give consideration to it.

Item 54 repeals sections 22 and 23 which deal with ASADA's powers and financial liabilities, and inserts a new section 22 which provides that the ASADA CEO is empowered to do all things necessary or convenient to be done in connection with performing his or her functions. The note to this section refers readers to section 44 of the FMA Act in respect of the power to enter into a contract on behalf of the Commonwealth, making clear that ASADA is an FMA agency.

Section 24 relates to the Minister's directions to ASADA. Subsections 24(1), (2)(b) and (3) are amended to replace references to ASADA with the ASADA CEO (items 55, 56 and 57). New subsection 24(4) provides that the ASADA CEO is not obliged to comply with directions given (by legislative instrument) by the Minister where such directions relate to the CEO's performance of his or her functions and powers under the FMA and PS Acts (item 58). The heading to section 24 is also amended to reflect the ASADA CEO.

Item 59

This item inserts new Divisions 2 to 4 and new sections 24A to 24P.

Division 2 – Appointment of the CEO

New section 24A states that the ASADA CEO is to be appointed by the Minister, on a full-time basis, by written instrument (subsection 24A(1)). As the establishment of the ADRVP is primarily based on the intention of keeping the decision-making arm (with respect to anti-doping rule violations) of the anti-doping program independent, this section also addresses the ineligibility of ADRVP and AG members to be appointed as the ASADA CEO (subsection 24A(2)).

Subsection 24A(3) makes clear that an appointment as ASADA CEO is not invalid because of a defective instrument of appointment or any irregularity in the appointment.

New section 24B provides that the period of office for which the CEO can be appointed must not exceed five years. The note to this section refers readers to the *Acts Interpretation Act 1901* (AI Act) in respect of re-appointment, which provides that in any Act, a reference to appointment includes re-appointment.

New section 24C provides for the Minister, by written instrument, to appoint persons to act in the role of CEO. Subsection 24C(1) describes the circumstances in which the position of CEO may be vacant, and subsection 24C(2) provides that if a person takes an action in accordance with their acting appointment, but the appointment is not valid (for example, because a defective instrument was used to action the appointment), their action is not invalid.

A note to this section refers readers to sections 20 and 33A of the AI Act which provide that where an Act mentions a person holding or occupying a particular office or position then, unless the contrary intention appears, it includes all persons who at any time occupy or perform the duties of the office or position; and set out the general rules that apply where a provision of an Act confers on a person or body, power to act in a particular office.

Division 3 – Terms and conditions for CEO

As the Head of Agency role at ASADA transfers from the outgoing office of ASADA Chair to the newly created position of ASADA CEO, fresh consideration must be given to level of remuneration (and associated allowances) that the new position will entail.

New section 24D stipulates that matters of remuneration as they apply to the ASADA CEO position will be determined by the Remuneration Tribunal or, in the absence of such a determination, remuneration will be prescribed by regulations made under this proposed section (subsection 24D(1)). Any allowance payable to the CEO will be prescribed by the regulations (subsection 24D(2)).

Subsection 24D(3) clarifies that this section has effect subject to the *Remuneration Tribunal Act 1973* (RT Act), meaning that it should be read in the context of that Act and the means by which the Remuneration Tribunal sets remuneration. This is a standard provision included in similar legislation.

Other standard provisions contained in Division 3 cover significant aspects of the employment conditions pertaining to the CEO's appointment, including:

- an obligation for the CEO to disclose potential or actual conflicts of interest to the Minister, in writing (section 24E);
- a stipulation forbidding the CEO from engaging in outside paid employment without approval from the Minister (section 24F);
- recreation leave entitlements that are determined by the Remuneration Tribunal (subsection 24G(1)) and scope for the Minister to grant the CEO leave of absence, other than recreation leave, subject to the conditions and remuneration determined by the Minister (subsection 24G(2));

- provision for the CEO to tender his or her resignation to the Minister, in writing (subsection 24H(1) and for that resignation to have effect from the date it is received by the Minister or a later day if specified (subsection 24H(2));
- provision for the Minister to terminate the CEO's appointment (subsection 24J(1) and the reasons for which the Minister can do so (subsection 24J(2)); and
- capacity for the Minister to set, in writing, additional terms and conditions that will apply to the CEO's appointment (section 24K).

Paragraph 24J(2)(e) is especially noteworthy as it allows for the CEO to be dismissed by the Minister in situations where the CEO inappropriately discloses personal information relating to the NAD Scheme or services contracted by ASADA. Inappropriate disclosure of this type is an offence carrying a maximum penalty of two years imprisonment and this provision aligns the CEO with behavioural expectations stipulated for members of the AG, ASDMAC and the ADRVP.

Division 4 – ASADA's staff etc.

Subsection 24L(1) outlines that ASADA staff are to be engaged under the PS Act, in line with conventional procedure for a government agency. Subsection 24L(2) reflects the changes of ASADA's constitution from ASADA Chair and ASADA staff, to the new situation in which ASADA is constituted as a statutory agency by the ASADA CEO and the ASADA staff.

New section 24M provides a standard provision enabling Commonwealth employees to assist the ASADA CEO in performing his or her functions or exercising his or her powers.

Division 5 – Delegation

New subsection 24N sets out standard provisions relating to the situations in which the ASADA CEO can delegate any or all of his or her functions and powers, in writing, and to whom he or she may delegate those functions or powers.

The ASADA CEO may not delegate the power to amend the NAD Scheme (subsection 24N(2)), and can only delegate to an individual appointed as a chaperone or drug-testing official a function or power which is conferred by the NAD Scheme (subsection 24N(3)).

Subsection 24N(4) requires that a delegate must comply with any directions given by the ASADA CEO in respect of exercising a delegated power of function.

Division 6 – Advisory committees

Section 24P gives the ASADA CEO the capacity to form, in writing, advisory committees to assist with the performance of his or her functions (subsection 24P(1)). These advisory committees will consist of sub-groups of the broader AG membership (subsection 24P(2)) and will allow the ASADA CEO to better tailor investigations into, and/or advice provided on, specific sports doping matters to the skill strengths and operating styles of particular AG members, where required.

Any appointments to an advisory committee will be subject to the terms and conditions determined by the ASADA CEO (subsection 24P(3)), and the ASADA CEO may issue directions to an advisory committee regarding the carrying out of its functions or its meeting procedures (subsection 24P(4)).

Subsections 24P(5) and (6) make clear that instruments made by the CEO to establish an advisory committee or to give directions are not legislative instruments, and are therefore not subject to the *Legislative Instruments Act 2003* (LI Act). These provisions are merely declaratory and included for the avoidance of doubt.

Item 60 Part 4 (heading)

Part 4 of the ASADA Act has dealt explicitly with the appointment of ASADA members and the terms and conditions relating to these appointments. As the offices of the ASADA members are to be removed with the introduction of the amended legislation, the content of Part 4 is amended (items 61 to 77) to cover the terms of office that are associated with the newly established AG.

This has necessitated a change to the heading of Part 4, which was previously “ASADA’s constitution and membership”.

Item 60 Division 1 of Part 4

This item repeals Division 1 of Part 4 and inserts a new Division 1 and new sections 25 and 25A.

Division 1 – Advisory Group’s establishment, functions and powers

New section 25 of the ASADA Act establishes the AG.

Unlike the outgoing ASADA members (whose offices are being removed) who had capacity for decision-making in the exercising of their ASADA functions, members of the AG will fulfil a purely consultative function, and will only be empowered to advise and make recommendations to the ASADA CEO, when requested, on sports doping matters (subsection 25A(1)).

Subsection 25A(2) empowers the AG to do all the things necessary or convenient to be done in connection with performing its functions.

For the avoidance of doubt, subsection 25A(3) makes clear that the AG cannot give directions to the ASADA CEO.

Item 62 Division 2 of Part 4 (heading)

The heading for this Division has been revised to reflect that it now covers provisions relating to the membership of the AG, rather than the outgoing offices of the ASADA members.

Item 63 Sections 26 and 27

These items repeal and replace sections 26 and 27.

New section 26 clarifies that the AG will consist of a minimum of two and maximum of seven members, including the member serving as Chair of the AG. The membership numbers attached to the AG have been arrived at on an understanding that an advisory body of this type should give voice to the views of more than a single individual. The numbers also allow for membership of the AG to incorporate specialist knowledge from a range of sporting disciplines that are intended to ensure wide coverage of issues that the ASADA CEO is likely to request AG consultation on.

New section 27 details the relevant specialist skills that members need to have to be considered for appointment to the AG (subsection 27(2)), and that appointments are by the Minister, on a part-time basis (subsection 27(1)).

The note to this section refers readers to the AI Act in respect of re-appointment, which provides that in any Act, a reference to appointment includes re-appointment.

Subsection 27(3) elucidates that the ASADA CEO and members of the ADRVP will not be eligible for appointment to the AG. These restrictions are deemed necessary to ensure that the operations of ASADA are not clouded by role confusion and to avoid conflicts that could arise through individuals trying to perform multiple (and often overlapping) functions.

The Minister is required to appoint an AG member to be Chair (subsection 27(4)).

Subsection 27(5) makes clear that an appointment as an AG member or Chair is not invalid because of a defective instrument of appointment or any irregularity in the appointment.

Items 64 and 65 Section 28

The amendment to section 28 makes clear that members of the AG can only be appointed to that office for a maximum period of three years. This time limitation is in keeping with standard appointment provisions of this type, as preferred by the Department of Finance and Deregulation. It should be noted, however, that the completion of a three-year term of office by an AG member will not render an individual ineligible for subsequent reappointment to that office, where such reappointment is deemed acceptable to the Minister.

This item also amends the heading to this section to replace the reference to ASADA members.

Items 66 to 68 Section 29

Section 29 of the ASADA Act caters for the appointment of ASADA members on an acting basis. With the removal of the offices of the ASADA members, subsections 29(1), (2) and (3) are amended to shift focus to acting appointments for members of the AG.

The amended section sets the same standardised acting provisions that were in place for the outgoing ASADA members, including:

- a stipulation that acting appointments are to be made by the Minister;
- direction that these appointments can be made where vacancies exist or during periods where existing members are unable to perform their duties; and
- provision that an individual cannot act in the positions of Chair or member of the AG where they do not meet criteria set down for membership of the AG.

The heading to section 29 and the subheadings of subsections 29(1) and (2) are also amended to replace references to ASADA members and ASADA Chair.

Item 69 Division 3 of Part 4 (heading)

The heading for this Division has been revised to reflect that it now covers the membership of the AG, rather than the outgoing offices of the ASADA members.

Items 70 and 71 Subsections 30(1) and 30(2)

Section 30 of the ASADA Act applies to the outgoing offices of the ASADA members and has been revised to spell out that the levels of remuneration (and associated allowances) for the offices of the AG members will be determined by the Remuneration Tribunal.

As the AG will be a newly established entity, a fresh assessment of remuneration levels will be required from the Tribunal. Given that the AG will fulfil a purely consultative function and will be required to provide advice to the ASADA CEO on a somewhat infrequent basis, members will be remunerated at sessional rates.

Items 72 to 76 Sections 31 to 38

These sections apply to the outgoing offices of the ASADA members. They are amended or replaced to apply to AG members.

New section 31 details the requirement for AG members to inform other members, and the Minister, whenever a potential or actual conflict of interest arises that may compromise the performance of their duties.

The provisions of section 31 are a standard feature of the ASADA Act and maintain consistency with the expectations of professional behaviour that are outlined for other bodies established under the ASADA Act, such as ASDMAC and the ADRVP.

New section 32 expands on the expectations detailed in new section 31 to make clear that a member of the AG must advise other AG members of a potential or actual conflict of interest, prior to deliberating on a matter relating to this conflict. This allows the remaining AG members to assess whether the nature of the conflict of interest disclosed warrants the disclosing member to participate in deliberations on the issue, or remove himself or herself from the deliberations. Any such disclosure, and the AG's subsequent determination, must be recorded in the minutes of the meeting.

New sections 33 and 34 make standard provisions prohibiting AG members from engaging in outside paid employment which the Minister considers may conflict with the performance of their duties, allowing the Minister to grant the AG Chair a leave of absence, and allowing the AG Chair to grant leave of absence to any other AG member.

Amended section 36 makes standard provisions for situations where an AG member may wish to resign his or her office (item 73). New subsection 36(1A) allows for situations where an individual may wish to pare back their participation on the AG to relinquish Chair duties in preference for participation as a member only (item 74).

New section 37 makes standard provisions for situations where the office of an AG member can be terminated by the Minister. Paragraph 37(2)(e) is especially noteworthy as it allows for an AG member to be dismissed by the Minister in situations where the member inappropriately discloses personal information relating to the NAD Scheme or services contracted by ASADA. Inappropriate disclosure of this type is an offence carrying a maximum penalty of two years imprisonment and this provision aligns the AG members with behavioural expectations stipulated for the ASADA CEO and members of ASDMAC and the ADRVP (item 75).

Amended section 38 affords the Minister the power to set additional criteria for an individual to meet before he or she can be appointed to the AG (item 76).

Item 77 At the end of Part 4

A new Division 4 has been inserted into Part 4, which spells out the processes and procedures through which meetings of the AG will be convened, conducted and recorded. The provisions contained in this Division, as new section 39, emphasise that the ASADA CEO has substantial control over when, and how often, meetings of the AG are needed and convened. As the intention is for the AG to advise the

ASADSA CEO, when such assistance is requested, subsection 39(1) makes clear that only the ASADA CEO can convene meetings of the AG.

The ASADA CEO may determine matters, in writing, relating to the operation of the AG. Subsection 39(6) makes clear that such a determination is not a legislative instrument, and is therefore not subject to the LI Act. This provision is merely declaratory and included for the avoidance of doubt.

Item 78 Parts 5 and 6

This item repeals Parts 5 and 6 and inserts new Parts 5 and 6 and new sections 40 to 50E.

Part 5 – Anti-Doping Rule Violation Panel

Division 1 – ADRVP’s establishment and functions

Part 5 of the existing ASADA Act relates to matters of decision-making and delegation powers in place for the ASADA. With the removal of the offices of the ASADA Chair and members, the provisions found in this Part will no longer have basis and have been reshaped and relocated to other Parts of the ASADA Act accordingly.

The new Part 5 covers the provisions associated with the newly established ADRVP.

New section 40 establishes the ADRVP and new section 41 outlines its functions, which primarily involves the exercise of powers in relation to the NAD Scheme. As NAD Scheme functions are predominantly spread across the Regulations and associated legislative instruments, transition arrangements are inserted in the ASADA Act (refer Part 2 of Schedule 1), to ensure that the ADRVP is invested with the authority to perform these functions. Subsection 41(2) sets out the constitutional limits on the ADRVP which reflects the limits imposed on the CEO under amended subsection 21(2).

The note to paragraph 41(1)(a) refers readers to paragraphs 13(1)(h), (ha), (i) and (l) of the ASADA Act which relate to the functions regarding the making of findings relating to investigations of possible violations of the anti-doping rules.

Division 2 – ADRVP’s membership

New section 42 clarifies that the ADRVP will consist of a minimum of four and maximum of seven members, including the member serving as Chair of the ADRVP. The membership numbers attached to the ADRVP have been arrived at on an understanding that a deliberating body of this type requires a quorum of sufficient number and diversity of experience to make considered decisions on sports doping rule violations. The numbers also allow for membership of the ADRVP to incorporate specialist knowledge from a range of disciplines that is intended to ensure wide coverage of issues that are likely to be covered in the course of an investigation of a possible doping breach.

New section 43 details the relevant specialist skills that members need to have to be considered for appointment to the ADRVP (subsection 43(2)), and that appointments are made by the Minister, on a part-time basis (subsection 43(1)).

Subsection 43(3) elucidates that the ASADA CEO and members of the AG will not be eligible for appointment to the ADRVP. These restrictions are deemed necessary to ensure that the operations of ASADA are not clouded by role confusion and to avoid conflicts that could arise through individuals trying to perform multiple (and often overlapping) functions.

The Minister is required to appoint an ADRVP member to be Chair (subsection 43(4)).

Subsection 43(5) makes clear that an appointment as an ADRVP member or Chair is not invalid because of a defective instrument of appointment or any irregularity in the appointment.

New section 44 makes clear that members of the ADRVP can only be appointed to that office for a maximum period of three years. This time limitation is in keeping with standard appointment provisions of this type, as preferred by the Department of Finance and Deregulation. The note to this section refers readers to the AI Act in respect of re-appointment, which provides that in any Act, a reference to appointment includes re-appointment.

New section 45 makes provision for the Minister to appoint members to the ADRVP or ADRVP Chair in an acting capacity. These provisions are standard for this process and in keeping with the procedures in place for the AG and ASDMAC.

A note to this section refers readers to sections 20 and 33A of the AI Act, which provides that where an Act mentions a person holding or occupying a particular office or position then, unless the contrary intention appears, it includes all persons who at any time occupy or perform the duties of the office or position; and set out the general rules that apply where a provision of an Act confers on a person or body, power to act in a particular office.

Division 3 – Terms and conditions for ADRVP members

New section 46 of the ASADA Act spells out that the levels of remuneration for the offices of the ADRVP members will be determined by the Remuneration Tribunal. As the ADRVP will be a newly established entity, a fresh assessment of remuneration levels will be required from the Tribunal. In the absence of such a determination, remuneration will be prescribed by regulations made under this proposed Act (subsection 46(1)). Any allowance payable to ADRVP members will be prescribed by the regulations (subsection 46(2)).

Subsection 46(3) clarifies that this section has effect subject to the RT Act, meaning that it should be read in the context of that Act and the means by which the Remuneration Tribunal sets remuneration. This is a standard provision included in similar legislation.

Other standard provisions contained in this Division cover significant aspects of the employment conditions pertaining to the appointment of ADRVP members, including:

- a stipulation forbidding members from engaging in outside paid employment if the Minister considers it may conflict with the performance of duties (section 47);
- an obligation for members to disclose potential or actual conflicts of interest to the Minister, in writing (section 48) and to the ADRVP, requiring that any such

disclosure, and the ADRVP's subsequent determination, must be recorded in the minutes of the meeting (section 49);

- an expectation that ADRVP members will remain removed from participating in the making of a decision for a sporting administration body where they may have previously deliberated on the same matter for the ADRVP (section 50);
- scope for the Chair to take leave of absence as granted by the Minister, or for the members to take leave of absence as granted by the Chair (section 50A);
- provision for a member to tender his or her resignation to the Minister, in writing (subsection 50B(1)), and for that resignation to have effect from the date it is received by the Minister or a later day if specified (subsection 50B(3));
- provision for the Minister to terminate the appointment of a member and the range of reasons for which the Minister may do so (section 50C); and
- capacity for the Minister to set, in writing, additional terms and conditions that applies to a member's appointment (section 50D).

Subsection 50B(2) allows for situations where an individual may wish to pare back their participation on the ADRVP to relinquish Chair duties in preference for participation as a member only.

Subsection 50C(e) is especially noteworthy as it allows for an ADRVP member to be dismissed by the Minister in situations where the member inappropriately discloses personal information relating to the NAD Scheme or services contracted by ASADA. Inappropriate disclosure of this type is an offence carrying a maximum penalty of two years imprisonment and this provision aligns the ADRVP members with behavioural expectations stipulated for members of the AG, ASDMAC and the ASADA CEO.

Division 4 – Meetings

New Division 4 spells out the processes and procedures through which meetings of the ADRVP will be convened, conducted and recorded (item 50E). These provisions are generally standard in nature and maintain consistency with the meeting procedures in place for the AG and ASDMAC.

The ASADA CEO may determine matters, in writing, relating to the operation of the ADRVP. Subsection 50E(4) makes clear that such a determination is not a legislative instrument, and it is therefore not subject to the LI Act. This provision is merely declaratory and included for the avoidance of doubt.

Items 79 to 82 Part 7

Part 7 of the ASADA Act sets up the ASDMAC and establishes the criteria by which this body will operate. ASDMAC is the specialist body responsible principally for approving Therapeutic Use Exemptions to enable an athlete to use a prohibited substance or prohibited method for therapeutic purposes.

The changes made to subsections 52(1) and (2), 58(3) and 59(4) do not alter the processes followed and functions performed by ASDMAC, which will remain as they are following the amendments of the ASADA Act.

As things presently stand, however, the ASADA (constituted by the ASADA Chair and ASADA staff) has interactions with, and links to, ASDMAC in the performance of that body's functions. With the office of the ASADA Chair being removed, revisions are required at relevant junctures of this Part of the ASADA Act to make clear that the ASADA will now be constituted by the ASADA CEO.

Items 83 to 99 Sections 67 and 68

Sections 67 and 68 of the ASADA Act set out the situations in which the ASADA (constituted by the ASADA Chair and ASADA staff) can access and make use of customs information relating to the import of prohibited substances and explains the occasions on which the ASADA can disclose this information to concerned sporting administration bodies.

These provisions will remain in place, and their intent will not alter with amendments, but revisions have been made at relevant junctures of the text to make clear that the ASADA will now be constituted by the ASADA CEO.

Amendments of this type occur in subsections 67(1)(b), 67(1)(d)(i), 67(1)(d)(ii), 67(1)(e), 67(1)(f), 67(1)(g), 67(2), 67(3), 67(4), 68(1), 68(1)(a), 68(3)(b), 68(4)(b), and 68(6).

Item 83 amends the heading of section 67 and items 95 and 99 amend the headings of subsection 68(1) and 68(6) respectively, by replacing references to ASADA with CEO.

Item 86 makes provision for the ADRVP, AG and any advisory committees (formed by the ASADA CEO under new section 24P) to have authority under law to access, use and further disclose, customs information where such information relates specifically to sports doping matters.

Item 89 underscores the new provisions at item 86 by identifying the ADRVP, AG and any advisory committees (formed by the ASADA CEO under new section 24P) as performing functions under the NAD Scheme that are deemed appropriate for receiving access to customs information under subsection 16(9) of the *Customs Administration Act 1985*.

Item 94 amends section 67 to add new subsections that enable the ASADA CEO to disclose protected customs information to the ADRVP, AG or associated advisory committees, where such disclosure is in keeping with their respective functions, and where such disclosure relates to the ASADA CEO's administration of the NAD Scheme.

It should be noted here that although the AG and associated advisory committees will only perform a consultative role, they will nevertheless be advising the ASADA CEO on any sports doping related issues that he or she may see fit to request assistance with. As an issue could overlap with customs related matters, it is necessary for the AG and associated advisory committees to have access to such information so that they can be fully briefed when advising the ASADA CEO. The need for these bodies to have access to customs information also works from the understanding that while the ASADA CEO does not have to make decisions based on advice received from the AG or the committees, he or she can do so should they wish.

Items 100 to 105 Sections 69 and 72

Section 69 of the ASADA Act sets out that certain individuals are deemed to be 'entrusted persons' for the purpose of protecting the confidentiality of personal information utilised by the ASADA in the exercising of its various functions. Individuals currently deemed to be 'entrusted persons' under the ASADA Act include:

- ASADA members;
- members of the ASADA staff;

- persons contracted to perform services for ASADA or the ASDMAC, and/or their designated associates;
- employees of Commonwealth authorities or agencies employed to assist the ASADA in the performance of its functions;
- individuals appointed as chaperones or drug testing officials under the NAD Scheme;
- ASDMAC members;
- members of advisory committees established by the ASADA Chair; and
- individuals attending meetings of the ASADA or any of the ASADA's designated advisory committees.

With the office of the ASADA Chair to be removed, revisions were required to this section to make clear that references to the ASADA or the ASADA Chair are replaced with references to the ASADA CEO. Extra provisions have also been added to indicate that members of the newly established ADRVP and the AG (including any sub-committees) will also have access to personal information used by ASADA and therefore must also conform to the expectations outlined for 'entrusted persons' under the ASADA Act.

Items 106 to 122 Part 9 – Other matters

Part 9 of the ASADA Act makes provisions for a range of miscellaneous elements and activities that are of interest to the ASADA in the performance of its functions. These elements include:

- a standing obligation for the ASADA to prepare an annual report on the ASADA's operations and present this to the Minister and both Houses of Parliament (section 74);
- a requirement to prepare and provide reports (or specified information) to the Minister where requested by the Minister in writing (section 75);
- an understanding that the ASADA is exempt from income and state/territory taxes (section 76);
- a clarification that the ASADA, ASADA members, persons contracted to perform services on behalf of the ASADA, and members of ASDMAC receive protections from civil actions in relation to the proper exercise of their duties for the ASADA (section 78); and
- a provision for the Governor-General to make regulations appropriate to, and associated with, the ASADA Act.

Sections 74 and 75 will remain as they presently appear in the ASADA Act, except for minor revisions to reflect the change to ASADA wherein the ASADA CEO will assume responsibility for these tasks following the removal of the ASADA Chair (items 106 to 112).

Section 76 is to be repealed as ASADA will no longer have the status of a corporate entity and this will remove any scope for doubt about whether ASADA is a 'public authority' for the purposes of section 50-25 of the *Income Tax Assessment Act 1997* (item 113).

Section 77 will also be repealed. This section has precluded the ASADA members from giving direction to the ASADA Chair on the exercise of his or her financial and staff management powers. This section has recognised that such powers can only be exercised by the ASADA Chair (or an appropriate delegate) under provisions

provided to the CEO and Head of Agency respectively under the FMA and PS Acts. With the removal of the offices of the ASADA members, and allowing for the fact that the AG is restricted to only providing advice to the ASADA CEO, there is no longer a need for this provision to be retained in the ASADA Act (item 113).

Section 78 will remain in the ASADA Act, but the provision relating to the outgoing ASADA members is to be removed, and references relating to the old ASADA (constituted by the ASADA Chair and the ASADA staff) will be revised to reflect the new constitution involving the ASADA CEO and allowing for responsibilities to be transferred, as appropriate, to the ASADA CEO, the ADRVP or the AG. (items 114 to 116, and 118 to 121).

Amendments will also be made to section 78 to extend protection from civil actions to the AG and the ADRVP (item 117).

In addition, a new subsection 78(4)(da) has been included to ensure that persons in good faith giving statements to the ADRVP, or providing a document or other information to the ADRVP, are protected from civil action (item 122).

Australian Sports Commission Act 1989

Items 123 and 124

The ASC Act establishes the ASC as a statutory authority of the Australian Government. The ASC is Australia's primary national sports administration and advisory agency. It plays a lead role in the development and operation of the Australian sports system, administering and funding innovative sport programs and providing leadership, coordination and support for the sports sector.

One of many functions performed by the ASC involves cooperating with national and international sporting organisations to help in achieving a sporting environment free from unsanctioned doping. Subsection 7(4A) of the ASC Act stipulates that the pursuit of this function should not overlap with the functions performed by the ASADA with its anti-doping program.

A minor change is required to this clause to make clear that the functions of the ASADA are now the responsibility of the ASADA CEO (item 123).

A similar change is also required for section 57A of the ASC Act to reflect this change of responsibility for ASADA (item 124). This section of the ASC Act makes provision for the ASC to disclose information to ASADA where this information relates to sports doping matters, or where it is relevant to the performance of ASADA's functions.

PART 2—APPLICATION AND TRANSITIONAL PROVISIONS

Part 2 to Schedule 1 of the Bill has been included to provide transitional provisions that are required to ensure that ASADA is capable of continuing its functions following amendments to the legislation. Part 2 also transitions current ASADA obligations and responsibilities across to the amended ASADA Act.

Division 1 – Definitions

Item 125 sets out the definitions for the terms used in Part 2 of the Bill.

Division 2 – Liabilities and legal proceedings

Item 126 clarifies that any liabilities applying to the ASADA immediately before commencement of the Bill will transfer to the Commonwealth on amendment of the ASADA Act.

Subitem 127(1) states that the Commonwealth will substitute for the ASADA in relation to any outstanding legal proceedings, pending in any court or tribunal prior to commencement of the amended ASADA Act, regarding assets held in trust by the ASADA. Subitem 127(2) substitutes the ADRVP for the ASADA where the proceedings concerned involve an appeal relating to an anti-doping rule violation that is pending in the Administrative Appeals Tribunal.

Division 3 – ASADA members

Division 3 of Part 2 recognises that the offices of the non-executive members of the ASADA will cease to exist upon commencement of the amended ASADA Act (item 128).

Division 4 – References to, and things done by or in relation to, the ASADA or the ASADA members

Division 4 of Part 2 provides for things done by, or in relation to, the ASADA members.

Item 129 states that responsibility for the functions of the ASADA that have been performed by the non-executive ASADA members will transfer to the ASADA CEO after the commencement time; excepting in circumstances where the Minister, in writing, determines that a particular function does not apply to the non-executive ASADA members, or determines that the function concerned should apply instead to the Commonwealth.

This item also allows for the Minister to determine that a function previously performed by the non-executive ASADA members, may now be done by, or in relation to, a person or body other than the ASADA CEO or the Commonwealth.

Additionally, item 129(6) states that any determination made by the Minister relating to functions previously performed by the non-executive ASADA members is not considered to be a legislative instrument and is therefore not subject to the LI Act. This provision is merely declaratory and included for the avoidance of doubt.

Item 130 makes provision for instruments in place immediately prior to commencement and referring to the non-executive ASADA members, to continue as if the references to the non-executive ASADA members were a reference to the ASADA CEO.

This item also allows for the Minister to determine that a reference previously relating to the non-executive ASADA members, may now relate to a person or body other than the ASADA CEO or the Commonwealth.

Additionally, item 130(4) states that any determination made by the Minister concerning references previously relating to the non-executive ASADA members is not considered to be a legislative instrument and is therefore not subject to the LI Act. This provision is merely declaratory and included for the avoidance of doubt..

Division 5 – Transitional arrangements relating to the Anti-Doping Rule Violation Committee

Under current arrangements, ASADA's rule violation function is performed by a sub-grouping of the ASADA members, informally known as the Anti-Doping Rule Violation Committee (ADRVC).

Subitem 131(1) states that a person who has been serving as an ASADA member immediately prior to the commencement of the amended ASADA Act, is taken to have been duly appointed as a member of the ADRVP immediately after commencement, by the Minister under new section 43.

This item also makes clear that, under these arrangements, a member will hold this office for a length of time specified, in writing, by the Minister and on the terms or conditions that are determined by the Minister (subitems 131(2) and (3)).

At subitem 132(4), clarification is provided that a person is restricted from transitioning to interim membership of the ADRVP (under subitem 132(1)) where he or she is appointed (in an acting or permanent capacity) to the position of ASADA CEO or AG member.

New item 132 elucidates that possible rule violation cases being considered by the ADRVC immediately prior to commencement of the Bill, will be completed by the ADRVP.

Item 132 ensures that cases being progressed by the ADRVC, immediately prior to commencement of the Bill, can be continued to be progressed by the ADRVP following commencement. It is also intended that the ADRVP will be able to review decisions made by the ADRVC in relation to incomplete cases.

Division 6 – Reporting requirements

Item 133 sets out the processes by which ASADA will deal with reporting requirements following commencement of the amended ASADA Act. This paragraph clarifies that reporting requirements that were the responsibility of the non-executive ASADA members will now be provided by the ASADA CEO. Under this item, it is made clear that the law, in respect of a report, applies to the ASADA CEO in the same way that the law would have applied to the non-executive ASADA members.

Division 7 – Miscellaneous

A range of provisions are made under this Division, which allow for:

- the exemption of the ASADA from paying stamp duty or other State or Territory taxes in relation to assets or liabilities transferred to the ASADA upon commencement of the Bill (item 134);
- an obligation for the Commonwealth to pay reasonable compensation to a person where the ASADA acquires property from that person otherwise than on just terms (item 135);
- the Minister to, by writing, delegate any or all of his or her powers under this Part of the ASADA Act to the ASADA CEO (item 136); and
- the Governor-General to make regulations (including those of a transitional nature) prescribing matters required under this Part of the ASADA Act to be

prescribed or necessary and convenient to be prescribed for carrying out or giving effect to this Part (item 137).

SCHEDULE 2—OTHER AMENDMENTS

Australian Sports Anti-Doping Authority Act 2006

Schedule 2 makes provision for incidental amendments to the ASADA Act aimed at ensuring consistency with the World Anti-Doping Code.

Items 1 to 7 Section 4

These items make changes to section 4 of the ASADA Act which sets out the definition of terms used in the Act.

Item 1 inserts a revised definition of ***athlete***. This definition clarifies that an athlete is an individual who participates in a sporting activity and who meets the definition of athlete under the NAD Scheme. The previous definition more broadly described an athlete as an individual who participated in a sporting activity.

Item 2 repeals paragraph (a) of the definition of ***doping method*** and substitutes a revised paragraph (a) in its place. Substitution of the revised paragraph is needed to broaden the scope of a sample that can be returned by an athlete as part of a doping test. For example, the new definition will allow for human hair to be covered under a doping test, while the previous definition only allowed for human fluid, tissue or breath.

Item 3 changes the definition of ***national sporting organisation***. This change removes the words “or is generally recognised [by the ASC]” from the existing definition, and is required in order to limit the national sporting organisations that the ASADA must monitor and report on for section 15 of the Act and the NAD Scheme. By limiting these organisations to those officially recognised by the ASC, the ASADA will not be left open to having to monitor and report on smaller and/or amateur organisations that would otherwise be inappropriate for such consideration under the Act and the NAD Scheme.

Item 4 alters the definition of ***sample***. This reflects the changed definition of doping method, and enables broader human biological material (such as hair) to be obtained from athletes for the purposes of testing under the NAD Scheme.

Items 5 and 6 repeal the existing definition of ***sports drug and safety matter*** and replace it with a new definition of ***sports doping and safety matter***. This altered definition is needed to cover an associated revision to ASADA functions that formerly dealt with ‘sports drug and safety matters’. The switch from ‘drug’ to ‘doping’ recognises that the term doping covers the methods employed by athletes to gain an unfair competitive advantage (for example, blood replacement) and not merely the drugs that athletes may use in seeking such advantage.

Item 7 repeals the definition of ***support person*** and replaces it with a new definition. This new definition will ensure that the anti-doping rules, and ASADA’s jurisdiction, can apply to all members of an athlete’s entourage

Items 8 to 10 Sections 9 to 11

Item 8 repeals the note included in the paragraph describing what is meant by the term *NAD Scheme* or *National Anti-Doping Scheme*. This new note now refers to the definition of the term contained in section 4 of the ASADA Act.

Item 9 repeals section 10 and substitutes a revised version of this paragraph. Section 10 makes provision for the ASADA CEO to be able to make amendments to the NAD Scheme, by written instrument, where such amendments relate to any or all of the matters specified in the paragraph. Previously, such amendments have been made by the ASADA, who have been able to alter all elements of the NAD Scheme by written instrument. Under new arrangements, all elements of the NAD Scheme that are not specified in section 10 of the ASADA Act will be remade, where necessary, by the Governor General in Council.

Item 10 makes an alteration to subsection 11(1) to clarify that the ASADA CEO must undertake appropriate public consultation on any proposed changes to the NAD Scheme that he or she may wish to make under the provisions of section 10(1).

Items 11 to 15 Section 21

These items make a range of consequential amendments to the functions of the ASADA that are detailed in amended section 21 of the ASADA Act.

These amendments are largely minor in nature, involving:

- the substitution of the term ‘sports drug’ with ‘sports doping’ to reflect a broadening of the description of ASADA’s key anti-doping program functions to cover doping methods, and not merely doping substances (paragraphs 21(1)(c), (e), (f), (g), (h), (i) and (j) and the associated note provided in subsection 21(1));
- repealing the provision for ASADA to advise the ASC about recognising a sporting organisation as being responsible for administering the affairs of a sport, or of a substantial part or section of a sport, in Australia (paragraph 21(1)(d); and
- substitution of the requirement for ASADA to provide other services including information technology services relating to sports drugs, on behalf of the Commonwealth, with a fresh requirement for the ASADA to provide other services including educational services relating to sports doping.

Items 16 to 20 Section 52

Section 52 of the ASADA Act details the functions of ASDMAC and provides the criteria by which this body will operate. ASDMAC is the specialist medical body responsible for providing sports medicine advice to athletes, sporting agencies and organisations, Government, sporting tribunals and anti-doping laboratories.

The incidental amendments to this section include:

- the substitution of the term ‘sports drug’ with ‘sports doping’ to reflect a broadening of the description of ASADA’s key anti-doping program functions to cover doping methods, and not merely doping substances (paragraphs 52(1)(b)(ii), 52(1)(c)(i), 52(1)(d) and the associated note provided in subsection 52(1)); and
- omission of the words “advice and” from paragraph 52(1)(c) so as to clarify that ASDMAC only has to provide information, and not advice, to sporting administration bodies about individual cases relating to sports doping matters or issues relating to anti-doping testing or safety checking services (item 17).

Item 21 Section 71

Section 71 sets out provisions relating to the protection of personal information under the NAD Scheme. This paragraph makes clear that it is an offence to improperly disclose personal information obtained under the NAD Scheme unless such disclosure is for the purposes of the ASADA Act, for the purposes of the NAD Scheme, consented to by the individual concerned, disclosed to the individual to whom the information relates, disclosed to the Australian Federal Police, disclosed to Customs, or prescribed in the ASADA Regulations.

An incidental amendment after paragraph 71(2)(f) extends this exemption to cover disclosures to relevant State or Territory medical bodies; foreign medical bodies, a Commonwealth or State or Territory law enforcement agency; and foreign or international law enforcement agencies.

Items 22 and 23 Section 72

Section 72 sets out provisions relating to the protection of personal information relating to services provided to ASADA under contract. This paragraph makes clear that it is an offence to improperly disclose contract services personal information unless such disclosure is: for the purposes of the ASADA Act; a disclosure for the purposes of the provision of the services to which the contract services personal information relates; consented to by the individual concerned; disclosed to the individual to whom the information relates; disclosed to the Australian Federal Police; disclosed to Customs; or prescribed in the ASADA Regulations.

Further amendment after paragraph 72(2)(f) extends this exemption to cover disclosures to relevant State or Territory medical bodies; foreign medical bodies, a Commonwealth or State or Territory law enforcement agency; and foreign or international law enforcement agencies.
(item 22).

Division 4.4 of the NAD Scheme sets out detailed requirements regarding ASADA's disclosure of information. These include the requirement for ASADA to obtain a legally binding agreement from a body receiving the information (unless the body is already subject to the Privacy Act 1988 or a similar law) that it will not use or disclose the information for a purpose other than the purpose for which the information is given to the body; it will securely retain and restrict access to the information; and it will destroy or return the information to ASADA once the purposes for which the disclosure is made are completed.