

## Australian Sports Anti-Doping Authority Amendment Regulation 2012 (No. 1)

F2012L02385

Portfolio: Regional Australia, Local Government, Arts and Sport

### Committee view

2.1 The committee seeks clarification from the Minister for Sport on the potential rights impacts of this instrument to assist its consideration of the instrument's compatibility with human rights.

### Overview

2.2 This instrument amends the *Australian Sports Anti-Doping Authority Regulations 2006* (made under the *Australian Sports Anti-Doping Authority Act 2006*), to clarify the intended role of the Anti-Doping Rule Violation Panel (the Panel). It sets out the powers of the Panel in making an adverse analytical finding against an athlete.

2.3 This follows from a recent decision of the Administrative Appeals Tribunal<sup>1</sup> that found that the Panel was a hearing body within the meaning of article 8 of the World Anti-Doping Code and its role was therefore to make a finding that an anti-doping rule violation had been committed.

### Compatibility with human rights

2.4 The statement of compatibility provides an overview of the instrument and states that it does not engage any human rights. However, these amendments appear to engage the right to privacy under article 17 of the International Covenant on Civil and Political Rights (ICCPR) and may engage the right to a fair hearing under article 14 of the ICCPR.

2.5 In particular, regulations<sup>2</sup> that provide that the Panel may make entries on the Register of Findings about an athlete, including their name, date of birth, and the nature of the finding against them in relation to an anti-doping rule violation, engages, and appears to limit, the right to privacy. Regulations that enable information to be made available to relevant sporting organisations and 'details of other parties that will be notified on the entry on the Register' also appear to limit

---

1 *XZTT v Anti-Doping Rule Violation Panel* [2012] AATA 728.

2 See, in particular, new clauses 1.03A(1)(f), 4.07A(3)(e) and (f), 4.09(2), 4.10.

this right. Information is needed to explain if this limitation is reasonable, necessary and proportionate to achieve a legitimate aim.

2.6 Further, it is unclear what effect a Panel's decision of an adverse analytical finding has in relation to an athlete. The explanatory memorandum states that the legislative intent was:

...that the role of the Panel is to make a finding that an athlete or support person had possibly committed an anti-doping rule violation, while the role of the sport is to determine whether an anti-doping rule violation has in fact been committed.<sup>3</sup>

2.7 However, it is unclear what effect the Panel's finding has on the ultimate determination, and raises issues about whether a person has been accorded a fair hearing under article 14 of the ICCPR.

---

3 Explanatory memorandum, p. 1.