

Case number: NST-E25-294506

Case Title: Athlete v Australian Weightlifting Federation and Sport Integrity Australia

Determination

National Sports Tribunal Anti-Doping Division

sitting in the following composition:

Dr Caroline Kenny KC (Chair)

Dr Larissa Trease

Mr Peter Kerr AM

in the arbitration between

████████████████████

(Applicant)

Represented by Mr Reimen Hii, Counsel and Ms Caitlin Pincott, Counsel

And

Australian Weightlifting Federation

(Respondent)

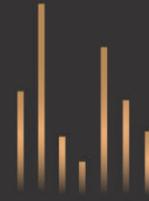
Represented by Mr Ian Moir, Australian Weightlifting Federation CEO

And

Sport Integrity Australia

(Sport Integrity Australia)

Represented by Mr Patrick Knowles SC, Counsel

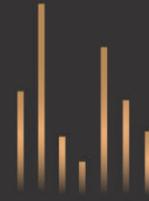


PARTIES

1. The Applicant, [REDACTED] (the **Athlete**), competes in the sport of Olympic Weightlifting.
2. The governing body of Olympic Weightlifting is the Australian Weightlifting Federation (**AWF**). The AWF has adopted and agreed to be bound by the Australian National Anti-Doping Policy 2021 (**NAD Policy**).
3. Sport Integrity Australia (**SIA**) is the independent National Anti-Doping Organisation for Australia.

INTRODUCTION

4. On 23 June 2024 the Athlete was a participant at the Australian Masters Weightlifting Championships at Surfers Paradise in Queensland. They were the subject of an In-Competition doping control test (**DCT**) and, upon request, provided a urine sample.
5. The Athlete's Part "A" Sample #1178358 returned an adverse analytical finding for GW1516 (GW501516) metabolite: GW1516-sulfoxide (**Prohibited Substance**).
6. GW1516 (also known as GW501516) is listed under Class S4.4 (Metabolic Regulators) of the *World Anti-Doping Code - International Standard - Prohibited List 2024* (**Prohibited List 2024**). It is prohibited at all times (that is, In-Competition and Out-of-Competition). GW1516 is classified as a Non-Specified Substance under the Prohibited List 2024. It is not designated as a Substance of Abuse.
7. At the time of the DCT, the Athlete did not have a therapeutic use exemption permitting them to use GW1516.
8. On 4 September 2024, the Athlete was sent a Notice of Anti-Doping Rule Violations (**ADRVs**), notifying them of the Adverse Analytical Finding (**AAF**).
9. On 5 September 2024, the AWF imposed a Mandatory Provisional Suspension on the Athlete.
10. On 19 September 2024, the Athlete's Part "B" Sample #1178358 confirmed the Part "A" Sample analysis.
11. After an investigation, on 16 May 2025, SIA issued the Athlete with a letter of charge. The letter of charge asserted an ADRV of Presence and Use based on the adverse analytical findings referable to the samples collected on 23 June 2024. The letter of charge proposed consequences which included a 4-year period of ineligibility.
12. The letter of charge sets out, among other things, the timeline of the investigation, details of the asserted ADRV's notice of proposed consequences and options for proceeding.
13. Pursuant to Article 10.2.1 of the NAD Policy a four-year period of ineligibility was imposed (back dated to commence on the date of the DCT through to 23 June 2028). In addition to this and pursuant to Articles 9 and 10.10 of the NAD Policy, any medals, points, or prizes awarded between 23 June 2024 to 5 September 2024 are to be forfeited, including the disqualification of any results achieved during this period of four years.
14. The Athlete has been subject to a Mandatory Provisional Suspension since 5 September 2024.



15. On 3 June 2025, the Athlete exercised their right to a Hearing by filing an Application to the National Sports Tribunal (**NST**).
16. The purpose of the Hearing is for the Parties to present evidence and submissions to an independent tribunal and for the Tribunal to make a binding and enforceable decision.

NST JURISDICTION

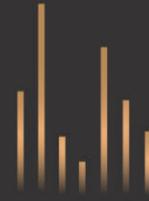
17. The NST has jurisdiction pursuant to Section 22 of the *National Sports Tribunal Act 2019* (Cth) (the **NST Act**). The AWF has adopted and agreed to be bound by the NAD Policy. The NAD Policy has been approved by the Chief Executive Officer of SIA. Pursuant to Section 22(2)(b) of the Act, the Athlete is bound by the NAD Policy.
18. The NST also has jurisdiction to hear and determine the dispute under Article 8 of the NAD Policy. On 3 June 2025, the Athlete made an application to the NST to hear and determine the dispute. The Parties to the dispute signed an Arbitration Agreement between 13 and 17 August 2025 and agreed to refer the dispute to the Anti-Doping Division of the NST, and further agreed that the NST's jurisdiction is engaged until the resolution of the dispute.
19. All Parties have consented to the jurisdiction of the NST, and no objection has been made to the jurisdiction of the NST to make a Determination.
20. The Chief Executive Officer of the NST appointed Dr Caroline Kenny KC as the Chair and Dr Larissa Trease and Mr Peter Kerr AM as Panel Members for the purposes of the Hearing. No party objected to the composition of the Panel.

FACTUAL BACKGROUND

21. While the Tribunal has considered all the facts, allegations, legal arguments and evidence submitted by the parties, it refers in this Determination only to the submissions and evidence it considers necessary to explain its reasoning.
22. The background to this proceeding is not in dispute. The Athlete joined the AWF on 14 March 2024 at which time they became subject to the NAD Policy. At the time of the DCT the Athlete was ■ years old. Between the date of joining the AWF and the date of the DCT the Athlete competed three times: ■ and on 22 and 23 June 2024 on the Gold Coast when the DCT was administered. In the Athlete's Statutory Declaration dated 18 August 2025 they said that as they were blood tested during the first competition, and as they did not test positive, they assumed the supplements they were taking did not contain a Prohibited Substance. ■, after which the DCT was administered. The DCT was on this occasion a urine test.

PROCEEDINGS BEFORE THE NST

23. In the Arbitration Agreement the parties agreed the following procedural timetable:
 - (a) By 4.00 pm (AEST) on 18 August 2025 the Athlete was to file and serve their written submissions, witness statements, evidence and any other documents on which they relied;



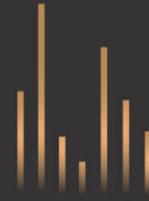
- (b) By 4.00 pm (AEST) on 18 September 2025 AWF and SIA were to file and serve their written submissions, witness statements, evidence and any other documents on which they relied;
 - (c) By 4.00 pm (AEST) on 23 September 2025 the Athlete was to file and serve their written submissions and statements and evidence in reply, a list of authorities on which they relied and a list of witnesses required to be called;
 - (d) By 4.00 pm (AEST) on 24 August 2025 AWF and SIA were to file and serve their list of authorities and a list of witnesses they required to be called;
 - (e) A Pre-Hearing Conference was to take place at 08.30 am (AEST) on 25 September 2025; and
 - (f) The Hearing was to take place at 10.00 am (AEST) on 3 October 2025.
24. There was delay on the part of SIA in serving its submissions. The Athlete also filed their reply submissions out of time.
 25. A Pre-Hearing Conference took place on Thursday, 25 September 2025 at 8.30 am (AEST). At the conference the Athlete was represented by Mr Hii and Ms Pincott of counsel. The Respondent was represented by Mr Moir and SIA was represented by Mr Knowles SC of counsel. At the conference Mr Knowles SC requested that the Athlete be available for cross-examination. During the Pre-Hearing Conference the Athlete's counsel requested information in relation to the Athlete's medical history be treated as confidential, a request which was renewed at the Hearing.
 26. At the Hearing on Friday, 3 October 2025 the parties were represented by those who had represented them at the Pre-Hearing Conference. The Athlete filed their submissions on 27 August 2025 and also relied on their Statutory Declaration and a Statutory Declaration of [REDACTED] dated 19 August 2025. SIA filed its submissions on 19 September 2025. The Athlete filed reply submissions on 2 October 2025. During the Hearing both parties gave a brief opening statement; the Athlete was then asked to make an affirmation and was subsequently cross-examined by Mr Knowles SC. There was no re-examination by Mr Hii. Each party then made closing submissions.
 27. Following the Hearing the Tribunal gave leave to the parties to file a supplementary submission concerning the discrete issue of 'How the NAD Policy anticipates that recreational athletes will engage in a level of competition'. The Athlete filed a supplementary submission on 27 October 2025 and SIA filed a supplementary submission on 12 November 2025.
 28. No objection was made at the outset of the Hearing to the composition of the Panel and at its conclusion the parties confirmed that their procedural rights had been fully respected.

APPLICABLE RULES

29. The NAD Policy provides the following warning to athletes:

Warning to Athletes and Other Persons

- *You are responsible for knowing what the anti-doping rule violations are*
- *You must find out which substances and methods are prohibited*
- *Ignorance is no excuse*



- You must be aware of the rules in this Anti-Doping Policy
- This Anti-Doping Policy adopts the strict liability principle
- Athletes are responsible for anything found in their system
- You must be aware of the sanctions that could be applied to you in this Anti-Doping Policy.

30. Article 1.3 of the NAD Policy specifies the persons who are subject to the policy. By reason of the Parties' submissions the two relevant articles are Article 1.3.1.1 and Article 1.3.1.5. It was submitted by the Athlete that they fell within the definition of 'recreational athlete' in Article 1.3.1.5, whereas SIA submitted that they were not a recreational athlete but were bound by the policy because of Article 1.3.1. The two relevant clauses read as follows:

1.3 Application to Persons

1.3.1 This Anti-Doping NAD Policy shall apply to the following Persons (including Minors), in each case, whether or not such Person is a citizen of or (temporary or permanent) resident in Australia:

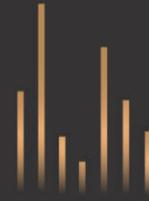
1.3.1.1 all Athletes and Athlete Support Personnel who are members of the Sporting Administration Body or of any member or affiliate organisation (including any clubs, teams, associations or leagues);

...

1.3.1.5 Recreational Athletes, i.e. any Person who engages or participates in sport or fitness activities for recreational purposes but who would not otherwise compete in Competitions or Events organised, recognised, or hosted by the Sporting Administration Body, or by any affiliated or non-affiliated association, organisation, club, team, or league and who, within the five (5) years prior to committing any anti-doping rule violation, has not been an International-Level Athlete (as defined by each International Federation consistent with the International Standard for Testing and Investigations) or National-Level Athlete (as defined by SIA or other National Anti-Doping Organisation consistent with the International Standard for Testing and Investigations); has not represented Australia or any other country in an International Event in an open category; or has not been included within any Registered Testing Pool or other whereabouts information pool maintained by any International Federation, SIA or other National Anti-Doping Organisation (underlining added and footnotes omitted).

31. Article 2.1.1 contains the following provision in relation to the presence of a Prohibited Substance or its metabolites:

2.1.1 It is the Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance, or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.



32. Article 2.2.1 provides that it is the Athlete's responsibility to ensure no Prohibited Substance enters his or her body:

2.2.1 It is the Athlete's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

33. Article 3.1 of the NAD Policy provides in relation to the burden of proof:

The Anti-Doping Organisation shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organisation has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where this Anti-Doping Policy places the burden of proof upon the Athlete or Other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.

34. Article 4.3 of the NAD Policy provides that all Parties are bound by the World Anti-Doping Agency's (**WADA's**) classification of substances which have been included on the Prohibited List, as follows:

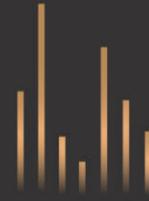
WADA's determination of the Prohibited Substances and Prohibited Methods that will be included on the Prohibited List, the classification of substances into categories on the Prohibited List, the classification of a substance as prohibited at all times or In-Competition only, the classification of a substance or method as a Specified Substance, Specified Method or Substance of Abuse is final and shall not be subject to challenge by an Athlete or Other Person including, but not limited to, any challenge based on an argument that the substance or method was not a masking agent or did not have the potential to enhance performance, represent a health risk or violate the spirit of sport.

35. In terms of sanctions, the relevant parts of the NAD Policy are Articles 10.2 and 10.6 and several definitions related to these Articles which are found in the in Appendix. Article 10.2 provides:

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:

10.2.1 The period of Ineligibility, subject to Article 10.2.4, shall be four years where:



10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or Other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance or a Specified Method and SIA can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of Ineligibility shall be two (2) years.

10.2.3 As used in Article 10.2, the term 'intentional' is meant to identify those Athletes or Other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.⁵² An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not 'intentional' if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered 'intentional' if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

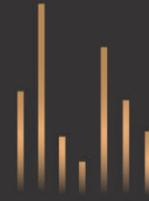
36. Article 10.6 permits the period of ineligibility for an ADRV of Article 2.1 to be reduced in certain circumstances and also when the athlete is a Protected Person or Recreational Athlete. Article 10.6.1.3 and 10.6.2 provide:

10.6.1.3 Protected Persons or Recreational Athletes

Where the anti-doping rule violation not involving a Substance of Abuse is committed by a Protected Person or Recreational Athlete, and the Protected person or Recreational Athlete can establish No Significant Fault or Negligence, then the period of ineligibility shall be, at a minimum, a reprimand and no period of ineligibility, and at a maximum, two (2) years ineligibility depending on the Protected Person or Recreational Athlete's degree of fault.

10.6.2 Application of No Significant Fault or Negligence beyond the application of Article 10.6.1

If an Athlete or Other Person establishes in an individual case where Article 10.6.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.7, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or Other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period



of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years.

37. 'No Significant Fault or Negligence' is defined in Appendix 1 as:

The athlete or other person's establishing that his or her Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relation to the anti-doping violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her System.

38. 'No Fault or Negligence' is defined in Appendix 1 as:

The Athlete or Other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.

39. 'Fault' is defined in Appendix 1 as:

any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or Other Person's degree of Fault include, for example, the Athlete's or Other Person's experience, whether the Athlete or Other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or Other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or Other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2.

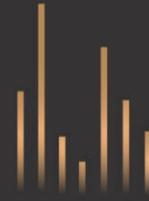
MAIN SUBMISSIONS OF THE PARTIES

40. The Athlete admitted:

- (a) that the results of the DCT undertaken on 23 June 2024 returned an AAF that included a Prohibited Substance; and
- (b) they committed the ADRV of 'Presence' in breach of Article 2.1 of the Policy.

41. As a consequence of that admission the Parties agreed there were four issues which had to be determined by the Tribunal. These are:

- (a) **Issue 1:** Whether the Athlete has also committed the ADRV of 'Use' contrary to Article 2.2 of the Policy;

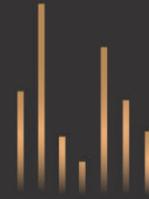


- (b) **Issue 2:** Whether the Athlete is, for the purposes of determining the appropriate sanction under the Policy, to be treated as a 'recreational athlete';
- (c) **Issue 3:** Whether the Athlete has established that the ADRV(s) were not 'intentional' (noting that if the Athlete meets this burden, the period of ineligibility imposed as a sanction upon them is reduced from 4 years to 2 years); and
- (d) **Issue 4:** Whether the Athlete has demonstrated that they bear 'no significant fault or negligence' for the ADRV(s) and, if so, what effect should that finding have on the period of ineligibility imposed (Issue 4).

42. The Tribunal will consider each of these issues in turn.

Issue 1: Whether the Athlete has also committed the ADRV of Use contrary to Article 2.2 of the Policy?

- 43. The Athlete denied they had committed the ADRV of Use of a Prohibited Substance. Despite this denial their written submissions do not contain any separate submissions explaining this denial. SIA noted in its submissions that this issue is somewhat theoretical since an ADRV of Presence is accepted and an additional ADRV of Use would not alter the applicable sanction. The Athlete's counsel agreed that whether the Athlete had engaged in the ADRV of Use would not change the sanction. However, he said that it was important for the Tribunal to address the issue because the Athlete had been accused of it and maintained their innocence.
- 44. 'Use' is defined in the NAD Policy as 'the utilisation, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance...' SIA submitted that it is clear from the non-exhaustive definition (and in particular the words 'consumption by any means whatsoever') that in order to make out a charge of Use it is not necessary for SIA to establish how the prohibited substance entered the Athlete's system.
- 45. SIA also relied on Article 2.2.1 of the NAD Policy as to the responsibility of an athlete to ensure that a Prohibited Substance did not enter their body. In reliance on this provision SIA submitted that it is not necessary for it to prove any mental element to make good its assertion of the ADRV of Use. SIA also submitted that as GW1516 is prohibited at all times (and not just in competition) it is not necessary for SIA to prove when the Athlete used the substance.
- 46. SIA relied on the AAF disclosed by the testing of the Athlete's A and B Samples. It submitted that evidence of this nature is admissible bearing in mind the comment to Article 2.2.1 which provides: 'It has always been the case that *Use or Attempted Use of a Prohibited Substance ... may be established by any reliable means*' (underlining added). It was submitted that this expansive definition means that evidence of Use may include, but is not limited to, the same evidence relied on to establish the ADRV of Presence.
- 47. Both parties agreed that under Article 3.1 of the NAD Policy SIA bore the onus of establishing the ADRV of Use to the 'comfortable satisfaction' of the Tribunal (see paragraph 33 above). The Athlete criticised SIA's reliance on the Athlete's A and B Samples. However, the Tribunal has no reason to doubt the accuracy of the Samples and considers that SIA has established the ADRV of Use pursuant to Article 2.2.1 of the NAD Policy to the comfortable satisfaction of the Tribunal. Based on the undisputed AAFs reached after testing of the Athlete's A and B Samples, the Tribunal can be comfortably satisfied that the Athlete engaged in the ADRV of Use (in addition to the uncontested ADRV of Presence).



Issue 2: Whether the Athlete is, for the purposes of determining the appropriate sanction under the Policy, to be treated as a ‘recreational athlete’?

48. As mentioned previously the Athlete submitted that they were a ‘recreational athlete’ within the meaning of Article 1.3.1.5 of the NAD Policy which impacted the sanctions the Tribunal could impose for the ADRVs of Use and Presence. This was denied by SIA who submitted that the Athlete was not a recreational athlete within the meaning of Article 1.3.1.5 because the proper construction of that Article was that it excluded any athlete who engaged in competition.
49. The definition of ‘recreational athlete’ as set out in Appendix 1 to the Policy simply refers back to Article 1.3.1.5 without further elaboration. The Tribunal notes that the definition of ‘recreational athlete’ in the NAD Policy has not received judicial consideration in Australia.

PRINCIPLES OF STATUTORY INTERPRETATION

50. In construing the meaning of the term ‘recreational athlete’ in Article 1.3.1.5 the Tribunal is conscious of the guidance to statutory interpretation set out by the High Court in the much-quoted passage in *CIC Insurance Ltd v Bankstown Football Club Ltd*.¹ Chief Justice Brennan, Dawson, Toohey and Gummow JJ observed that:

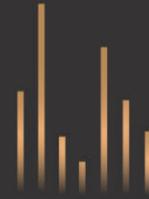
... the modern approach to statutory interpretation (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses “context” in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as [by reference to reports of law reform bodies], one may discern the statute was intended to remedy [Attorney-General v Prince Ernest Augustus of Hanover [1957] AC 436 at 461, cited in K & S Lake City Freighters Pty Ltd v Gordon & Gotch Ltd (1985) 157 CLR 309 at 312, 315]. Instances of general words in a statute being so constrained by their context are numerous. In particular, as McHugh JA pointed out in Isherwood v Butler Pollnow Pty Ltd [(1986) 6 NSWLR 363 at 388], if the apparently plain words of a provision are read in the light of the mischief which the statute was designed to overcome and of the objects of the legislation, they may wear a very different appearance. Further, inconvenience or improbability of result may assist the court in preferring to the literal meaning an alternative construction which, by the steps identified above, is reasonably open and more closely conforms to the legislative intent [Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation (1981) 147 CLR 297 at 320–1] by legitimate means such as those just mentioned ...

51. The Full Court in *Stevens v Kabushiki Kaisha Sony Computer Entertainment*², elaborated on the importance of context saying:

[C]ontext is not limited to the text of the rest of the statute. For purposes of statutory construction, context includes the state of the law when the statute was enacted, its known or supposed defects at that time and the history of the relevant branch of the law, including the legislative history of the statute itself. It also includes in appropriate cases “extrinsic materials” such as reports of statutory bodies or commissions and

¹ *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384, 408.

² *Stevens v Kabushiki Kaisha Sony Computer Entertainment* (2005) 224 CLR 193, 230 [124].



parliamentary speeches – indeed any material that may throw light on the meaning that the enacting legislature intended to give to the provision...

52. The need to identify the mischief that an amending statute is seeking to remedy was referred to by Hayne, Heydon, Crennan and Kiefel JJ in *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (Northern Territory)*:³

This Court has stated on many occasions that the task of statutory construction must begin with a consideration of the text itself. Historical considerations and extrinsic materials cannot be relied on to displace the clear meaning of the text. The language which has actually been employed in the text of legislation is the surest guide to legislative intention. The meaning of the text may require consideration of the context, which includes the general purpose and policy of a provision, in particular the mischief it is seeking to remedy.

53. To determine the purpose to be achieved by the introduction of a new tier of athlete called a 'recreational athlete' in 2021 it is necessary to examine the background to the revisions to the World Anti-Doping Code (**WAD Code**) which for the first time made provision for that definition.

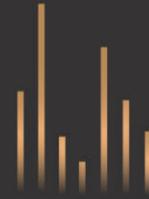
REVISIONS TO WAD CODE IN 2021

54. During the Hearing the Athlete relied on a document published on the WADA website titled '2021 Code Revision — Third Draft (Following the Third Consultation Phase) Summary of Major Changes',⁴ which gave the following background to the proposal to insert a definition of recreational athlete in the revised WAD Code:

- (a) *Under the current Code, Anti-Doping Organizations are not required to test lower-level athletes, but if they do and violations result, then all of the Consequences imposed by the Code apply.*
- (b) *A number of stakeholders who regularly test these lower-level athletes have pointed out that:*
 - i. *... [I]mposing full Code Consequences ... is counterproductive to [the public health] objectives [in testing such athletes];*
 - ii. *[T]hese lower-level athletes have not had the same anti-doping educational opportunities as higher-level athletes; and*
 - iii. *... [T]he consequences of mandatory public disclosure on the employment status of someone who participates in sport only at the recreational level is unduly harsh.*
- (c) *A new Code definition describes these lower-level Athletes as "Recreational Athletes" [and] ... includes:*
 - i. *Athletes who are not and have not for the prior 5 years been an International-Level or National-Level Athlete;*

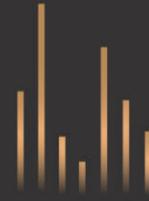
³ (2009) 239 CLR 27, 46–7 [47].

⁴ World Anti-Doping Agency, *2021 Code Revision — Third Draft (Following the Third Consultation Phase) Summary of Major Changes* (Report, 2021) 12 [26].



- ii. *[H]ave never represented a country in an International Event;*
 - iii. *Have never been in a Registered Testing Pool; or*
 - iv. *... [W]ere not nationally ranked in the top 50.*
- (d) *... There was a general consensus among stakeholders that truly recreational Athletes should deserve some special accommodation.*
- (e) *There was a great deal of comment on what the definition ... should be.*
- (f) *Since the decision to impose anti-doping rules on lower-level Athletes is almost always made at the national level, ... each National Anti-Doping Organization [will be allowed] to define the Recreational Athlete criteria in its country.*
55. When the WAD Code was approved in 2021, WADA published a 'Development and Implementation Guide for Stakeholders' (**WADA Guide**).⁵ This document outlines the review process of the WAD Code and summarises the significant changes under the heading 'New Category of Athletes – "Recreational Athletes" Permitted More Flexibility in the Imposition of Consequences':
- Under the current Code, ADOs are not required to test lower-level athletes, but if they do and an ADRVs results, then all of the consequences imposed by the Code apply. A number of the stakeholders who regularly test these lower-level athletes have pointed out that: they do so as a matter of public health and imposing full Code consequences (as opposed to rehabilitation) is counter-productive to that objective; these lower-level athletes have not had the same anti-doping educational opportunities as higher-level athletes; and the consequence of mandatory Public Disclosure on the employment status of someone who participates in sport only at the recreational level is unduly harsh. A new Code definition describes these lower-level athletes as "Recreational Athletes." The determination of who is a recreational athlete is left to the NADO of the athlete's country, but must not include any athlete who in the prior 5 years has been: an international-level or national-level athlete; representing a country in an international event in an open category; or been in a Registered Testing Pool or other whereabouts pool of an IF or NADO. "Recreational Athletes" benefit from the same flexibility in sanctioning as protected persons.*
56. The definition of recreational athlete appears in Appendix 1 to the 2021 WAD Code. It provides:
- Recreational Athlete:*** *A natural Person who is so defined by the relevant National Anti-Doping Organisation; provided, however, the term shall not include any Person who within five years (5) prior to committing any anti-doping rule violation, has been an International-Level Athlete (as defined by each International Federation consistent with the International Standard for Testing and Investigations) or National-Level Athlete (as defined by each*

⁵ World Anti-Doping Agency, 2021 World Anti-Doping Code and International Standard Framework Development and Implementation Guide for Stakeholders (Report, 2021) 19 [51].



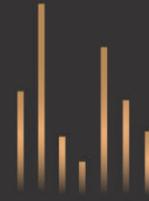
National Anti-Doping Organisation consistent with the International Standard for Testing and Investigations); has represented any other country in an International Event in an open category; or has been included within any Registered Testing Pool or other whereabouts information pool maintained by any International Federation or National Anti-Doping Organisation (underlining added)

57. As can be seen, the WAD Code leaves to each national Anti-Doping Organisation the task of defining a recreational athlete but does not allow them to depart from the mandatory exclusions from that term which is indicated by the underlining of the definition in the previous paragraph. It is, therefore, relevant to the interpretation of the term that the WADA Guide mentions that the Code is intended to draw a distinction between, on the one hand, 'lower level athletes', who were referred to as 'recreational athletes, and, on the other, 'higher level' athletes who in the past five years competed nationally or internationally or who have been included within a Registered Testing Pool. As also explained by the WADA Guide, the mischief sought to be avoided by the definition of recreational athlete was to prevent the full consequences of the Code which apply to elite athletes, including mandatory public disclosure of an anti-doping violation, from applying to 'lower level' athletes who participate in a sport for recreational purposes only. This mischief is addressed in the revised WAD Code by subjecting recreational athletes to a different, more lenient sanction regime than that which applies to elite athletes. Under Article 10.6.1.3 of the Code, if a recreational athlete can establish 'no significant fault or negligence', then they can access a lower band of sanctions. A tribunal can give a reprimand and no period of ineligibility, or, at a maximum, two years ineligibility. Additionally, Article 14.3.7 provides that mandatory public disclosure is not required and any optional disclosure should be proportionate to the facts and circumstances of the case.
58. Although National Sporting Organisations were free to adopt their own definition of recreational athlete the 2021 WAD Code requires compliance with the mandatory guiding principles which it establishes. This is explained in the introduction to the Code under the heading 'Purpose, Scope and Organization of the World Anti-Doping Program and the Code':

The Code is the fundamental and universal document upon which the World Anti-Doping Program in sport is based. The purpose of the Code is to advance the antidoping effort through universal harmonization of core anti-doping elements. It is intended to be specific enough to achieve complete harmonization on issues where uniformity is required, yet general enough in other areas to permit flexibility on how agreed -upon anti-doping principles are implemented. The Code has been drafted giving consideration to the principles of proportionality and human rights.

IMPLEMENTATION OF THE 2021 WAD CODE IN AUSTRALIA

59. The law governing sports doping in Australia is the product of international instruments and national legislation. Australia has ratified the United Nations Educational, Scientific and Cultural Organization (**UNESCO**) International Convention against Doping in Sport (**Convention**), which requires governments who have ratified the Convention to align their anti-doping framework with the principles of the WAD Code. SIA is the Australian Government Agency responsible for working with Australia's national sporting organisations, of which AWF is one, to eliminate doping in sport. SIA's powers and functions are specified in the *Sport Integrity Australia Act 2020* (Cth)



(**SIA Act**) and the *Sport Integrity Australia Regulations 2020* (Cth) (**Regulations**).⁶ The NAD Policy is Schedule 1 to the Regulations.

60. The *Sport Integrity Australia Amendment (World Anti-Doping Code Review) Act 2020* (Cth) (**Amendment Act**) amended the *SIA Act*. According to the Explanatory Memorandum to the *Sport Integrity Australia Amendment (World Anti-Doping Code Review) Bill 2020* (Cth) (**Bill**) the amendments were to align Australia's anti-doping legislation with the revised WAD Code. The legislation was also intended to give effect to Australia's international obligations under the Convention. The Explanatory Memorandum states that the Convention requires the 180 governments who have ratified the Convention to align their anti-doping framework with the principles of the WAD Code and to be consistent with it.⁷ It explained that 'to ensure the continued operation of a globally harmonised anti-doping framework, international sporting federations and governments were required to amend their own anti-doping framework to align with' the WAD Code and this was achieved in Australia by the amendments to the *SIA Act* and to the NAD Policy.⁸

61. The Second Reading Speech for the Bill referred to the 2021 WAD Code revisions with respect to 'recreational athletes' in the following terms:

*The Code requires an anti-doping organisation to maintain a public-facing violations list which details information of all anti-doping rule violations (except for those under 18 years old). The revised Code broadens this exception to include athletes who compete for recreational purposes (unless that person has been considered a national-level athlete or international-level athlete within the previous five years), and individuals who do not have the mental capacity to understand the anti-doping rules.*⁹

62. The Explanatory Memorandum and the Second Reading Speech explain that the Australian Parliament intended to give effect to the 2021 WAD Code by introducing an additional category of athlete — the recreational athlete — and to ensure consistency with the 2021 WAD Code, that such athletes would be subject to the less rigorous consequences of the Code for an anti-doping violation.

63. One such consequence is that, reflecting the complementary provisions in the WAD Code, the mandatory reporting of a violation does not apply to recreational athletes. The amendments to s 19A of the *SIA Act* give effect to the expanded exceptions in the 2021 WAD Code in respect of the obligation of SIA to publish a list for all anti-doping violations. Section 19A of the *SIA Act* requires the Chief Executive Officer of SIA to establish and maintain a 'violations list' which is required to include the athlete's name, date of birth, sport, nature and date of the anti-doping violation and other information he or she considers appropriate. However, ss 19A(5)(ab)(i) and (ii) provides that the CEO is not required to include in the violations list any violation that he or she is satisfied was committed by an individual 'who is an athlete who competes for recreational purposes' and who has neither been a national-level athlete nor an international-level athlete at any time in the 5 years before the individual committed the anti-doping violation.

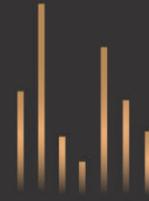
SUBMISSIONS MADE BY THE PARTIES

⁶ Explanatory Memorandum, *Sport Integrity Australia Amendment (World Anti-Doping Code Review) Bill 2020* (Cth), 1.

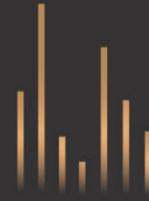
⁷ See *ibid.*

⁸ *Ibid.*, 2.

⁹ Commonwealth, *Parliamentary Debates*, Senate, 26 August 2020, 4136–7 (Senator Jonathon Duniam); Commonwealth, *Parliamentary Debates*, Senate, 10 December 2020, 11296–7 (Trevor Evans MP).



64. The underlining in the definition of recreational athlete (as referred to in paragraph 30 above) represents Australia's definition of recreational athlete while the part not underlined represents the mandatory part of the definition which National Doping Organisations, such as SIA, were not permitted to vary. The Athlete submitted that they were a recreational athlete because, although they had competed in three events organised by AWF before June 2024, they did not 'otherwise compete' in national or international events. The Athlete's fundamental submission, therefore, was that an athlete who competes for a recreational purpose but not for a professional purpose, such as an elite athlete, would fall within the definition of recreational athlete.
65. SIA submitted that the definition should be read as excluding any athlete who competed in a sport for recreational purposes. It was submitted that because the Athlete had competed in three competitions they were not a recreational athlete. SIA said the term should be construed as follows:
- Textually, the underlined portion of the definition identifies two essential criteria to fall within the definition of recreational athlete – one positive and one negative. The positive criterion is that the person in question must engage in the particular sport or activity for recreational purposes. The second, negative, criterion is somewhat complicated by grammatical and syntactical awkwardness created by the words "but who would not otherwise compete". However, it is clear from the use of the word "but" that the negative criterion is intended to cut down the scope of persons who fall within the definition of recreational athletes. Further, on its proper construction, the negative criterion operates to exclude from the definition any person who has, in the past five years, competed in a competition or event organised, recognised or hosted by, relevantly, a sporting body such as the AWF. This is so even if the person meets the positive criteria (i.e. he or she engages in the sport in question for recreational purposes).*
66. Mr Knowles SC submitted there was no implication of a level of competition within the 'positive criterion' — that is, that the person must be engaged in the sport activity for a recreational purpose, such as jogging, walking, swimming or playing a game of touch football in the park on Sunday but could not do so as part of a competition. It was submitted that to be engaged in a sport for recreational purposes, the athlete had to be undertaking it 'for fun, enjoyment or as a leisure activity or for the purpose of leisure'. He also said that the definition did not call for a comparison between recreational and professional athletes. He said the words 'who would not otherwise compete' should be read as 'who do not compete in these events'. On SIA's construction any person who competed in an organised sporting activity would not be a recreational athlete. Mr Knowles SC acknowledged that SIA's construction would mean that people who are not high-level athletes would not be captured by the definition.
67. The Tribunal is unable to accept SIA's construction of the definition of the term recreational athlete for the following reasons. First, the Tribunal is of the view that the ordinary meaning of the words 'but who does not otherwise compete' do imply that an athlete engaging in the sport for recreational purposes can do so as part of a competition. The natural meaning of those words is that the athlete does not engage in competition otherwise than as a recreational athlete. Second, as acknowledged by Mr Knowles SC, to exclude from the definition of recreational athlete any athlete who competes would mean that lower-level athletes would be subject to the strict consequences of the NAD Policy applicable to high-level athletes who compete nationally



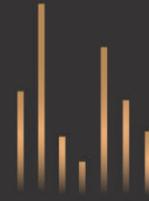
or internationally, including mandatory public disclosure, which was the very mischief sought to be avoided by the creation of a new tier of athlete — the recreational athlete — in the revised WAD Code. Such an interpretation would also be inconsistent with the Australian Parliament's stated intention of introducing amendments to the SIA Act and Regulations which would conform Australia's anti-doping legislation to the WAD Code. Third, SIA's interpretation would be inconsistent with s 19A of the SIA Act (referred to in paragraph 63 above) which states that SIA's CEO is not required to publish a violation if he or she is satisfied it was committed by an individual 'who is an athlete who competes for recreational purposes' and who has neither been a national-level athlete, nor an international-level athlete at any time in the previous five years. It would be contrary to the express terms of s 19A(5), which contemplates that a person may compete in sport for recreational purposes, to construe Article 1.3.5.1 of the NAD Policy, which is a subordinate instrument made under the Act, as meaning that a person who is engaged in competition could not be a recreational athlete.

68. Additionally, as pointed out in supplementary submissions filed by the Athlete, there are several provisions in the WAD Code, which are reproduced in the NAD Policy, which contemplate that a recreational athlete will engage in a level of competition. The definition of 'Athlete' in the Policy, for example, refers to 'any person who competes in sport' and includes 'any person falling within the scope of Article 1.3.1 or 1.3.2' (Article 1.3.1 containing the definition of recreational athlete) Similarly, Article 5.2 of the NAD Policy states that SIA 'shall have *in-competition and out-of-competition* Testing Authority over all Athletes falling within the scope of Article 1.3' (which would include recreational athletes). Article 5.2 therefore contemplates that athletes will participate in a level of competition, as they may be subject to in-competition testing. Additionally, Articles 10.6 and 10.2 of the NAD Policy imply that a recreational athlete may compete because they may be subject to periods of ineligibility from competing.
69. As WADA allowed governments to devise their own definition of the term 'recreational athlete' there is little assistance to be gained from jurisprudence outside Australia. However, for completeness, it should be noted that the definition of 'recreational athlete' in the anti-doping framework in New Zealand, the United Kingdom, the United States and Canada do not suggest that such an athlete does not engage in competition. For example, the definition section of New Zealand's *Sports Anti-Doping Rules 2026* (administered by the Sport Integrity Commission Te Kahu Rauenui) (p. 59) defines a 'recreational athlete' as:

... Any Athlete who is not a National-Level Athlete, High-Level Athlete, or an International-Level Athlete, provided, however, that within the last five years prior to committing any Anti-Doping Rule Violation: (a) the Athlete has not been a National-Level Athlete, High-Level Athlete or an International-Level Athlete; (b) the Athlete has not represented any country in an International Event in an open category; and (c) the Athlete has not been included within any Registered Testing Pool or other whereabouts information pool maintained by any International Federation or National Anti-Doping Organisation.¹⁰

This definition effectively tracks the 2021 WAD Code's five-year exclusion and excludes a 'high-level athlete' category as part of the definition of recreational athlete.

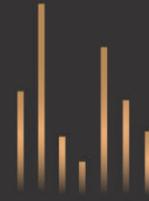
¹⁰ *Sports Anti-Doping Rules 2026* (NZ), 59; 'open category' here is meant to exclude competition that is limited to junior or age group categories.



THE MEANING OF 'RECREATIONAL PURPOSE' WITHIN THE DEFINITION OF 'RECREATIONAL ATHLETE'

70. The Tribunal considers that the relevant issue with respect to the definition of 'recreational athlete' is not whether it excludes athletes who compete, but the meaning of 'recreational purposes', which is not defined. The concept of engaging in sport for 'recreational purposes' under the 2021 WAD Code has not been judicially considered. The ordinary meaning of 'recreation' according to the Oxford Dictionary¹¹ is (a) 'the action or act of refreshing or entertaining oneself through a pleasurable or interesting pastime, amusement, activity, etc. (esp. habitually); amusement, entertainment' (b) 'an activity or pastime which is pursued for the pleasure or interest it provides'. A useful definition of 'recreational sport' appears in s 2 of the *Sport Ireland Act (2015)*, which defines 'recreational sport' as 'all forms of physical activity which, through casual or regular participation, aim at (a) expressing or improving physical fitness and mental well-being, and (b) at forming social relationships.' While each case will turn on its own facts, the Tribunal considers that if the primary purpose for an athlete participating in a sport is for victory, to receive honours and awards, and to progress in rankings and qualification for higher levels of competition, then it is unlikely that the athlete will be participating in the sport for a recreational purpose. However, if the athlete participates in the sport primarily for a range of personal reasons such as personal achievement, interest, pleasure, health benefits, collegiality and social engagement, that would indicate that the athlete's participation in the sport is for recreational purposes, even if the athlete also wins honours and awards as a result of the sporting activity. The Tribunal notes that this assessment will often be a matter of degree, and that an Athlete's primary motivation (and therefore their status as a recreational athlete or otherwise) may change over time.
71. In their Statutory Declaration the Athlete said that they had always enjoyed playing different kinds of sport. Since 2017 the Athlete had played rugby union and other social sports such as OzTag and touch football. They said when they participated in these sports they did not have to comply with any requirements in relation to anti-doping rules and was not provided with any information about anti-doping rules or regulations. The Athlete said when they were in their twenties they would attend the gym, take classes and do body building exercises but did not compete in formal competitions. During the Covid-19 Pandemic the Athlete bought equipment and started doing gym exercises in the courtyard. When the Covid lockdown was over in Sydney the Athlete said they decided they wanted to go to a gym and train with a community. They said they started to join a CrossFit gym and started at [REDACTED]. The Athlete said they loved training at the gym and became friends with a number of people who also trained at the gym. They would train every day and enjoyed the social, physical and mental benefits from staying healthy and being with friends. The Athlete said they competed in local CrossFit competitions but was not subject to any drug testing requirements. The Athlete started training for weightlifting at the same gym. Their friends at the gym encouraged them to compete in weightlifting and the Athlete competed in their first informal in-house weightlifting competition on [REDACTED], 'won the competition and had a lot of fun.' The Athlete said they competed in their first formal weightlifting competition in [REDACTED].

¹¹ Oxford Dictionary (online at 9 December 2025) 'recreation'.



72. The Athlete gave the following evidence in their Statutory Declaration as to their reason for participating in the sport:

The main purpose of participating in the competitions, for me, was pushing myself to get better each time. I enjoyed the challenge of trying to improve and the competition environment was exciting. I did not have any plans to turn professional, or try to make a living out of being a weightlifting athlete.

My main enjoyment from participating in weightlifting came, and still does come, from the community I am involved in, training with my friends every day and spending time with them. Being at a gym and training is such an integral part of my life, and I would never jeopardise my ability to do this by taking a prohibited substance and exposing myself to the possibility that I may be banned from training in the sport.

...

Sport is not my livelihood. I am not trying to make the Olympic (sic). I play sport because I love doing it and it helps to keep my body and my mind healthy, and I enjoy staying active with my friends and being involved in sporting communities. I love training in gyms, and the community that comes with being a member of a gym and seeing my friends on a daily basis.

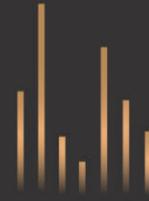
73. The Tribunal is satisfied that the Athlete was participating in the sport for personal achievement, interest, pleasure, health benefits, collegiality and social engagement. The Tribunal accordingly considers that the Athlete was competing for recreational purposes and, therefore, falls within the definition of a recreational athlete for the purpose of the NAD Policy.

Issue 3: Whether the Athlete has established that the ADRV(s) were not ‘intentional’ (noting that if the Athlete meets this burden, the period of ineligibility imposed as a sanction upon the Athlete is reduced from 4 years to 2 years)

74. The Metabolite GW1516 is classified as a Non-Specified Substance under the Prohibited List 2024 and is prohibited at all times. The applicable sanction for an ADRV of Presence and/or Use of a Non-Specified Substance under Article 10.2.1.1 of the NAD Policy is a 4-year period of ineligibility unless the athlete can establish that the ADRV was not intentional (see paragraph 35 above). If the athlete can establish that the ADRV was not intentional, the sanction is reduced to a 2-year period of ineligibility under Article 10.2.

75. A comment to Article 10.2.1.1 in the NAD Policy states:

While it is theoretically possible for an Athlete or Other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one’s system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance.



76. In reliance on *WADA v Jack & Swimming Australia*¹² the Athlete's submissions contended that to establish that the ADRV was not intentional would require the Athlete to disprove on the balance of probability: (a) culpable intent or (b) recklessness. Although *Jack* was decided under a version of the Code which did not include the comment mentioned in the previous paragraph, the approach taken by the Panel in that case is instructive. In summary, the Panel concluded:

1. *There is not a "absolute requirement" that an athlete prove the source or mechanism by which a prohibited substance entered his or her system: at [109];*
2. *That said, "it [is] significantly more difficult but not impossible to succeed if [an athlete is] unable to show how they came into contact with the Prohibited Substance": at [136];*
3. *The fact that there is no direct evidence of intentional use of a prohibited substance, and the fact that an athlete has no prior record of doping are not decisive factors: at [124];*
4. *Speculation, protestations of innocence and character references are "not sufficient proof": at [133];*
5. *Although scientific or other evidence may be difficult or even impossible to obtain, it is an error to give an athlete faced with that difficulty the same benefit that they would have obtained had the athlete found and presented that evidence: at [133];*
6. *What the athlete is required to prove, to the balance of probabilities, is both an absence of "culpable intent" and "recklessness": at [153]; and*
7. *Decision makers should be "disinclined to give weight to uncorroborated assertions of the accused and persons close to him or her": at [172].*

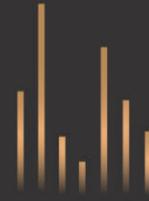
77. Additional cases confirm that it is unlikely that an athlete will satisfy the burden of proving an ADRV is not intentional in the relevant sense unless they are able to show the source or mechanism by which the prohibited substance entered their system.¹³ The position was usefully summarised by the Court of Arbitration for Sport in *Jensen v World Rugby*¹⁴ where the Panel also expressly confined cases such as *Jack* (with citations omitted):

[T]here exists an extensive and consistent line of CAS awards holding that establishing the origin of the Prohibited Substance is a crucial, almost indispensable element for an athlete to disprove intent, the absence of which leaves only "the narrowest of corridors

¹² *World Anti-Doping Agency v Swimming Australia, Sport Integrity Australia & Shayna Jack (Arbitral Award)* (Court of Arbitration for Sport, CAS 2020/A/7579, 16 September 2021); *Sport Integrity Australia v Shayna Jack & Swimming Australia Limited (Arbitral Award)* (Court of Arbitration for Sport, CAS 2020/A/7580, 16 September 2021).

¹³ see, eg, *United States Anti-Doping Agency v Kensey McMahon (Final Award)* (New Era Alternative Dispute Resolution, NE ADR Case No 2023082101, 31 May 2024); *World Anti-Doping Agency v Russian Anti-Doping Agency & Kamila Valieva (Arbitral Award)* (Court of Arbitration for Sport, CAS 2023/A/9456, 29 January 2024); *United States Anti-Doping Agency v Nicholas Dondzila (Final Award)* (New Era Alternative Dispute Resolution, NE ADR Case No 24072501, 23 May 2025).

¹⁴ *Jensen v World Rugby (Arbitral Award)* (Court of Arbitration for Sport, CAS 2023/A/9377, 4 December 2023) 26–7 [66] (citations omitted).

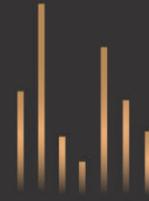


through which such athlete must pass to discharge the burden which lies upon him”... On the contrary, there are only a few cases at CAS that would comfortably support a deviation from this general rule that the athlete is highly unlikely to be able to disprove intent in the absence of a credible identification of the source. These few cases ... in which a lack of intent can be affirmed without the athlete establishing the source of the Prohibited Substance are outliers. No one case is exactly the same as another and it will inevitably present its own human, factual, and scientific particulars that invite a substantial degree of caution from Panels when determining how and to what extent the reasoning in those outlier cases can be extended to other circumstances. Cases such as Jack, where the non-intentional character of the ADRV is established in the absence of establishing the source of the Prohibited Substance, are, by large, exceptional cases.

78. The Athlete accepts that they are unable to ‘definitively identify’ the source of the Prohibited Substance. Rather they contend that the source is likely to be through the transmission of bodily fluids from a previous sexual partner whom they had reasonable grounds to believe was using steroids and other performance enhancing substances. The Athlete said they had only become aware of their former partner’s use of steroids and other prohibited substances after receiving the Notice of ADRVs.
79. The Athlete submitted that scientific evidence and other anti-doping decisions establish that a Prohibited Substance may pass through the exchange of bodily fluid whether by kissing or sexual activity. Additionally, it was contended that although the Athlete has declined to identify their previous sexual partner, nor call them as a witness to this arbitration, the Tribunal ought not draw a negative inference against the Athlete because of the coercive and controlling nature of their relationship with them, and the Athlete’s reluctance to have any further involvement or contact with them.
80. SIA submitted that the Athlete’s explanation for how they ingested the Prohibited Substance is no more than speculation or conjecture and should not be accepted for the following reasons.

First, the [Athlete’s] contention falls at the first hurdle because there is no evidence at all that their previous sexual partner consumed GW1516. The highest the evidence goes is that the [Athlete] states that they were aware that [the partner] had taken steroids prior to their relationship, but the Athlete “does not know” if they was taking them during the relationship, and “it is possible they could have been taking other substances”: Athlete’s Statutory Declaration at [57]-[58]. Bearing in mind that GW1516 is not a steroid, a fair assessment of the evidence is that it goes no further than saying that it is possible, but is not shown to be probable, that the former partner took prohibited substances during their relationship and the [Athlete] has no basis to know whether this included GW1516.

Secondly, the [Athlete] has not obtained evidence from their former partner. the Athlete has explained the reasons for this, and SIA do not take issue with those reasons: AS [61]. No negative inference can be drawn. However, the [Athlete] bears the onus of proof. As the Panel in Jack made clear at [133], the fact that evidence is unavailable or difficult to obtain, does not mean that a positive inference should be drawn in favour of a person in the position of the [Athlete] or that they should be treated as if exculpatory evidence was before the Tribunal.



Thirdly, and critically, there is no scientific evidence available to support the theory of contamination via sexual intercourse. The [Athlete] relies on other anti-doping decisions where it has been accepted that there was contamination between intimate partners: AS [60]. However, the outcome in those cases necessarily turns on the evidence before the decision-maker in each case. They also do not involve GW1516. In this case there is no scientific evidence to establish the following matters:

1. Is GW1516 capable of transmission via intercourse or other intimate activities?
2. Is the detection of the metabolite GW1516-sulfoxide in urine consistent with the theory of transmission via intercourse?
3. Was the concentration of the metabolite GW1516- sulfoxide in the [Athlete's] sample consistent with the theory of transmission via intercourse?
4. Is the timing and frequency of intercourse (which is unclear on the lay evidence) consistent with the theory of transmission via intercourse?

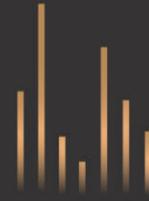
In the absence of evidence, these matters cannot simply be assumed in the [Athlete's] favour because scientific evidence would be expensive or difficult to obtain. The theory of transmission via sexual intercourse is mere speculation or conjecture.

Fourthly, the [Athlete's] own evidence demonstrates alternative possible sources of contamination which are, at the very least, equally plausible sources of the prohibited substance. Specifically, the [Athlete's] evidence is that they took no fewer than 10 sports supplements. The Athlete not obtained tests of samples of these supplements. It is not known whether they are the source of the substance. Concerningly, the Athlete continued to use those supplements even though they were not listed on SIA's portal and, therefore, the Athlete was unable to confirm they contained no prohibited substances: Applicant's Statutory Declaration at [49]-[50].

Fifthly, the [Athlete] contends that the ADRVs are an isolated event, and this is the first time they have tested positive: AS [65]. No weight can be given to this contention because the [Athlete] does not have a long history of negative test results: cf Jack at [130]. The Athlete competed in their first weightlifting event in [REDACTED] and tested positive less than 3 months later.

Sixthly, the fact that the Athlete is an amateur athlete does not significantly reduce the likelihood of their ADRVs not being "intentional". Athletes at all levels can and do take performance enhancing drugs. There may be a variety of motivating factors for this behaviour, but the lack of financial incentive for amateur athletes cannot be determinative.

Seventhly, consistently with the approach in previous cases, the Tribunal should give limited weight to protestations of innocence by the [Athlete].

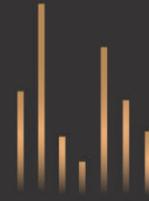


Accordingly, the Tribunal should not accept that the [Athlete] has proven, on the balance of probabilities, that their ADRVs were not “intentional” in the relevant sense.

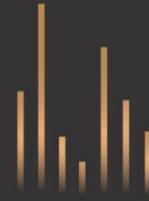
81. SIA’s submissions should be accepted. As other Tribunal decisions turn on their own facts and circumstances they do not provide significant assistance to the Tribunal in assessing whether the Athlete’s commission of the ADRVs was intentional. The Tribunal cannot attribute any weight to evidence of a relationship where the other party is not called as a witness but also not identified. To the extent that it is necessary for a recreational athlete to prove the absence of intent by establishing the source of the Prohibited Substance the Athlete has failed to do so. Accordingly, the mandatory period of 4 years ineligibility cannot be reduced to 2 years under Article 10.6 of the NAD Policy. However, as a recreational athlete the Athlete may be eligible to a reduced sanction under Article 10.6. This is considered further under Issue 4.

Issue 4: Whether the Athlete has demonstrated that he or she bears ‘no significant fault or negligence’ for the ADRV(s) and, if so, what effect should that finding have on the period of ineligibility imposed.

82. Pursuant to Article 10.6, where the Athlete can establish ‘No Significant Fault or Negligence’ the Tribunal has a discretion to reduce the period of ineligibility to, at a minimum, a reprimand and no period of ineligibility and a maximum of 2 years ineligibility (see paragraphs 36 to 39 above). The definition of ‘No Significant Fault or Negligence’ directs the Tribunal to consider the ‘totality of the circumstances’ and to take into account the criteria for ‘No Fault or Negligence’ (see paragraph 37 above). The criteria of ‘No Fault or Negligence’ is that the Athlete ‘did not know or suspect, and could not reasonably have known or suspected even with the exercise of the utmost caution, that he or she had Used or been administered the Prohibited Substance’ (see paragraph 38 above). This definition establishes a high bar. However, it is implicit in the definition of ‘No Significant Fault or Negligence’ that this is just one criterion to be considered in determining whether the degree of fault was significant. The Tribunal considers that the definition imposes an obligation on the Tribunal to take into account whether the Athlete positively knew or suspected, in the sense that they intended the ADRV to occur. Under the definition of ‘Fault’ the Tribunal is also to consider the ‘totality of circumstances’ such as any breach of duty or any lack of care appropriate to a particular situation, the Athlete’s experience, the degree of risk that they should have perceived and the level of care and investigation they exercised in relation to what should have been the perceived risk. In assessing the Athlete’s degree of fault, the circumstances considered must be specific and relevant to explain the Athlete’s departure from the expected standard of behaviour (see paragraph 39 above).
83. It is relevant to note that the definitions of ‘No Significant Fault or Negligence’ and ‘No Fault or Negligence’ in Appendix 1 do not require the Athlete, as a recreational athlete, to establish how the Prohibited Substance entered their body. Rather, as explained above, in assessing whether the Athlete has demonstrated No Significant Fault or Negligence the Tribunal is required to consider the ‘totality of circumstances’ including whether they positively knew or suspected the ADRV.



84. SIA's primary submission was that because the Athlete was not a recreational athlete they are not entitled to the benefit of the reduced sanction regime established by Article 10.6. In the alternative, it submitted that if the Athlete was a recreational athlete, or even if they could establish lack of intentionality and the source of the Prohibited Substance, they would not be eligible for the benefit of Article 10.6.2 (or Article 10.6.1.3) because of the level of fault involved in their ADRVs. In this regard, SIA relies on the Athlete's evidence that they continued to use supplements even though they were not listed on the online portal and, as a result, they were unable to confirm whether they contained a Prohibited Substance: Athlete's Statutory Declaration at [49]-[50]. It was submitted that this oversight was telling in circumstances where the Athlete had completed anti-doping education modules and could be presumed to be aware of the risk of using supplements.
85. The Athlete's Statutory Declaration states that they did not intentionally consume a Prohibited Substance. The Athlete said prior to the first competition in [REDACTED] they 'completed some online training about anti-doping matters, where I understood that you have to account for everything that goes into your body and you should not share things with people.' The Athlete said after this training they looked up the supplements they had been taking on an online portal they had been directed to. The Athlete said that some of the supplements did not appear on the portal, however they checked the 'ingredients in the listed supplements and was satisfied those supplements did not contain any banned ingredients. I also made a decision, based on my limited financial resources that I did not want to throw away my current supplements, which I had purchased in bulk.' The Athlete said they did not have the financial resources to undertake further testing of the substances. They said they found most of the supplements they were taking on the portal. The Athlete said they looked up the protein powder they were taking which is 'ATP Science' and collagen. The Athlete said they searched the ingredients and they did not appear to be prohibited. They said they knew that creatine was allowed but the particular brand they were using, ATP Science, was not on the portal. However, the Athlete said that as they had spent hundreds of dollars on supplements they were not prepared to throw them out for a local weightlifting competition.
86. The Athlete's Statutory Declaration also said that because they were blood tested during their first competition on [REDACTED] with a spot test and was not positive for banned substances they assumed that the supplements they were taking did not contain banned substances.
87. During cross-examination the Athlete said that they took the supplements listed in paragraph 50 of their Statutory Declaration every day and was still taking them once or twice a week. The Athlete said they did not necessarily take the supplements for assistance with performance. For example, they said protein does not necessarily enhance performance but they took it to fuel their muscles. The Athlete said in the lead up to competitions they did not take some of the supplements. They said that the anti-doping education training recommended to search the supplements they were taking on the 'app', which they explained was a reference to the portal maintained by SIA. The Athlete said they looked up the brand and then when the brand did not come up they looked up the ingredients. The Athlete also said they had difficulty using the portal. They said they relied on the labels on the supplements to accurately list the ingredients and did not consider they would be inaccurate. The Athlete said when the ingredients were not shown they were not prepared to throw the supplements out, which were worth four or five hundred dollars, because they were not certified by Human and Supplement Testing Australia (**HASTA**).



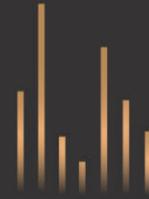
The Athlete said they thought they were not a high-level athlete and they had done enough due diligence. The Athlete said they were ignorant on how strict they should have been.

88. SIA did not address in any detail the type of education the Athlete would have received in relation to taking supplements. In paragraph 29 (above) the Tribunal has referred to the warnings that currently appear on the SIA website about ADRVs. The SIA website also currently has warnings about taking supplements including the following:

Supplement tips to remember

- *No supplement is 100% safe: the best way to reduce risks is to avoid supplements entirely.*
- *Consider food-first and seek professional advice from experts like an accredited doctor, nutritionist or dietitian to help find out if you even need supplements.*
- *If you must use supplements, make sure they're batch-tested. Download the Sport Integrity App now and use the supplement checker before taking any supplement.*
- *Keep evidence of any supplement you research and take. Keep screenshots of your supplement check on the Sport Integrity App and record specific batch numbers and expiry dates.*
- *Avoid higher-risk supplements, including those made in China, India or the USA. Beware of products such as muscle-builders, fat-burners and pre-workouts.*
- *Don't fall for marketing hype such as bold claims in advertising or on the packaging. You can check every ingredient on the labels but you need to beware some ingredients may not be listed or may have alternative names.*
- *Check if the seal, pack and cap of the supplement is intact before using the product.*
- *If you have an anti-doping test, list all supplements you have used on your doping control documentation.*
- *Review any supplement use regularly to check if you still need it.*
- *Stay informed: access our free education tools and resources. (underlining added)*

89. In considering the 'totality of the circumstances' the Tribunal is satisfied that the Athlete did not positively know or intend the ADRVs and it also takes into account their relative lack of experience, financial resources and the assumption they said they formed namely, that because the blood test was not positive they thought the supplements they were taking did not contain a Prohibited Substance. In respect of the latter, it should be noted that although the Athlete's Statutory Declaration mentioned this assumption they were not cross-examined on it, nor did SIA submit evidence to establish the difference between a blood test and a urine test so that the Athlete's assumption remained unchallenged. However, the Tribunal considers that in ingesting supplements which were not listed on the SIA portal the Athlete must have appreciated the risk that they may contain a Prohibited Substance. Although the SIA did not submit evidence about the nature of the training the Athlete received it may be assumed from the warning which appears



on the SIA website (referred to in paragraph 88 above) that the training would have covered the risk of ingesting supplements and relying on ingredients on labels. The Tribunal, therefore, considers the Athlete fully appreciated there was a risk that the supplements they were taking, may contain a Prohibited Substance. It was not sufficient in the Tribunal's view for the Athlete to rely on searching the ingredients on the SIA portal as they would have been aware that the ingredients described in the supplements may not be accurate. The Athlete was also prepared to keep taking the supplements after the first blood test even though they knew some were not HASTA approved. It was not sufficient in the Tribunal's view for the Athlete to take the view that they had 'done enough,' because they were not a high level athlete, to ensure the supplements did not contain a Prohibited Substance. In all the circumstances the Tribunal considers that the Athlete has satisfied the standard of 'No Significant Fault or Negligence' and is therefore eligible to have the sanction of 4 years reduced. However, in assessing an appropriate sanction the Tribunal considers the Athlete's degree of fault to be at the higher end and, therefore, considers it appropriate to impose a 2 year period of ineligibility.

PUBLIC DISCLOSURE OF THE ADRVs

90. Article 14.3.2 of the NAD Policy requires SIA and the AWF to publicly disclose the disposition of an anti-doping violation including the name of the athlete, the sport, the anti-doping rule violated, the Prohibited Substance and the consequences imposed. However, this is subject to Article 14.3.7 which provides:

The mandatory Public Disclosure required in Article 14.3.2 shall not be required where the Athlete or Other Person who has been found to have committed an anti-doping rule violation is a Minor, Protected Person or Recreational Athlete. Any optional Public Disclosure in a case involving a Minor, Protected Person or Recreational Athlete shall be proportionate to the facts and circumstances of the case.

91. Section 49 of the *National Sports Tribunal (Practice and Procedure) Determination 2024 (NST Determination)* provides:

Publication of determinations

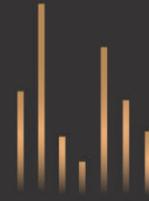
(1) In accordance with the relevant anti-doping policy and subject to subsections (4) and (5), the CEO is to publish all determinations of the Anti-Doping Division, including the reasons for those determinations.

(2) The Tribunal member who prepared the determination may recommend to the CEO that the CEO publish a version of the determination containing a pseudonym so that a witness is not able to be identified.

(3) A pseudonym is not to be applied to protect the identity of a party to the dispute.

(4) Where the Tribunal has determined that a minor, a protected person, or a recreational athlete against whom an anti-doping rule violation has been asserted has committed the anti-doping rule violation, the CEO:

*(a) is not to publish the determination or its reasons unless the applicant consents;
but*



(b) may publish information about the outcome of the matter that is proportionate to the facts and circumstances of the case.

*(4A) In this section, **minor, protected person and recreational athlete** have the same meanings as those expressions in the anti-doping policy of the sporting body to which the applicant belongs.*

(5) Where the Tribunal has determined that the person against whom an anti-doping rule violation has been asserted has not committed the anti-doping rule violation, the CEO is not to publish the determination or its reasons unless the applicant for arbitration consents, and may do so in its entirety or in such redacted form as the applicant may approve.

(6) Subsection (5) does not prevent the CEO publishing, on the Tribunal's website, that the decision has been appealed or, with the consent of the applicant, a summary of the decision.

(7) Where feasible, a summary published under subsection (6) should not contain information that would identify the parties, or that could reasonably identify the parties, unless the parties agree to be named.

92. The Athlete contends that should the Tribunal find they are a recreational athlete, it should exercise its discretion not to publish further information about the matter. As the Tribunal has determined that the Athlete is a recreational athlete s 49(4) of the NST Determination applies. The Tribunal has a discretion under s 49(2) to recommend to the NST CEO that it publish a pseudonym to protect the identity of a witness but does not otherwise have a discretion to make a recommendation concerning the publication of information about the proceedings. This is entirely a matter for the NST CEO. Similarly, Article 14.3.7 of the NAD Policy does not confer a discretion on the Tribunal concerning the publication of information about the proceeding. That Article is directed solely to the publication of information by SIA and AWF who, in the case of a recreational athlete, are directed to make a publication proportionate to the facts and circumstances of the case.

DIRECTIONS FOR CONFIDENTIALITY

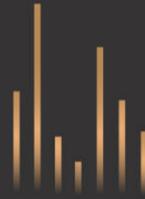
93. There was medical evidence before the Tribunal relating to the Athlete's health. The medical records were personal and confidential. The Tribunal has power pursuant to s 41 of the NST Determination to give directions restricting the disclosure of evidence or information about evidence. Section 41 provides:

41 Directions for confidentiality of information before the Tribunal

(1) The CEO or Tribunal member (as relevant) may, on application by a party to the dispute, give directions prohibiting or restricting the publication or other disclosure of information that relates to a dispute and is any of the following:

(a) information that comprises evidence or information about evidence;

(b) information lodged with or otherwise given to the Tribunal.

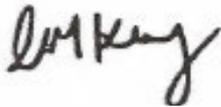


94. The medical evidence was provided by way of background and was not relevant to the determination of whether the Athlete committed the ADRVs of Use and Presence or to the sanctions imposed by the Tribunal. It has, therefore, not been necessary to refer to that evidence. Accordingly, no order for confidentiality is required.

THE TRIBUNAL THEREFORE DETERMINES:

1. That [REDACTED] has committed the following Anti-Doping Rule Violations:
 - (a) Presence of a metabolite of the prohibited substance GW1516 (GW501516) on 23 June 2024; and
 - (b) Use of a metabolite of the prohibited substance GW1516 (GW501516) on 23 June 2024.
2. That a period of 2 years ineligibility be imposed on [REDACTED] commencing on 23 June 2024.
3. That the results achieved by [REDACTED] during the period from 23 June 2024 to 5 September 2024 should be disqualified and all medals, points and prizes obtained during that period forfeited.

Date: **22 December 2025**



Signature

Dr Caroline Kenny KC (Chair)



Signature

Dr Larissa Trease



Signature

Mr Peter Kerr AM