



ATHLETE WHEREABOUTS POLICY

POLICY AUTHORITY & MONITORING

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1. Introduction and Scope

- 1.1. The *Australian Sports Anti-Doping Authority (ASADA)* has the role and responsibility of a *National Anti-Doping Organisation (NADO)* for Australia under the UNESCO International Convention Against Doping in Sport and the *World Anti-Doping Code (the Code)*.
- 1.2. The signatories to the UNESCO International Convention Against Doping in Sport recognise that effective *Out-of-Competition Testing* programmes are essential to the fight against doping in sport. They also recognise that effective *Out-of-Competition Testing* requires accurate and complete *Athlete whereabouts information (Whereabouts Filing)*.
- 1.3. As a *NADO* under the *Code*, ASADA has a number of responsibilities relating to *Whereabouts Filing*, including the establishment of a national *Registered Testing Pool (RTP)*, the setting of *Whereabouts Filing* requirements and policies and the development of systems and procedures to collect, monitor and manage *Whereabouts Filing*. ASADA also has a responsibility to notify *Athletes* of their rights and responsibilities in relation to the provision of *Whereabouts Filings*.
- 1.4. As a result, the *Code*, the *ASADA Act 2006* and *ASADA Regulations*, which contain the *National Anti-Doping (NAD) scheme*, requires certain *Athletes* to provide current and accurate *Whereabouts Filing* to enable *Athletes* to be located for *Out of Competition Sample* collection.
- 1.5. The 2009 *Code* harmonizes the area of athlete whereabouts, by requiring *Anti-Doping Organisations (ADOs)* to implement the standardized whereabouts requirements set out in the International Standard for Testing. As a result, all *Athletes* in an *RTP* are subject to the same whereabouts requirements, which means that *Whereabouts Failures* declared against such an *Athlete* can be recognized and aggregated for purposes of determining violations of *Code* Article 2.4¹ (whereabouts anti-doping rule violation (*ADRVs*)).
- 1.6. This document, and accompanying attachments, describes ASADA's policy with regards to the following:
 - (a) collecting, maintaining and monitoring adequate and accurate *Whereabouts Filing* to ensure that *Sample* collection can be planned and conducted at *No Advance Notice* for all *Athletes* included in ASADA's *RTP*;

¹ Code Article 2.4 makes a violation of the applicable requirements for Athlete availability for Out Of Competition Testing, including failure to file required whereabouts information and missed tests which are declared based on rules which comply with the International Standard for Testing.

and

- (b) determining ADRVs in accordance with Code Article 2.4 and entering the name and details of an *Athlete* onto ASADA's *Register of Findings (ROF)* as a result of an *Athlete*:
 - (i) failing to comply with a request to inform ASADA of their location (also known as a *Filing Failure*); and/or
 - (ii) as a result of an *Athlete* failing to be located for collection of a *Sample* after being requested to provide their location (also known as a *Missed Test*)
- (c) determining ADRVs and entering the name and details of an *Athlete* onto ASADA's *ROF* as a result of an *Athlete* providing fraudulent information in his/her *Whereabouts Filing*, whether in relation to his/her location during the specified daily nominated hour, or in relation to his/her whereabouts outside that time slot, or otherwise under Code Article 2.3² and/or Code Article 2.5³.

1.7 Transitional arrangements:

ASADA will, for the purposes of *Whereabouts Failures* under this Policy, consider any *Whereabouts Failures (Declarations)* declared under ASADA's 2006 Athlete Whereabouts Policy and it will consider other *Whereabouts Failures* declared by ADOs in accordance with the International Standard for Testing (2009)⁴.

² Code Article 2.3 is an ADRV of refusing or failing without compelling justification to submit a *Sample* collection after notification as authorised in applicable anti-doping rules, or otherwise evading *Sample* collection.

³ Code Article 2.5 is an ADRV of Tampering or Attempted Tampering with any part of *Doping Control*.

⁴ The January 2009 version of the *International Standard for Testing*, including (without limitation) the provisions relating to the combination of *Whereabouts Failures* declared by different ADOs for the purposes of Code Article 2.4, shall apply in full to all *Whereabouts Failures* occurring after 1 January 2009.

Where an *Athlete* has failed to comply with any whereabouts requirements declared in accordance with the then-applicable rules of the ADO in question in the 18-month period up to 1 January 2009, questions about whether such failures may be combined with each other and/or with post-1 January 2009 *Whereabouts Failures* for purposes of Code Article 2.4 shall be determined by reference to Code Article 25.2.

[Comment: Nothing precludes an ADO providing in its rules that it will recognise whereabouts violations declared by other ADOs, even prior to 1 January 2009, where such whereabouts violations are made public by the ADO(s) in question. Furthermore, an ADO may put an Athlete on notice that whereabouts failures committed subsequent to the notice but prior to 1 January 2009 will be combined with Whereabouts Failures committed after 1 January 2009 for purposes of Code Article 2.4.]

2. Definitions

ADAMS means the Anti-Doping Administration and Management System which is a Web-based database management tool for data entry, storage, sharing, and reporting designed to assist stakeholders and WADA in their anti-doping operations in conjunction with data protection legislation.

Anti-Doping Organization (ADO) means a ‘Signatory’ that is responsible for adopting rules for initiating, implementing or enforcing any part of the *Doping Control* process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, other *major event organizations* that conduct *Testing* at their events, WADA, International Federations, and *National Anti-Doping Organizations*.

ADRV means an anti-doping rule violation as defined in clause 2.0 of the NAD scheme.

ADRV Committee means a Committee of ASADA Members who have been delegated powers pursuant to section 47 of the ASADA Act to determine possible anti-doping rule violations.

Alternative Location means a location, other than a regular location, training camp or competition venue.

Athlete has the same meaning given in clause 1.06 of the NAD scheme.

Athlete Whereabouts Online System means ASADA’s *Athlete Whereabouts* online system, accessible through the ASADA website at www.asada.gov.au.

ASADA means the Australian Sports Anti-Doping Authority, a body corporate established by section 6 of the Australian Sports Drug Agency Act 1990 and continued in existence by force of section 20(2) of the ASADA Act.

ASADA Act means the *Australian Sports Anti-Doping Authority Act 2006 (Cth)*.

ASADA Chair means the Chair of the ASADA.

ASADA Regulations means the *Australian Sports Anti-Doping Authority Regulations 2006 (Cth)*.

ASC means the Australian Sports Commission.

Authorised Representative means a person nominated by the *Athlete* to submit and update their *Whereabouts Filing*, directly to ASADA, on their behalf.

Code means the *World Anti-Doping Code* in force at the date of this document as amended from time to time.

Competition means a sporting event or a series of sporting events.

Doping Control Officer (DCO) means an official who has been trained and authorised or contracted by ASADA with responsibility for the on-site management of a *Sample* collection session.

Doping Control means all steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in between such as provision of whereabouts information, *Sample* collection and handling, laboratory analysis, therapeutic use exemptions, results management and hearings.

Filing Failure means a failure by the *Athlete* (or by a third party to whom the *Athlete* has delegated this task, in accordance with Clause 3.9 or Clause 3.14) to make an accurate and complete *Whereabouts Filing* in accordance with Clause 3.

Fraudulent information means information that is knowingly false, intended to deceive.

In-Competition means that unless provided otherwise in the rules of an International Federation or other relevant *ADO*, "*In-Competition*" means the period commencing twelve hours before a *Competition* in which the *Athlete* is scheduled to participate through the end of such *Competition* and the *Sample* collection process related to such *Competition*.

International Federation (IF) means an international sporting federation, and in relation to a particular type of sporting event or sporting activity, means a body having international control over that sport or sporting event.

Missed Test means a failure by the *Athlete* to be available for *Testing* at the location and time specified in the nominated hour identified in his/her *Whereabouts Filing* for the day in question.

NADO (National Anti Doping Organisation) means the entity(ies) designated by each country as possessing the primary authority and responsibility to adopt and implement anti-doping rules, direct the collection of *Samples*, the management of test results, and the conduct of hearings, all at the national level. This includes an entity which may be designated by multiple countries to serve as regional *ADO* for such countries. If this designation has not been made by the competent public authority(ies), the entity shall be the country's National Olympic Committee or its designee.

National Anti- Doping scheme (NAD scheme) as prescribed by Regulation 3 of

the ASADA Regulations.

National Sporting Organisation (NSO) and in relation to a particular sport, means:

- (a) a sporting organisation that is recognised by the *IF* that has international control over the sport as being the organisation responsible for administering the affairs of the sport, or of a substantial part or section of the sport, in Australia or in another country; or
- (b) whether or not there is an *IF* that has international control over the sport—a sporting organisation that is recognised by the *ASC*, or is generally recognised, as being responsible for administering the affairs of the sport, or of a substantial part or section of the sport, in Australia or in another country.

No Advance Notice means a *Doping Control* which takes place with no advance warning to the *Athlete* and where the *Athlete* is continuously chaperoned from the moment of notification through *Sample* provision.

Out-of-Competition means any *Doping Control* which is not *In Competition*.

Register of Findings (ROF) mentioned in clause 13 (1) (i) of the ASADA Act, and maintained by ASADA under Division 4.3 of the *NAD scheme*.

Registered Testing Pool (RTP) means the pool of *Athletes* established by ASADA, who are subject to this Policy and both *In-Competition* and *Out-of Competition Sample* collection as part of ASADA's test distribution plan, in accordance with the criteria set out in Attachment A.

Responsible ADO means the *Anti-Doping Organisation* with responsibility for a particular whereabouts matter.

Sample means any of the following:

- (a) any *human* biological fluid;
- (b) any human biological tissue (whether alive or otherwise);
- (c) any human breath.

Sporting Administration Body (SAB) means:

- (a) the International Olympic Committee; or
- (b) WADA; or
- (c) a NADO as defined in the *Code*; or
- (d) a foreign sporting organisation; or
- (e) an NSO; or
- (f) a sporting organisation; or
- (g) a tribunal, committee or other investigative body that is associated with a

body referred to in one or more of paragraphs (a) to (f) above; or
(h) ASC.

Support person has the same meaning given to it in clause 1.07 of the *NAD scheme*.

Team Sport means a sport in which the substitution of players is permitted during a *Competition*.

Testing means the parts of *Doping Control* process involving test distribution planning, *Sample* collection, *Sample* handling, and *Sample* transport to the laboratory.

Unsuccessful Attempt means a failed attempt to obtain a *Sample* from an *Athlete* based on the one hour period at one specific location provided by the *Athlete* to ASADA in their *Whereabouts Filing*

Whereabouts Failure (also referred to as a '*declaration*' under the *NAD scheme*) means a *Filing Failure* or a *Missed Test*.

Whereabouts Filing: Information provided by or on behalf of an *Athlete* in a *RTP* that sets out the *Athlete's* whereabouts during the following quarter, in accordance with Clause 3.

WADA means the World Anti-Doping Agency established in November 1999 under the law of Switzerland.

Italicised terms are those terms defined in Clause 2, Definitions.

When a time period is referred to in a number of days, in this context days refers to calendar days not working days.

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3. Whereabouts Filing Requirements

- 3.1 ASADA will establish an *RTP* and **Attachment A** sets out ASADA's current criteria for the inclusion of *Athletes* in ASADA's *RTP*. *Athletes* will be advised in writing by ASADA of their inclusion in ASADA's *RTP*. *Athletes* will be advised of their obligations once included in the *RTP*. If ASADA asks an intellectually disabled *Athlete* to provide Whereabouts Information, ASADA must give at least one of the following persons oral or written notice that ASADA has made the request;
- (a) the athlete's spouse;
 - (b) the athlete's parent or guardian;
 - (c) the athlete's coach;
 - (d) a representative of a relevant sporting administration body
- 3.2 An *Athlete* included in ASADA's *RTP* shall continue to be subject to the *Athlete Whereabouts Filing* requirements specified from time to time unless and until;
- (a) The *Athlete* is given written notice by ASADA stating that he/she is no longer in ASADA's *RTP*; or
 - (b) The *Athlete* gives notice in accordance with the relevant rules of the *Athlete's IF, NSO* and/or ASADA under clause 3.19 of the *NAD scheme* ('Retired Athletes'), as the case may be, of their retirement from competition.
- 3.3 NSOs shall be required to provide to ASADA personal details of an *Athlete* from its sport on the *RTP* as follows:
- (a) first name;
 - (b) surname;
 - (c) gender;
 - (d) date of birth
- Any changes to an *Athlete's* personal information, as described in this Clause 3.3, can only be effected by ASADA upon written notification by the *Athlete's NSO*.
- 3.4 NSOs shall also be required to provide initial contact details for an *Athlete* which shall include, but is not limited to:
- (a) primary residential address;
 - (b) primary mailing address;
 - (c) primary contact telephone numbers;
 - (d) coach details;
 - (e) team doctor details (if applicable); and
 - (f) primary email address (if applicable).

- 3.5 ASADA will specify a date, that is prior to the first day of each quarter (each quarter starts on 1 January, 1 April, 1 July and 1 October of each year), by which an Athlete in the RTP must lodge a *Whereabouts Filing* with ASADA (if the Athlete has been included in the RTP) that contains at least the following information:

[Comment: If an Athlete is included in both an international RTP and ASADA's RTP then, unless advised by ASADA otherwise the Athlete should continue to abide by the applicable rules of each organization. When arrangements have been made between ASADA and an IF, for the submission of Whereabouts Filings, ASADA will advise the Athlete accordingly].

- a. complete mailing address where correspondence may be sent to the Athlete for formal notice purposes. Any notice or other item mailed to that address will be deemed to have been received by the Athlete five working days after it was deposited in the mail;

[Comment: For these purposes, the Athlete should specify an address where he/she lives or otherwise knows that mail received there will be immediately brought to his/her attention. ASADA also supplements this basic provision with other notice and/or "deemed notice" provisions in its rules (for example, permitting use of fax, email, SMS text or other methods of service of notice; permitting proof of actual receipt as a substitute for deemed receipt; allowing notice to be served on the Athlete's NSO if it is returned undelivered from the address supplied by the Athlete). The aim of such provision is to shorten the results management timelines set out in Clause 7].

- b. details of any disability of the Athlete that may affect the procedure to be followed in conducting a Sample collection session;
- c. specific confirmation of the Athlete's consent to the sharing of his/her *Whereabouts Filing* with other ADOs having authority to test him/her: see Code Article 14.6;
- d. for each day during the following quarter, the full address of the place where the Athlete will be residing (e.g. home, temporary lodgings, hotel, etc);
- e. for each day during the following quarter, the name and address of each location where the Athlete will train, work or conduct any other regular activity (e.g. workplace), as well as the usual time-frames for such regular activities; and

[Comment: This requirement applies only to regular activities, i.e. activities that are part of the Athlete's regular routine. For example, if the Athlete's regular routine includes training at the gym, the pool and the track, and regular physio sessions, then the Athlete should provide the name and address of the gym, track, pool and physio in his or her Whereabouts Filing, and then set out his/her usual routine, e.g. "Mondays: 9-11 gym, 13-17 gym; Tuesdays: 9-11 gym, 16-18 gym; Wednesdays: 9-11 track, 3-5 physio; Thursdays: 9-12 gym 16-18 track; Fridays: 9-11 pool 3-5 physio; Saturdays: 9-12 track, 13-15 pool; Sundays: 9-11 track, 13-15 pool".

If the Athlete is not currently training, he/she should specify that in his/her

Whereabouts Filing and detail any other routine that he/she will be following in the forthcoming filing period, e.g. his/her work routine, or rehabilitation routine, or other routine, and identify the name and address of each location where that routine is conducted and the time-frame during which it is conducted.]

- f. the Athlete's competition schedule for the following quarter, including the name and address of each location where the Athlete is scheduled to compete during the quarter and the date(s) on which he/she is scheduled to compete at such location(s).

- 3.6 The *Whereabouts Filing* must also include, for each day during the following quarter, one specific nominated hour between the hours of 6 a.m. and 11 p.m. each day where the Athlete will be available and accessible for *Testing* at a specific location.

[Comment: The Athlete can choose which location to identify for this nominated hour. It could be the Athlete's place of residence, training or competition, or it could be another location (e.g. work). A failure to be available for Testing at the specified location during the nominate hour will be pursued as an apparent Missed Test, in accordance with Clause 7.2.]

- 3.7 Athletes may update their *Whereabouts Filing* via online submission; by mail or by fax, using ASADA's *Whereabouts Filing Form*; by phoning the ASADA Athlete Services Team on 02 6222 4200 or the ASADA Anti-Doping Hotline on 13 000 ASADA (13 000 27232) (International +61 2 6222 4288) or by other means advertised by ASADA from time to time.

However:

- (i) Athletes cannot update their *Whereabouts Filing* for a day or time that has already passed; and
- (ii) Updates for any one particular day must be received by ASADA prior to the beginning of the nominated hour. Athletes should update their *Whereabouts Filing* as soon as possible once the whereabouts information provided in it becomes outdated. While updating will be possible until the last minute, Athletes should not delay until the last minute to update their information unless that is unavoidable. If Athletes do so delay, ASADA will consider whether it is appropriate to charge the Athletes with an anti-doping rule violation under Code Article 2.3 (evasion of Sample collection), and/or Tampering or Attempted Tampering with Doping Control under Code Article 2.5.

[Comment: ASADA shall make AWOS available to the Athlete or provide other electronic filing form(s) or paper form(s) for the Athlete to use in making a Whereabouts Filing or update.

Where an Athlete does not know precisely what his/her whereabouts will be at all times during the forthcoming quarter, he/she must provide his/her best information, based on where he/she expects to be at the relevant times, and then update that information as necessary in accordance with Clause 5.2. ASADA provides mechanisms (e.g. phone, fax, Internet, email) to facilitate the filing of such updates.

When specifying a location in his/her Whereabouts Filing (whether in his/her original

quarterly filing or in an update), the Athlete must provide sufficient information to enable the DCO to find the location, to gain access to the location, and to find the Athlete at the location. For example, declarations such as “cycling the streets of Melbourne” are insufficient and are likely to result in a Whereabouts Failure. Similarly, specifying a location that the DCO cannot access (e.g. a “restricted-access” building or area) is likely to result in an Unsuccessful Attempt and may therefore result in a Whereabouts Failure.

In such circumstances, there are several possibilities:

- a. Where ASADA is able to determine the insufficiency of the information from the Whereabouts Filing itself, ASADA will pursue such insufficiency as an apparent Filing Failure, in accordance with Clause 7.1.
- b. Where ASADA only discovers the insufficiency of the information when it attempts to test the Athlete and is unable to locate him/her:
 - i. if the insufficient information relates to the nominated hour, ASADA should pursue the matter as an apparent Missed Test, in accordance with Clause 7.2, and/or (where the circumstances warrant) as an evasion of Sample collection under Code Article 2.3, and/or as Tampering or Attempted Tampering with Doping Control under Code Article 2.5; and
 - ii. if the insufficient information relates to periods outside the nominated hour, then ASADA should pursue the matter as an apparent Filing Failure, in accordance with Clause 7.3, and/or (where the circumstances warrant) as an evasion of Sample collection under Code Article 2.3, and/or as Tampering or Attempting to Tamper with Doping Control under Code Article 2.5.]

- 3.8 Any Athlete who provides fraudulent information in his/her Whereabouts Filing, whether in relation to his/her location during the specified daily nominated hour, or in relation to his/her whereabouts outside that time slot, or otherwise, thereby may commit an anti-doping rule violation under Code Article 2.3 (evading Sample collection) and/or Code Article 2.5 (Tampering or Attempting to Tamper with Doping Control).

[Comment: Any decision to treat an incident as evading Sample collection under Code Article 2.3 and/or as Tampering or Attempting to Tamper with Doping Control under Code Article 2.5 shall be without prejudice to ASADA’s ability to treat the same incident as a Whereabouts Failure under Code Article 2.4; and vice versa.]

- 3.9 An Athlete in a RTP may choose to delegate the making of some or all of his/her Whereabouts Filings required under Clauses 3.5 and 3.6 (and/or any updates to his/her Whereabouts Filing required under Clause 6.1) to a third party, such as coach, a manager or a NSO administrator, provided that the third party agrees to such delegation.

[Comment: See Clause 3.14 for a discussion of the application of this Clause 3.9 in the specific context of a Team Sport. For the avoidance of doubt, however, an Athlete in a sport that is not a Team Sport may also delegate the making of his/her Whereabouts Filings to a third party for some or all relevant periods, provided that the third party agrees.]

ASADA requires written notice of any agreed delegation pursuant to Clause 3.9 to be filed with it, signed by both the Athlete in question and the third party delegate.]

3.10 In all cases, however, including in *Team Sports*:

- a. each *Athlete* in an *RTP* remains ultimately responsible at all times for making accurate and complete *Whereabouts Filings* as required by this Clause 3, whether he/she makes each filing personally or delegates it to a third party (or a mixture of the two). It shall not be a defense to an allegation of a *Filing Failure* under Code Article 2.4 that the *Athlete* delegated such responsibility to a third party and that third party failed to comply with the applicable requirements; and
- b. such *Athlete* remains personally responsible at all times for ensuring he/she is available for *Testing* at the whereabouts declared on his/her *Whereabouts Filings*, whether he/she made that filing personally or delegated it to a third party (or a mixture of the two). It shall not be a defence to an allegation of a *Missed Test* under Code Article 2.4 that the *Athlete* had delegated responsibility for filing his/her whereabouts information for the relevant period to a third party and that third party had failed to file the correct information or failed to update previously-filed information so as to ensure that the whereabouts information in the *Whereabouts Filing* for the day in question was current and accurate.

Team Sports

[WADA Comment: During the 2007-08 consultation phase on revisions to the 2007 Version 3.0 of the International Standard for Testing, a common theme of many of the submissions made by Team Sports was that any harmonised whereabouts system needs to be flexible enough to reflect the fact that Team Sports are organized and carried out on a team basis rather than on an individual basis, with most of the activities carried out in pursuit of that sport being conducted on a collective basis rather than on an individual basis. The purpose of this Clause is to reflect that characteristic of Team Sports by allowing for a RTP to be defined by reference to teams. It also allows for whereabouts information in relation to Athletes on such teams to be submitted on a collective basis, with information as to the team's collective activities being supplemented by submission of individual whereabouts information for periods when the Athletes are not with the team. In line with the systems implemented in 2004-2007 in Team Sports such as water polo and rugby union, the individual Athlete remains personally responsible at all times for the accuracy of that whereabouts information and for making him/herself available for Testing at such whereabouts.]

3.11 An *IF* of a *Team Sport* may define its *RTP* by reference to teams, i.e. so that the *Athletes* in its *RTP* are some or all of the *Athletes* on particular teams within the relevant period.

[Comment: For example, an IF may choose to define its RTP by reference to its top-ranked national representative teams at any given time. In a year in which that IF's World Championships are played, it may choose to expand its RTP to include all of the national representative teams that have qualified to compete in the World Championships. The IF may delegate the responsibility for collecting such Athletes' whereabouts information to the relevant NSO.]

A NADO that includes a Team Sport within its national RTP may take the same approach.]

- 3.12 In such circumstances, to reflect the fact that membership of a team may change regularly, the IF shall issue rules addressing changes in the composition of the RTP during the relevant period.

[Comment: For example, in a Team Sport where a RTP is identified by reference to national representative teams, the IF might fix membership by reference to the Athletes included in the last national representative squad selected prior to the quarter in question. If a new squad is selected during the quarter that is different in composition from the prior squad, the IF's rules will determine whether the changes are reflected immediately (e.g., any Athlete from the first squad who is not in the second squad drops out of the RTP with immediate effect) or alternatively as of the beginning of the next quarter (i.e., the Athlete not in the second squad remains in the RTP until the end of the quarter).]

- 3.13 In a Team Sport where the RTP is defined by reference to teams, Athletes on the designated teams are likely to carry out most of their sporting activities (e.g., training, traveling, tactical sessions) on a collective basis. Accordingly, much of the whereabouts information required under Clause 3 will be the same for all of the Athletes on the team. Furthermore, on occasions when an Athlete on a team is not participating in a scheduled team collective activity (e.g. because of injury), he/she is likely to be pursuing other activities under the supervision of his/her team (e.g. treatment by a team doctor). Such team-based activities, collective or otherwise, shall be known, for purposes of this International Standard for Testing, as "Team Activity".

- 3.14 An Athlete who is included in a RTP by reference to the fact that he/she plays for a particular team is subject to the same individual whereabouts requirements set out in this Policy as an Athlete who is included in a RTP by reference to some other criterion. In accordance with Clauses 3.9 and 3.10, however, in the circumstances outlined in Clause 3.13 the Athlete may delegate the task of making some or all of the Whereabouts Filings required under Clauses 3.5 and 3.6 (and/or any updates to Whereabouts Filings required under Clause 5.2) to the team, to be carried out by (for example, depending on the rules of the Responsible ADO) a coach, a manager or a NSO representative.

[Comment: For the avoidance of doubt, for the sake of convenience and efficiency, an Athlete in a Team Sport may delegate the making of his/her Whereabouts Filings to his/her team not only in respect of periods of Team Activity but also in respect of periods where he/she is not with the team, provided the team agrees. In such circumstances, it will be necessary for the Athlete to provide the information as to his/her individual whereabouts for the period in question to the team, to supplement the information it provides in relation to Team Activities.

In those Team Sports where an Athlete may play for more than one team, and therefore may be involved in Team Activity for more than one team in any given filing period, clear provision should be made in the relevant rules for the collection and submission of the information required under Clause 3. For example, where an IF defines its RTP by reference to national representative teams, the Athletes on such teams may spend much of their time with their national representative teams,

competing in International Events, but they may also spend a significant amount of time with their clubs, competing in domestic and/or regional Events. In such circumstances, the NSO should collect the information as to the Athlete's Team Activities for his/her club and include it in the Whereabouts Filing alongside the information as to the national representative team's Team Activities and the Athlete's individual whereabouts information for the relevant period.]

3.15 In the circumstances identified in Clause 3.14 the team (e.g. the NSO) may make the *Whereabouts Filing* on behalf of its *Athletes*, providing the information required under Clause 3, as follows:

- a. a complete mailing address for formal notice purposes, in accordance with Clause 3.5(a). Where agreed with the *Athlete*, this notice may be sent care of the team
- b. the information specified in Clauses 3.5(b), (c), (d) and (f);
- c. for each day in the following quarter, the time(s) each day of any Team Activity, whether that is a collective activity (e.g. training) or an individual activity under the supervision of the team (e.g. medical treatment), along with the venue and any other details required in order for the *Athlete* to be located during the time(s) in question; and

[Comment: If the Athlete conducts other regular activities outside Team Activities (e.g., he is an amateur Athlete and therefore also works), then the locations and time-frames of such other regular activities should also be disclosed, in accordance with Clause 3.5(e).]

- d. for each day in the following quarter, one specific one hour time slot between 6 a.m. and 11 p.m. where the *Athlete* will be available and accessible for *Testing* at a specific location. For the avoidance of doubt, this one hour time slot may be during any Team activity conducted on the day in question.

3.16 For *Athletes* in *RTPs* in *Team Sports*, liability for *Filing Failures* shall be determined in accordance with Clause 4.1, and liability for *Missed Tests* shall be determined in accordance with Clause 5.2. In accordance with Clause 3.10:

- a. if the team does not make a required *Whereabouts Filing*, or makes the *Whereabouts Filing* but does not include all of the required information, then (subject to the requirements of Clause 4.1) the *Athlete* will be liable for a *Filing Failure* under *Code Article 2.4*; and
- b. if any of the required information changes after a *Whereabouts Filing* is made, then in accordance with Clause 5.2 an update must be filed so that the *Whereabouts Filing* remains accurate at all times. If an update is not made, and as a result an attempt to test the *Athlete* during the one hour time slot is unsuccessful, then (subject to the requirements of Clause 6.1) the *Athlete* will be liable for a *Missed Test* under *Code Article 2.4*.

[Comment: For example, if an attempt to test an Athlete during a one hour time slot designated within a particular Team Activity period is unsuccessful due to a team

official filing the wrong information in relation to the Team Activity, or failing to update previously-filed information where the details of the Team Activity have subsequently changed, the team may be liable for sanction under the applicable rules of the IE for such failure, but the Athlete him/herself will still be liable (assuming that the requirements of Clause 6.1 are satisfied) for a Missed Test. This must be the case because if an Athlete is able to blame his/her team if he/she is not available for Testing at a location declared by his team, then he/she will be able to avoid accountability for his/her whereabouts for Testing. Of course the team has the same interest as the Athlete in ensuring the accuracy of the Whereabouts Filing and avoiding any Whereabouts Failures on the part of the Athlete.]

- 3.17 In addition to maintaining a RTP in accordance with the foregoing provisions of this Clause, ASADA may establish, in a Team Sport one or more further testing pool(s) for other teams/Athletes under its jurisdiction, and may apply different whereabouts requirements to such pool(s) for purposes of Code Article 2.4.

[Comment: A good example of such an additional pool is the whereabouts pool maintained by the Football Association in England in the period 2006-08, consisting of all Athletes playing for certain teams. Under the FA's approach, which has been identified by FIFA and the IEs of certain other Team Sports as a useful model, a team designated for inclusion in such pool is responsible for making periodic whereabouts filings with the Football Association, declaring the names of the Athletes registered with the team and the team's training and competition schedule for the following period. In other words, the Football Association is advised of the collective whereabouts of the team during the Team Activities referred to in Clause 3.13. If an attempt is then made to test an Athlete on that team during such a Team Activity and the Athlete in question is not available for Testing at the specified location, then the Athlete is investigated for a potential Missed Test. If upon investigation it is determined that the Athlete was not available for Testing because the team failed to provide accurate information as to the Athlete's participation in and/or the location of the relevant Team Activity to the Football Association, then the team rather than the Athlete is subject to sanction. Otherwise, however, absent exceptional circumstances a Missed Test is declared against the Athlete.

4. **Failure to Provide Whereabouts Filing**

4.1 An Athlete may only be declared to have committed a *Filing Failure* where ASADA, following the results management procedure set out below in Clause 7.1 can establish each of the following:

- a. that the Athlete was duly notified according to the provisions of clause 3.5 a. of this policy
 - i. that he/she was designated for inclusion in a RTP
 - ii. of the consequent requirement to make *Whereabouts Filings*; and
 - iii. of the consequences of any failure to comply with that requirement;
- b. that the Athlete failed to comply with that requirement by the applicable deadline;

[Comment: An Athlete fails to comply with the requirement to make Whereabouts Filings in the following circumstances:

- i. when he/she does not make any such filing; or
- ii. where he/she makes the filing (i.e. either the original quarterly filing or an update) but does not include all of the required information (e.g. he/she does not include a 1 hour time slot for every day of the quarter); or
- iii. where he/she includes information (whether in the original quarterly filing or an update) that is inaccurate (e.g. an address that does not exist) or insufficient to enable ASADA to locate him/her for Testing (e.g. "cycling the streets of Melbourne"). If the inaccuracy or insufficiency relates to the nominated hour, and is only discovered when an attempt is made to test the Athlete during that time slot, that may be pursued as a Missed Test. In other circumstances, such inaccuracy or insufficiency should be pursued as a Filing Failure.]

- c. (in the case of a second or third *Filing Failure* in the same quarter) that he/she was given notice of the previous *Filing Failure* and failed to rectify that *Filing Failure* by the deadline specified in that notice; and

[Comment: The purpose of this requirement is to ensure fairness to the Athlete. In the notice of the first Filing Failure that ASADA sends to the Athlete, ASADA will advise the Athlete that, in order to avoid a further Filing Failure, he/she must file the required Whereabouts Filing by the deadline specified in the notice. That deadline will be set by ASADA].

- d. that the Athlete's failure to comply was at least negligent. For these purposes, the Athlete will be presumed to have committed the failure negligently upon proof that he/she was notified of the requirement yet failed to comply with it. That presumption may only be rebutted by the Athlete establishing that no negligent behaviour on his/her part caused or contributed to the failure.

[Comment: In the event that a Code Article 2.4 ADRV is established, the actual degree of fault involved on the part of the Athlete (i.e. negligence or greater) will be relevant to the assessment, under Code Article 10.3.3, of the period of Ineligibility to be imposed].

5. Availability for Testing

- 5.1 An Athlete in a RTP must specifically be present and available for Testing on any given day in the relevant quarter for the one hour time slot specified for that day in his/her *Whereabouts Filing*, at the location that the Athlete has specified for that time slot in such filing.

[Comment: This specific requirement is without prejudice to the Athlete's basic obligation to provide information as to his/her whereabouts generally during the forthcoming quarter, and to submit to Testing at any time and any place during that quarter.

To achieve Testing that is effective in deterring and detecting cheating, best practice requires test distribution planning that makes the timing of Testing unpredictable. To achieve this, Testing needs to be attempted at different times of the day. Thus, the intent behind the one hour time slot is not to limit Testing to that period, or to create a 'default' period for Testing, but rather:

- a. *to make it very clear when an unsuccessful attempt to test an Athlete will count as a Missed Test (which helps the Athlete to avoid a Missed Test and helps ASADA, as well as a hearing panel, to determine when there has been a Missed Test);*
- b. *to guarantee that the Athlete can be found, and a Sample can be collected, at least once per day (which should deter cheating, or, as a minimum, make it far more difficult);*
- c. *to increase the reliability of the rest of the whereabouts information provided by the Athlete, and so to assist ASADA in locating the Athlete for Testing outside the one hour time slot:*
 - i. *The one hour time slot "anchors" the Athlete to a certain location for a particular day. Combined with the information that the Athlete must provide as to where he/she is residing, training, competing and conducting other 'regular' activities during that day, ASADA should be able to locate the Athlete for Testing outside the one hour time slot, or alternatively to determine whether the information provided as to his/her whereabouts outside that time slot is incomplete and/or inaccurate (which may be pursued, depending on the circumstances, as a Filing Failure under Code Article 2.4, a sample evasion case under Code Article 2.3, and/or a Tampering case under Code Article 2.5)*
 - ii. *It is of course in the interests of the Athlete to provide as much information as possible about his/her whereabouts outside the one hour time slot, so that ASADA is able to test him/her outside the one hour time slot and therefore he/she never risks liability for a Missed Test; and*
- d. *to generate useful anti-doping intelligence, e.g. if the Athlete regularly specifies time slots with large gaps between them, and/or changes his time slot and/or location at the last minute. Such intelligence can be relied upon as a basis for the target testing of such Athlete.]*

- 5.2 It is the Athlete's responsibility to ensure (including by updates, where necessary) that the whereabouts information provided in his/her *Whereabouts Filing* is sufficient to enable ASADA to locate him/her for Testing on any given day in the quarter, including but not limited to during the one hour time slot specified for that day in his/her *Whereabouts Filing*. Where any change in circumstances means that the information previously provided by or on behalf of the Athlete (whether in the initial *Whereabouts Filing* or in any subsequent update) is no longer accurate or complete (i.e. it is not

sufficient to enable ASADA to locate the *Athlete* for *Testing* on any given day in the relevant quarter, including but not limited to during the one hour time slot that he/she has specified for that day), the *Athlete* must update his/her *Whereabouts Filing* so that the information on file is again accurate and complete. He/she must make such update as soon as possible, and in any event prior to the one hour time slot specified in his/her filing for that day. A failure to do so shall have the following consequences:

- a. if, as a result of such failure, ASADA's attempt to test the *Athlete* during the one hour time slot is unsuccessful, then the unsuccessful attempt shall be pursued as an apparent *Missed Test* in accordance with Clause 7.2; and
- b. if the circumstances so warrant, the failure may be pursued as Evasion of Sample collection under Code Article 2.3, and/or Tampering or Attempted Tampering with Doping Control under Code Article 2.5; and
- c. in any event, ASADA shall consider target testing of the *Athlete*.

[Comment: It is ASADA's responsibility to ensure that it checks for any updates filed by the Athlete prior to attempting to collect a Sample from the Athlete based on his/her Whereabouts Filing. For the avoidance of doubt, however, an Athlete who updates his/her one hour time slot for a particular day prior to the original one hour slot must still submit to Testing during the original one hour time slot, if he/she is located for Testing during that original one hour time slot.]

An update of the one hour time slot may be made at any time up until the beginning of the time slot. In appropriate circumstances, however, last-minute updates by an Athlete may be pursued as a possible anti-doping rule violation of evading Sample collection under Code Article 2.3 and/or Tampering (or Attempting to Tamper) with Doping Control under Code Article 2.5.

If an update is filed by the Athlete, but the updated information filed is incomplete, or inaccurate, or insufficient to enable ASADA to locate the Athlete, then it may be pursued as a Filing Failure in accordance with Clause 4.1(b).]

6. Failure to be Available for Testing

6.1 An *Athlete* may only be declared to have committed a *Missed Test* where ASADA, following the results management procedure set out in Clause 7.2, can establish each of the following:

- a. that when the *Athlete* was given notice that he/she had been designated for inclusion in ASADA's *RTP*, he/she was advised of his/her liability for a *Missed Test* if he/she was unavailable for *Testing* during the one hour time slot specified in his/her *Whereabouts Filing* at the location specified for that time slot;
- b. that a *DCO* attempted to test the *Athlete* on a given day in the quarter, during the one hour time slot specified in the *Athlete's Whereabouts Filing* for that day, by visiting the location specified for that time slot;

[Comment: If the Athlete is not available for Testing at the beginning of the one hour time slot, but becomes available for Testing later on in the one hour time slot, the DCO should collect the Sample and should not process the attempt as an unsuccessful attempt to test, but should include full details of the delay in availability of the Athlete in the DCO's Sample collection report. Any pattern of behaviour of this type may be investigated by ASADA as a possible anti-doping rule violation of evading Sample collection under Code Article 2.3 or Code Article 2.5. It may also prompt Target Testing of the Athlete.

If located for Testing, the Athlete must remain with the DCO until the Sample collection has been completed, even if this takes longer than the one hour time slot.

If an Athlete is not available for Testing during his/her specified one hour time slot at the location specified for that time slot for that day, he/she will be liable for a Missed Test even if he/she is located later that day and a Sample is successfully collected from him/her.]

- c. that during that specified one hour time slot, the *DCO* did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the *Athlete*, short of giving the *Athlete* any *Advance Notice* of the test;

[Comment: Once the DCO has arrived at the location specified for the one hour time slot, if the Athlete cannot be located immediately then the DCO should remain at that location for whatever time is left of the one hour time slot and during that remaining time he/she should do what is reasonable in the circumstances to try to locate the Athlete.]

- d. that the provisions of Clause 6.2 (if applicable) have been met; and
- e. that the *Athlete's* failure to be available for *Testing* at the specified location during the specified one hour time slot was at least negligent. For these purposes, the *Athlete* will be presumed to have been negligent upon proof of the matters set out at sub-Clauses 6.1(a) to (d). That presumption may only be rebutted by the *Athlete* establishing that no negligent behaviour on his/her part caused or contributed to him/her (i) being unavailable for *Testing* at such location during such time slot; and (ii)

failing to update his/her most recent *Whereabouts Filing* to give notice of a different location where he/she would instead be available for *Testing* during a specified one hour time slot on the relevant day.

[Comment: In the event that a Code Article 2.4 anti-doping rule violation is established, the actual degree of fault involved on the part of the Athlete (i.e. whether negligence or greater) will be relevant to the assessment, under Code Article 10.3.3, of the period of Ineligibility to be imposed.]

- 6.2 To ensure fairness to the *Athlete*, where an unsuccessful attempt has been made to test an *Athlete* during one of the one hour time slots specified in his/her *Whereabouts Filing*, any subsequent attempt to test that *Athlete* (by ASADA or any other ADO) may only be counted as a *Missed Test* against that *Athlete* if that subsequent attempt takes place after the *Athlete* has received notice, in accordance with Clause 7.2 (b) of the original unsuccessful attempt. There is, however, no restriction on ASADA making further attempts to conduct *Sample* collection on the *Athlete* during this time.
- 6.3 A *Missed Test*, if confirmed, will be deemed to have occurred on the date that the *Sample* collection was attempted.
- 6.4 ASADA is not, in any way, limited to using the information contained in the *Unsuccessful Attempt* report, only for the purposes of taking action against any *Athlete/Support Person* for a possible *Missed Test* declaration or *anti-doping rule violation*. The information may also be used by ASADA for the purposes of taking action against any *Athlete/Support Person* for any associated anti-doping rule violation, including a failure to comply with and/or manipulation of a *Sample*.

7. **Results Management**

7.1 The results management process in respect of an apparent *Filing Failure* shall be as follows:

- a. If it appears that all of the Clause 4.1 requirements relating to *Filing Failures* are satisfied, then no later than 14 (fourteen) days after the date of discovery of the apparent *Filing Failure* ASADA will send notice to the *Athlete* in question of the apparent *Filing Failure*, inviting a response within 14 (fourteen) days of receipt of the notice. In the notice, ASADA will warn the *Athlete*:
 - (i) that unless the *Athlete* persuades ASADA that there has not been any *Filing Failure*, then (subject to the remainder of the results management process set out below) an alleged *Whereabouts Failure* will be recorded against the *Athlete*; and
 - (ii) of the consequences to the *Athlete* if a hearing panel upholds the alleged *Whereabouts Failure*.

The notice from ASADA will be signed by ASADA's Director Strategic Partnerships in consultation where relevant with ASADA's Legal Services.

[Comment: The notice should advise the Athlete whether any other Whereabouts Failures have been alleged against him/her in the 18-month period prior to this alleged Whereabouts Failure.]

- b. Where the *Athlete* disputes the apparent *Filing Failure*, ASADA will consider any submission made by the athlete and re-assess whether all of the Clause 4.1 requirements are met. ASADA will advise the *Athlete*, by letter sent no later than 14 (fourteen) days after receipt of the *Athlete's* response, whether or not it maintains there has been a *Filing Failure*. The letter from ASADA will be signed by ASADA's General Manager Anti-Doping Programs and General Counsel.

[Comment: Any notice sent to an Athlete pursuant to Clause 7.1(b) agreeing that there has not been any Filing Failure shall also be sent to WADA and any other party/ies with a right of appeal under Code Article 13, and may be appealed by WADA and/or such other party/ies in accordance with that Article.]

- c. If no response is received from the *Athlete* by the relevant deadline, or if ASADA maintains (notwithstanding the *Athlete's* response) that there has been a *Filing Failure*, ASADA shall send notice to the *Athlete* that an alleged *Filing Failure* is to be recorded against him/her. The notice, signed by ASADA's General Manager Anti-Doping Programs and General Counsel and shall at the same time advise the *Athlete* that he/she has the right to an administrative review of that decision. A request for an administrative review must be communicated to ASADA within 7 days of receipt of confirmation along with any other written submissions the athlete wishes to provide and should be addressed to ASADA's Athlete Whereabouts Officer

- d. Where it is requested by the *Athlete*, such administrative review shall be conducted by the ASADA Chief Executive Officer or a designee of the ASADA Chief Executive Officer. The review shall be based on written submissions only, and shall consider whether all of the requirements of Clause 4.1 are met. The review shall be completed within 14 (fourteen) days of receipt of the *Athlete's* request and the decision shall be communicated to the *Athlete* by ASADA's Chief Executive Officer/Chair by letter sent no more than 7 (seven) days after the decision is made;

[Comment: Nothing in this Article prevents ASADA using a panel of up to three persons to conduct such administrative review, provided that none of those persons has been involved in the previous assessment of the alleged Filing Failure.]

- e. If it appears, upon such review, that the requirements of Clause 4.1 have not been met, then the alleged *Filing Failure* shall not be treated as a Whereabouts Failure for any purpose; and

[Comment: Any notice sent to an Athlete pursuant to Clause 7.2(e), agreeing that there has been no Filing Failure, shall also be sent to WADA and any other party/ies with a right of appeal under Code Article 13, and may be appealed by WADA and/or such party/ies in accordance with that Article.]

- f. If the *Athlete* does not request an administrative review of the alleged *Filing Failure* by the relevant deadline, or if the administrative review leads to the conclusion that all of the requirements of Clause 4.1 have been met, then ASADA shall record an alleged *Filing Failure* against the *Athlete* and shall notify the *Athlete* and (on a confidential basis) WADA and all other relevant ADOs of that alleged *Filing Failure* and the date of its occurrence.

[Comment: For the avoidance of doubt, ASADA is not precluded from notifying other relevant ADOs (on a strictly confidential basis) of the alleged Filing Failure at an earlier stage of the results management process. Rather, ASADA is entitled to do so, where it considers it appropriate (for test planning purposes or otherwise).

The Clause 7.1(f) notice should again advise the Athlete whether any other Whereabouts Failures have been alleged against him/her in respect of the 18-month period prior to this alleged Filing Failure.]

7.2 The results management process in the case of an apparent *Missed Test* shall be as follows:

- a. The DCO shall file an *Unsuccessful Attempt Report* with ASADA, setting out the details of the attempted *Sample* collection, including the date of the attempt, the location visited, the exact arrival and departure times at the location, the step(s) taken at the location to try to find the *Athlete*, including details of any contact made with third parties, and any other relevant details about the attempted *Sample* collection.

[Comment: When commissioning another ADO to conduct a test on its behalf, ASADA may specify a deadline for the submission to it of an Unsuccessful Attempt Report.]

- b. If it appears that all of the Clause 6.1 requirements relating to *Missed Tests* are satisfied, then no later than 14 (fourteen) days after the date of the unsuccessful attempt, ASADA will send notice to the *Athlete* of the unsuccessful attempt, inviting a response within 14 (fourteen) days of receipt of the notice. In the notice, ASADA will warn the *Athlete*:
- i. that unless the *Athlete* persuades ASADA that there has not been any *Missed Test*, then (subject to the remainder of the results management process set out below) an alleged *Missed Test* will be recorded against the *Athlete*; and
 - ii. of the consequences to the *Athlete* if a hearing panel upholds the alleged *Missed Test*.

[Comment: The notice should also advise the Athlete whether any other Whereabouts Failures have been declared against him/her in the 18-month period prior to this alleged Missed Test.]

The notice from ASADA will be signed by ASADA's Director – Strategic Partnerships in consultation where relevant with ASADA's Legal Services.

- c. Where the *Athlete* disputes the apparent *Missed Test*, ASADA will consider any submission made by the athlete and re-assess whether all of the Clause 6.1 requirements are met. ASADA will advise the *Athlete*, by letter sent no later than 14 (fourteen) days after receipt of the *Athlete's* response, whether or not it maintains that there has been a *Missed Test*.

[Comment: Any notice sent to an Athlete pursuant to Clause 7.2(c), agreeing that there has been no Missed Test, shall also be sent to WADA and any other party/ies with a right of appeal under Code Article 13, and may be appealed by WADA and/or such party/ies in accordance with that Article.]

- d. If no response is received from the *Athlete* by the relevant deadline, or if ASADA maintains (notwithstanding the *Athlete's* response) that there has been a *Missed Test*, ASADA's General Manager Anti-Doping Programs and General Counsel will send notice to the *Athlete* that an alleged *Missed Test* is to be recorded against him/her. ASADA will, at the same time, advise the *Athlete* that he/she has the right to request an administrative review of the alleged *Missed Test*. A request for an administrative review must be communicated to ASADA within 7 days of receipt of confirmation along with any other written submissions the athlete wishes to provide and should be addressed to ASADA's Athlete Whereabouts Officer; The *Unsuccessful Attempt Report* must be provided to the *Athlete* at this point if it has not been provided earlier in the process.

[Comment: ASADA may provide the Unsuccessful Attempt Report to the Athlete prior to this stage if it so chooses (i.e. when it sends the initial notice in accordance with Clause 7.2(b)), or it may initially provide only the basic details of the apparent

Missed Test, holding back the full Unsuccessful Attempt Report to be provided only at this stage.]

- e. Where requested, such administrative review shall be conducted by ASADA's *Chief Executive Officer*, shall be based on written submissions alone, and shall consider whether all of the requirements of Clause 6.1 are met. If necessary, the relevant *DCO* may be asked to provide further information to ASADA's *Chief Executive Officer*. The review shall be completed within 14 (fourteen) days of receipt of the *Athlete's* request and the decision shall be communicated to the *Athlete* by ASADA's *Chief Executive Officer/Chair* by letter sent no more than 7 (seven) days after the decision is made.

[Comment: Nothing in this Article prevents ASADA setting up a panel of up to three persons to conduct such administrative review, provided that none of those persons has been involved in the previous assessment of the alleged Missed Test.]

- f. If it appears to the designee that the requirements of Clause 6.1 have not been met, then the unsuccessful attempt to test the *Athlete* shall not be treated as a *Missed Test* for any purpose; and

[Comment: Any notice sent to an Athlete pursuant to Clause 7.2(f), agreeing that there has been no Missed Test, shall also be sent to WADA and any other party/ies with a right of appeal under Code Article 13, and may be appealed by WADA and/or such party/ies in accordance with that Article.]

- g. If the *Athlete* does not request an administrative review of the alleged *Missed Test* by the relevant deadline, or if the administrative review leads to the conclusion that all of the requirements of Clause 6.1 have been met, then ASADA shall record an alleged *Missed Test* against the *Athlete* and, in the case of an administrative review, shall notify the *Athlete* and (on a confidential basis) WADA and all other relevant *ADOs* of that alleged *Missed Test* and the date of its occurrence.

[Comment: For the avoidance of doubt, the ADO that attempted the test is not precluded from notifying other relevant ADOs (on a strictly confidential basis) of the alleged Missed Test at an earlier stage of the results management process. Rather, it is entitled to do so, where it considers it appropriate (for test planning purposes or otherwise).

The Clause 7.2(g) notice should again advise the Athlete whether any other Whereabouts Failures have been alleged against him/her in respect of the 18-month period prior to this alleged Missed Test.

Whenever such notice is received, if the ADO with results management responsibility, is different from the ADO that attempted the test, then the ADO with results management responsibility is encouraged to review the file immediately to determine whether, in its view, the evidence in relation to the Missed Test declared by the ADO that attempted the test is sufficient to establish a Whereabouts Failure under Code Article 2.4. The reviewing ADO should raise any issues of concern with the notifying ADO as soon as possible, i.e. it should not wait until an Athlete has amassed three alleged Whereabouts Failures within any one 18-month period before raising any concern. Any decision by the reviewing ADO that a Whereabouts Failure recorded by

another ADO should be disregarded for lack of sufficient evidence shall be communicated to the other ADO and to WADA, shall be without prejudice to WADA's right of appeal under Code Article 13, and in any event shall not affect the validity of any other Whereabouts Failures declared against the Athlete in question.]

- 7.3 An ADO that declares, or that receives notice of, a Whereabouts Failure in respect of an Athlete shall not disclose that information beyond those persons with a need to know unless and until that Athlete is found to have committed an anti-doping rule violation under Code Article 2.4 based on (among other things) such *Whereabouts Failure*. Such persons who need to know shall also maintain the confidentiality of such information until the same point.

[Comment: This shall not preclude ASADA from publishing a general statistical report of its activities that discloses in general terms the number of Whereabouts Failures that have been declared in respect of Athletes under its jurisdiction during a particular period, provided that it does not publish any information that might reveal the identity of the Athletes involved. An ADO should not disclose that a particular Athlete does (or does not) have any Whereabouts Failures alleged against him/her (or that a particular sport does, or does not, have Athletes with Whereabouts Failures alleged against them).]

- 7.4 ASADA shall keep a record of all *Whereabouts Failures* alleged in respect of each Athlete within its RTP. Where it is alleged that such an Athlete has committed 3 (three) *Whereabouts Failures* within any 18-month period:

- a. Where two or more of those *Whereabouts Failures* were alleged by an ADO that had the Athlete in its RTP at the time of those failures, then that ADO (whether the IF or ASADA) shall be the *Responsible ADO* for purposes of bringing proceedings against the Athlete under Code Article 2.4. If not (for example, if the *Whereabouts Failures* were alleged by three different ADOs), then the *Responsible ADO* for these purposes will be the ADO whose RTP the Athlete was in as of the date of the third *Whereabouts Failure*. If the Athlete was in both the international and a national *Registered Testing Pool* as of that date, the *Responsible ADO* for these purposes shall be the IF.

[Comment: The Responsible ADO shall have the right to receive, from any other ADO that has recorded one of the alleged Whereabouts Failures, such further information about that alleged Whereabouts Failure as the Responsible ADO may reasonably require in order to assess the strength of the evidence of such alleged Whereabouts Failure and to bring proceedings under Code Article 2.4 in reliance thereon. If the Responsible ADO decides in good faith that the evidence in relation to such alleged Whereabouts Failure(s) is insufficient to support such proceedings under Code Article 2.4, then it may decline to bring proceedings based on such alleged Whereabouts Failure(s). Any decision by a Responsible ADO that a declared Whereabouts Failure should be disregarded for lack of sufficient evidence shall be communicated to the other ADO and to WADA, shall be without prejudice to WADA's right of appeal under Code Article 13, and in any event shall not affect the validity of the other Whereabouts Failures alleged against the Athlete in question.]

- b. Where the *Responsible ADO* fails to bring proceedings against an Athlete under Code Article 2.4 within 30 (thirty) days of WADA receiving notice of that Athlete's third alleged *Whereabouts Failure* in any 18-

month period, then it shall be deemed that the *Responsible ADO* has decided that no anti-doping rule violation was committed, for purposes of triggering the appeal rights set out at Code Article 13 (in particular Article 13.2).

[Comment: In such circumstances, the ADO(s) that alleged such Whereabouts Failure(s) must provide to WADA, upon request, such further information about the alleged Whereabouts Failure(s) as WADA shall reasonably require in order to assess the strength of the evidence of such alleged Whereabouts Failure(s) and (where it deems it appropriate) to bring an appeal in accordance with Code Article 13.]

- 7.5 An Athlete alleged to have committed an ADRV violation under Code Article 2.4 shall have the right to have such allegation determined at a full evidentiary hearing in accordance with Code Article 8. The hearing panel shall not be bound by any determination made during the results management process, whether as to the adequacy of any explanation offered for a *Whereabouts Failure* or otherwise. Instead, the burden shall be on the ADO bringing the proceedings to establish all of the requisite elements of each alleged *Whereabouts Failure*.

[Comment: Nothing in Clause 7.5 is intended to prevent the ADO challenging an argument raised on the Athlete's behalf at the hearing on the basis that it could have been but was not raised at an earlier stage of the results management process.

The ADO that brings proceedings against an Athlete under Code Article 2.4 should also consider in good faith whether or not a Provisional Suspension should be imposed on the Athlete pending determination of the proceedings, in accordance with Code Article 7.5.2.

If the hearing panel decides that one (or two) alleged Whereabouts Failures have been established to the required standard, but that the third alleged Whereabouts Failure has not, then no Code Article 2.4 anti-doping rule violation shall be found to have occurred. However, if the Athlete then commits one (or two) further Whereabouts Failures within the relevant 18-month period, new proceedings may be brought based on a combination of the Whereabouts Failure(s) established to the satisfaction of the hearing panel in the previous proceedings (in accordance with Code Article 3.2.3) and the Whereabouts Failure(s) subsequently committed by the Athlete.

A finding that an Athlete has committed an ADRV under Code Article 2.4 of the Code has the following Consequences:

- a. *imposition of a period of Ineligibility in accordance with Code Article 10.3.3 (first violation) or Code Article 10.7 (second violation); and*
- b. *in accordance with Code Article 10.8, Disqualification (unless fairness requires otherwise) of all individual results obtained by an Athlete from the date of the ADRV through to the date of commencement of any Provisional Suspension or Ineligibility period, with all of the resulting consequences, including forfeiture of any medals, points and prizes. For these purposes, the anti-doping rule violation shall be deemed to have occurred on the date of the third Whereabouts Failure found by the hearing panel to have occurred.*

The impact of any Code Article 2.4 ADRV by an individual Athlete on the results of any team for which that Athlete has played during the relevant period shall be determined in accordance with Code Article 11.]

- 7.6 Athletes who fail to comply with ASADA's *Whereabouts Policy* requirements may have committed an *ADRV* in accordance with the *Code* and *NAD* scheme.
- 7.7 For *ADRVs* (whereabouts Filing Failures and/or Missed Tests), period of ineligibility shall be at a minimum one (1) year and at a maximum two (2) years based on the Athlete's degree of fault⁵.

⁵ Code Article 10.3.3. – Comment: the sanction under Code Article 10.3.3 shall be two (2) years where all three Filing Failures or Missed Tests are inexcusable. Otherwise, the sanction shall be assessed in the range of two years to one year based on the circumstances of the case.

8. **Management of Athlete's Information**

- 8.1 In accordance with the *ASADA Act* and *ASADA Regulations*, and in particular the *NAD scheme*, ASADA may use and disseminate *Athlete Whereabouts Information* as authorised under the *ASADA Act* and *ASADA Regulations*.
- 8.2 *Athlete's Whereabouts Filing* shall be:
- (a) maintained by ASADA in strict confidence at all times;
 - (b) used by ASADA pursuant to its powers and functions under the *ASADA Act* and *ASADA Regulations* for the implementation, coordination, administration, monitoring and enforcement by ASADA of effective *Doping Control* measures; and
 - (c) destroyed pursuant to the relevant requirements under the *Archives Act 1983 (Cth)*.
- 8.3 ASADA may, as part of a measure to ensure accurate contact details for *Athletes*, provide the *NSOs* with an up-to-date list of the *NSO's Athletes*, within the *RTP*, at a minimum of every six months. The *NSOs* will provide to ASADA and/or verify the contact details of any *Athlete* who may be added to the *RTP*. ASADA may also make the list of *Athletes* within the *RTP* available to other *SABs*.
- 8.4 ASADA may also disclose *Athlete Whereabouts Information* to a number of parties in circumstances as described for in the *ASADA Act* and *ASADA Regulations* including but not limited to *SABs*.
- 8.5 Where the *ADRV Committee* determines that an *ADRV* has occurred, the *Athlete's* name and details of the relevant *ADRV* will be entered on ASADA's *ROF* and ASADA must disclose the entry in accordance with Division 4.4 of the *NAD scheme* ('Disclosure of Information')
- 8.6 For further information on ASADA's handling of the athlete's personal information please refer to Attachment C "Athlete Privacy Information Notice".

References

World Anti-Doping Code

ASADA Act 2006 and ASADA Regulations which contains the *National Anti-Doping scheme*.

International Standard for Testing 2009

Authority

Endorsed by Chair of the Australian Sports Anti-Doping Authority– June 2009

ATTACHMENT A

CRITERIA FOR ATHLETE INCLUSION IN ASADA'S REGISTERED TESTING POOL (RTP)

Inclusion in ASADA's RTP is based on a number of factors related to the Athlete and the sport including:

- Those athletes included on any International Federation (IF) RTP (where relevant to ASADA's Test Distribution Plan (TDP))
- Olympic & Paralympic athletes (where relevant to ASADA's TDP)
- Physical demands of sport and possible performance enhancing benefits that doping may elicit;
- Available doping analysis statistics;
- Available research on doping trends;
- Injury or return from injury or any period of inactivity from other causes;
- Withdrawal or absence from expected competition;
- Going out or coming into retirement;
- Behaviour indicating doping;
- Sudden major improvement in performance;
- Changes in Athlete Whereabouts Information that can indicate a potential increase in the risk of doping, including moving to a remote location;
- Athlete sport performance history;
- Details of past tests;
- Athlete reinstatement after period of ineligibility;
- Reliable information from a third party;
- Training periods and Competition season; and
- Athletes who are serving periods of ineligibility or provisional suspensions as consequences of anti-doping rule violations.

ATTACHMENT B

TEXT ONLY SAMPLE

ATHLETE WHEREABOUTS INFORMATION

AUTHORISED REPRESENTATIVE DECLARATION

I, _____
Name of athlete

of _____
Residential Address

National Sporting Organisation and sport discipline

Authorise _____
Name of Authorised Representative

of _____
Residential Address

to provide and/or update the *Australian Sports Anti-Doping Authority (ASADA)* with my *Athlete Whereabouts Filing*.

I acknowledge that my authorisation to my named *Authorised Representative* does not in any way reduce or abrogate my responsibilities as an *Athlete* to ensure that the *Athlete Whereabouts Filing* provided to ASADA is at all times current, accurate and complete.

I understand that if my *Authorised Representative* fails to provide the required *Athlete Whereabouts Filing*, in whole or in part, or provides incorrect information to ASADA, then ASADA may still declare that I have either:

- a) failed to comply with request to inform ASADA of my location; or/and
- b) failed to be located for a sample after being requested to provide my location.

I further understand that if I have already received two such declarations, and my *Authorised Representative* fails to provide the required *Athlete Whereabouts Filing*, in whole or in part or provides incorrect information to ASADA, then ASADA may determine that I have committed either of the following anti-doping rule violations:

- a) failure to comply with request to inform ASADA of my location; or/and
- b) failure to be located for a sample after being requested to provide my location.

As a consequence, if ASADA is satisfied that an anti-doping rule violation has occurred, my name and relevant details will be entered on ASADA's *Register of Findings* and my National Sporting Organisation will be informed.

Athlete name	Athlete signature	Date
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Authorised Representative name	Authorised Representative signature	Date
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Authorised Representative mailing address

(Home) _____ (Work) _____ (Mobile) _____

Authorised Representative phone contact details

Note to Athlete:

When completing this form please print all details, using black or blue pen.

Completed forms should be sent to ASADA by mail or fax:

Athlete Whereabouts Mail – PO Box 339, Curtin ACT 2605
 Athlete Whereabouts Fax – 02 6222 4210 (International +61 2 6222 4210)



ATHLETE PRIVACY INFORMATION NOTICE

Any information collected by the Australian Sports Anti-Doping Authority (ASADA) on its forms (such as Doping Control forms or Athlete Whereabouts forms) will be maintained, used and disseminated by ASADA for the lawful purposes of carrying out its functions as authorised under the Australian Sports Anti-Doping Authority Act 2006 and the Australian Sports Anti-Doping Authority Regulations 2006.

When collecting, storing, using and disclosing your personal information ASADA is bound by the Privacy Act 1988 (which incorporate the Information Privacy Principles) and the Australian Sports Anti-Doping Authority Act 2006 and the Australian Sports Anti-Doping Authority Regulations 2006 (which contains the National Anti-Doping (NAD) Scheme). ASADA also has regard to the World Anti-Doping Code 2009 (the Code) as well as recognises the International Standard for the Protection of Privacy and Personal Information as published by the World Anti-Doping Agency (WADA).

This Information Notice explains in more detail how your personal information will be used and processed to ensure harmonised, coordinated and effective anti-doping programs for detection, deterrence and prevention of doping.

Categories of personal information

- Your personal information is all information related to the Doping Control process, and administration of the NAD Scheme including, but not limited to investigations, test distribution planning, athlete whereabouts, sample collection and handling, laboratory analysis, results management, hearings and appeals.
- The laboratory analysis results include: detection of a prohibited substance, its metabolites or markers or any evidence of use of prohibited method/s identified on the WADA Prohibited List; detection of the presence of other substances not included in the WADA Prohibited List as may be directed by WADA pursuant to monitoring program described in Article 4.5 of the Code; longitudinal profile of haematological parameters such as haemoglobin and red blood count over a specified period of time as well as T/E ratio; or results from other tests that may be developed in future to identify the presence of prohibited substances.

Processing of Personal Information

- ASADA uses databases known as EUGENE and the Athlete Whereabouts Online System (AWOS) to store your personal information and to share that information in accordance with the requirements of the NAD Scheme and the Code. Strong technological, organisational and other security measures have been applied to EUGENE and AWOS to maintain the security of the personal information they contain.
- WADA has also developed a database management tool, ADAMS, which ASADA may also, in the future, use to store your personal information. Information relating to any Therapeutic Use Exemption (TUE) you may apply for may also be stored in ADAMS by the Australian Sports Drug Medical Advisory Committee (ASDMAC).
- EUGENE/AWOS and ADAMS enables Anti-Doping Organisations (ADOs) (e.g. ASADA, ASDMAC, national anti-doping agencies, international or national sporting federations, sports administration bodies and major games organisers) and WADA to conduct harmonised, coordinated and effective anti-doping programs and to fulfil their respective responsibilities arising under the Code.
- EUGENE/AWOS and ADAMS may be used for scheduling in and out-of-competition doping control and managing related information, including TUE information, related to athlete whereabouts, information about the results of anti-doping tests, and sanctions-related information relevant to individual athletes.
- EUGENE/AWOS/ADAMS may contain the following categories of personal information:
 - Data relating to your identity (name, nationality, date of birth, gender, sport and discipline you compete in, organisations and/or sports federations to which you belong, indication whether you compete at an international or national level);
 - Data relating to your whereabouts (training, competitions, travel, time at home, vacation, any other regular or exceptional activities);
 - Data relating to test distribution planning (for the testing pools in which you participate);
 - Data relating to your TUE, if any; and
 - Data relating to Doping Control (test distribution planning, sample collection and handling, laboratory analysis, results management, hearings and appeals).
- ASADA uses the EUGENE/AWOS and/or ADAMS data-management system to process and manage, including disclose to authorised recipients, your Doping Control related data.

Disclosures

- Your Personal Information may be made available to authorised ADOs, for instance, designated national ADOs, your international or national sporting federations, sporting administration bodies or major games organisers, in accordance with the NAD Scheme and the Code and processed in accordance with the anti-doping provisions of the NAD Scheme and the Code.
- Your personal information may also be made available, in part, to WADA, which will need to process certain information in order to fulfil its obligations and responsibilities under the Code.
- WADA-accredited laboratories will need to receive your specimens and possibly other data relating to you; however, such laboratories will only be provided with de-identified, key-coded data and specimens that will not enable the laboratories to identify you.
- Your personal information may also be disclosed in accordance with the NAD Scheme to relevant government sports agencies (such



as the Australian Sports Commission, Australian Olympic Committee and State and Territory sporting academies) and other relevant government agencies (such as the Australian Federal Police, Australian Customs Service, Therapeutic Goods Administration or State and Territory law enforcement bodies).

- ADOs, WADA and accredited laboratories will process your personal information only for the purpose of ensuring harmonised, coordinated and effective anti-doping programs in sport.
- ADOs, WADA, and accredited laboratories will not disclose any of your personal information other than to those persons within their organisation on a need to know basis.
- Prior to ASADA disclosing any of your personal information to external bodies, ASADA must ensure that the external body has completed a written undertaking that your personal information will be treated in confidence. ASADA must also take reasonable steps to ensure that the information will not be disclosed in a way that would be unfairly prejudicial to your interests.

Your Rights

- You have certain rights under the Privacy Act 1988 and Information Privacy Principles in relation to your personal information, including rights to access and/or correct any inaccurate data, and remedies and rights of redress for any unlawful processing of your personal information.
- To the extent that you have any concerns about the processing of your personal information you may consult with ASADA's Privacy Contact Officer on +61 (0) 2 8222 4200, WADA (www.wada-ama.org), and/or your federation or national anti-doping agency, as appropriate.

Retention

- Your personal information is stored by ASADA in accordance with the Archives Act 1983. Generally, ASADA will store your personal information for no more than 10 years. In limited circumstances, the Archives Act 1983 requires ASADA to store your information for longer periods (such as when your information is used in litigation that creates a precedent).

Withdrawal of Consent

- You understand that you may at any time revoke consent for the processing of your personal information, although in that event, and as noted above, it still may be necessary for ASADA, ADOs and WADA to continue to process (including retain) certain of your personal information to fulfil obligations and responsibilities arising under the NAD Scheme, the Code and applicable laws. Examples of such obligations include:
 - to commence or pursue investigations involving suspected anti-doping rule violations relating to you;
 - to conduct or participate in proceedings involving suspected anti-doping rule violations relating to you; or
 - to establish, exercise or defend against legal claims relating to ASADA or other bodies, you or both.

(Note: any withdrawal of consent or any request for deletion of personal information, which is motivated principally by a desire to render testing, investigation and results management (including associated disciplinary hearings, appeals and adjudications) conducted by ASADA, other anti-doping or sports organisations or WADA more difficult or impossible, may be considered Tampering under the NAD Scheme or the Code and be sanctioned as such.)
- You also understand that your participation in organised sporting events is contingent upon your adherence at all times to the rules contained in the NAD Scheme, the Code and your relevant sports organisations policies, including, among other things, your voluntary participation in anti-doping procedures set forth in the Code and thus the processing of your personal information as described in this form.
- You understand that the withdrawal of your consent to the processing of your personal information will be construed as a refusal to participate in those anti-doping procedures mandated by the NAD Scheme, the Code and your relevant sports organisations policies. This could exclude you from further participation in organised sporting events, and may result in disciplinary or other sanctions being imposed upon you, such as disqualification from competitions in which you are scheduled to participate or the invalidation of results arising from prior competitions.

Research

- It is possible that your personal information (such as your urine/blood sample) may be used for the purposes of anti-doping research.
- Anti-doping research will generally be conducted by WADA accredited laboratories. The Australian Sports Drug Testing Laboratory is the Australian WADA accredited laboratory.
- The research performed by ASADA or a WADA accredited laboratory on samples is generally directed at developing or enhancing the effectiveness of new anti-doping tests for prohibited substances. This benefits the wider anti-doping community through greater detection capabilities.
- The Code requires that if your sample is to be used for anti-doping research all means of identification (for example sample numbers from testing bottles) must be removed. This ensures that samples cannot be traced back to particular athletes.
- In order for your sample to be used for anti-doping research purposes, you must consent in writing. Please refer to the ASADA Doping Control Test Form.
- You may withdraw your consent by contacting ASADA's Privacy Contact Officer on +61 (0) 2 8222 4200. There are no consequences for withdrawing your consent. However, if your withdrawal of consent occurs after your sample has been de-identified and used for research it will not be possible to eliminate the data obtained from your sample for research purposes.

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