



# Rowing Australia

## Illicit Drugs Policy

**Effective from 23 February 2017**

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## 1. Position statement

- 1.1 Rowing Australia (RA) is acutely aware of the challenges faced by society in terms of illicit drugs and wishes to ensure the ongoing integrity of Australian rowing by reinforcing its position on any potential illicit drug use within the sport. RA is committed to protecting:
  - 1.1.1 the health and wellbeing of its Athletes and Participants; and
  - 1.1.2 the integrity and interests of RA and rowing generally.
- 1.2 RA acknowledges that the use of illicit drugs is harmful to the Athlete and other Persons involved in rowing, can bring the sport into disrepute and sets a poor example for other members of the community who view Athletes as role models.
- 1.3 This policy is designed to:
  - 1.3.1 deter the use of Illicit Drugs through education, random and targeted testing and counselling; and
  - 1.3.2 reduce drug related harm to Athletes, Participants, their families and stakeholders of RA and the broader community.
- 1.4 This policy adopts a tiered sanction approach to breaches, from education and counselling through to escalating sanctions, including suspension or termination for repeated breaches.
- 1.5 RA has adopted and implemented an Anti-Doping Policy to address In-Competition use of drugs, including Illicit Drugs by Athletes. This Illicit Drugs Policy addresses the Out-of-Competition use of Illicit Drugs by Athletes, and the use of Illicit Drugs by Support Personnel. If there is any inconsistency between this Illicit Drugs Policy and the RA Anti-Doping Policy, then the Anti-Doping Policy will prevail.

## 2. Objectives

The objectives of this policy are to:

- 2.1 protect the health and well-being of Athletes and others to whom this policy applies;
- 2.2 educate Athletes and other Persons about the harm of Illicit Drugs;
- 2.3 provide an appropriate avenue of counselling and rehabilitation for Athletes and Support Personnel identified as using Illicit Drugs;
- 2.4 provide an effective deterrent to Illicit Drug use by Athletes and Support Personnel;
- 2.5 provide a positive example for young people and others in the community; and
- 2.6 protect and promote the image and interests of rowing generally, its teams, clubs, sponsors and other stakeholders as a sport free of Illicit Drugs.

## 3. Application

- 3.1 This Illicit Drugs Policy applies to the following persons:

- 3.1.1 Athletes;

- 3.1.2 Support Personnel;
- 3.1.3 RA's directors, committee members, officers and employees, contractors; and
- 3.1.4 Any other Person who has agreed to be bound by this Illicit Drugs Policy.

3.2 This policy commences on 23<sup>rd</sup> February 2017 and applies until the policy is reviewed.

3.3 Nothing in this policy limits the application of Commonwealth, State and Territory laws to illicit drugs issues or the ability of RA to refer such issues to the police, customs or other relevant authorities.

#### **4. Roles and Responsibilities**

4.1 The Persons identified in Article 3.1 are bound by this Policy.

**4.2 Athletes must:**

- 4.2.1 comply with this Policy;
- 4.2.2 use their influence on other persons bound by this policy to reinforce the education messages regarding Illicit Drugs;
- 4.2.3 read and understand the List of Prohibited Illicit Drugs and keep up to date with any changes to it;
- 4.2.4 be available for Sample Collection and provide accurate and up-to-date Location Information for this purpose, when identified for inclusion in the Testing Pool;
- 4.2.5 take responsibility, in the context of this Policy, for what they use, ingest or otherwise consume;
- 4.2.6 cooperate and liaise with RA and any SIS/SAS Partner in relation to the conduct of any investigation or hearing into a suspected or alleged Illicit Drugs Breach;
- 4.2.7 act in a discreet and confidential manner in discharging their obligations under this Policy;
- 4.2.8 if they are receiving or are about to receive medical treatment, ask the medical personnel if any of the medical treatment could result in a positive or non-negative test for Illicit Drugs and if so, request the medical personnel to complete the RA Medical Use Exemption form (MUE) and return it to the Independent Medical Officer as soon as practicable;
- 4.2.9 attend and/or complete illicit drugs education as directed by RA.

**4.3 Support Personnel, and any Person to whom this Policy applies under Article 3.1 must:<sup>1</sup>**

- 4.3.1 comply with all rules applicable to them under this Policy or to the Athletes with whom they are working;

<sup>1</sup> It is recognised that *Athlete Support Personnel* in certain professions may be subject to legal obligations with respect to confidentiality and disclosure.

- 4.3.2 support and assist Rowing Australia and any relevant SIS/SAS Partner to conduct Testing;
- 4.3.3 read and understand the List of Prohibited Illicit Drugs and keep up to date with any changes to the List of Prohibited Illicit Drugs;
- 4.3.4 use their influence on Athletes to reinforce the education messages regarding illicit drugs;
- 4.3.5 be available for Sample Collection and provide accurate and up-to-date Location Information for this purpose, when identified for inclusion in the Testing Pool;
- 4.3.6 take responsibility, in the context of this Policy, for what they use, ingest or otherwise consume;
- 4.3.7 cooperate and liaise with Rowing Australia and any relevant SIS/SAS Partner in relation to the conduct of any investigation or hearing into a suspected or alleged Illicit Drugs Breach;
- 4.3.8 act in a discreet and confidential manner in discharging their obligations under this Policy.

**4.4 Any other Person to whom this Policy applies under Article 3.1 must:**

- 4.4.1 comply with all rules applicable to them under this Policy or to the Athletes with whom they are working;
- 4.4.2 support and assist Rowing Australia and any relevant SIS/SAS Partner to conduct Testing;
- 4.4.3 read and understand the List of Prohibited Illicit Drugs and keep up to date with any changes to the List of Prohibited Illicit Drugs;
- 4.4.4 use their influence on Athletes and Support Personnel to reinforce the education messages regarding illicit drugs;
- 4.4.5 cooperate and liaise with Rowing Australia and any relevant SIS/SAS Partner in relation to the conduct of any investigation or hearing into a suspected or alleged Illicit Drugs Breach;
- 4.4.6 act in a discreet and confidential manner in discharging their obligations under this Policy.

**4.5 RA must, in addition to those duties set out elsewhere in this policy:**

- 4.5.1 abide by, implement and enforce this Policy;
- 4.5.2 develop and implement appropriate education programs and initiatives for Persons bound by this Policy;
- 4.5.3 investigate, make findings and issue breach notices in relation to alleged Illicit Drugs Breaches;
- 4.5.4 appoint Tribunals to conduct hearings under this Policy and in accordance with Appendix B;

- 4.5.5 convene hearings and present its findings and its recommendations before the Tribunals;
- 4.5.6 make reasonable efforts to make this Policy and the List of Prohibited Illicit Drugs available to Athletes, Support Personnel and any other Persons who are bound by this Policy;
- 4.5.7 ensure all employees and contractors act in a discreet and confidential manner in discharging their obligations under this Policy, adopting confidentiality and privacy practices as set out in Article 18.

## 5. Illicit Drugs Policy Officer

- 5.1. RA shall appoint an experienced person to the position of Illicit Drugs Policy Officer.
- 5.2. The Illicit Drugs Policy Officer, or their delegate, shall:
  - 5.2.1. be responsible for the Illicit Drugs education program and dissemination of this policy to Athletes, Support Personnel, and any other Person who is bound by this Policy;
  - 5.2.2. coordinate the administration of a Testing Pool and Location Information requirements;
  - 5.2.3. assist RA's Integrity Officer(s) with the implementation, updating and monitoring of this Policy;
  - 5.2.4. liaise with and assist the Independent Medical Officer as required;
  - 5.2.5. act in a discreet and confidential manner in discharging their obligations under this Policy, applying privacy practices consistent with the RA Privacy Policy and the Privacy Act;
  - 5.2.6. perform other such roles as may be necessary for the administration of this Policy.

## 6. Independent Medical Officer

- 6.1. RA shall appoint a medical doctor with experience and knowledge of drugs in sport to the position of Independent Medical Officer (IMO) to supervise and administer this Policy.
- 6.2. The IMO shall receive from the Testing Agency, the results of any non-negative and/or positive test for Illicit Drugs, and act in accordance with RA's Illicit Drugs Testing & Results Management Procedures. The IMO shall:
  - 6.2.1. Review analytical results, issue Medical Use Exemptions (MUE) and/or review any possible discrepancies in the Sample Collection procedures.
  - 6.2.2. Advise the Integrity Officer(s) if there is any reason why an individual who returns or is deemed to return a positive test should not be target tested by the Testing Agency.

- 6.2.3 Report to the CEO of RA on circumstances known or suspected to amount to a breach of this Policy or any practice concerning the use of illicit drugs in rowing including information in relation to tests or a self-referral made under paragraph 6.2.5.
- 6.2.4 Refer any Athlete or Support Person found to have committed an Illicit Drugs Breach to a suitable illicit drug counselling program in accordance with this Policy.
- 6.2.5 Refer any Athlete or Support Person in the Testing Pool, who may self-refer to the IMO, to illicit drug counselling at any time.
- 6.2.6 Ensure that arrangements regarding the Athlete or Support Person's attendance and participation in any counselling program respect the privacy of the Athlete or Support Person.
- 6.2.7 Liaise, as required, with RA's Chief Medical Officer, Illicit Drugs Policy Officer and Integrity Officer(s).

## 7. List of Prohibited Illicit Drugs

- 7.1 The drugs prohibited under this Policy are specified in the Australian Government's List of Prohibited Illicit Drugs which is Appendix A to this Policy.
- 7.2 Any modifications to the List of Prohibited Illicit Drugs will be come into effect once the List is updated on RA's website.

## 8. Testing

### 8.1 Authority to Test

- 8.1.1 All Athletes agree to submit to Out-of-Competition Sample Collection, and all Support Personnel submit to Sample Collection, as determined by RA at any time or place, with or without advance notice by a RA authorised Testing Agency.
- 8.1.2 RA intends that Out-of-Competition Sample Collection will be conducted in conjunction with a rowing related activity such as, but not limited to, selection trials, training sessions, recovery sessions, team/squad camps, meetings, functions or other sport activities.
- 8.1.3 All Athletes and Support Personnel agree to submit to Target Testing under this Policy.

### 8.2 Testing Standards

All Sample Collection will be conducted in accordance with RA's Illicit Drugs Testing & Results Management Procedures.

### 8.3 Illicit Drugs Testing Pool

- 8.3.1 The RA Illicit Drugs Testing Pool will consist of:
  - (a) all Athletes over the age of 18 years; and
  - (b) all Support Personnel

8.3.2 RA may revise its Illicit Drugs Testing Pool from time to time.

#### 8.4 **Targeted Testing**

RA may target test an Athlete or a Support Person for a period of time considered appropriate at any time or place, with such decision to be based on one or more of the following criteria being satisfied:

- 8.4.1 behaviour indicating an Athlete or Support Person is under the impairment or effects of Illicit Drugs;
- 8.4.2 apparent and identifiable disregard or opposition to the Illicit Drugs Policy;
- 8.4.3 unjustified non-availability for random no-notice testing;
- 8.4.4 unexplained or suspicious withdrawal from a competition or squad training;
- 8.4.5 reliable information from a credible and known third party; or
- 8.4.6 any other justifiable reason.

#### 8.5 **Location Information Requirements**

8.5.1 RA will inform Athletes and Support Personnel in the Illicit Drugs Testing Pool when they are required to provide Location Information to conduct Illicit Drugs testing and the type of information required. This may include:

- a) Home address;
- b) Home, work and mobile phone numbers;
- c) Regular training venues and times (club, state, national and individual);
- d) Regular sport meeting/function venues and times; and
- e) Other relevant information as required by RA.

8.5.2 When requested, Athletes in the Illicit Drugs Testing Pool must provide sufficient location information to permit reasonable Out-of-Competition Illicit Drugs Testing.

#### 8.6 **Authorised Illicit Drugs Testing Agency**

RA shall appoint an authorised Testing Agency or Agencies to conduct Out-of-Competition Sample collection and illicit drugs Testing and Sample Analysis under this policy.

#### 8.7 **Selection of Athletes or Support Personnel for Sample Collection**

8.7.1 RA or its authorised Testing Agency may select any Athlete or Support Person in the Illicit Drugs Testing Pool for Sample Collection.

8.7.2 RA may select any Athlete or Support Person in the Testing Pool for Target Testing in accordance with this Policy.

8.7.3 If an Athlete has been notified for doping control by SIA or another Anti-Doping Organisation to occur at the same time as proposed Sample Collection from the Athlete, the anti-doping testing takes precedence.

**8.8 Analysis of Samples**

- 8.8.1 Samples will be analysed by the authorised Testing Agency, or its agent or subcontractor in accordance with Australian Standards 4308.
- 8.8.2 Samples will be analysed for the presence of Prohibited Illicit Drugs and their Metabolites and Markers.

**8.9 Results Management**

RA will coordinate results management procedures following Testing under this Policy in accordance with RA's Testing and Results Management Procedures.

**8.10 Cooperation with SIS/SAS Partners**

RA may conduct any or all of the Testing, including the appointment of Testing Agencies, in conjunction with one or more SIS/SAS partners, with results able to be utilised by both to the extent permitted under this Policy.

**9. Illicit Drugs Breaches**

**9.1 Each of the following constitutes an Illicit Drugs Breach under this Policy:**

- 9.1.1 A Positive Analytical Finding for any Prohibited Illicit Drug (listed in the List of Prohibited Illicit Drugs - Appendix A) or its Metabolites or Markers;
- 9.1.2 Possession, Use or Attempted Use, or Trafficking or Attempted Trafficking, of any Prohibited Illicit Drug (listed in the List of Prohibited Illicit Drugs - Appendix A);
- 9.1.3 Refusal to submit, Failure to Submit to Sample Collection for Illicit Drugs Testing after notification by an authorised Illicit Drugs Testing Agency as described in this Policy, or otherwise evading Sample Collection for Illicit Drugs Testing.
- 9.1.4 Tampering, or attempted Tampering, with any part of Sample Collection or any other part of Testing.
- 9.1.5 A Person bound to this policy who is not a medical practitioner bound by professional privilege and who becomes aware of any, or any suspected, breaches under this Policy and who fails to report or notify such information to RA.

**9.2 RA will issue a written notice of breach to the Person who RA alleges has committed an Illicit Drugs Breach.**

**9.3 Any illicit drugs issues that are not defined as breaches of this policy in Article 9.1 above will be addressed in compliance with the relevant Commonwealth, State and Territory laws.**

**9.4 It is not an acceptable defence to any claim that a Person has committed a Breach of this Policy for that Person to contend that the:**

- 9.4.1 use of an Illicit Drug by the Person was not intentional or it had otherwise been used inadvertently;

- 9.4.2 Person was negligent, ignorant or otherwise not at fault;
- 9.4.3 Person did not know the Illicit Drug was prohibited under this policy;
- 9.4.4 use of the Illicit Drug in question did not enhance the performance of the Person concerned or was otherwise not performance enhancing.

## 10. Sanctions

- 10.1 Any Athlete found to have committed an Illicit Drug Breach under this Policy shall be subject to sanctions including:
  - 10.1.1 For a **First** Illicit Drug Breach:
    - a) undertake an appropriate illicit drugs counselling, education and/or training program as identified by RA at the Athlete's expense;
    - b) be subject to Target Testing under this Policy;
    - c) **may** receive a suspension from Competition at the Disciplinary Tribunal's discretion; and
    - d) **may** be subject to additional Sanctions at the discretion of the Disciplinary Tribunal.
  - 10.1.2 For a **Second** Illicit Drug Breach:
    - a) undertake an appropriate illicit drugs counselling, education and/or training program as identified by RA at the Athlete's expense;
    - b) be subject to Target Testing under this Policy;
    - c) **must** receive a suspension from Competition for not less than sixteen weeks in length; and
    - d) **may** be subject to additional Sanctions at the discretion of the Disciplinary Tribunal.
  - 10.1.3 For a **Third** Illicit Drug Breach:
    - a) have his or her Membership of RA squads or teams terminated;
    - b) be referred to further appropriate drugs in sport counselling, education and/or training program as identified by RA at the Athlete's expense; and
    - c) be subject to additional Sanctions at the discretion of the Disciplinary Tribunal as per Article 10.3.
- 10.2 Any Person who is not an Athlete who is found to have committed an Illicit Drug Breach under this Policy shall receive such sanction(s) from the Illicit Drugs Tribunal (IDT) as per Article 10.3 and as it sees fit in all the circumstances.
- 10.3 Sanctions imposed may include one or more of the following:
  - 10.3.1 A withdrawal of any awards, scholarships, placings, records, achievements bestowed in any competitions, activities or events held or sanctioned by RA;

- 10.3.2 Recommending the demotion or transfer of the individual to another location, role or activity;
- 10.3.3 Recommending the suspension or termination of the Person's membership, participation, appointment, employment or engagement in a role or activity;
- 10.3.4 In the case of a coach or official, a recommendation that the relevant organisation cancel the accreditation of the coach or official for a period of time or permanently;
- 10.3.5 A fine;
- 10.3.6 Reimbursement of costs;
- 10.3.7 Any other sanction that the IDT considers appropriate.

10.4 In determining the appropriate Sanction, the IDT shall take into account any relevant aggravating and mitigating factors. These factors include, but are not limited to:

- 10.4.1 The nature and seriousness of the breach;
- 10.4.2 The behaviour record of the Person;
- 10.4.3 The age and experience of the Person;
- 10.4.4 The context of how, where and when the Illicit Drug entered the Athlete's system;
- 10.4.5 The type of breach;
- 10.4.6 The substance type and amount;
- 10.4.7 The level of contrition and remorse of the Person;
- 10.4.8 If the Person self-referred for drug counselling;
- 10.4.9 If the Person established No Fault or Negligence for the Breach;
- 10.4.10 If the Person established No Significant Fault or Negligence for the Breach;
- 10.4.11 If the Person waived a hearing;
- 10.4.12 The effect of the proposed disciplinary measures on the Person, including any personal/welfare, professional or financial consequences;
- 10.4.13 The Person's public profile and potential or actual damage the Sanctions may have on their reputation, the sport or stakeholders; and
- 10.4.14 Any other aggravating and/or mitigating factors.

10.5 An Athlete's Illicit Drugs Breach under this Policy may also constitute a breach of the Australian Rowing Team Membership Agreement. The Sanctions and other consequences under this Policy are not to be limited or reduced by the existence or application of the Australian Rowing Team Membership Agreement or any sanctions applied under that agreement.

10.6 An Athlete's Illicit Drugs Breach under this Policy may also constitute a breach of the Athlete's SIS/SAS Partner, AOC or APC illicit drugs policy (where applicable). The

Sanctions and other consequences under this Policy are not to be limited or reduced by the existence or application of such other policy.

10.7 A Support Person's Illicit Drugs Breach under this Policy may also constitute a breach of the Support Person's employment contract with RA, a SIS/SAS Partner, AOC or APC (where applicable). The Sanctions and other consequences under this Policy are not to be limited or reduced by the existence or application of such other agreement.

**10.8 Referral to Counselling programs**

10.8.1 The IMO may refer any Athlete or Support Person found to have committed an Illicit Drugs Breach to a suitable drug counselling program.

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

10.8.3 Self-referral for counselling does not negate the result of any Illicit Drug Test or Sample Collection or attempted Illicit Drug Test or Sample Collection that has been conducted or attempted prior to or on the day of such self-referral.

10.8.4 The IMO will ensure that arrangements are made regarding the Athlete or Support Person's attendance and participation in the counselling program.

**10.9 Status during Suspension**

No suspended Athlete or Person may, during the period of suspension, participate in any Competition or Event authorised or organised by RA, or represent RA at any other Competition or Event as a competitor or in any coaching, support personnel, promotional or other role.

**10.10 Reinstatement**

As a condition to regaining eligibility for Competition or participation in any coaching, support personnel, promotional or other support role (including the revoked rights described in Article 10.3) at the end of a suspension period as a consequence of an Illicit Drugs Breach, an Athlete or other Person must:

10.10.1 during the suspension period, make him or herself available for further Sample Collection by RA and must provide current and accurate location information as required under Article 8.5;

10.10.2 have completed the required counselling program to RA's satisfaction; and

10.10.3 have complied with any other obligations imposed by the Disciplinary Tribunal including the payment of any fine imposed.

**10.11 Limitations of Action**

All actions must be commenced within two years from the date the alleged Illicit Drugs Breach occurred. For the avoidance of doubt, this Article does not restrict any right of RA to take action at any time under the RA Team Agreement, RA Member Protection Policy and/or other agreement between the Person and RA.

## **11. Hearings**

- 11.1 All hearings conducted under this Policy will respect the following principles:
  - 11.1.1 a timely hearing;
  - 11.1.2 a fair and impartial hearing body;
  - 11.1.3 the right to be informed in a fair and timely manner of the alleged Illicit Drugs Breach;
  - 11.1.4 the right to respond to the alleged Illicit Drugs Breach and resulting consequences;
  - 11.1.5 the right of each party to present evidence;
  - 11.1.6 the Person's right to an interpreter at the hearing, with the IDT to determine the identity of, and responsibility for the cost of the interpreter; and
  - 11.1.7 a timely, written, reasoned decision.
- 11.2 Subject to the principles in Article 14.1, the hearing will be conducted in the manner that the hearing body determines is appropriate, with as little formality and technicality, and as quickly, as proper consideration of the issue permits.
- 11.3 RA will convene the hearing and present the case at the hearing in accordance with the hearing procedures set out in Appendix B.
- 11.4 RA will wait 14 days (or a shorter period if agreed between RA and the Person) after sending a breach notice and then will appoint an IDT to conduct the hearing.
- 11.5 At the discretion of RA, the IDT may be the Court of Arbitration for Sport – Oceania Registry (CAS).

### **11.6 Tribunal Determination**

The Illicit Drugs Tribunal (IDT) will determine:

- 11.6.1 if the Person has committed an Illicit Drugs Breach;
- 11.6.2 if so, what Sanction(s) and other actions will apply (to the extent that the Illicit Drugs Tribunal has jurisdiction and discretion under Article 13); and
- 11.6.3 any other issues referred to it by RA such as, but not limited to, reimbursement of costs.

- 11.7 The IDT will give RA a written statement of:
  - 11.7.1 the findings of the hearing and brief reasons for the findings;
  - 11.7.2 what Sanctions (if any) and other actions will apply; and
  - 11.7.3 any other relevant issues such as, but not limited to, reimbursement of costs.

## **12. Appeals**

- 12.1 Decisions made by the IDT under Article 10 may be appealed exclusively to the CAS Appeals Division as set out in this Article 12.



- 12.2 Appeals to the CAS Appeals Division shall only be made on procedural grounds not on the decision of the IDT or RA, in the case of a waiver. This Article replaces R57 of the CAS Code of Sports-related Arbitration to the extent of any inconsistency.
- 12.3 Both the Athlete or Person being the subject of a decision, and RA, have the right to appeal to the CAS Appeals Division. Such appeal must be filed within 21 days of receipt of the IDT decision in writing.
- 12.4 The appealing party shall pay all CAS fees for the appeal.
- 12.5 The determination of the CAS Appeals Division will be final and binding on the parties to the appeal and no party may institute or maintain proceedings in any court or tribunal other than the CAS Appeals Division.

## 13. Investigations

- 13.1 RA may at its discretion at any time conduct an investigation into whether an Illicit Drugs Breach or other breach of this Policy has occurred.
- 13.2 A Person who is investigated under this Policy may also be investigated in relation to the same matter under the RA Anti-Doping Policy, Australian Rowing Team Membership Agreement and/or RA Member Protection Policy, where applicable.
- 13.3 An investigation for the purposes of this Policy may also serve as an investigation under the RA Anti-Doping Policy, Australian Rowing Team Membership Agreement and/or RA Member Protection Policy, where applicable.

## 14. Medical Use Exemptions

- 14.1 An Athlete with a recognised medical condition requiring the legitimate use of an Illicit Drug for medical treatment must apply to the IMO for a Medical Use Exemption (MUE).
- 14.2 In general, retrospective MUE's shall not be granted, however in the event of a positive test, RA's IMO shall consider an Athlete's specific medical history to determine whether there are any exceptional circumstances upon which an MUE should be retrospectively granted. For example, an Athlete who tested positive may have been administered Morphine, Pethidine or OxyContin during or following a recent operation.
- 14.3 All retrospective MUE's must be authorised by RA's IMO within 14 days of an A Sample Positive Analytical result.
- 14.4 RA shall also consider any Therapeutic Use Exemption (TUE) granted by an anti-doping agency for substance use in accordance with RA's Illicit Drugs Testing & Results Management Procedures.

## 15. Confidentiality and Disclosure

### 15.1 Privacy

RA, Support Personnel, Employees, and Contractors, shall act in a discreet and confidential manner in discharging their obligations under this Policy.

### 15.2 Confidentiality



Any Person or party informed or notified of an alleged or Illicit Drug Breach will keep this information confidential, including the identity of the Person alleged or found to have committed such breach, except to the extent such disclosure is:

- 15.2.1 permitted under Article 15.2 or elsewhere in this Policy;
- 15.2.2 permitted under another applicable RA policy or agreement with the relevant Person;
- 15.2.3 required for the purposes of administering and enforcing this Policy;
- 15.2.4 required by law;
- 15.2.5 in the public domain; and/or
- 15.2.6 authorised by the relevant Person.

### 15.3 Disclosure

- 15.3.1 RA may inform the following organisations of any Positive Analytical Finding, any notification of an alleged Illicit Drugs Breach, any finding of an Illicit Drugs Breach or any other details of the results management process or hearing process with respect to any Athlete or other Person subject to this Policy:
  - a) SIA;
  - b) the Person's SIS/SAS partner (if applicable);
  - c) the Australian Institute of Sport and/or the Australian Sports Commission;
  - d) the Person's club;
  - e) where relevant, the AOC and APC; and
  - f) without limitation to Article 3.3, police, customs or other relevant authorities.
- 15.3.2 Any parties notified of an alleged Illicit Drugs Breach must comply with the confidentiality requirements specified at article 15.2. RA must obtain this undertaking, to its satisfaction, in writing.

## 16. Definitions

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

**Anti-Doping Rule Violation:** An anti-doping rule violation as defined in RA's Anti-Doping Policy or under the corresponding provisions of the anti-doping policy of a SIS/SAS partner.

**AOC:** The Australian Olympic Committee Inc.

**Appellant:** The Person who appeals a determination of a Breach of the imposition of a Sanction by the Illicit Drugs Tribunal.

**Athlete:** Any individual rower who submits a nomination to RA for selection to an Australian Rowing Team in any given year.

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



**Competition:** A rowing contest, event or activity measuring performance against an opponent, oneself or the environment either once off or as part of a series conducted by RA, a state association, affiliated rowing club or association, or FISA.

**Illicit Drugs:** The substances listed in the List of Prohibited Illicit Drugs.

**Illicit Drugs Tribunal:** The body appointed by RA for the purposes of conducting a hearing pursuant to Article 11.

**Illicit Drugs Testing Agency:** An illicit drugs testing agency endorsed by the Australian Government and appointed by RA.

**In-Competition:** Unless provided otherwise in the rules of International Rowing Federation or other relevant Anti-Doping Organisation, the period commencing 12 hours before a Competition in which the Athlete is scheduled to participate through to the end of such Competition and the Sample collection process related to such Competition.

**List of Prohibited Illicit Drugs:** The list identifying the illicit drugs prohibited under this Policy and found at Appendix A of this Policy.

**Location Information:** Information relating to an Athlete in the Testing Pool as required by RA in order to arrange Sample Collection from the Athlete.

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

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

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

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

**Out-of-Competition:** Any period of time where an Athlete is not In-Competition and includes training sessions, recovery sessions, team/squad camps, meetings, functions or other sport activities.

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

**Person:** A natural person. This includes, but is not limited to:

- RA's Directors, committee members, Officers and Employees;
- Athletes, support personnel, officials and other personnel participating in events and activities, including camps and training sessions, held or sanctioned by RA;
- Any other Person that agrees to bind by this Policy from time to time by virtue of consensual jurisdiction with RA.

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

**Prohibited Illicit Drug:** A drug listed on the List of Prohibited Illicit Drugs.



**RA:** The organisation (as per the Rowing Australia Limited Constitution) which is recognised by the Australian Sports Commission as a National Sporting Organisation or National Sporting Organisation for people with a Disability, administering one or more rowing activities at a national level. RA is responsible for adopting rules, for initiating, implementing and enforcing any part of the Illicit Drugs Testing or Sample Collection process.

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

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

**SIA:** Sport Integrity Australia, established under the Sport Integrity Australia Act.

**SIS/SAS Partner:** An Australian state or territory institute or academy of sport, and/or the AIS.

**Support Person and Support Personnel:** Any employee of RA, or coach, team staff Member, official or other personnel nominated for or appointed to an Australian Rowing Team.

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

- Altering, or attempting to alter, for an improper purpose or in an improper way;
- Bringing, or attempting to bring, improper influence to bear;
- Interfering, or attempting to interfere, improperly;
- Obstructing, misleading or engaging in any fraudulent conduct to alter results or prevent normal procedures from occurring, or attempting to so obstruct, mislead or engage in such conduct; or
- Providing, or attempting to provide, fraudulent information.

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

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

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

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

**Trafficking:** Selling, giving, transporting, sending, delivering or distributing (either physically, electronically or by other means) any substance on the List of Prohibited Illicit Drugs by an Athlete or any other person bound to this policy, to any other person, without a bona fide medical reason.

**Use:** The utilization, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Illicit Drug.

## **Appendix A: List of Prohibited Illicit Drugs**

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1. Amphetamine;
2. Cannabis (in any form, including flowering or fruiting tops, leaves, seeds or stalks but not including Cannabis resin or Cannabis fibre);
3. Cannabis resin;
4. Cocaine;
5. Gammabutyrolactone (GBL);
6. Gamma-Hydroxybutanoic acid (GHB);
7. Heroin (diacetylmorphine);
8. Lysergide (LSD);
9. Methamphetamine;
10. 3,4-Methylenedioxymphetamine (MDA);
11. 3,4-Methylenedioxymethamphetamine (MDMA);
12. Opium;
13. Psilocine;
14. Psilocybine;
15. Tetrahydrocannabinol (THC);
16. Methadone;
17. Morphine;
18. Oxycodone;
19. Fentanyl;
20. Pethidine;
21. Dimethylamphetamine;
22. Benzphetamine;
23. Ephedrine;
24. Methylephedrine;
25. Cathine (D-norpseudoephedrine).

## **Appendix B: Hearings Procedures and Determination of Sanctions**

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### **Preparing for an Illicit Drugs Tribunal (IDT) hearing**

1. The IDT will be established to:
  - hear alleged breaches of RA's Illicit Drugs Policy;
  - determine Sanctions and other actions to be imposed; and
  - hear and determine any other issues referred to it by RA such as, but not limited to, reimbursement of costs.
2. The number of IDT panel members required to be present throughout the hearing will be determined by the Board.
3. The IDT panel should include at least one person with knowledge or experience of Illicit Drugs in sport.
4. The IDT panel will not include any person who has any actual or perceived conflict of interest or bias regarding the allegation.
5. The IDT panel members will be provided with a copy of all the relevant reports or information relating to the alleged Illicit Drugs Breach.
6. The IDT hearing will be held as soon as practicable and as quickly as proper consideration of the allegation permits.
7. The RA Integrity Officer will inform the respondent(s) in writing that an IDT hearing will take place. The notice will outline:
  - the Person's right to appear at the IDT hearing to defend the allegation;
  - details of the allegation as well as the clause of RA's Illicit Drugs Policy and any other policy or rule that has allegedly been breached;
  - the date, time and venue of the IDT hearing;
  - the Person's right to an interpreter at the hearing, with the IDT panel to determine the identity of, and responsibility for the cost of the interpreter;
  - whether verbal or written submissions can be presented at the IDT hearing;
  - whether witnesses may attend the IDT hearing to support the position of the respondent(s);
  - the possible consequences and sanctions that may be imposed if the allegation is found to be proven; and
  - legal representation will not be allowed.
8. A copy of any information/documents that have been given to the IDT panel will be provided to the respondent(s).
9. RA shall pay the costs of the IDT, and each party shall bear their own costs of the hearing. Where the IDT finds that a party has acted maliciously, lied or intentionally deceived it or RA, or attempted to do so, the IDT may award costs, including the costs of the IDT, against that party as it sees fit at its sole discretion.



## IDT hearing procedure

10. The following people will be allowed to attend the IDT hearing:
  - IDT panel members;
  - the respondent(s);
  - an interpreter (if required); and
  - witnesses.
11. RA must notify SIA, the Athlete's SIS/SAS Partner, and if relevant, the AOC or APC of all alleged breaches and findings of hearings. Such groups (as applicable) shall be entitled to attend the hearing as an observer.
12. If the respondent(s) is not present at the set hearing time and the IDT chairperson considers that no valid reason has been presented for their absence, the IDT hearing will continue subject to the chairperson being satisfied that all IDT notification requirements have been met.
13. If the IDT chairperson considers that there is a valid reason for the non-attendance of the respondent(s), or the chairperson does not believe the IDT notification requirements have been met, then the IDT hearing will be rescheduled to a later date in which case the IDT chairperson will inform the RA Integrity Officer of the need to reschedule the hearing. The RA Integrity Officer will arrange for the IDT to be reconvened.
14. The IDT chairperson will read out the alleged Illicit Drugs breach and ask the respondent(s) if he or she understands.
15. The respondent(s) will be asked to provide any evidence or witnesses that should be considered by the IDT when determining any disciplinary measures or sanctions.
16. The IDT may:
  - consider any evidence, in any form, that it deems relevant;
  - question any person giving evidence;
  - limit the number of witnesses;
  - require (to the extent it has power to do so) the attendance of any witness it deems relevant;
  - act in an inquisitorial manner in order to establish the truth of the issue.
17. Video evidence, if available, may be presented. Arrangements must be made entirely by the person(s) wishing to offer video evidence.
18. If the IDT panel considers that at any time during the hearing there is any unreasonable or intimidatory behaviour from anyone, the IDT chairperson may deny further involvement of that person in the hearing.
19. After all the evidence has been presented, the IDT will make its decision in private. It must decide whether the breach has been substantiated to the satisfaction of the IDT based on greater than a mere *balance of probability* but less than *proof beyond a reasonable doubt*.
20. Any disciplinary measures and sanctions imposed must be reasonable in the circumstances and comply with Article 10 of RA's Illicit Drugs Policy.
21. All IDT decisions will be by majority vote.

22. The IDT chairperson will announce the decision in the presence of all those involved in the hearing and will declare the hearing closed. Alternatively, he or she may advise those present that the decision is reserved and will be handed down in written form at a later time.
23. Within 48 hours, the IDT chairperson will forward:
  - a notice of the IDT's decision to the RA Integrity Officer, including any disciplinary measures and sanctions imposed and any other relevant issues such as, but not limited to, reimbursement of costs; and
  - a letter reconfirming the IDT's decision to the respondent(s), including any disciplinary measures and sanctions imposed and any other relevant issues such as, but not limited to, reimbursement of costs. The letter should also include the process and grounds for an appeal, if allowed, as outlined in Article 12 of RA's Illicit Drugs Policy. If the matter is especially complex or important, the IDT chairperson may inform the parties in writing within 48 hours that the decision will be delayed for a further 48 hours.
24. The IDT must provide written reasons for its decision.
25. Decisions by the IDT shall not be subject to further review except as provided in Article 12 or as required by applicable law, and no party shall institute or maintain proceedings in any court or tribunal other than the CAS Appeals Division. Decisions by the IDT shall not be subject to further review except as provided in Article 12 or as required by applicable law.
26. If, during any hearing, a party implicates a third party to an Illicit Drugs Breach or possible Anti-Doping Rule Violation then RA may use any information that arises as a result of the hearing process without having to first seek the permission of the parties. This Article overrides R43 of the CAS Code of Sports-related Arbitration to the extent of any inconsistency.

## **27 Waiving of Hearing**

- 27.1 If, upon receipt of a notification alleging a breach of this Illicit Drugs Policy, an Athlete chooses to admit to committing the Illicit Drugs violation and consents to the counselling and Sanctions applicable for an Illicit Drugs Breach without taking the case to an Illicit Drugs Tribunal, then RA can immediately refer the person to a counselling program and impose the applicable Sanctions without convening the Illicit Drugs Tribunal.
- 27.2 The Athlete will provide this admission and consent in writing to the CEO of RA.
- 27.3 An Athlete will be deemed to have waived his or her right to a hearing by failing to respond to a breach notice or failing to appear at a scheduled hearing.

## **28. Proof of Breach**

### **28.1 Burdens and Standards of Proof**

28.1.1 RA shall have the burden of establishing that an Illicit Drugs Breach has occurred.

28.1.2 The standard of proof shall be whether RA has established an Illicit Drugs Breach to the satisfaction of the hearing body, bearing in mind the seriousness of the allegation which is made (if the hearing has not been waived). This standard of proof is greater than a mere balance of probability but less than proof beyond a reasonable doubt.



28.1.3 Where this policy places the burden of proof upon the Athlete alleged to have committed an Illicit Drug Breach to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be greater than a mere balance of probability but less than proof beyond a reasonable doubt.

## 28.2 Methods of Establishing Facts and Presumptions

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

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

- a) The respective Testing Agency is presumed to have conducted Sample Collection, Sample handling and Sample transport in accordance with RA's Illicit Drugs Testing & Results Management Procedures or Australian Standards 4308. The Athlete may rebut this presumption by establishing that a departure from these Standards or Procedures occurred.
- b) If the Athlete rebuts the preceding presumption by showing that a departure from RA's Testing Procedures or Australian Standards 4308 (as applicable) occurred, then RA shall have the burden to establish that such departure did not cause the Positive Analytical Finding.

## 29. Elimination or reduction of Sanctions based on exceptional circumstances

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

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

## 29.2. Rules and timing for potential multiple breaches

29.2.1 For the purposes of Article 10, a second or subsequent Illicit Drugs Breach may be considered separately to the first or earlier Illicit Drugs Breach only if RA can establish that the Athlete committed the second or subsequent Illicit Drugs Breach after the Athlete received notice, or after RA made a reasonable



attempt to give notice, of the first or earlier Illicit Drugs Breach — if RA cannot establish this, the Illicit Drugs Breaches shall be considered as one single Illicit Drugs Breach.

29.2.2 For the purposes of imposing Sanctions under Article 10, an Illicit Drugs Breach must have occurred within four years of the date of a previous Illicit Drugs Breach in order to be considered a second or subsequent Illicit Drugs Breach

### 29.3 Commencement of Sanctions

- 29.3.1 Subject to Article 29.2.2, any Sanction imposed on a Person shall take immediate effect on the date of the hearing decision or, if the hearing is waived, on the date specified by RA.
- 29.3.2 Where required by fairness, such as delays in the hearing process or other aspects of the Testing and results management process not attributable to the Person, or where the Person has stood down from Competition or from their support role in writing pending the outcome of the hearing, the Disciplinary Tribunal imposing a suspension from Competition may start the suspension at an earlier date commencing as early as the date of notification.