2027 CODE & IS UPDATE PROCESS

World Anti-Doping Code

Concepts for Consideration and Feedback

Executive Summary

The World Anti-Doping Code (Code) was first adopted in 2003 and took effect in 2004. It has been amended five times, in 2009, in 2015, in 2018 (compliance-related amendments), in 2019 (reporting of certain endogenous substances as atypical findings), and in 2021.

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

The Code Drafting Team has identified nine concepts for the upcoming revision of the Code.
Stakeholders are invited to provide their feedback on each of these key concepts, as well as identify any other topics they wish the Code Drafting Team to consider.
The Code Drafting Team will also work closely with each International Standard Drafting Team on key related topics.

Concept #1 – Lack of Intent without Establishing Origin

Case law relating to athletes, which have established a lack of intent (for anti-doping rule violations involving non-specified substances) but have not demonstrated how the prohibited substance(s) entered their bodies, has become increasingly inconsistent in recent years. In particular, this is the case with respect to the question as to how exceptional a case must be in order for an athlete to demonstrate a lack of intent without proving the source and type of evidence that is considered relevant within this context. This lack of consistency has led to unequal treatment of athletes and undermines the credibility of the fight against doping.

Accordingly, stakeholders are invited to provide their feedback on what the test/criteria should be for athletes attempting to prove a lack of intent when they cannot demonstrate the source. Among the avenues to be explored, the feedback of stakeholders is sought specifically on the following two proposals:

1. Athletes would be required to rule out through scientific/analytical evidence that the violation could have been directly or indirectly intentional; or

2. Athletes would be required to rule out direct intent only through scientific/analytical evidence and the period of ineligibility could subsequently and in exceptional cases be two to four years taking all circumstances/evidence into account.

PROVIDE FEEDBACK TO CONCEPT #1

What the test/criteria should be for athletes attempting to prove a lack of intent when they cannot demonstrate the source. Among the avenues to be explored, the feedback of stakeholders is sought specifically on the following two proposals:
1. Athletes would be required to rule out through scientific/analytical evidence that the violation could have been directly or indirectly intentional; or
2. Athletes would be required to rule out direct intent only through scientific/analytical evidence and the period of ineligibility could subsequently and in exceptional cases be two to four years taking all circumstances/evidence into account.

We **agree** there needs to be a consistent approach to determine how exceptional a case must be to demonstrate a lack of intent without proving the source and type of evidence that is considered relevant within this context.

However, we **do not agree** with either of the two proposals requiring the Athlete to rely on scientific/analytical evidence to rule out intent.

In relation to the first point, we note the comment to Article 10.2.1.1 was included in the WADC 2021.

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

Following the addition of this comment in the WADC, we have not seen an increase in volume of cases where Establishing Origin of a Prohibited Substance (or lack of intent) has been problematic, or that there has been a lack of consistency in applying the principles.

In relation to the second point, it would be helpful to have further information about the scientific or analytical evidence that is being considered.

It seems unlikely that an Athlete could establish a lack of intent based on scientific or analytical evidence alone. Rather a range of other factors may be considered when establishing origin and intent by an Athlete aside from scientific/analytical evidence. These factors may include evidence from witnesses, documentary evidence (such as prescriptions etc), and the Athlete's actions supporting clean sport behaviours (such as evidence of undertaking supplement and medication checks, completion of education requirements). In dealing with these cases, we rely on our assessment of the evidence as a whole.

In addition to the above, there are also other concerns with obtaining scientific/analytical evidence, including chain of custody and cost issues when an Athlete tests any product they purportedly used.

If the Drafting Team does choose to pursue either of the proposals, we suggest Direct Intent and Indirect Intent should be defined in the Code and examples supporting the definitions should be included in a comment or guidance material.

Concept #2 – Results Management of Substances of Abuse

The 2021 Code introduced, in Article 10.2.4, a specific sanctioning regime applicable to prohibited substances, which are defined as "Substances of Abuse" on the Prohibited List "because they are frequently abused in society outside of the context of sport" (see Code Article 4.2.3). In order to be eligible for a three-month period of ineligibility (which may further be reduced to one month if a Substance of Abuse treatment program is completed), the athlete must establish that the ingestion or use of a substance of abuse occurred out-of-competition in a context unrelated to sport performance.

However, the implementation of these provisions has raised several questions as to how this system should be applied. To harmonize approaches and ensure the consistent treatment of athletes, the Code.

Drafting Team is seeking stakeholder feedback on the following proposals:

- The further reduction of the period of ineligibility related to a treatment program be either removed (e.g., with a fixed sanction of 3 months) or limited to a second violation involving a substance of abuse. If the reduction of the period of ineligibility related to the treatment program is maintained (in whole or in part), it would make sense to clarify that the condition could be met by an enrolment on the approved treatment program (as opposed to completing the same), with the possibility of reinstating the reduced period if the treatment program was not duly completed.

- Code Article 10.2.4.1 violations are currently excluded from the multiple violation regime described in Code Article 10.9.1 (per Code Article 10.9.2). The Code Drafting Team wishes to explore the possibility of removing this exclusion, at least where two violations subject to article 10.2.4.1 are committed.

- To link the temporal aspect of Article 10.2.4 not to the Code definition of "In-Competition" but rather to an adequate fixed period between ingestion and the actual competition in question (to be defined taking into account the potential doping effect).

- To clarify that this specific sanctioning regime can apply to other uses of those substances, e.g., coca tea or coca leaves.

PROVIDE FEEDBACK TO CONCEPT #2

In general, we are of the view that within the Australian context the current regime is working and that the changes proposed would not improve the operation of the current system.

The history of amendments to the Code in relation to substances prohibited in Competition has been aimed at simplifying and clarifying the rules to reduce regulation and target drug cheats. For example, the streamlining of the definition of 'in Competition' and the introduction of decision limits for cannabis. The Substance of Abuse (SOA) regime was introduced in 2021 to clearly distinguish between the use of substances to gain a performance enhancing effect and 'recreational' drug use. It represents a concentrated effort to lessen the regulatory burden on ADOs; allowing ADOs to focus on performance enhancing substances while dealing effectively with Athlete welfare arising from recreational drug use through an alternative SOA regime.

We are concerned that while the proposals put forward under this Code Concept #2 are aimed at harmonising this SOA regime they may instead complicate this approach and increase the impost on ADOs.

As such **we do not support** the proposals put forward under this Code Concept #2. Instead, we encourage the Drafting Team to retain the current regime with some suggested improvements to ensure the rules are clear and are consistently and practically applied.

We have included our positions and reasons in relation to each proposal as follows:

The further reduction of the period of ineligibility related to a treatment program be either removed (e.g. with a fixed sanction of 3 months) or limited to a second violation involving a substance of abuse.

We **do not agree** the period of Ineligibility related to a treatment program should be a fixed sanction of 3 months or alternatively that the further reduction to a one-month sanction be limited to a second violation involving a SOA.

We have found the one-month reduction related to a treatment program to be beneficial to Athletes and sports and would support maintaining this option. The main purpose for introducing this system is to deal with the 'recreational use' of Prohibited Substances by Athletes and the rule allowing the reduction of the period of ineligibility from 3 months to one month is a worthwhile part of this process.

An Athlete should be encouraged and rewarded (for the first violation) for taking steps to address the use of a SOA for a purpose not related to sporting performance. If a medical practitioner recommends a treatment program (to treat addiction or dependency) then enrolling in the program satisfies the requirements for reducing the period to one month, noting that treatment for a longer period of time may be prescribed (see further information on this point in the answer below).

We do acknowledge that completing results management within the one-month timeframe (where a mandatory provisional suspension is imposed) can be difficult. However, from our perspective, we have been able to achieve it in all cases where the one-month period of Ineligibility was found to have applied.

If the reduction of the period of ineligibility related to the treatment program is maintained (in whole or in part), it would make sense to clarify that the condition could be met by an enrolment on the approved treatment program (as opposed to completing the same), with the possibility of reinstating the reduced period if the treatment program was not duly completed.

We **agree in part** to this proposal, noting the difficulty in monitoring the completion of a program. We **agree** that the condition to reduce the period of Ineligibility should be met by enrolment in a treatment program (rather than completion of the program) and that this should be made clear. However, we **do not agree** the reduced period should be reinstated if the treatment program is not duly completed.

- It is not the role of the ADO to monitor the completion of the treatment program and we would be concerned that any subjective assessment of when a program was 'duly completed' would add further inconsistencies into the system.
- The difficulty of reinstating the reduced period if the treatment program was not duly completed would cause confusion and administrative difficulties for the ADO and the sport.

Code Article 10.2.4.1 violations are currently excluded from the multiple violation regime described in Code Article 10.9.1 (per Code Article 10.9.2). The Code Drafting Team wishes to explore the possibility of removing this exclusion, at least where two violations subject to article 10.2.4.1 are committed.

We **do not agree** that Code Article 10.2.4.1 should no longer be excluded from the multiple violation regime under Code Article 10.9.1 (per Code Article 10.9.2).

Relying on the exclusion has achieved a fairer result in Australian cases and we would support the continued exclusion of the SOA provisions from the multiple violations provision.

- Multiple violations for a SOA should not give rise to a consideration of a lifetime period of ineligibility – this is an issue not related to performance in sport.
- If there is a desire to address multiple violations this should be dealt with under a separate regime that is focussed on this issue and that does not automatically default to Article 10.9.1.

To link the temporal aspect of Article 10.2.4 not to the Code definition of "In-Competition" but rather to an adequate fixed period between ingestion and the actual competition in question (to be defined taking into account the potential doping effect).

We **do not agree** the temporal aspect of Article 10.2.2 be linked to an adequate fixed period between ingestion and the actual competition in question (to be defined taking into account the potential doping effect) for a number of reasons.

Foremost, changing from the established 'In-Competition' definition (that is consistent and well understood) to a time period that varies depending on the substance and the potential doping effect will be too complex for Athletes to understand (and comply with) and is likely to cause confusion across all stakeholders.

The rules already require the use of a SOA to be unrelated to sport performance, so adding specific timeframes for each SOA would over-complicate the rules. The purpose is for Athletes who test positive for a SOA to receive help, as quickly and efficiently as possible and not be punished unnecessarily for failing to comply with complex technical issues.

To clarify that this specific sanctioning regime can apply to other uses of those substances, e.g., coca tea or coca leaves.

We **agree** this specific sanctioning regime should apply to other uses of substances such as coca tea or coca leaves.

Other comments

Criteria for including a Prohibited Substance as a SOA

We encourage the Drafting Team to consider whether more specific criteria for including a Prohibited Substance as a SOA be included in a standard or guidelines to provide more certainty about the substances that may fall within this regime. For example, we continue to advocate for the inclusion of methamphetamine as a SOA due to its prevalence as a 'recreational drug' in Australia that is 'frequently abused in society outside the context of sport'. In our view the SOA regime would be more widely supported if the reasons for including a Prohibited Substance as a SOA were publicly available.

Separating the SOA regime

Given the unique purpose and application of the SOA regime, the Drafting Team may wish to consider relocating the SOA regime under a separate appendix/standard to clearly identify that this regime deals with behaviours unrelated to sport performance.

This approach would allow the regime to be distinguished from the other anti-doping rules and more easily amended (if required) while remaining legally enforceable. Adjustments to other provisions such as those dealing with trafficking, publication, and multiple violations of SOA could be included altogether in the one place for clarify and ease of use.

Concept #3 – Results Management of Whereabouts Cases

The sanctioning regime applicable to Code Article 2.4 anti-doping rule violations relating to three whereabouts failures committed within a twelve-month period, is described in Code Article 10.3.2:

> A two-year period of ineligibility, which may be reduced down to a minimum of one year, depending on the athlete's degree of fault, unless it can be established that the athlete was trying to avoid being available for testing.

Case law has brought to light certain issues relating to the determination of the applicable sanction for such anti-doping rule violations, in particular:

- The weight to be given to each whereabouts failure, i.e., either equal weight given to the first, second, and third failure, or a progressive weight given to each of them (e.g., the second failure weighs more than the first and the third weighs more than the second).

- The need for more clarity regarding the fact that the period of ineligibility must start at two years and then, can only be reduced to a minimum of one year if athletes can establish circumstances to mitigate their fault.

- The need to specify, through a comment or definition, that certain elements are irrelevant for determining whereabouts sanctions (e.g., no doping history, good character, credibility).

- The importance and rationale of whereabouts requirements, which must be specified in the Code, since Code Article 2.4 cases are wrongly perceived as a "paper violation".

The Code Drafting Team is seeking stakeholder feedback with respect to each of the above points.

PROVIDE FEEDBACK TO CONCEPT #3

In general, we are **supportive** of the current whereabouts regime, the crucial need for whereabouts, and the way it is operating in the Australian context. We are **supportive** of the need to clarify the operation of the sanctioning regime relating to whereabouts provisions, as long as any attempt to explain the process and rules does not lead to greater complexity and confusion.

Case law has brought to light certain issues relating to the determination of the applicable sanction for such Anti-Doping rule violations, in particular:

- **The weight to be given to each whereabouts failure, i.e., either equal weight given to the first, second, and third failure, or a progressive weight given to each of them (e.g., the second failure weighs more than the first and the third weighs more than the second).**

We **do not agree** with varying the weight given to each whereabouts failure as 3 violations are required to establish a possible ADRV. It is a 'rolling system' with the fault assessed across all three failures with the expectation that the athlete would be on heightened alert after the first and second failures.

- **The need for more clarity regarding the fact that the period of ineligibility must start at two years and then, can only be reduced to a minimum of one year if athletes can establish circumstances to mitigate their fault.**

We **agree** that more clarity is beneficial.

- **The need to specify, through a comment or definition, that certain elements are irrelevant for determining whereabouts sanctions (e.g., no doping history, good character, credibility).**

While some of those listed elements may be irrelevant in a particular case, it is still important to be able to rely on evidence to distinguish between Athletes who commit a violation as a result of an intention to

undermine the system and 'cheat', and those who fall foul of the rules due to incompetence, mistake or lack of understanding.

If the Drafting Team wishes to proceed with this proposal, then any comments or definitions will need to very clearly describe how these limitations would apply.

- **The importance and rationale of whereabouts requirements, which must be specified in the Code, since Code Article 2.4 cases are wrongly perceived as a "paper violation".**

We **agree** with this inclusion. The principles and rationale behind Code provisions are critical for understanding and interpreting the rules.

Concept #4 – Increase in Sanction Flexibility

Currently, circumstances in which a period of ineligibility can be reduced below one year (between a reprimand and two years) based on no significant fault or negligence are listed at Code Article 10.6 and are limited to specified substances/methods, contaminated products, as well as protected persons/recreational athletes.

Provided an athlete can establish no significant fault or negligence, the Code Drafting Team intends to consider the addition of the following categories:

- For therapeutic use cases, regardless of the nature of the prohibited substance and/or prohibited method but subject to the satisfaction of the criteria for obtaining a TUE described in Article 4.2 of the International Standard for Therapeutic Use Exemptions.

- For contamination cases not covered by contaminated products.

The Code Drafting Team is seeking stakeholder feedback on the possibility of extending the provisions of Code Article 10.6 to the above-mentioned situations to allow the imposition of a period of ineligibility ranging from a reprimand to two years depending on the athlete's degree of fault.

Furthermore, the Code Drafting Team is considering distinguishing the sanction for cases of direct and indirect intent under Code Article 10.2.3, whereby for cases of indirect intent, the applicable period of ineligibility could range from two to four years depending on the circumstances of the case.

PROVIDE FEEDBACK TO CONCEPT #4

The Code Drafting Team is seeking stakeholder feedback on the possibility of extending the provisions of Code Article 10.6 to the above-mentioned situations to allow the imposition of a period of ineligibility ranging from a reprimand to two years depending on the athlete's degree of fault.

We **support** the proposal to extend the provisions of Code Article 10.6, to the mentioned situations (involving TUEs and contamination), to allow the imposition of a period of ineligibility ranging from a reprimand to two years depending on the athlete's degree of fault:

- We **agree** there should be avenues for people who have legitimate therapeutic uses who did not consider that their medications would provide a performance enhancing benefit.

- We **agree in principle** that this proposal extend to contamination cases. However, it may be useful to provide guidance in a comment (or other materials) to explain the circumstances relating to 'contamination cases not covered by contaminated products'.

However, we also **encourage** the Drafting Team to consider if this proposal could be applied more broadly to cover other examples that may arise in the future and that should be included under this provision.

Furthermore, the Code Drafting Team is considering distinguishing the sanction for cases of direct and indirect intent under Code Article 10.2.3, whereby for cases of indirect intent, the applicable period of ineligibility could range from two to four years depending on the circumstances of the case.

We **agree** in principle that more explanation is required to distinguish the sanction for cases of direct and indirect intent under Code Article 10.2.3, whereby for cases of indirect intent, the applicable period of ineligibility could range from two to four years depending on the circumstances of the case. To clarify the operation of these provisions, it may be useful to include a definition or explanation of the meaning of 'direct' and 'indirect'. (See our comments in relation to Code Concept #1).

Concept #5 – Results Management Agreements

Code Article 10.8.1 provides that an athlete or other person, after being notified of an asserted period of ineligibility of four or more years, may receive a one-year reduction in the period of ineligibility asserted, where they admit the anti-doping rule violation and accept the asserted period of ineligibility.

As this mechanism has proven to be effective since 2021, the Code Drafting Team is seeking stakeholder feedback on the possibility of amending Code Article 10.8.1 as follows:

1. Extend its scope to all violations, including sanctions carrying less than a four-year ban and violations of the prohibition against participation during ineligibility described in Code Article 10.14.3.

2. No longer provide for a one-year reduction of the asserted period of ineligibility, but a 25% reduction in the applicable sanction.

3. Make this sanctioning regime available only at the pre-charge stage, i.e., from the assertion letter described in Article 5 of the International Standard for Results Management (ISRM) and/or to provide a lesser reduction of the period of ineligibility where the admission occurs post-charge.

Moreover, the Code Drafting Team proposes to clarify that Code Article 10.8.2 (*Case Resolution Agreements*) only applies in exceptional cases. It is also considering removing or, alternatively, increasing the flexibility of the criteria for reduction of the period of ineligibility. In addition, it is suggested to re-integrate, as a free-standing provision (i.e., that can be applied by Anti-Doping Organizations (ADOs) without the approval of WADA), the possibility to backdate the start date of the period of ineligibility for prompt admission.

PROVIDE FEEDBACK TO CONCEPT #5

As this mechanism has proven to be effective since 2021, the Code Drafting Team is seeking stakeholder feedback on the possibility of amending Code Article 10.8.1 as follows:
1. Extend its scope to all violations, including sanctions carrying less than a four-year ban and violations of the prohibition against participation during ineligibility described in Code Article 10.14.3.

We have **no concerns** with extending the application to all violations as it is preferable to resolve any matter without the need for a hearing. We consider the addition of the Results Management Agreement has resulted in fewer hearings being sought by Athletes and it would be beneficial to extend this trend.

2. No longer provide for a one-year reduction of the asserted period of ineligibility, but a 25% reduction in the applicable sanction.

We have **no strong objection** to introducing a 25% reduction. However, if the first proposal is not adopted, applying a one year reduction is preferable – more straight forward and simpler to apply. If this amendment is made, the drafting will also need to be clarified in Article 10.9 (multiple violations).

3. Make this sanctioning regime available only at the pre-charge stage, i.e., from the assertion letter described in Article 5 of the International Standard for Results Management (ISRM) and/or to provide a lesser reduction of the period of ineligibility where the admission occurs post-charge.

We **don't agree** that the sanctioning regime should only be made available at the pre-charge stage. We support a more flexible approach that is not fixed to a point in time, but instead allows a person to enliven the sanctioning regime at any time from notification through to post charge (but before the deadline for requesting a hearing). This approach still ensures the person is afforded the time necessary to make a fully informed decision and understand the case made against them.

If, in addition to making a timely admission, a person provides information about the circumstances giving rise to the violation (but without implicating a third party) this situation should be dealt with (including possible further reduction in sanction) through the Substantial Assistance provisions – which we suggest be expanded to include the receipt of a wide range of relevant information (see our response to Code Concept #6 and ISII Concept #4).

This approach seeks to encourage/incentivise the person to provide information that would assist or inform the anti-doping program of an ADO. For example, information could include details about motivations, source of the substance, how it was administered and used, and the benefits gained.

Any amendments to this regime must be carefully drafted and closely considered against the other provisions in the Code dealing with sanction reductions (such as Article 10.7: Substantial Assistance etc and Article 10.8.2) to ensure that they properly align, achieve the desired outcome, and do not create duplication, or confusion or lead to unintended consequences. When sanction reductions are being considered, it must be clear which provision/s of the Code applies. Any solution designed to increase flexibility must be balanced with the need to provide clear rules that are easily understood and applied.

For example, if a Person considers they are better off admitting the violation as soon as possible without providing any intelligence, because the reward to act is not commensurate or they do not properly understand the rules and the rewards, then the aim of the sanctioning regime is compromised.

Moreover, the Code Drafting Team proposes to clarify that Code Article 10.8.2 (Case Resolution Agreements) only applies in exceptional cases. It is also considering removing or, alternatively, increasing the flexibility of the criteria for reduction of the period of ineligibility. In addition, it is suggested to re-integrate, as a free-standing provision (i.e., that can be applied by Anti-Doping Organizations (ADOs) without the approval of WADA), the possibility to backdate the start date of the period of ineligibility for prompt admission.

We **support** clarification that Article 10.8.2 applies in exceptional circumstances (and that once enlivened, flexibility should be allowed).

We have **no concerns** with the proposal to backdate for prompt admission. However, for clarity 'prompt admission' should be explained/defined and as should the point to which backdating will occur.

Concept #6 – Substantial Assistance

Code Article 10.7.1 and the Code definition of "Substantial Assistance" set out the requirements a person must fulfill for their period of ineligibility and/or other consequences to be partly or fully suspended, depending on the seriousness of the anti-doping rule violation they committed, and the significance of the assistance provided to the effort to eliminate doping in sport. To this end, the person must provide (i) a signed written statement or, at least, a recorded interview (ii) disclosing all information in their possession, (iii) which must be credible and (iv) comprise an important part of any case brought, or which could have been the sole basis for bringing a case, and (v) must also fully cooperate with the investigation and adjudication of any matter arising from the information provided.

Although first adopted in the 2003 version of the Code, substantial assistance provisions have been invoked less regularly than originally hoped.

Therefore, in an attempt to improve this situation, the Code Drafting Team is considering lessening the associated requirements concerning causation, not least in order to create the possibility of applying substantial assistance at an earlier stage of the results management process. To this end, consideration could be given to introducing a two-stage process whereby the initial granting of a limited suspension (if credible information is provided) could be increased at a later stage depending on the outcome. Stakeholders are also invited to comment on the possibility of:

- Removing the "seriousness of the anti-doping rule violation committed" criterion or make it a subsidiary criterion.
- Focusing on the value of the substantial assistance provided.
- Opening the categories of information that might qualify for substantial assistance (e.g., breach of provisional suspension and/or period of ineligibility, strategies used to avoid sample collection, strategies used to avoid detection and/or being flagged by the athlete biological passport (ABP) models).
- Clarifying that the level of the suspension should be considered in absolute terms, not as a percentage of the applicable period of ineligibility (in which case more serious offenders would receive a greater suspension, in absolute terms, merely as a result of the seriousness of their violation/length of their sanction).

PROVIDE FEEDBACK TO CONCEPT #6

The Code Drafting Team is considering lessening the associated requirements concerning causation, not least in order to create the possibility of applying substantial assistance at an earlier stage of the results management process. To this end, consideration could be given to introducing a two-stage process whereby the initial granting of a limited suspension (if credible information is provided) could be increased at a later stage depending on the outcome.

Stakeholders are also invited to comment on the possibility of:

- **Removing the "seriousness of the anti-doping rule violation committed" criterion or make it a subsidiary criterion.**
- **Focusing on the value of the substantial assistance provided.**
- **Opening the categories of information that might qualify for substantial assistance (e.g., breach of provisional suspension and/or period of ineligibility, strategies used to avoid sample collection, strategies used to avoid detection and/or being flagged by the athlete biological passport (ABP) models).**
- **Clarifying that the level of the suspension should be considered in absolute terms, not as a percentage of the applicable period of ineligibility (in which case more serious offenders**

would receive a greater suspension, in absolute terms, merely as a result of the seriousness of their violation/length of their sanction).

We **broadly agree** with the direction of these proposals. However, we encourage the Drafting Team to further expand the scope of these provisions.

- We **agree** with removing the "seriousness of the anti-doping rule violation committed" criterion or making it a subsidiary criterion.

- We **agree** the focus should be shifted to place more weight on the value of the information provided—acknowledging intelligence value, where there may not be a specific tangible outcome (further ADRV, investigation etc). This may include information about individual use/protocols that are useful for promoting anti-doping endeavours but do not implicate a third party or result in the discovery of an additional ADRV (see Code Concept #5). We support Drafting Team's suggestion to focus on the ultimate value of the information being provided. We encourage the Drafting Team to consider a sliding scale which, in general terms, aligns the reduction in the sanction to the value of the information provided. Information that targets and removes high end facilitators is arguably more valuable than information which leads to a single ADRV against an individual athlete, and as such should give rise to a greater reduction in the period of Ineligibility.

- The ISRM Guidelines states that "Substantial Assistance must result in one of the four outcomes specified in Code Article 10.7.1.1." Practically speaking, how does this requirement interact with the requirement in the definition of Substantial Assistance that "the information must be credible and must comprise an important part of any case or proceeding which is initiated or, if no case or proceeding is initiated, must have provided a sufficient basis on which a case or proceeding could have been brought."
    - In cases where the information provided by the Athlete has been referred to an external agency, for example the Therapeutic Goods Administration or law enforcement (and not in cases where we can discover or bring forward an ADRV by another Athlete). It is difficult to control what is done with the information within the time frames relevant to the ADRV proceedings. Nevertheless, the information may be of substantial assistance and lead to proceedings or further lines of inquiry in future. To consider the application of Substantial Assistance in these matters we are required to rely on the advice on external agencies as to whether the information provided was "credible" or "comprised an important part of any case or proceeding initiated." This is problematic when the actions taken by an external agency do not align neatly with one of the outcomes specified in Article 10.7.1.
    - In such cases where a case or proceeding is not initiated by the external agency, we are also not able to evaluate whether the information provided by the Athlete "provided a sufficient basis on which a case or proceeding could have been brought." Where an Athlete provides information for Substantial Assistance that is disclosed to an external agency, the Athlete can have an expectation of receiving a suspension on the basis that their information was "credible" by virtue of the fact that it was disclosed (even if no case was initiated).

- We would welcome clarification from WADA as to what constitutes 'exceptional circumstances' pursuant to Article 10.7.1.2.

The current operation of the Substantial Assistance provisions means that working with an Athlete under this regime may not achieve an acceptable outcome to the Athlete in some circumstances. It is also unclear that a suspension for Substantial Assistance is available to an Athlete in addition to any reduction to their period of Ineligibility, and an Athlete may seek to rely on other provisions in the Code that allow for an explicit reduction in the period of Ineligibility leading. Where an Athlete chooses not to provide assistance then valuable anti-doping information may be lost.

As we have noted in relation to other Concepts about sanctions, the interpretation and application of the provisions dealing with Substantial Assistance must be clear, easily, and readily applied and upheld, and

must be balanced and coordinated with other Code provisions dealing with sanctions, to ensure the best outcomes are achieved for both Athletes and ADOs.

Issue: Without Prejudice Agreement

Recommendation: Remove or amend the ability for an Athlete to seek a Without Prejudice Agreement (***WPA***) prior to giving Substantial Assistance. The evidence that is provided pursuant to a WPA cannot be used beyond that agreement and prolongs the progress of an Athlete's anti-doping matter (as negotiations for waiving this agreement are required). The removal of the option for a WPA would not preclude an Anti-Doping Organisation from considering an Athlete's information on a without prejudice basis generally (in accordance with legal principle). Alternatively, clarification could be provided that following entering into a WPA, for the information to be considered for the purpose of Substantial Assistance (and any suspension given), the Athlete would ultimately need to give that information on an open basis (which would assist in managing an Athlete's expectations).

Concept #7 – Use of Data

The collection and processing of whereabouts information are highly regulated in the Code and International Standards. Considering the impact on athletes of requiring such information, ADOs have a duty to use it effectively to detect anti-doping rule violations. The Code Drafting Team intends to update Code Article 5.5 to better reflect that whereabouts are used in risk assessment and prioritization processes necessary for intelligence-led testing, as required by the International Standard for Testing (IST).

The rules regarding the use of samples and anti-doping data in research and quality assessment/improvement processes are no longer fit for purpose. A broader spectrum of stakeholders is actively engaging in a wider range of research. As set out in Code Article 19, anti-doping research contributes to the development and implementation of efficient anti-doping programs. The Code Drafting Team intends to expand Article 19 and make corresponding adjustments to Code Articles 6.2 and 6.3 to provide appropriate minimum standards for the use of samples and data in research and to define the scope of research versus other activities involving the analysis of samples and data. The Code Drafting Team considers that such minimum standards could then be expanded upon in guidelines.

The publication of anti-doping sanctions is integral to achieving the public interest aims of the World Anti-Doping Program, specifically as it deters doping, alerts the sport and anti-doping communities to individuals that have engaged in doping practices, and informs the general public, including younger athletes and children, so they properly understand and appreciate why doping is both wrong and dangerous to health. This critical measure must be proportionate considering its impact on the privacy interests of individuals receiving such sanctions. The Code Drafting Team thus proposes to make adjustments to Code Article 14.3 to: (i) reflect the important public interest purposes achieved by publication and ensure the measure is implemented in a harmonized manner globally; (ii) consider whether publication should be made only with athlete consent where 10.5 applies (no fault or negligence); (ii) whether it should be made optional (and therefore subject to a case-by-case assessment) where Code Article 10.6 applies (no significant fault or negligence) ; and (iii) whether exceptions are required to the mandatory publication of sanctions related to athlete support personnel similar to those set out in Code Article 14.3.7.

PROVIDE FEEDBACK TO CONCEPT #7

The Code Drafting Team intends to update Code Article 5.5 to better reflect that whereabouts are used in risk assessment and prioritization processes necessary for intelligence-led testing, as required by the International Standard for Testing (IST).

Use of Athlete Whereabouts information
We **support** the proposal to update Code Article 5.5 to better reflect that whereabouts are used in risk assessment and prioritisation processes necessary for intelligence-led testing, as required by the International Standard for Testing.

The Code Drafting Team intends to expand Article 19 and make corresponding adjustments to Code Articles 6.2 and 6.3 to provide appropriate minimum standards for the use of samples and data in research and to define the scope of research versus other activities involving the analysis of samples and data. The Code Drafting Team considers that such minimum standards could then be expanded upon in guidelines.

Use of sample and data in research and activities
We **support** the proposal to expand Article 19 and make corresponding adjustments to Code Articles 6.2 and 6.3 to provide appropriate minimum standards for the use of samples and data in research and to define the scope of research versus other activities involving the analysis of samples and data.

It is important to better define the types of research that can be undertaken and clarify how research protocols will be applied, for example, to ensure the anonymity of the individual, and take into account the use of data for multiple research purposes as well as the use of data in research using new techniques engaging artificial intelligence and big data sets.

It is also important to clearly distinguish between research and use of samples and data for other anti-doping purposes.

We encourage the Drafting Team to provide more guidance on the activities that fall within an anti-doping purpose to ensure an Athlete's data is never misused and that all appropriate consents are in place.

The Code Drafting Team thus proposes to make adjustments to Code Article 14.3 to: (i) reflect the important public interest purposes achieved by publication and ensure the measure is implemented in a harmonized manner globally; (ii) consider whether publication should be made only with athlete consent where 10.5 applies (no fault or negligence); (ii) whether it should be made optional (and therefore subject to a case-by-case assessment) where Code Article 10.6 applies (no significant fault or negligence) ; and (iii) whether exceptions are required to the mandatory publication of sanctions related to athlete support personnel similar to those set out in Code Article 14.3.7.

Publication of sanctions

- We **support** the proposal to amend Code Article 14.3 to reflect the important public interest purposes achieved by publication and ensure the measure is implemented in a harmonized manner globally.
    - This proposal may assist in managing expectations regarding 'exceptional circumstances' and non-disclosure of anti-doing rule violations in the context of substantial assistance pursuant to Article 10.7.1.2 .
- *Publication with consent where Article 10.5 applies (no fault or negligence)*
    - We **query** the utility of a consent provision (Instead we suggest the requirement to publish where Article 10.5 applies is either removed completely, or maintained) as in most circumstances, it seems likely that most athletes would not consent to their matter being published, unless their matter was already in the public domain (see Article 14.3.1 of the WADC).
    - There is also an added benefit to publishing (for transparency) details of a case but no name or identifying features to protect the wellbeing and reputation of the person who is determined not to be at fault. Given they are exceptional/uncommon, publication of these cases can demonstrate the anti-doping system working.
- *Publication is optional where Article 10.6 applies (no significant fault or negligence)*
    - We **do not support** this proposal—a finding of no significant fault or negligence is more common, and the athlete is still at fault. We would seek to continue to be able to publish these matters not least because there is educational value gained from being able to speak about and use these case examples. While publication would be possible under an "optional" arrangement, it may decrease harmonisation across ADOs.
- *Whether exceptions are required to the mandatory publication of sanctions related to athlete support personnel similar to those set out in Article 14.3.7 (mandatory publication is not required for Minors, Protected Persons, Recreation Athletes)*
    - We **do not agree** with this proposal. Athlete Support Personnel play a critical role in compliance by Athletes under the World Anti-Doping Code and should be held to account in the same way Athletes are, given their proximity to Athletes and positions of power (in the case of coaches, for example).

The publication of anti-doping sanctions is integral to achieving the public interest aims of the World Anti-Doping Program, specifically as it deters doping, alerts the sport and anti-doping communities to individuals that have engaged in doping practices, and informs the general public, including younger athletes and children, so they properly understand and appreciate why doping is both wrong and dangerous to health.

While sanctions should be published, we encourage the Drafting Team to consider whether there should be additional flexibility built into the system (with adequate protections such as of the approval of WADA) to allow for non-publication when the circumstances are exceptional. As further prompts for discussion, WADA may wish to investigate whether it should be mandatory/optional for the publication of Substance of Abuse violations – especially where the athlete has entered an agreed rehabilitation program (see below).

Additional note: In relation to Article 4.2.3 (Substances of Abuse) – we suggest that consideration be given to providing discretion for the publication requirements for a Substance of Abuse, given it is not related to enhancing performance and publication may have a disproportionate impact on the person involved.

Concept #8 – NADO Operational Independence

Code Article 20.5.1 is currently the sole provision which specifically sets out the operational independence requirements for NADOs. Given that the operational independence of NADOs has been identified as a key element in ensuring that NADOs deliver effective anti-doping programs and are independent from government and sport vis-à-vis their operational activities and decisions, the Code Drafting Team intends to consider, from stakeholders' feedback and experience, proposing more details in the Code to clarify the principles and mandatory requirements of NADO operational independence. In particular, the Code Drafting Team wishes to consider whether and to what extent National Federations may be involved in testing or in the results management process under the responsibility of NADOs.

PROVIDE FEEDBACK TO CONCEPT #8

Proposing more details in the Code to clarify the principles and mandatory requirements of NADO operational independence. In particular, the Code Drafting Team wishes to consider whether and to what extent National Federations may be involved in testing or in the results management process under the responsibility of NADOs.

Given the importance of this requirement, we **agree** there can only be benefit from further clarity around the requirements for NADO operational independence and would support the exploration of amendments in this regard as long as the requirement for independence remains at the operational level.

However, the application of the rules (once clarified) may generally be better described in comments or guidance materials (such as the existing WADA Guide for operational independence of NADOs). Our limited challenges/questions around Article 20.5.1 centred on NADO staff being offered short term or contract positions with MEOs (what are the definitions of management and operations role). For example, could a NADO staff member perform a part time medical adviser role for an MEO? Can a staff member also take a games time leadership role at a major event (Chef de mission etc)?

Concept #9 – Uncorrectable Non-Conformities

The existing compliance system under the International Standard of Code Compliance by Signatories (ISCCS) is tailored to incentivize Signatories to address and correct non-conformities. WADA alleges non-compliance and imposes consequences as a last resort, and only if non-conformities remain not corrected. However, WADA lacks tools when confronted with non-conformities which are no longer capable of being corrected. These non-conformities are not adequately caught by the existing compliance system, even though some of these non-conformities were committed deliberately, are severe in nature, and erode trust in the anti-doping system. This problem arises particularly often in cases identified by investigations. Another example of an uncorrectable non-conformity would be when a Signatory fails to enforce a consequence that is within their sphere of authority (e.g., a restriction on flying a national flag at an event). To address such scenarios, the Code Drafting Team proposes to introduce the concept of "uncorrectable non-conformities".

The concept was submitted to stakeholder consultation during the 2022/2023 ISCCS revision. The feedback received during this process has been duly taken into consideration and is planned to be implemented in the 2027 Code & IS Update Process. Among others, the Code Drafting Team proposes to limit the procedure to:

- Deliberate failures to comply with one or more critical requirements; and
- Failures which undermine public confidence in the efficacy of the fight against doping in sport.

In addition:

- The non-compliance would be determined according to the requirements of the Code or an International Standard in place at that time, i.e., there will be no retroactive application of subsequently introduced rules;
- Any non-compliance for which the statute of limitations has expired would be excluded from the scope of application of the procedure; and
- Save in exceptional cases, the consequences for such non-compliance would be financial in nature.

PROVIDE FEEDBACK TO CONCEPT #9

The Code Drafting Team proposes to introduce the concept of "uncorrectable non-conformities".

We **agree** the introduction of text to deal with uncorrectable non-conformities will benefit WADA and the anti-doping community. The limits and notes from the Drafting Team (based on previous feedback received from stakeholders) are supported and are important elements to be included.

Other – provide feedback on other areas of the 'World Anti-Doping Code' you think needs reviewing or updating

PROVIDE FEEDBACK

General

Simplifying the Code

We would like to suggest that the Drafting Team give consideration to ensuring, as best as possible, the Code is a clear and concise document that is easily accessed, interpreted and applied while remaining a robust set of consistent and harmonised anti-doping rules. As changes are considered for drafting, wherever possible they should look to clarify, simplify, and provide flexibility to the Code rather than add complexity. If ADOs are struggling to understand or interpret aspects of the Code, then undoubtably Athletes are too.

One way this may be achieved is by transferring some more of the detail included in the Code to a relevant International Standard. This would provide clear overarching rules while also allowing for more regular revision of the rules (through the process for amending the International Standards and Technical documents) while still ensuring the provisions remain legally enforceable. Additional material informing the application of the rules would still be included in guidance materials..

We also suggest WADA may wish to consider lengthening the timeframe between Code revisions (so long as options are maintained for urgent changes if necessary, and, if as suggested above, more detail is included in International Standards which can be more regularly amended). Given the extensive consultation process undertaken by WADA, we find ourselves in situations where the current version of the Code has only been in place for less than three years before consideration is being given to changing it. In many cases (particularly given the timeframes involved in complex CAS cases) this makes it difficult to truly understand the impact the 2021 Code is having and to fully understand whether the newer additions (substances of abuse for example) are working or not.

Minimum mandatory standards with increased flexibility to implement other areas of the Code

We also encourage the Drafting Teams to only to consider mandating (in both the Code and Standards) those rules that must be applied consistently across all persons and organisations bound by the Code to achieve a fair and harmonised approach. Mandating too many elements, where not fundamentally necessary, creates additional burden and costs on ADOs that may ultimately be unneeded. A balance is required that achieves harmonisation while allowing flexibility (closely managed by guidance materials and examples) above and beyond the minimum standards to achieve the anti-doping goals.

A streamlined, coordinated sanctioning regime

As noted under Code Concepts #5 and #6, any amendments to any of the provisions dealing with the imposition of a period of Ineligibility under the Code (such as Article 10.7: Substantial Assistance etc and Article 10.8) must be aligned to ensure they achieve the desired outcome, and do not create duplication, or confusion or lead to unintended consequences.

When sanction reductions are being considered, it must be clear which provision/s of the Code applies—any solution designed to increase flexibility must be balanced with the need to provide clear rules that are easily understood and applied.

It is also important to formulate rules that set clear parameters whilst also allowing for appropriate discretion to be applied (taking into account the circumstances of the case) to achieve a flexible, consistent and fair approach.

ADRV for non-cooperation

We support the comments made by some other organisations suggesting the Drafting Team gives consideration to the creation of an ADRV for non-cooperation with anti-doping investigations. Currently this is covered in Article 21 but the comments to the section outline that it is not an ADRV and should be covered by a disciplinary approach under the signatory's rules. We would support further consideration of whether such an ADRV is needed and how it might work in practice.

Our experience is that despite a legislative framework, the current disciplinary approach is not a good compliance mechanism particularly regarding sophisticated intentional doping.

Review of trafficking definition regarding substances subject of the substance of abuse provisions

We would like to suggest that the Drafting Team give consideration to reviewing the definition of Trafficking regarding substances subject of the Substance of Abuse provisions. Guidance around the implementation of the Substances of Abuse indicated that those substances were included "because they are frequently abused in society outside the context of sport".

The current definition of Trafficking includes:

> *"....and shall not include actions involving Prohibited Substances which are not prohibited in Out-of-Competition Testing unless the circumstances as a whole demonstrate such Prohibited Substances are not intended for genuine and legal therapeutic purposes or are intended to enhance sport performance."*

Given many of the Substances of Abuse do not have a legal and therapeutic purpose, despite the actions of the Athlete clearly not being intended to enhance sport performance, this results in a potential unintended consequence of the Athlete potentially being eligible for a reduced sanction under Substance of Abuse provisions but then subject of a Trafficking or Attempted Trafficking ADRV. Substances of Abuse could be excluded from the *"…intended for genuine legal and therapeutic purposes…"* which would then limit the impact of trafficking on those substances only where it is *"…intended to enhance sport performance…"* and puts the onus on the ADO to gather evidence of such.

2027 CODE & IS UPDATE PROCESS

Formatting of the World Anti-Doping Code and International Standards

Concepts for Consideration and Feedback

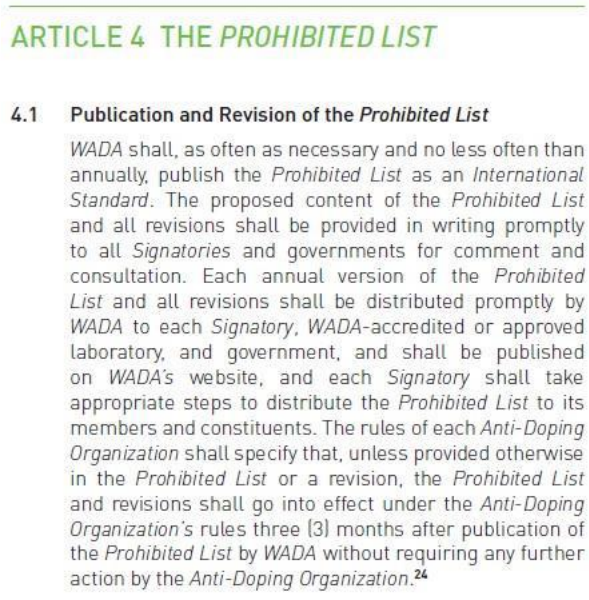
Executive Summary

Certain formatting aspects in both the World Anti-Doping Code (Code) and International Standards have remained relatively unchanged since the original iterations of the Code and International Standards were first adopted. Particularly, in the English version of the Code, definitions have always been capitalized and italicized and definitions in the English versions of the International Standards have always been capitalized and underlined.

As part of the 2027 Code & IS Update Process, WADA wishes to receive feedback as to whether certain formatting aspects are still relevant and useful for the practitioners, readers, and users of the Code and International Standards. WADA also welcomes any other comments or suggestions that could improve both the formatting and legibility of the Code and International Standards.

Concept #1: Italicization of defined terms in the Code

Should defined terms in the Code remain italicized in the updated version of the Code (see example)?



ARTICLE 4 THE *PROHIBITED LIST*

4.1 Publication and Revision of the *Prohibited List*

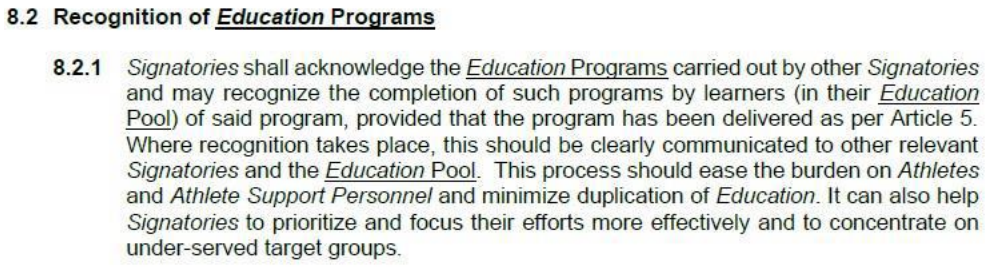
WADA shall, as often as necessary and no less often than annually, publish the *Prohibited List* as an *International Standard*. The proposed content of the *Prohibited List* and all revisions shall be provided in writing promptly to all *Signatories* and governments for comment and consultation. Each annual version of the *Prohibited List* and all revisions shall be distributed promptly by *WADA* to each *Signatory*, *WADA*-accredited or approved laboratory, and government, and shall be published on *WADA's* website, and each *Signatory* shall take appropriate steps to distribute the *Prohibited List* to its members and constituents. The rules of each *Anti-Doping Organization* shall specify that, unless provided otherwise in the *Prohibited List* or a revision, the *Prohibited List* and revisions shall go into effect under the *Anti-Doping Organization's* rules three (3) months after publication of the *Prohibited List* by *WADA* without requiring any further action by the *Anti-Doping Organization*.[24]

PROVIDE FEEDBACK TO CONCEPT #1

Yes, it is helpful to differentiate the defined terms and we have no issues with this continuing to be done using italics.

Concept #2: Underling of defined terms in the International Standards

Should defined terms in the International Standards remain underlined in the updated and new versions of the International Standards (see example)?



8.2 Recognition of *Education* Programs

8.2.1 *Signatories* shall acknowledge the *Education* Programs carried out by other *Signatories* and may recognize the completion of such programs by learners (in their *Education* Pool) of said program, provided that the program has been delivered as per Article 5. Where recognition takes place, this should be clearly communicated to other relevant *Signatories* and the *Education* Pool. This process should ease the burden on *Athletes* and *Athlete Support Personnel* and minimize duplication of *Education*. It can also help *Signatories* to prioritize and focus their efforts more effectively and to concentrate on under-served target groups.

PROVIDE FEEDBACK TO CONCEPT #2

For the purpose of consistency, consideration should be given to presenting defined terms in the same manner as in the Code.

Concept #3: Positioning of comments in International Standards

Should comments to the different articles in the International Standards be positioned in the body of the text or in a footnote below (see example)?

4.3 *Anti-Doping Organizations* shall be able to demonstrate that their Processing of Personal Information takes place in accordance with this *International Standard*, in particular through the adoption of appropriate internal policies and procedures reflecting their adherence to this *International Standard*.

[Comment to 4.3: Anti-Doping Organizations can only effectively adhere to the requirements of this International Standard by having in place documented internal policies, procedures and information governance standards relating to Personal Information.]

PROVIDE FEEDBACK TO CONCEPT #3

Comments presented in the body of text provide for more ease of reading than in a footnote.

Other – provide feedback on other areas of the ‘Formatting of the World Anti-Doping Code and International Standards’ you think needs reviewing or updating

PROVIDE FEEDBACK

Large sections of continuous text, make it more difficult to read and accurately interpret many of the provisions of the Code. Where possible, we encourage the Drafting team to separate the text, especially where there are subsections. For example 10.8.2.

2027 CODE & IS UPDATE PROCESS

International Standard for Code Compliance by Signatories

Concepts for Consideration and Feedback

Executive Summary

The International Standard for Code Compliance by Signatories (ISCCS) was introduced in April 2018 to set out the framework and procedures for ensuring Code compliance by Signatories. More specifically the ISCCS covers:

- The roles, responsibilities, and procedures of the different bodies involved in WADA's compliance monitoring function (Article 5);
- The support and assistance that WADA will offer to Signatories in their efforts to comply with the Code and the International Standards (Article 6);
- The means by which WADA will monitor compliance by Signatories with their obligations under the Code and the International Standards (Article 7) as well as the opportunities and support that WADA will offer to Signatories to correct non-conformities before any formal action is taken (Article 8);
- If a Signatory fails to correct the non-conformities and disputes the allegation of non-compliance, signatory consequences of such non-compliance or reinstatement conditions, the process to be followed to before the Court of Arbitration for Sport (CAS) to hear and determine the dispute (Articles 9 and 10; Annexes A and B);
- The procedures that WADA will follow to ensure that a Signatory that has been determined to be non-compliant, is reinstated as quickly as possible once it has corrected that non-conformity (Article 11).

Given the Russian Anti-Doping Agency (RUSADA) CAS case was ongoing during the previous Code review process in 2021, only minimal, clerical amendments were made to the ISCCS. Once the CAS case was concluded and CAS had rendered its decision, WADA initiated its first full review of the ISCCS in 2022 and conducted two rounds of stakeholder consultation. It is currently proposed that an updated ISCCS will come into force in 2024.

It is anticipated that the ISCCS will require further updates as part of the 2027 Code and IS Update process to ensure it reflects any changes made to the Code and other International Standards. It is likely that this will be done through stakeholder consultation in 2025. For example, such changes may include:

- Updating activities in the categories of non-compliance (Annex A) to reflect changes made in the Code and other International Standards; and
- Addressing issues of historical or non-correctable non-compliance if such aspects become effective in the Code (see also Concept #9 of the Code Concept Paper).

Consequently, at the current moment, no new concepts are presented here. Nevertheless, both WADA and the ISCCS Drafting Team welcome any additional feedback on the ISCCS.

PROVIDE FEEDBACK

Recent cases and CAS decisions regarding compliance have shown that further strengthening or clarification of the Standard may be required to ensure decisions (such of those of CAS) are not able to cause confusion or undermine the intent of the Standard. For example:

- Drafting that prevents the possibility for situations whereby ADOs remain non-compliant however no consequences are in place.
- Drafting that ensures sanctions imposed are appropriate to the seriousness of the offence. It is clear the outcome in the RUSADA case (decision of CAS) was not the desired outcome of WADA, and not considered appropriate by most of the anti-doping community. If the 2-year ban was the longest sanction available for what was the largest scale doping scheme seen in the history of the Code – then changes are needed (including to the standard) to ensure WADA is able to appropriately respond in these cases.

Other – provide feedback on other areas of the ‘International Standard for Code Compliance by Signatories’ you think needs reviewing or updating

PROVIDE FEEDBACK

NIL

2027 CODE & IS UPDATE PROCESS

International Standard for Intelligence and Investigations

Concepts for Consideration and Feedback

Executive Summary

The International Standard for Intelligence and Investigations (ISII) is a new International Standard dedicated to requirements for conducting intelligence and investigations activities. To date, these standards were part of the International Standard for Testing and Investigations (ISTI). However, evolution within the anti-doping landscape necessitates that a dedicated standard be applied to the practice of intelligence gathering and investigation. Moreover, such a standard is wanted by those within the anti-doping intelligence and investigations community.

Code Article 5.7 requires that an Anti-Doping Organization (ADO) “[has] the capability to conduct, and shall conduct, investigations and gather intelligence” as required by the ISTI. In its current form the ISTI establishes the minimum standards an ADO must attain regarding the “gathering, assessment and use” of intelligence, as well as conducting an investigation.

This document is not a draft of the proposed ISII. Rather, it is a conceptual document where concepts and their related context will be explained, and stakeholder feedback as it relates to a concept shall be sought. This feedback will help to inform the ISII Drafting Team during the subsequent phase, the ‘First Drafting Phase’ following which stakeholders will have an opportunity to provide input directly related to the precise text and wording of each article in the ISII.

Concept #1 – Gathering, Assessment, and Use of Anti-Doping Intelligence

Much of the ISII content will be founded on the previous requirements as outlined in the ISTI. Accordingly, as it relates to the gathering, assessment, and use of anti-doping intelligence, the ISII Drafting Team has chosen to retain certain concepts set out at ISTI Article 11 as a guide for establishing the key areas which it intends to include in the ISII. Where applicable, the ISII Drafting Team has outlined the reasoning for the inclusion of any mandatory requirements.

- **ADOs must ("shall") ensure they are able to obtain, assess and process anti-doping intelligence from all available sources (as per ISTI Article 11.1).**

  The ISII Drafting Team considers this to be a foundational objective, and it should remain a mandatory requirement in the ISII.

- **ADOs must ("shall") do everything in their power to ensure that they are able to capture or receive anti-doping intelligence from all available sources (as per ISTI Article 11.2.1).**

  The ISII Drafting Team considers this to be a foundational capacity and it should remain a mandatory requirement in the ISII.

- **ADOs must ("shall") have policies and procedures in place to ensure that anti-doping intelligence captured or received is handled securely and confidentially, that sources of intelligence are protected for these purposes (as per ISTI Article 11.2.2).**

  The ISII Drafting Team considers this to be a foundational capability and it should remain a mandatory requirement. However, the ISII Drafting Team proposes to establish better guidance on the issue of human sources (e.g., source registration, management, and use). The issue of human sources is the subject of a specific concept below (see Concept #2).

- **ADOs must ("shall") ensure that they are able to assess all anti-doping intelligence upon receipt for "relevance, reliability, and accuracy" (as per ISTI Article 11.3.1).**

  The ISII Drafting Team considers this to be a foundational capability and it should remain a mandatory requirement in the ISII.

- **All anti-doping intelligence captured or received by an ADO should be "collated and analyzed to establish patterns, trends and relationships" that may assist the work of an ADO (as per ISTI Article 11.3.2).**

  The ISII Drafting Team understands the history and purpose of this non-mandatory requirements. However, it is concerned by the consequences of those ADOs who neither collate nor analyze their anti-doping intelligence, and by those ADOs who have insufficient resources (e.g., a trained analyst) to conduct any analysis of their intelligence. The ISII Drafting Team proposes to provide clarity around the expectations of collating and analysis to provide ADOs a better understanding of this requirement.

- **The ISTI details the purposes for which anti-doping intelligence must ("shall") be used (e.g., developing and revising a testing plan) (as per ISTI Article 11.4.1).**

  The ISII Drafting Team acknowledges the importance of testing, generally, and intelligence led testing, more particularly. However, the ISII Drafting Team notes that globally less than 1% of samples collected produce an Adverse Analytical Finding ("AAF"). Moreover, the use of anti-doping intelligence is broader than developing a test program. It can be used to drive prevention and deterrence strategies (e.g., education, proactive outreach, communication strategies etc.). thereby, enabling ADOs to better distribute their limited resources to areas of highest risk. Consequently,

direction within the ISII on the effective use of intelligence regarding non-analytical cases will be considered.

- **ADOs "should also develop and implement policies and procedures for the sharing of intelligence" (as per ISTI Article 11.4.2).**

  The ISII Drafting Team notes that this is not a mandatory requirement in the ISTI. Nevertheless, the ability to share information with relevant entities and authorities is considered by the ISII Drafting Team as fundamental to the effectiveness of an anti-doping program and representative of the need for a holistic and collaborative approach to anti-doping. Non-analytical violations are invariably the result of investigation, often involving external stakeholders. In the absence of an established and robust procedural framework, intelligence sharing is often ad hoc and inconsistent. The WADA European I&I Capacity and Capability Project is currently fostering relationships between European based ADOs and relevant law enforcement authorities. An established and mandatory obligation to implement policies and procedures may greatly enhance the collaboration between ADOs and law enforcement. To this end, the ISII Drafting Team is considering making the implementation of policies and procedures a mandatory requirement.

- **ADOs should develop and implement policies and procedures to facilitate and encourage confidential sources (e.g., informants, whistleblowers) (as per ISTI Article 11.4.3).**

  The ISII Drafting Team considers the area of human sources to be one of the most important to the ISII and an area requiring significant consideration, review, and clarity. This matter is the subject of a specific concept below (see Concept #2).

PROVIDE FEEDBACK TO CONCEPT #1

Previous mandatory requirements outlined in Art. 11 of the ISTI

- **ADOs must ("shall") ensure they are able to obtain, assess and process anti-doping intelligence from all available sources (as per ISTI Article 11.1).**
- **ADOs must ("shall") do everything in their power to ensure that they are able to capture or receive anti-doping intelligence from all available sources (as per ISTI Article 11.2.1).**
- **ADOs must ("shall") have policies and procedures in place to ensure that anti-doping intelligence captured or received is handled securely and confidentially, that sources of intelligence are protected for these purposes (as per ISTI Article 11.2.2).**
- **ADOs must ("shall") ensure that they are able to assess all anti-doping intelligence upon receipt for "relevance, reliability, and accuracy" (as per ISTI Article 11.3.1).**
- **The ISTI details the purposes for which anti-doping intelligence must ("shall") be used (e.g., developing and revising a testing plan) (as per ISTI Article 11.4.1).**

We **agree** with all the mandatory requirements the Drafting Team is proposing to carry over from the ISTI Article 11: Articles 11.1, 11.2.1, 11.2.2, 11.3.1, and 11.4.1.

ADOs must ("shall") do everything in their power to ensure that they are able to capture or receive anti-doping intelligence from all available sources (as per ISTI Article 11.2.1).

In relation to Article 11.2.1, we suggest that more guidance be provided as to how an organisation should capture, or receive information, to ensure an effective mechanism is in place. ADOs should be encouraged to go beyond a minimum standard to effectively receive (and proactively identify) intelligence information from the sporting community. This could include a range of options tailored to meet the different capabilities of ADOs. For example, the range of options could extend from an email address, phone line, mobile applications and a web form to an anonymous two-way communications system (similar to platforms used by WADA / ITA).

All anti-doping intelligence captured or received by an ADO should be "collated and analyzed to establish patterns, trends and relationships" that may assist the work of an ADO (as per ISTI Article 11.3.2).

We **agree** with the proposal to provide clarity around the expectations of collating and analysis to provide ADOs a better understanding of this requirement.

Other previous requirements outlined in Art. 11 of the ISTI

- **The ISTI details the purposes for which anti-doping intelligence must ("shall") be used (e.g., developing and revising a testing plan) (as per ISTI Article 11.4.1).**
- **ADOs "should also develop and implement policies and procedures for the sharing of intelligence" (as per ISTI Article 11.4.2).**
- **ADOs should develop and implement policies and procedures to facilitate and encourage confidential sources (e.g., informants, whistleblowers) (as per ISTI Article 11.4.3).**

We **agree** with all the other requirements the Drafting Team is proposing to carry over from the ISTI Article 11: Articles 11.4.1, 11.4.2, 11.4.3.

The ISTI details the purposes for which anti-doping intelligence must ("shall") be used (e.g., developing and revising a testing plan) (as per ISTI Article 11.4.1).

We **agree** that guidance/direction is required to help inform the effective use of intelligence across both analytical and non-analytical cases.

In relation to ISTI Article 11.4.1, we acknowledge the use of anti-doping intelligence is broader than developing a testing program and extends to drive other prevention, disruption and detection strategies especially based on risk.

Strategies may include identifying unusual patterns and in particular the athlete's behaviour, identifying emerging doping methods, further investigating information from sources, SOPS for how to adjust testing plans based on intelligence, integrate case studies into the risk assessment, a shared platform across ADO's for information sharing.

ADOs "should also develop and implement policies and procedures for the sharing of intelligence" (as per ISTI Article 11.4.2).

We **agree** that the ISII Drafting Team, consider making the implementation of policies and procedures a mandatory requirement in relation to ISTI article 11.4.2.

We suggest that caution must be exercised to ensure that the appropriate emphasis is placed on different national and international arrangements. These should allow for flexibility, and any mandatory requirements must respect legal frameworks and support stakeholder expectations, while seeking to address the barriers to sharing information.

For example, depending on the legislative arrangements in different countries and the nature of the information, sharing with other ADOs may be as important as sharing with law enforcement, or even more so, especially where doping is not a criminal offence (e.g. Law Enforcement in Australia are indifferent to unsupported or vexatious allegations regarding low level drug use). It is also important to respect national requirements that govern the passage of information between organisations and law enforcement to avoid upsetting established protocols that already work effectively in this space. We are of the view that in some circumstances, with the assistance of WADA, it may be more beneficial to set up structures and platforms and distribute tools for sharing information amongst ADOs encouraging collaboration, rather than mandate practices that may not always be appropriate or best practice in the circumstances.

We also suggest, it would be beneficial to clarify whether a requirement to share information, is implying it be a requirement to be ‘able to’ share information (i.e.. if asked) or if it is intended to capture the ‘proactive’ sharing of information. We consider the proactive sharing of intelligence insights and building awareness across ADOs (noting this can be de-identified general trends) an absolutely fundamental basis underpinning intelligence-led anti-doping. This would aid ADOs in minimising duplications of resources and efforts. Additionally, it would enhance ADOs global response, and strategies, to deter, detect and prevent the potential for athletes to share information on anti-doping methods for avoiding detection. The Drafting Team may wish to consider if it is possible to determine any types of information that must be shared (and to which organisation(s)) as opposed to other information that ‘should’ be shared where possible, and appropriate to do so.

ADOs should develop and implement policies and procedures to facilitate and encourage confidential sources (e.g., informants, whistleblowers) (as per ISTI Article 11.4.3).

We **agree** with this proposal in relation to ISTI Article 11.4.3,.

We are also of the view that it would be beneficial to revisit the terminology used and look to adopt more meaningful terms such as 'contact', 'source' or 'proactive reporter' in place of 'informant' and 'whistleblower' (which are terms more relevant to law enforcement).

Concept #2 – Human Source Management, Use, and Oversight

The ISII Drafting Team acknowledges the importance of human sources, as well as the potential risks posed by a deficient source handling program (e.g., policies, procedures). This area has remained largely untouched by the ISTI. The ISII Drafting Team proposes to provide significant clarity and guidance around this topic. The WADA Sport Human Intelligence Network ("SHIN") has already expressed the importance of this issue to the ISII Drafting Team on this topic. This concept is linked in many ways to Concept #4 below.

PROVIDE FEEDBACK TO CONCEPT #2

We **agree** it is imperative that significant clarity and guidance is provided to support the handling of human sources.

To simultaneously address this concept and Concept #1 - **ADOs must ("shall") have policies and procedures in place to ensure that anti-doping intelligence captured or received is handled securely and confidentially, that sources of intelligence are protected for these purposes (as per ISTI Article 11.2.2).**

Where ADOs are able to perform this function, minimum standards should be applied. It would also be useful to provide 'good practice guidance' for those ADOs that work more closely with other ADOs and do not have a strong connection to law enforcement/intelligence agencies.

Setting a baseline minimum standard would promote 'good practice' such as arrangements to protect the safety and welfare of sources, and practices to reduce the risk of corruption. For example:

- source tasking protocols,
- requirement to document source agreements.
- steps to ensure sources know not to engage in any illegal activity.
- a registry that is secure.
- source verification protocols.
- utilisation of information protocols – i.e. for anti-doping purposes only.
- auditing and reviews of human source management practices and security measures.
- measures to maintain confidentiality. i.e., restricted access.

Best Practice Guidelines may include the following to support a minimum standard and enhance the process for management of anti-doping intelligence:

- Implementing continuous improvement programs including the most up to date methods.
- Implementing risk assessments and mitigations for things like security breaches.
- How best to foster whistleblowing principles.
- Ethical and trauma informed decision-making best practices.
- How to foster collaboration across different ADOs and potentially law enforcement/intelligence agencies.
- Incorporating elements of human sources and Intelligence functions into Education programs and tools.

The drafting team may also wish to investigate how to best monitor and ensure practices are compliant and effective through regular audits.

Concept #3 – Investigations

As previously mentioned, much of the ISII content will be founded on the previous requirements as outlined in the ISTI. Accordingly, as it relates to investigations, the ISII Drafting Team has chosen to retain certain concepts set forth at ISTI Article 12 as a guide for establishing the key areas which it intends to include in the ISII. Where applicable, the ISII Drafting Team has outlined the reasoning for the inclusion of any mandatory requirements.

- **The objective of ISTI Article 12 was to establish standards for the efficient and effective conduct of investigations into relevant matters (e.g., AAFs, adverse passport findings, non-analytical violations, involvement of complicit athlete support personnel (ASP)) (as per ISTI Article 12.1). Moreover, the ISTI detailed that the purpose of an investigation was to find all inculpatory and exculpatory evidence, including evidence of a breach of the Code or applicable International Standard (as per ISTI Article 12.1.1).**

  The ISII Drafting Team agrees that setting standards for the "efficient and effective conduct of investigation" are vital to the ISII, particularly given that in certain instances the Code mandates the conducting of an investigation. The ISII Drafting Team therefore proposes to provide clarity on this issue, including on any previous potential conflict between the ISTI and the operational practice of some ADOs (e.g., ISTI Article 12.1.1 stipulates that the purpose of an investigation is to "rule out" a person's involvement in a violation; however, some ADOs commence a results management process without ever interviewing the athlete, or investigating an athlete's claim of defense).

- **An ADO must ("shall") ensure that they are able to investigate matters "confidentially and effectively" (as per ISTI Article 12.2.1).**

  The ISII Drafting Team considers this to be a foundational capability and it should remain a mandatory requirement in the ISII.

- **An ADO must ("shall") gather, record, and fully document all relevant information "as soon as possible", to develop "admissible and reliable evidence". Moreover, an ADO must ("shall") conduct all investigations "fairly, objectively and impartially" (as per ISTI Article 12.2.2).**

  The ISII Drafting Team considers this to be a foundational capability and capacity, and it should remain a mandatory requirement in the ISII. The ISII Drafting Team proposes to provide clarity around the notions of a fair, objective, and impartial investigation, as well as the means by which an ADO should store information.

- **An ADO should make use of "all investigative resources reasonably available" to it to conduct its investigation (as per ISTI Article 12.2.3).**

  The ISII Drafting Team considers this an important area of the ISTI and proposes to carry this over to the ISII while providing enhanced clarity and firm guidance around the effective use of resources (e.g., law enforcement collaboration, Anti-Doping Intelligence and Investigations Network (ADIIN), collaboration with other ADOs).

- **Athletes and ASPs who fail to comply with the Code Article 21 requirement to "cooperate" with investigation should be subject to "disciplinary action" under the applicable rules of their sport, and where the conducted amounts to subversion of the investigation process, an applicable Code Article 2 anti-doping rule violation (e.g., tampering) should be charged (as per ISTI Article 12.2.4).**

  The ISII Drafting Team considers this the area of cooperation (as per Code Article 21) to be one of the more ambiguous issues within the ISTI and Code. For example, the terms "cooperate", and "subversion" are not defined by the Code. Consequently, the ISII Drafting Team proposes to consult

with the Code Drafting Team in an endeavor to provide greater clarity around issues of this kind. ADIIN has expressed significant interest in improving the workability of this area. The ISII Drafting Team will also engage with the Code Drafting Team on the viability of including within the Code a violation for not "cooperating" with an ADO investigation.

- **An ADO must ("shall") come to a decision "efficiently and without undue delay" as to whether proceedings should be commenced against an athlete or other person (as per ISTI Article 12.3.1).**

  The ISII Drafting Team considers this to be a foundational capability and it should remain a mandatory requirement in the ISII.

- **An ADO shall comply with the International Standard for Results Management for any proceedings commenced (as per ISTI Article 12.3.2).**

  The ISII Drafting Team considers this to be a foundational capability and it should remain a mandatory requirement in the ISII.

- **Where a decision is made not to commence proceeding against an athlete or other person, then this decision shall be communicated to all relevant parties (e.g., WADA, applicable International or National Federation), and an ADO must ("shall") provide that relevant party all necessary information to allow that entity to determine whether to appeal against the decision (as per ISII Article 12.3.3).**

  The ISII Drafting Team considers this to be a foundational capability and it should remain a mandatory requirement in the ISII.

PROVIDE FEEDBACK TO CONCEPT #3

ISTI Article 12 concepts to be transferred to the ISII

The objective of ISTI Article 12 was to establish standards for the efficient and effective conduct of investigations into relevant matters (e.g., AAFs, adverse passport findings, non-analytical violations, involvement of complicit athlete support personnel (ASP)) (as per ISTI Article 12.1). Moreover, the ISTI detailed that the purpose of an investigation was to find all inculpatory and exculpatory evidence, including evidence of a breach of the Code or applicable International Standard (as per ISTI Article 12.1.1).

We **agree** that setting standards for the 'efficient and effective conduct of investigations' is vital to the ISII and that clarity is required to ensure that operational practices are consistent and harmonised across ADOs and are revised to promote a clear and effective approach.

It may be useful to explain the meaning of 'an efficient and effective program' and outline the indicators of success. The definition may allude to efficiency being adhering to predetermined timelines and deadlines, while effectiveness may incorporate things like fairness, impartiality and objectivity are maintained (as per ISTI Article 12.2.1), but further clarification would be beneficial.

Key indicators for success may include quality metrics such as measuring defects for meeting deadlines (in particular for decision making), metrics for measuring cooperation or non-cooperation, instances for utilisation of external resources like law enforcement bodies, metrics for obtaining and managing information, instances for the scrutinisation of evidence, feedback outcomes post the process, successful implementation of corrective actions for continuous improvement.

An ADO must ("shall") ensure that they are able to investigate matters "confidentially and effectively" (as per ISTI Article 12.2.1).

We **agree** this is a mandatory requirement for inclusion in the ISII. All investigations should be conducted confidentially, fairly and impartially, observing the principles of natural justice.

An ADO must ("shall") gather, record, and fully document all relevant information "as soon as possible", to develop "admissible and reliable evidence". Moreover, an ADO must ("shall") conduct all investigations "fairly, objectively and impartially" (as per ISTI Article 12.2.2).

We **agree** this is a mandatory requirement for inclusion in the ISII.

We also **agree** with the proposal to provide clarity around the notions of a fair, objective and impartial investigation, as well as the means by which an ADO should store information.

An ADO should make use of "all investigative resources reasonably available" to it to conduct its investigation (as per ISTI Article 12.2.3).

We **agree** with the inclusion of this provision in the ISII and with the proposal to provide clarity and guidance around the effective use of resources (especially in relation to the use of tools for collaboration).

Athletes and ASPs who fail to comply with the Code Article 21 requirement to "cooperate" with investigation should be subject to "disciplinary action" under the applicable rules of their sport, and where the conducted amounts to subversion of the investigation process, an applicable Code Article 2 anti-doping rule violation (e.g., tampering) should be charged (as per ISTI Article 12.2.4).

We **agree** that greater clarity and explanation is required to improve the understanding, implementation and workability of this provision and that the key actions and behaviours need to be defined (e.g. cooperate and subvert).

We also **support** further investigation of a possible additional violation for 'not cooperating with an investigation'.

An ADO must ("shall") come to a decision "efficiently and without undue delay" as to whether proceedings should be commenced against an athlete or other person (as per ISTI Article 12.3.1).

We **agree** this is a mandatory requirement for inclusion in the ISII.

The inclusion of a minimum standard and potential implementation of success indicators should assist to support mandating and monitoring compliance. As previously addressed against the first point, of Concept #3.

An ADO shall comply with the International Standard for Results Management for any proceedings commenced (as per ISTI Article 12.3.2).

We **agree** this is a mandatory requirement for inclusion in the ISII.

Where a decision is made not to commence proceeding against an athlete or other person, then this decision shall be communicated to all relevant parties (e.g., WADA, applicable International or National Federation), and an ADO must ("shall") provide that relevant party all necessary information to allow that entity to determine whether to appeal against the decision (as per ISII Article 12.3.3).

We **agree** this is a mandatory requirement for inclusion in the ISII.

Concept #4 – Substantial Assistance

The ISII Drafting Team has identified significant confusion and inconsistency around the issue of substantial assistance (Code Article 10.7.1); for example, its workability and application across the various ADO jurisdictions, as well as its use and promotion by ADOs. The ISII Drafting Team is aware of frustration experienced in various jurisdictions by investigators on the issue of substantial assistance. This topic is also being addressed by the Code Drafting Team (see Concept #6 of the Code Concept Paper) and the ISII Drafting Team will accordingly work closely with the Code Drafting Team to simplify the complexities around this issue and provide guidelines of best practice in dealing with athletes and other persons on the issue of substantial assistance.

PROVIDE FEEDBACK TO CONCEPT #4

We **agree** the interpretation and application of the provisions dealing with substantial assistance must be clear, easily, and readily applied and upheld, and must be balanced and coordinated with the sanction regime under the Code to ensure the best outcomes are achieved for all stakeholders.

The types of assistance recognised under this provision should be expanded to include and recognise the value of information that promotes the fight against doping in sport. For example, information that uncovers doping practices and methodologies or exposes the actions of other third parties where a breach of another compliance, or regulatory regime, facilitates doping in sport.

The current focus on assistance that leads to a further ADRV, or criminal investigation, is too narrow and too constrained and is limited by current Code requirements, such as the Article 10.7.1 reference to the organisation that ‘discovers or brings forward’ the information’.

Athletes who are proactive and want to provide assistance, but do not meet the current criteria for substantial assistance, are at a disadvantage. By expanding the criteria and providing ADOs flexibility to apply substantial assistance, will result in ADOs receiving a wider range of assistance that could improve compliance and provide ADOs with a greater understanding of doping methodologies and practices.

It is also imperative that there is clarity around the benefit that will be afforded to an athlete providing assistance, to encourage the athlete to make a fully informed decision understanding the consequences of their actions.

The drafting team may wish to consider creating guidance on the range of suspension of consequences that could apply to the receipt of certain types of information. This may also expand to a relevant athlete’s active engagement to assist an ADO in educating their peers of the pitfalls and impacts of ADRV process on their welfare and career, and avenues for providing assistance through whistleblower schemes.

Concept #5 – Investigations of AAFs and Non-Analytical Violations

The ISII Drafting Team has identified a lack of consistency amongst ADOs in the investigation of AAFs. Many ADOs treat an AAF as an administrative exercise, like the end of an investigation, and do not consider other possible associated non-analytical violations (e.g., Code Articles 2.2 (Use), 2.6 (Possession), 2.9 (Trafficking)), or intelligence that may be gathered. Some ADOs consider an AAF as the start of an investigation and use investigators to notify an athlete of an AAF and establish how and why the AAF occurred. The earlier an investigator is introduced to a case, the greater the chances that the truth will be discovered. The ISII Drafting Team propose to provide significant clarity and guidance around this topic.

PROVIDE FEEDBACK TO CONCEPT #5

We **agree** that significant clarity and guidance around the investigation and management of AAFs is required to ensure a consistent and harmonised approach (as outlined in our response to the proposal re Art. 12.1).

As articulated in the response to **Concept #2 – Human Source Management, Use, and Oversight**, a minimum standard should be included. Procedures must be designed to promote a thorough investigations balanced with achieving an effective process that is aligned with the goal of catching the facilitators and the cheats.

We also suggest this same approach is put in place for other non-AAF ADRVs and pursuit of these matters should be promoted to the same extent as an investigation into the circumstances of an AAF.

Concept #6 – An Accessible Standard

The ISII Drafting Team proposes to consider holistically the notion of an 'acceptable standard', i.e., a standard that does not unfairly disadvantage an ADO that is poorly resourced compared to an ADO that is well resourced. However, the ISII Drafting Team is conscious of the need to produce a standard that is practically and operationally useful. This noted, it is an unfortunate reality of anti-doping that many ADOs do not have a truly effective intelligence and investigative capability or are so poorly resourced that most of their energy is expended on ineffective testing programs. Additionally, the ISII Drafting Team proposes to consider the practicalities of policing the new Standard, including matters like how to assess a stakeholder's compliance, and the resources required to properly audit a stakeholder's compliance with the ISII. Stakeholder's feedback on this will be valuable to the ISII Drafting Team.

PROVIDE FEEDBACK TO CONCEPT #6

We **agree** with the proposal to produce a standard that is operationally and practically useful, and addresses and recognises the different capabilities of ADOs.

It is our view that setting a standard that promotes and supports the wide scope of programs is crucial. For example, by guiding developing programs while granting flexibility to established programs to grow and improve.

We encourage a standard that promotes and strengthens information sharing and collaboration of ADOs. Additionally, we encourage a holistic approach where intelligence and investigations teams can utilise shared data sets, to not only address existing trends, but identify and integrate new and proactive strategies. This will assist to prevent, deter, or minimise doping methods evolving into trends which significantly impact the global sporting landscape.

Subsequently, this would elevate the need, and importance, of clear auditing practices to ensure compliance and minimise the risk for breaches in security.

Other – provide feedback on other areas of the ‘International Standard for Intelligence and Investigations’ you think needs reviewing or updating

PROVIDE FEEDBACK

Throughout the concept papers, we observe your intent for drafting teams to collaborate ensuring amendments are integrated into the Code. Furthermore, we strongly support and advocate the necessity for drafting teams to align amendments with all other International Standards.

2027 CODE & IS UPDATE PROCESS

International Standard for Laboratories

Concepts for Consideration and Feedback

Executive Summary

The International Standard for Laboratories (ISL) is a comprehensive, highly technical, and specialized International Standard that has undergone multiple rounds of revision since its first publication in August 2004. The ISL establishes the general norms and requirements for all WADA accredited anti-doping laboratory-related activities including:

- The definition of WADA laboratory normative documents (the ISL and its associated Technical Documents and Technical Letters, as well as Laboratory Guidelines and Technical Notes);
- The process of WADA accreditation or approval and the sanctions/disciplinary processes for laboratories which fail to comply with accreditation standards (Article 4.0);
- The structural/resources, process, and management requirements for the analysis of samples, including the performance of anti-doping tests and the secondary use of samples for research and quality assurance (Article 5.0);
- The WADA External Quality Assurance Scheme (EQAS) (Article 6.0); and
- The evaluation of Laboratory EQAS and routine performance (Article 7.0) as well as annexes describing the ISL Code of Ethics (Annex A), requirements for WADA accreditation for Major Events (Annex B), and the Procedural Rules for the ISL Disciplinary Committee (Annex C).

Considering the ISL is a living document, it is subject to periodic review and constant improvements to better reflect the active dynamics of the promotion of clean sport as well as the developments in terms of both doping practices, scientific knowledge, technological improvements, as well as the day-to-day experience gained through the review of laboratory practices and the management of specific doping cases. Accordingly, in this spirit of continuous development and improvements, the ISL Drafting Team has identified the following concepts which it considers will help further strengthen and clarify the ISL as part of the 2027 Code & International Standard Update Process.

This document is a conceptual document where concepts and their related context will be explained, and stakeholder feedback as it relates to a concept shall be sought. This feedback will help to inform the ISL Drafting Team during the subsequent phase, the ‘First Drafting Phase’ following which stakeholders will have the opportunity to provide input directly as it relates to the proposed modifications or additions of the precise text and wording of the relevant articles in the ISL.

Concept #1 – Further Details of Requirements for WADA Laboratory Accreditation/Approval for the Athlete Biological Passport (ABP)

ISL Article 4.0 provides an explanation of the different steps and requirements for a laboratory to obtain WADA accreditation or WADA approval for the ABP. However, the ISL Drafting Team considers that additional details are needed to further clarify the requirements associated with the different stages of the accreditation/approval processes. Specifically, the ISL Drafting Team is seeking to propose the following updates:

- **Robust anti-doping programs in host country of applicant laboratory for WADA accreditation**. The ISL Drafting Team will consider proposing that a new laboratory applicant must demonstrate that its host country has a robust anti-doping program (i.e., minimum number of urine, blood, and ABP samples) before it shall be granted WADA accreditation as a laboratory or ABP laboratory in that country. This would ensure that a new laboratory is situated in a country with a strong national anti-doping program. It would also ensure that the new laboratory has a solid foundation and receives appropriate public/governmental support in that country. In addition, this may also help convince the host country National Anti-Doping Organization that the existing laboratory network is sufficient, and as a consequence, that the country should prioritize supporting the country's anti-doping program instead of looking for a new laboratory elsewhere.

- **Review of initial WADA accreditation fee**. The ISL Drafting Team will consider proposing a clearer definition of the costs needed or involved in the accreditation process prior to WADA accreditation or approval.

- **Candidate Laboratory**. The ISL Drafting Team will discuss establishing a clearer definition of the different stages in the three-year timeline for candidate laboratories: two years to prepare for the pre-probationary test (PPT) EQAS and assessment; and one year to address issues related to the PPT EQAS.

- **Probationary Laboratory**. The ISL Drafting Team will consider proposing the establishment of a time limit for probationary laboratories, which should allow increased flexibility in the timelines for implementation of improvements and corrections based on a Final Accreditation Test (FAT) and on-site assessment of probationary laboratories.

- **Requirement for Laboratories to implement a Research & Development (R&D) Program**. The ISL Drafting Team will consider defining a clearer framework as it relates to the requirements for laboratories' R&D programs. For example, the current requirement that 7% of a laboratory's annual budget be directed towards R&D may not necessarily be the best measure of a strong scientific research program, which can benefit the anti-doping system. In general, the ISL Drafting Team considers that the existing requirements are minimalistic and could be improved by integrating more descriptive indicators and qualifying the expectations from the research (e.g., level of novelty and innovation). Moreover, the annual periodicity of the evaluations of R&D programs is ill-adapted to the dynamics of scientific research and could be extended (for example, to two or three years), which the ISL Drafting Team considers would be more appropriate for the evaluation of this type of activity.

- **Minimum number of annual samples**. The ISL Drafting Team will consider proposing revisions to the current benchmark of 3,000 samples in order to incorporate the complexity and relevance to perform analyses in different matrices (e.g., blood and dried blood spot (DBS)).

- **ABP approval**. The ISL Drafting Team will consider whether a laboratory that is approved by the WADA Executive Committee (ExCo) as a candidate laboratory for WADA accreditation should be automatically qualified as a candidate laboratory for WADA ABP approval, as this would allow the candidate laboratory to begin the process of becoming an ABP laboratory pursuant to ISL Article

4.7.2 (i.e., without requiring the candidate laboratory to revert to the ExCo in order to be specifically granted its ABP laboratory status). If adopted, the WADA technical evaluation could then proceed as described in ISL Article 4.7.2.

- **Analytical Testing Restrictions (ATR)**. ISL Article 4.6.6.1 establishes that an ATR can be extended to a maximum of twelve months, following which the laboratory would be revoked if the laboratory has not provided satisfactory evidence that it has corrected the issues that led to the ATR. Since an ATR is limited to specific Analytical Testing Procedure(s) or the analysis of a particular class(es) of prohibited substances or prohibited methods, the ISL Drafting Team will consider whether a suspension should be imposed on the laboratory before revoking the laboratory's accreditation.

PROVIDE FEEDBACK TO CONCEPT #1

Overall, we **support** the views of the Drafting Team that additional details are needed to further clarify the requirements associated with the different stages of the accreditation/approval processes.

Our comments in relation to the specific proposals are outlined below.

Robust anti-doping programs in host country of applicant laboratory for WADA accreditation

We **support the principle** that a robust national anti-doping program provides a strong foundation for the establishment of a new laboratory and in turn promotes the local anti-doping program. However, we are concerned this may result in a 'chicken and egg' scenario where it is difficult for a country to achieve a robust program in the absence of a 'local' laboratory. A robust program requires the effective collection and analysis of urines, bloods and ABP samples. As some of these processes are time limited, they are dependent on utilising a 'local' laboratory. Where there is not a 'local' laboratory, the required collections and analysis cannot be undertaken, and the country will not be able to demonstrate the program is robust.

We **suggest** this problem could be resolved by defining a robust anti-doping program taking into account these limitations by focusing on other criteria, such as the resources the government dedicates.

Review of initial WADA accreditation fee

We **agree** with the proposal to consider a clearer definition of the costs needed or involved in the accreditation process prior to WADA accreditation or approval. For transparency, we suggest including information on what the fee covers.

Requirement for Laboratories to implement a Research & Development (R&D) Program

We **agree** with this proposal.

Minimum number of annual samples

We **agree in principle** with the proposal to make revisions to incorporate the complexity and relevance to perform analyses in different matrices (e.g., blood and dried blood spot (DBS)) as this will increase the robustness of the process.

However, we would be interested in what the proposed revisions to the current benchmark would be.

Analytical Testing Restrictions (ATR)

We **support** the concept of invoking a suspension on the laboratory before revoking the laboratory's accreditation. However, we suggest its application should be selective to the specific Analytical Testing

Procedure(s) or the analysis of a particular class(es) of prohibited substances or prohibited method, for which the ATR is issued rather than suspending the whole laboratory operation.

Concept #2 – WADA-specific Analytical Testing Procedures

The ISL establishes the requirements for laboratories to implement test methods that are classified as WADA-specific analytical testing procedures. Nevertheless, it has become evident that revisions are required to expedite the application of certain routine analytical procedures, which may also lead to a more effective use of internal human resources for the WADA Laboratory Team, which should otherwise be reviewing all laboratory applications for the implementation of these procedures, including validation reports and standard operating procedures (SOP). This could be considered a task of the ISO/IEC 17025 accreditation bodies.

Accordingly, the ISL Drafting Team will consider proposing revisions to the definition and approval process to include WADA-specific analytical testing procedures into a laboratory's scope of accreditation before application to the analysis of doping control samples.

PROVIDE FEEDBACK TO CONCEPT #2

NIL

Concept #3 – Monitoring of Accreditation Status: Disciplinary Proceedings

ISL Articles 4.6.4.1.2 and 4.6.4.4 describe when a resolution facilitation session (session) may be offered to a laboratory, which has been recommended by the Laboratory Expert Advisory Group (Lab EAG) for an analytical testing restriction, suspension, or revocation of its accreditation. In practice, if a session is requested by a laboratory, it may prolong the disciplinary proceedings instead of shortening them as originally intended.

Therefore, in order to provide the laboratory with an efficient process so that it can focus on the resolution of identified non-conformities instead of facing a lengthy disciplinary process, the ISL Drafting Team will consider proposing revised language to clarify that a laboratory may, upon notice of the Lab EAG's recommendation, either accept the Lab EAG's recommendation, or request disciplinary proceedings be initiated as soon as reasonably possible in order to provide any evidence that the Lab EAG's recommendation should not be accepted.

PROVIDE FEEDBACK TO CONCEPT #3

NIL

Concept #4 – Secondary Use of Samples: Research and Quality Assurance

ISL Article 5.3.12 establishes the conditions for secondary use (research and quality assurance) of doping control samples. However, the concepts of research and quality assurance must be better defined, since the requirements for the use of doping control samples differ for these activities (namely, on the need for an athlete's consent, and consequent protection of athletes' privacy and personal information). Assuredly, many national and institutional ethics policies consider data collected for quality assurance (QA) and quality improvement (QI) activities to be outside the scope of research ethics review and consent procedures. In this respect, both the Code and ISL Article 5.3.12.2 already include language that allows for a broad interpretation of QA/QI activities as well as for the potential overlap with activities that would typically be considered as research related (for example, see the comment to Code Article 6.3, which mentions that the use of samples and related information for quality assurance, quality improvement, method improvement and development or to establish reference populations, is not considered research). Furthermore, with the increased sophistication of doping practices (e.g., new substances, new masking strategies, new doping methods), it is essential that anti-doping laboratories have access to a sufficient number of samples in order to keep pace with new analytical challenges. Therefore, samples collected in the context of doping control represent a valuable resource for anti-doping research and QA/QI.

Accordingly, the ISL Drafting Team will consider proposing a thorough review and update of the ISL in order to assist laboratories and anti-doping organizations in implementing a uniform approach to the use of samples for research, QA, or QI purposes once they are no longer needed for the purposes of doping control, including long-term storage for further analysis, as otherwise such samples would be destroyed. An update to the ISL in this respect should describe the conditions that would allow the secondary use of samples without athlete consent. This proposal would be based on the presumption that such activities do not go beyond the initial objectives of the sample collection, namely, to test the sample for the presence of such prohibited substances and prohibited methods. This noted, and whether consent is required or not, any samples that are used for secondary purposes shall always be adequately anonymized to avoid athlete identification.

Moreover, the ISL Drafting Team proposes that the concept of research be defined in the Code and other related documents in a clearer, more assertive, and justified manner so as to position research as one of the main drivers of performance for the global anti-doping system and, by consequence, as a contribution to the principle of equity between athletes.

PROVIDE FEEDBACK TO CONCEPT #4

We **agree** with this proposal.

We note the work of the ISL Drafting Team in this regard, is directly related to the work of the other Drafting Teams that are also tasked with looking at the use of samples and data for research and other activities, and the privacy considerations that arise.

Any amendments will need to be closely considered and properly aligned with policies of seeking consent, personal information, and privacy protection.

Concept #5 – Clarification of Further Analysis

In accordance with the relevant Code requirements, the ISL establishes the conditions under which samples may be subjected to further analysis. Nonetheless, there is insufficient clarity regarding the performance of certain confirmation procedures that may occur after an adverse analytical finding has been reported (e.g., confirmations by GC/C/IRMS based on ADAMS notifications of an atypical passport finding or upon request by the athlete passport management unit or the testing authority) and which may then require an athlete or hearing panel's consent or approval in order to be carried out.

The ISL Drafting Team shall consider proposing that certain confirmation procedures (e.g., GC/C/IRMS tests for atypical passport findings related to the steroid profile), which are triggered by initially suspicious results from analyses already performed on samples (e.g., initial testing procedures for the steroid profile), are not considered as further analysis, but as part of the ongoing analytical testing process, even if results for other analyses have already been reported for the sample. This would ensure that if an adverse analytical finding has been reported and the athlete has been charged with an anti-doping rule violation, those confirmation procedures could be performed without requiring the athlete or hearing panel's consent or approval.

PROVIDE FEEDBACK TO CONCEPT #5

We **support** this concept but believe greater clarity is required.

We believe the athlete ought to be aware that further analysis is or may be being conducted during the notification/charging. Additionally, we would be interested in how this would work with B samples.

If this further analysis is automatically triggered by initially suspicious results from analyses of samples based on the biological profile, we recommend the financial burden on ADOs be considered.

Concept #6 – Assuring the Validity of Analytical Results

ISL Article 5.0 describes the general requirements (e.g., structural, resource-related, process and management requirements) for the analysis of samples. Amongst them, the implementation of appropriate quality control procedures is essential to ensure the validity of analytical results.

The ISL Drafting Team will consider an improved description of the quality control procedures to be implemented by laboratories, including the use of reference materials (metrological traceability including stock and working solutions, verification of identity and purity checks, etc.), quality control (QC) samples and QC-charts, internal standards, internal quality assessment schemes (iQAS) and internal audit programs.

PROVIDE FEEDBACK TO CONCEPT #6

We **support** the ISL Drafting Team to provide an improved description of the quality control procedures to be implemented by laboratories. We support continuous improvement for the purpose of improving the conformity, accuracy, and reliability of analytical methods.

Concept #7 – Update of WADA EQAS

ISL Article 6.0 describes the WADA External Quality Assessment Scheme (EQAS), which requires updating following the implementation of an EQAS Management System in compliance with the ISO 17043: 2023 international standard applicable to proficiency testing providers.

The ISL Drafting Team will consider proposing revisions to the distribution of WADA EQAS modalities (i.e., number of rounds/samples/type of EQAS) to make it more efficient and cost-effective with an increased focus on education and improvement of laboratory harmonization and analytical capacity, while also maintaining the program as an important tool for laboratory performance monitoring. The ISL Drafting Team will also consider proposals to integrate the introduction of a DBS EQAS program into the ISL. Furthermore, the ISL Drafting Team will consider reviewing the allocation of penalty points in the WADA EQAS based on the revised EQAS sample distribution and application of a new Bayesian statistical approach for evaluation of Laboratory EQAS performance. Depending on the extent of the proposed changes, this may lead to a reduction of the EQAS budget as well as a better assignment and more effective use of WADA human resources for EQAS. It may also require revisions to the existing contract with the EQAS Sample Provider and the identification of a new provider for DBS EQAS samples.

PROVIDE FEEDBACK TO CONCEPT #7

We **agree** with the proposal for the ISL Drafting Team to consider proposing revisions to the distribution of WADA EQAS modalities, and to integrate the introduction of a DBS EQAS program into the ISL.

Additionally, we **agree** the ISL Drafting Team consider reviewing the allocation of penalty points in the WADA EQAS based on the revised EQAS sample distribution and application of a new Bayesian statistical approach for evaluation of Laboratory EQAS performance.

We also suggest the Drafting Team consider the logistics of different DBS devices and different testing menus across laboratories.

Concept #8 – Laboratory Right of Appeal: Evaluation of Non-Conformities identified during Routine Analysis

While the ISL and the WADA EQAS Management System respectively provide guidance on the appeal process for laboratory sanctions affecting their accreditation status (e.g., suspensions, analytical testing restrictions, revocations) and EQAS performance decisions, there is no explicit mention of a laboratory's right of appeal against sanction-related decisions (e.g., assignments of penalty points) for non-conformities identified during routine sample analysis.

To further strengthen the process of laboratory performance evaluation, while maintaining fairness and impartiality, the ISL Drafting Team will consider adding an Article to the ISL that addresses a laboratory's right of appeal against decisions that may lead to the assignment of penalty points (e.g., evaluation of non-conformities identified during routine sample analysis) and which could eventually affect the WADA accreditation or approval status of that laboratory.

PROVIDE FEEDBACK TO CONCEPT #8

We **agree** that the ISL Drafting Team consider adding an Article to the ISL that addresses a laboratory's right of appeal against decisions that may lead to the assignment of penalty points if it will further strengthen the process of laboratory performance evaluation, while maintaining fairness and impartiality.

Other – provide feedback on other areas of the ‘International Standard for Laboratories’ you think needs reviewing or updating

PROVIDE FEEDBACK

When referring to ABP, it would be advantageous to differentiate between ABP types (i.e. steroid, endocrine, or haematological) to clearly articulate the ABP type being referred to in each case (i.e., Approvals under Concept #1 – ABP Approvals).

2027 CODE & IS UPDATE PROCESS

International Standard for Results Management

Concepts for Consideration and Feedback

Executive Summary

The International Standard for the Results Management (ISRM) was first adopted in 2019 and came into effect in 2021 following consultation with Signatories, public authorities, and other relevant stakeholders.

The ISRM's main purpose is to set out the core responsibilities of Anti-Doping Organizations (ADOs) with respect to the various phases of results management, from the initial review and notification of potential anti-doping rule violations until the issuance and notification of a final decision and subsequent appeal.

The ISRM Drafting Team has identified six key concepts for the upcoming revision of the ISRM.

Stakeholders are invited to provide their feedback on each of these concepts, as well as identify any other priority topic areas they wish the Drafting Team to consider.

The ISRM Drafting Team will also work closely with the Code Drafting Team on key results management-related topics, in particular on principles applicable to provisional suspensions, right to a fair hearing, sanctions, and appeals.

Concept #1 – Notification Process

The ISRM Drafting Team intends to review the notification process under the current ISRM, in particular in the context of major events or other major competitions.

The interplay between ISRM Articles 5 and 7 in the context of Code Article 10.8.1 (*One-Year Reduction for Certain Anti-Doping Rule Violations Based on Early Admission and Acceptance of Sanction*) will also be considered. The ISRM Drafting Team intends to consider whether the regime of Code Article 10.8.1 should be available to an athlete already at the stage of the initial notification under ISRM Article 5 as currently, Code Article 10.8.1 is only available at the charge stage.

The ISRM Drafting Team will consider providing further guidance to ADOs as it relates to the acceptance of consequences, and more particularly in which circumstances and how consequences should be proposed under ISRM Article 7.

PROVIDE FEEDBACK TO CONCEPT #1

The ISRM Drafting Team intends to review the notification process under the current ISRM, in particular in the context of major events or other major competitions.

We **agree** with this proposal to review the notification process, in particular in the context of major events/competitions.

The interplay between ISRM Articles 5 and 7 in the context of Code Article 10.8.1 (One-Year Reduction for Certain Anti-Doping Rule Violations Based on Early Admission and Acceptance of Sanction) will also be considered. The ISRM Drafting Team intends to consider whether the regime of Code Article 10.8.1 should be available to an athlete already at the stage of the initial notification under ISRM Article 5 as currently, Code Article 10.8.1 is only available at the charge stage.

We **agree** with this proposal to consider the interplay between ISRM Articles 5 and 7 and Code Article 10.8.1. See our comments in relation to the Code concept for Results Management Agreements under Article 10.8.1.

The ISRM Drafting Team will consider providing further guidance to ADOs as it relates to the acceptance of consequences, and more particularly in which circumstances and how consequences should be proposed under ISRM Article 7.

We welcome further guidance on the application of this provision.

Concept #2 – Provisional Suspension

The ISRM Drafting Team intends to review the provisional suspensions regime in the context of athlete biological passport (ABP) cases as these principles could benefit from further clarification, in particular as it concerns the moment when a provisional suspension is imposed.

Similarly, the grounds on which a provisional suspension may be lifted deserve further consideration, for instance whether they should be expanded to include likely cases of no fault or negligence or potentially others.

The ISRM Drafting Team intends to liaise with the Code Drafting Team in respect of these matters.

PROVIDE FEEDBACK TO CONCEPT #2

We **agree** that reviewing the provisional suspension regime, in the context of the ABP, will be a valuable exercise.

We also **agree** it is worthwhile exploring additional grounds for the lifting of provisional suspensions including cases of no fault or negligence.

Concept #3 – Hearing Process

The ISRM Drafting Team intends to review the Code defined term of "Operational Independence" specifically as this term relates to an ADO's results management process. Without limitation, the involvement of National Federations in an International Federation (IF) results management process or, where results management is delegated to a third party or persons affiliated to that third party, is currently not covered by the Code definition of "Operational Independence". Given this fundamental concept is enshrined in the Code, the ISRM Drafting Team will liaise with the Code Drafting Team in this respect.

Moreover, the ISRM Drafting Team intends to review the provisions relating to the timeliness of decisions following a hearing process (including on appeal).

PROVIDE FEEDBACK TO CONCEPT #3

The ISRM Drafting Team intends to review the Code defined term of "Operational Independence" specifically as this term relates to an ADO's results management process, such as, the involvement of National Federations in an International Federation (IF) results management process or, where results management is delegated to a third party or persons affiliated to that third party.

Nil feedback.

Review of timeliness of decisions.

We **support** decisions being made in a timely manner, and in particular, the principle that an arbitration should be completed as soon as possible, and a determination issued as soon as practicable after final submissions and evidence have been lodged by the parties.

Concept #4 – Appeals/Revision

The Code and ISRM currently do not define in which circumstances a final decision can be reopened or subject to revision. In conjunction with the Code Drafting Team, the ISRM Drafting Team will consider the need to add clarity in this respect, in particular in circumstances where new evidence is discovered after a first instance or appeal decision is rendered.

PROVIDE FEEDBACK TO CONCEPT #4

ISRM Drafting Team will consider the need to add clarity as to when a final decision can be reopened or subject to revision, in particular in circumstances where new evidence is discovered after a first instance or appeal decision is rendered.

This issue has not arisen in the Australian context. We are **supportive** for the Drafting Team to provide clarity, but caution against the addition of exhaustive lists of circumstances which may limit legitimate needs.

In principle we believe a decision should only be reopened in exceptional circumstances in response to new evidence that was not known to the parties at the time of the proceedings and could not have been identified with reasonable inquiries.

Concept #5 – Specific Results Management Processes

The ISRM Drafting Team intends to review the notification process for whereabouts failures, which currently involves a notification, an administrative review, and a *de novo* review in the context of an anti-doping rule violation charge under Code Article 2.4. Matters relating to the jurisdiction of ADOs to conduct results management over individual whereabouts failures and/or Code Article 2.4 violations deserve further consideration. Specifically, the discovery of further whereabouts failures in the context of the results management for a Code Article 2.4 anti-doping rule violation is currently not addressed in the ISRM and requires further clarification. To improve monitoring, whereabouts failure decisions may also require reasoning in all cases.

The ISRM Drafting Team also intends to review the results management process for ABP cases under ISRM Annex C, in particular for matters relating to the provisional suspension of athletes (as indicated above).

PROVIDE FEEDBACK TO CONCEPT #5

The ISRM Drafting Team intends to review the notification process for whereabouts failures.

We **agree** with the proposal to review the notification process for whereabouts failures, including the process, jurisdictional issues, and discovery of further failures.

We also **agree** that reasoning be provided in all cases.

- WADA should consider establishing a Whereabouts group to ensure consistency and to share learnings.

The ISRM Drafting Team also intends to review the results management process for ABP cases under ISRM Annex C, in particular for matters relating to the provisional suspension of athletes (as indicated above).

We **agree** with this proposal.

Concept #6 – New ISRM Annex

The ISRM Drafting Team will consider adding a new annex to the ISRM (Annex D), which compiles all specific results management procedures that are currently described in WADA Stakeholder Notices and WADA Technical Documents. The ISRM Drafting Teams welcomes stakeholder feedback in this respect.

PROVIDE FEEDBACK TO CONCEPT #6

The ISRM Drafting Team will consider adding a new annex to the ISRM (Annex D)

We **agree** with the proposal for a new Annex to be added to the ISRM which compiles all specific results management procedures that are currently described in WADA Stakeholder Notices and Technical Documents.

This will provide a single repository for all related rules while ensuring the rules are readily located and recognised and applied accurately and consistently across the board.

Other – provide feedback on other areas of the ‘International Standard for Results Management’ you think needs reviewing or updating

PROVIDE FEEDBACK

NIL

2027 CODE & IS UPDATE PROCESS

International Standard for Testing

Concepts for Consideration and Feedback

Executive Summary

The International Standard for Testing and Investigations (ISTI) is a comprehensive, technical, and specialized International Standard that has undergone multiple rounds of revision since its first publication in 2003. The scope of the ISTI is to plan for intelligent and effective testing, both in-competition and out-of-competition, and to maintain the integrity, identity and security of the samples collected from the point the athlete is notified of their selection for testing, to the point the samples are delivered to the laboratory for analysis. To that end, the ISTI (including its Annexes) establishes mandatory requirements for test distribution planning (including collection and use of athlete whereabouts information), notification of athletes, preparing for and conducting sample collection, security/post-test administration of samples and documentation, and transport of samples to laboratories for analysis.

As a result of the development of the new International Standard for Intelligence and Investigations (ISII), the Investigations (I) element of the IST(I) will be removed, and the IS will become the International Standard for Testing (IST). As such, current Articles 11 (*Gathering, Assessment and Use of Intelligence*) and 12 (*Investigations*) of the ISTI will be amended and or removed accordingly.

The IST Drafting Team has identified the following concepts which it considers will help further strengthen and clarify the IST as part of the 2027 Code & IS Update Process and welcomes stakeholder feedback on these concepts and related procedures.

Concept #1 – The Timely Analysis of Samples Collected prior to a Major Event[1]

In the past, there have been a number of situations where athletes had samples collected from them shortly before the start of a major event (e.g., before athletes travel from their home country to the country of the major event), and the analytical results of those samples were reported by WADA accredited laboratories during the event or after it had concluded. In some cases, this has resulted in an adverse analytical finding (AAF). This poses further issues when the athlete who returns an AAF finishes on the podium and following a result management process has an anti-doping rule violation confirmed, and therefore medals have to be re-allocated at a later date. This situation may also prevent another athlete from having the opportunity to compete at the major event in the place of the athlete who committed the anti-doping rule violation.

As such the IST Drafting Team proposes that if testing authorities plan to collect samples from athletes shortly before a major event takes place e.g., within 21 days, they must arrange with a WADA accredited laboratory e.g., via ADAMS, to prioritize these samples for a quick turnaround analysis. Ideally, the reporting of the results and the initiation of any results management process for these samples should occur at the latest before the athlete travels to the major event.

The IST Drafting Team acknowledges that there will be situations where testing will need to occur immediately before the major event or where the laboratory requires additional time to confirm specific analyses or confirm initial analytical procedures (such that the results management process cannot occur before the major event). However, the main objective is to minimize the risk of such situations occurring. In proposing this concept, the 21 days before a major event should not become a 'no testing window' for Anti-Doping Organizations (ADOs).

PROVIDE FEEDBACK TO CONCEPT #1

We **agree** that, where appropriate, samples collected prior to any major event should be prioritised to facilitate timely analysis and results management as a mechanism for safeguarding the event of any adverse analytical finding (AAF).

We note there are additional costs associated with quick turnaround analysis, and any drafting should take care not to dissuade ADO's from testing during this period due to costs.

We **agree with the Drafting Team's comment** that testing, regardless of whether a result can be delivered prior to the event starting, must still be possible within the 21-day window and right up to the start of the In-Competition period. For deterrence and detection purposes, testing must not be impeded by the prioritisation of samples, especially where all efforts have been made to secure fast turnaround but due to other constraints (such as laboratory processes or capacity) analysis cannot be completed within the required timeframes. Testing at the event venue before the in-competition period has started, can yield valuable insights into things such as the athlete's biological passport even in the absence of an AAF.

As indicated in the WADA footnote, drafting would have to define major events for the purposes of any new clause.

[1] For the purpose of this concept a major event includes the Olympics or Paralympic Games, World Championships or other multi-sport events.

Concept #2 – Whereabouts Requirements for Athletes

The IST establishes the requirements for athletes in a Registered Testing Pool (RTP) and stipulates that their whereabouts information must be filed in ADAMS (see Code Article 14.5.b). In addition, the ability for ADOs to include athletes in a Testing Pool (TP), which is the whereabouts pool below an RTP, was introduced in the 2021 version of the ISTI. Athletes in a TP are also required to file accurate whereabouts to assist ADOs in locating them for testing. Currently ISTI Article 4.8.10.4 states that whereabouts information for TP athletes should be filed in ADAMS. Following the successful use of TPs by ADOs since 2021 (there are over 15,000 athletes in a TP in 2023), the IST Drafting Team proposes that whereabouts information for athletes in a TP become mandatory to file in ADAMS.

At the moment, there is no requirement in the ISTI to record in ADAMS the date on which an athlete first enters an RTP or TP and the date on which the athlete no longer fulfills the criteria to be part of an RTP or TP and as such is removed from the whereabouts pool.
The IST Drafting Team wishes to propose that the start and end dates for athletes in either an RTP or TP must be mandatorily entered into ADAMS.

To facilitate the planning and readiness for the testing of athletes in a whereabouts pool on the 1st day of the quarter as well as to avoid any gaps in the ability to test due to a lack of whereabouts for the start of the following quarter, the IST Drafting Team proposes a change to the filing date deadline for athletes to submit their whereabouts information under ISTI Article 4.8.8.2 from the 1st day of the quarter to the 15th day of the month preceding the start of the quarter. As a result of this proposal, consequences to an athlete for not filing their whereabouts by the 15th day of the month deadline would apply rather than the 1st day of the quarter under the current ISTI.

ADOs are currently required under ISTI Article 4.8.6.1 to plan independently or in coordination with other ADOs and to test any athlete in an RTP a minimum of three times out-of-competition (OOC) per year. In addition, under ISTI Article 4.8.10.1, ADOs are currently required to ensure athletes in a TP have a minimum of one planned OOC test per year. The IST Drafting Team is seeking input from stakeholders as to whether the current level of OOC tests for both RTP athletes and TP athletes is sufficient to deter and detect doping and whether it should be increased by one OOC test per year per for athletes in either an RTP and or a TP.

Finally, in reference to conducting an OOC test on an RTP athlete during their 60-minute time slot/location, and in an attempt to reduce the predictability of testing and to promote greater deterrence, the IST Drafting Team is proposing that at least one of the required three OOC tests planned on RTP athletes be conducted outside the 60-minute time slot/location. This is in accordance with guidance included in WADA's Guidelines for Implementing an Effective Testing Program, which states that "an effective testing program is as unpredictable as possible to the athlete" and "[e]xamples of implementing an unpredictable testing program include testing in and outside of the athletes 60-minute time slot."

PROVIDE FEEDBACK TO CONCEPT #2

Proposal 1

Until ADAMS is fit for purpose and fully supports the programs of all ADOs, the most important consideration is to ensure interoperability between ADAMS and third-party systems so that where appropriate protections are in place, information can be seamlessly shared between organisations. SIA would oppose any drafting which had the effect of not allowing third party systems to be maintained if desired by the ADO. Third Party systems can enhance the ability of ADOs to conduct informed and targeted testing and changes to the International Standard should not be detrimental to those programs.

Therefore, before forming a view in relation to the **first proposal** that whereabouts information for athletes in a TP becomes mandatory to file in ADAMS, we **require clarification** on whether it is mandatory only to file the information or to also maintain it using the ADAMS system specifically.

Proposal 2

We **agree** that the start and end dates for athletes in either an RTP or TP must be mandatorily entered into ADAMS.

This will assist with capturing the correct data when publishing data (Concept #7 – Reporting of ADO Testing Statistics by each Athlete).

Proposal 3

We **are supportive** of the whereabouts filing deadline to be on the 15th day of the preceding month.

Proposal 4

We **disagree** with the proposal to increase the number of OOC tests for RTP or TP athletes by one, without any further evidence to support this approach.

It is our view and experience, that the use of intelligence informed testing alleviates the mandatory need for increasing the required number of tests and that allowing flexibility to respond to the environment increases the effectiveness of the testing program. Increasing the number of tests does not change the budget available to the ADO, it simply reduces the flexibility of testing and ability to use those tests in other targeted ways. As such it is not a question as to whether the current requirements are sufficient to deter or detect doping, but instead is a question about the optimal use of resources. WADA would need to provide evidence that the increase in the number of tests does proportionally increase deterrence and detection before this approach would be supported.

Proposal 5

We **agree in principle** that at least one of the required 3 OOC tests on RTP athletes be conducted outside the 60-minute timeslot/location.

In relation to the **fifth proposal,** we also suggest that instead of increasing the OOC test number for RTP athletes from 3-4, the Drafting Team considers expanding the concept of at least 1 OOC test being conducted 'outside the testing hour' by linking it to the TDSSA.
Whereby, those athletes in a sport that has ESA's/GH&GHRF greater than 30%, are suggested to have 2 of 3 OOC tests outside of their hour, while those with 15% should have 1 of 3 OOC tests conducted outside of the hour.

However, our preference would be to capture these requirements in guidance materials to allow ADOs to adopt a flexible and intelligence-based approach. Changes should only be made to the IST if evidence exists that ADO's are not currently doing this, and don't do it with extra guidance provided. Each additional mandatory aspect of the Standards decreases flexibility for ADOs, so should be done with caution.

Concept #3 – Identification Requirements for Athletes selected to provide a Sample for Analysis

In accordance with ISTI Article 5.3.4, the testing authority shall establish criteria to validate the identity of an athlete selected to provide a sample. The inclusion of such a broad rule creates inconsistency among athletes and ADOs.

As such, the IST Drafting Team is proposing that the above provision also refers to specific types of documents accepted to validate an athlete's identity. This would likely include government issued documents with a photo. Furthermore, rules concerning third party validation of an athlete's identity also need to be established so there is consistency. The benefits of having athletes in a RTP or TP (or their ADO) uploading a photograph of the athlete into their ADAMS profile page to further assist with identification would also be part of this review. In addition, the ability for doping control officers to take a photo of the athlete in certain situations as part of validating their identity for the sample collection session will also be considered.

The IST Drafting Team will also consider the identification requirements for all sample collection personnel and seeks input from stakeholders on this concept.

PROVIDE FEEDBACK TO CONCEPT #3

We **agree** that clear and robust criteria should be put in place governing the validation of both the identity of an athlete selected to provide a sample, as well as sample collection personnel.

This should include the requirement for an RTP/TP athlete to upload a 'prescribed' photo ID into ADAMS (satisfying the required criteria).

When considering the criteria for an appropriate photo, we suggest the Drafting Team consider the approach taken by governments/legal systems for identity/document verification (as long as such approach can be consistently applied on a global basis). For example, the rules governing the requirements for passport photos should be applied where an athlete is required to upload a photo into ADAMS. DCOs can verify the photo when testing, and any issues with the photo can be reported on the mission report. Photo submissions should be treated like any other transgression where the athlete is obligated to update their WAs or face a possible filing failure.

We **have concerns** with the proposal to allow doping control officers to take a photo of the athlete in certain situations, as part of the process to validate their identity for the sample collection session, for several reasons. These include the real risk of breaching national privacy laws and the fact that many DCOs would be required to use their own 'unsecured' personal devices creating a further risk.

We note that with technology advancing, the methods for formal identification may change, and we encourage WADA to investigate any methods (biometrics, facial recognition) that might make the process easier and more reliable for both ADOs and athletes whilst maintaining the requisite data protection and confidentiality requirements.

Concept #4 – Enhancements to the Athlete Biological Passport (ABP)

There are several items listed in the ABP Operating Guidelines document that the IST Drafting Team proposes to move into IST Articles 4 (*Planning Effective Testing*), 10 (*Ownership of Samples*), Annex D (*Collection of Venous Blood Samples*) and Annex I (*Collection, Storage and Transport of Blood ABP Samples*) to ensure they are inclusive of the overall ABP procedures.

The IST Drafting Team is considering the inclusion of the following:

- Ensuring that an athlete has only one blood ABP established;
- Ensuring that passport 'read only' access rights can easily be provided to other ADOs that share testing jurisdiction over the athlete and that the procedures for the attribution and transfer of passport custodianship are mandatorily followed by ADOs; and
- Ensuring that ADOs work cooperatively so that testing is coordinated appropriately with all results collated in the athlete's passport in ADAMS.

In addition, the information collected from the athlete during the collection of a blood ABP sample on the ABP Supplementary form (ISTI Annex I.2.9) will be updated.

Finally, with the inclusion of venous blood serum samples for the new ABP endocrine module, the addition of a mandatory period of time an athlete must wait post training/competition and prior to the collection of a venous blood serum sample is required to be documented.

PROVIDE FEEDBACK TO CONCEPT #4

Moving proposed items from the ABP Operating Guidelines document into the IST (Articles 4, 10, Annex D and I)

We **agree** with the proposal to move these items to ensure they are inclusive of the overall ABP procedures. However, we ask the Drafting Team to ensure this change is necessary to provide clarity, consistency and harmonisation of rules and does not adversely affect any need for flexibility or revision.

Ensuring that an athlete has only one blood ABP established;

We **agree** with the proposal that an athlete has only one blood ABP established. The change to have only one ABP established per athlete will provide a single comprehensive record of their blood profile. This should prevent any confusion and discrepancies that can arise.

Ensuring that passport 'read only' access rights can easily be provided to other ADOs that share testing jurisdiction over the athlete and that the procedures for the attribution and transfer of passport custodianship are mandatorily followed by ADOs;

We **agree** that sharing with other ADOs with jurisdiction over an athlete utilising a 'read only 'option, would improve information sharing of testing histories and coordination across ADOs.

Ensuring a clear and defined mandatory procedure for transferring custodianship will assist with making any elements mandatory. It is unclear how WADA will monitor ADO's to ensure compliance but we suggest the drafting team consider: consent and privacy of the athlete for sharing passport information, articulate what the purpose of sharing the information is, who will be entitled to the information, design and strengthen roles and permissions within ADAMS for users, provide 'proper use' training tools, implement functionality within ADAMS to log access to passport information and for WADA to undertake audits to assess the system and for continuous improvement.

Ensuring that ADOs work cooperatively so that testing is coordinated appropriately with all results collated in the athlete's passport in ADAMS.

We **agree** with the proposal that ADOs work cooperatively so that testing is coordinated appropriately with all results collated in the athlete's passport in ADAMS.

Mechanisms to ensure and track a coordinated approach need to be carefully considered. To monitor and enhance coordination, WADA could assess the implementation of the following mechanisms: a robust intelligence system within ADAMS to gather information and facilitate potential coordinated approaches, invest in data analysis tools to identify patterns and anomalies in testing results, strengthen or provide guidelines for establishing protocols for joint investigations between ADOs, and embrace emerging technologies to support functions within ADAMS.

Additionally, we suggest the ability to populate projected test plans be plotted into the athlete's steroid or blood passport in ADAMs to facilitate passive coordination. Whether the projected plot for planned testing remains post completion of the test should be considered, it could be the third axis across the top of the chart, as it could be utilised as a mechanism for tracking coordination.

Update of athlete information on the ABP Supplementary form (ISTI Annex I.2.9)

We **agree** with the fundamental principle for continuous improvement, which involves review and updating pertinent testing documentation.

However, the extent of updates is unclear. We would support revisions that include factors such as clarifying the mandatory waiting period for venous blood serum samples. Consideration should also be given to extending updates to include essential details for serums samples collected for hGH and blood steroids.

For example: implementing similar existing protocols may include the athlete's requirement to rest for 30 minutes prior to collection of the sample, and the sample is collected in a serum tube with gel separator. For post collection, steps may include inverting the sample, stabilising the sample, and articulating ideal temperatures the sample is exposed to.

Mandatory Waiting Period and Documentation - Venous blood serum samples for the new ABP endocrine module,

We **agree** with the proposal that a mandatory period of time an athlete must wait post training/competition, and prior to the collection of a venous blood serum sample, is required to be documented on the supplementary form.

To better assist ADOs who don't have access to laboratories within their region, labs that can receive samples in the mandated timeframe for sample validation, there should be a consideration for all WADA accredited labs to offer the endocrine module especially if there is going to be any mandatory obligation for ADOs to complete the analysis under the TDSSA.

Concept #5 – Sample Retention and Further Analysis of Samples[2]

ISTI Article 4.7.3 stipulates the requirement for ADOs to have a written strategy on the retention and further analysis of samples for long-term storage.

The IST Drafting Team is considering whether the requirements of ISTI Article 4.7.3 can be further specified and whether to evaluate the circumstances where it shall be mandatory to conduct further sample analysis such as for a prohibited substance that is contained within the TDSSA upon an APMU recommendation.

Furthermore, it may also be useful to develop additional criteria concerning the circumstances when samples shall be put in long-term storage, be subject to further analysis, and be discarded when they no longer meet the sample retention and further analysis strategy.

Accordingly, the IST Drafting Team welcomes stakeholder feedback on circumstances where sample storage should be mandatory as well as criteria as to when further analysis should be conducted or when samples in long-term storage should be discarded.

PROVIDE FEEDBACK TO CONCEPT #5

In line with the general theme of our response to most Code review topics - we believe further guidance is generally valuable, but mandatory requirements should only be used where absolutely necessary. Mandatory requirements can reduce the flexibility for ADOs to implement their programs in the most flexible and intelligent way, and in general will always increase costs.

[2] To assist ADOs in documenting and managing samples in long-term storage, there is a new functionality available in ADAMS.

Concept #6 – Transgender and Gender Diverse Athletes and Procedures for Sample Collection[3]

The IST Drafting Team is seeking further clarification as it relates to sample collection procedures for transgender and gender diverse athletes. While gender identity is complex, simply put, gender refers to how an athlete identifies themselves, which may differ from their biological sex assigned at birth. A transgender athlete is a person whose gender identity differs from the sex that was assigned at birth. Athletes may also have identities outside the binary gender system and are defined as gender diverse.

In this respect, it is to be noted that as outlined in ISTI Annex C.4.5, the gender of the sample collection personnel who is responsible for witnessing the sample provision, is currently the same gender as the event in which the athlete competed. Moreover, the sport gender of the athlete is recorded on the doping control form in accordance with ISTI Article 7.4.5 f).

The IST Drafting Team welcomes stakeholder feedback on how the current sample collection procedures and processes could be enhanced for transgender and gender diverse athletes, and sample collection personnel.

PROVIDE FEEDBACK TO CONCEPT #6

We **agree** with the proposal to enhance and strengthen the guidance for managing sample collection procedures for transgender, gender diverse athletes, and sample collection personnel.

Both the athlete and sample collection personnel need to be comfortable, and their rights protected when a sample is being provided. To mitigate for any risk, we support an assessment as to whether it is appropriate for transgender and gender diverse athletes to self-report in advance to the ADO, which gender they'd prefer to have witness the urine provision. This would provide ADOs the opportunity to ensure those sample collection staff who undertake the witnessing of a sample, are comfortable in doing so, and providing assurance to the athlete that their needs are met.

[3] WADA has also published a FAQ on Transgender and Gender Diverse Athletes and Anti-Doping.

Concept #7 – Reporting of ADO Testing Statistics by each Athlete

Under Code Article 14.4, ADOs are required to publish annually their anti-doping activities. In addition, ADOs may also publish reports showing the name of each athlete tested and the date of each test. The IST Drafting Team is seeking feedback from ADOs concerning the publishing of athlete test information and the information which should be included, the time period that such information should remain available after publication, the level of athlete to whom the reporting should apply, and whether the publishing of such data should become mandatory subject to data privacy rules.

PROVIDE FEEDBACK TO CONCEPT #7

We **support** transparency in anti-doping data and are supportive of an assessment on whether the requirement to publish annual anti-doping activities should be expanded but suggest any outcomes will likely need to be limited. As per the general theme of our Code feedback, mandatory obligations on ADOs should only be used where there is a clear need and benefit for an effective anti-doping program. In the absence of clear rationale as to why certain data MUST be made publicly available, we prefer allowing each ADO the flexibility to act as appropriate to their specific situation.

Given what we know to be divergent views on the pros and cons of publishing data, as well as the significant impact of local data privacy rules, we suggest that at the very most, mandatory requirements on the publication of data be limited to the sport and discipline, not naming the athlete.

Other – provide feedback on other areas of the 'International Standard for Testing' you think needs reviewing or updating

PROVIDE FEEDBACK

Recommendation 1:
We encourage WADA to review the wait times for athletes post exercise for all blood sample types. Assess whether there are any efficiencies that could be provided through the standard.

Recommendation 2:
We encourage WADA to review Article 4.2.1 Risk Assessment of the current ISTI in particular e) pertaining to available statistics, to assess where it can be strengthened especially for intelligence-led anti-doping. It would be advantageous for WADA to consider how they might be able to release testing figures and ADRV reports more expeditiously (they are regularly two years old) to allow for better planning by ADOs.

Recommendation 3:
Following any updates to the IST, it may be timely to relook at the associated guidance documents to see if, and where, they need refining or further clarity aimed at creating harmonised approaches to issues not mandated in the International Standard. SIA would be willing to assist and input into this process.

Recommendation 4:
The Code and ISTI include mandatory requirements for the management of a testing program (risk assessment, RTP etc). However, we suggest WADA should consider a way of evaluating the effectiveness or appropriateness of an ADOs testing or anti-doping program as opposed to assessing compliance against only the code compliance questionnaire. Just being compliant doesn't result in an effective testing program. Are there ways the IST can assist or promote this broader assessment of effectiveness? It may require a deeper look at exactly what constitutes an "effective" or appropriate" testing program.

As one example, the Code Compliance survey asks for the number of RTP athletes and the number of tests against each, but there is no assessment of how effective or appropriate this is in each county/ADO. An ADO could have an RTP of 5 athletes, conduct 15 tests and theoretically remain compliant. Just because an ADO has limited budget doesn't mean the number of RTP athletes should be reduced, this is not a fair and consistent approach and exposes athletes in some countries to ADRVs others of very similar standard are not held to. Or conversely, ADOs with adequate budget (or high levels of sporting success) may not actually be doing enough testing or intelligence work and may be deliberately not placing athletes onto an RTP.

While we support maintaining flexibility in anti-doping programs and the ability to be agile, harmonisation or evaluation of appropriate programs could provide additional benefits including:

- a fair and equal application of the rules irrespective of sport or affiliation to a particular ADO.
- enhances trust of athletes that the anti-doping landscape is consistent.
- testing resources, including testing numbers, are utilised effectively and efficiently.
- assists ADO's ability to monitor when athletes enter or are removed from the RTP, especially where and athlete is subject to multiple jurisdictions.

Recommendation 5:
It would be advantageous for the drafting team to consider including the principle of education before testing in the IST. This would ensure consistency across both education and testing portfolios.

2027 CODE & IS UPDATE PROCESS

International Standard for Therapeutic Use Exemptions

Concepts for Consideration and Feedback

Executive Summary

The International Standard for Therapeutic Use Exemptions (ISTUE) was created to provide detailed, fair, and understandable regulations for athletes, Anti-Doping Organizations (ADOs), physicians and athlete support personnel (ASP) to follow when situations arise where, due to illness or medical condition, an athlete may require the use of substances or methods that are specifically included in the World Anti-Doping Agency's (WADA) Prohibited List.

It is always in the interest of the sport and anti-doping community to update or upgrade WADA's regulatory documents. The aim is to produce a comprehensive International Standard that upholds the strict ISTUE criteria and protection of clean sport while ensuring that it remains practical and manageable for stakeholders, particularly athletes and ADOs.
The concepts set out below have been identified as key topics for specific consideration and feedback from stakeholders. However, stakeholders should not feel confined to the concepts listed; indeed, comments and suggestions on any topic are welcome.

Concept #1 – Clarify when a prospective TUE begins

The ISTUE Article 4.0 states that “An Athlete who needs to Use a Prohibited Substance or Prohibited Method for Therapeutic reasons must apply for and obtain a TUE under Article 4.2 prior to Using or Possessing the substance or method in question.”

In the general population, when a patient is prescribed medication from their physician, it would be very unusual not to start their treatment right away. The Code and ISTUE state that athletes must obtain a TUE before starting treatment unless they meet the requirements for a retroactive TUE. If an athlete is using the medication while the Therapeutic Use Exemption Committee (TUEC) is still deliberating, they do so at the risk of an anti-doping rule violation.
Once the TUE is approved, the effective date, based on the wording of the ISTUE, should be the date of the TUEC decision, such that it would not cover any prior use and/or adverse analytical finding. For practical reasons, however, certain ADOs assign the effective date as the date the application was received or when the medication was prescribed (without assessing the criteria for a retroactive TUE).

The ISTUE Drafting Team is looking for feedback and may consider adding or amending an article (or comment) to the ISTUE to clarify when a prospective TUE should begin in these circumstances and, more generally, whether any mechanism could be introduced to address the practical concerns while mitigating the risk of this issue.

PROVIDE FEEDBACK TO CONCEPT #1

We **support** the consideration of changes to the ISTUE to clarify when a prospective TUE should begin in the above circumstances and, more generally, whether any mechanism could be introduced to address the practical concerns while mitigating the risk of this issue.

The current effective date for Australian prospective TUEs is the date of approval by the TUE Committee, and on balance we recommend this option to the Drafting Team for the following reasons.

It is recognised that an effective TUE from the date of approval does create a ‘gap’ in coverage if an athlete has already commenced use of a prohibited substance prior to receiving approval for use. However, should the athlete return a positive test then they would be eligible to apply for a retroactive TUE as per section 4.1. of the current ISTUE.

This section is designed to address the circumstances giving rise to the ‘gap’ between use of a Prohibited Substance and granting of a TUE.

For example, an Athlete who requires an in Advance TUE due to a change in circumstance may rely on the exceptional circumstances outlined under Article 4.1 (such as 4.1(b) insufficient time for Athlete to submit or TUEC to consider their application) to obtain a retroactive TUE to cover the ‘gap’ if they are facing a possible violation.

- If an Athlete transitions from a lower-level athlete (subject to the retroactive TUE regime) to a national level athlete (subject to the advance TUE regime) and they have been using a prescribed Prohibited Substance for a legitimate medical purpose, then they will need to apply for a TUE. They will most likely be continuing to use the Prohibited Substance prior to receiving the TUE approval.

The risk to the Athlete is the same for all Athletes not falling within the requirements for an in Advance TUE. That is, the potential for a violation to be recorded if the TUE is not approved by the TUEC.

To avoid any doubt if would be useful to include a comment explaining the types of situations which could fall within exceptional circumstances. It would also be useful to distinguish between 'exceptional circumstances' arising due to medical circumstances v 'exceptional circumstances' caused by processes or other events.

If an alternative approach is taken, and a TUE is dated from the date of when the application was first received, this could have implications such as if the application is incomplete. As a result, there could be a considerable amount of time that the TUE is backdated once the required information is received.

Concept #2 – National-level Prioritization

Within the ISTUE, should National Anti-Doping Organizations (NADOs) be allowed to prioritize certain substance categories, not just sports and disciplines (see ISTUE Article 4.1(c) and the comment to ISTUE Article 5.1)?

The ISTUE Drafting Team is considering whether to amend ISTUE Article 4.1(c) to also allow NADOs to prioritize certain substances (in addition to certain sports or disciplines), by only requiring advance TUE applications for certain categories of prohibited substances.
For example, all national level athletes using S1 or S2 substances would have to apply for a TUE in advance, even if their sport is not included in the NADO's "sport prioritization" group. While other national-level athletes using S7 substances, even if included in the NADO's "sport prioritization" group, would not need to apply in advance and can always apply retroactively.

PROVIDE FEEDBACK TO CONCEPT #2

We **agree in principle** to exploring this approach (prioritising by substance) further. However, there is a real risk that adding another category to the national-level 'prioritisation list' will increase complexity to the TUE system and cause additional confusion for athletes. Having a list of athletes who don't need to apply for an in Advance TUE because of their level, but then still do have to apply because of the substance, seems contradictory and difficult to explain through education and online information.

Note: In Australia, any athlete (regardless of prioritisation level) who is prescribed an S1 Prohibited Substance is encouraged to apply to ASDMAC 'in advance' to ensure they do not use such a Prohibited Substance until an approval is granted. This ensures that they are not exposed to the higher risk associated with the use of these substances which would result if they were required to rely on the retroactive TUE process.

Concept #3 – Major Event Organizations (MEOs) Prioritization

The ISTUE Drafting Team is considering whether to expand ISTUE Article 4.1(c) on retroactive TUEs to include MEOs.

There are several MEOs who deal with relatively low-level athletes. This addition would be practical and greatly reduce the burden of work for these organizations.

PROVIDE FEEDBACK TO CONCEPT #3

We **agree** with the proposal to expand the ISTUE Article 4.1(c) on retroactive TUEs to MEOs.

There are a number of examples of MEOs running one-off international events where the majority of athletes are lower level who are eligible to apply to their NADO for a retroactive TUE under 4.1.c of the current ISTUE. For example, the Pacific Games. As such, it is appropriate to allow the national prioritisation rules to also apply in these circumstances and allow these lower-level athletes to still rely on the retroactive TUE provisions. However, it is imperative, as with all retroactive TUEs, that the process be supported by education, and athletes be fully informed of the rules and the risks.

Athletes competing at major multi-international events such as the Olympic Games are most likely already required to apply to their NADO or IF for an in-advance TUE.

Concept #4 – TUEC Membership and Operation

TUECs are an integral part of the TUE process. However, concerns have been raised that the ISTUE does not adequately provide guidance on TUEC establishment and procedures/operations. In an effort to provide requirements and/or guidance to ADOs and create a harmonized approach, the ISTUE Drafting Team is seeking stakeholder feedback and input on the practical considerations relating to this topic.

PROVIDE FEEDBACK TO CONCEPT #4

We **agree** there should be guidance materials on the TUEC establishment and procedures/operations to support these important processes and promote an effective and harmonised approach to managing TUEs under the ISTUE. These materials would need to take into account the differing abilities of TUECs. For example, they would need to be drafted to take into account the way TUECs operate depending on their size, composition, and the way roles and responsibilities are performed.

To ensure that only competent and compliant TUECs are in operation, smaller NADOs lacking resource and expertise could outsource their TUEC to a more established TUEC.

In addition to the above, we suggest that remedies could be introduced to deal with any TUEC non-compliance. For example, the responsible NADO could be required to invoke assistance from a compliant NADO/TUEC to undertake their processes and put in place a plan to address issues of non-conformity.

Concept #5 – Short term TUEs

The ISTUE Drafting Team is aware that ADOs sometimes approve TUEs for a short term while the TUEC awaits further medical information from medical specialists. This is because TUECs recognize the fact that the athlete very likely suffers from a legitimate medical condition that would result in a longer-term TUE being granted.

This is not expressly provided for in the ISTUE and the Drafting Team is seeking feedback and input on the practical considerations.

PROVIDE FEEDBACK TO CONCEPT #5

We **agree** the granting of 'short term/preliminary TUEs' should be recognised under the ISTUE.

Where there is a very low risk that a TUE will not be granted, however, further verification is required to complete the process resulting in a delay and it is important for the Athlete to be taking the medication. A 'short term/preliminary TUE' could be provided to cover any 'gap'.

This appears to be most relevant to applications for TUEs for ADHD medications.

While this approach is likely to create additional work for a TUE Manager, it is a clear practical way to facilitate the process and reduce uncertainty and risk. There should be a provision for follow up and for the short-term approval to be withdrawn at a point in time if the required information is not forthcoming. It may be prudent to require the Athlete to explain why the information has not been provided and be warned of any possible further investigation of the matter if it appears the athlete may have abused the process.

It may be possible to include wording such as “conditional” TUE in addition to “short term”, to more clearly articulate there are conditions attached to the short term approval.

As noted above in relation to retroactive TUEs, information and education are key to ensuring the Athlete is fully informed of the process and any risk. Also, reliance on this approach may need to be limited to certain substances, and this provision needs to be considered against any expansion of other provisions such as Art. 4.1(c) as outlined above as well as and any further expansion or explanation of 'exceptional circumstances'.

This concept has links and similarities to Concept #1 and we support a process that doesn’t penalise athletes where clearly a TUE would or should be granted.

Concept #6 – Recognition Process

The TUE recognition process has on occasion created conflicts between NADOs and International Federations (IFs) in regard to the follow up on certain conditions attached to the TUE.

At present, an IF either must recognize the NADO TUE in full or reject the NADO TUE. To provide fairness to the athletes while maintaining the strengths of the ISTUE, the ISTUE Drafting Team suggests that IFs be allowed to add certain conditions, if necessary, when recognizing TUEs (in the exact same way as if the original TUE application had been made straight to the IF).

The responsibility for monitoring these conditions would be assigned to the IF, although it could be accomplished through the assistance of NADOs.

The ISTUE Drafting Team also seeks feedback from MEOs on whether they should also be allowed to add certain conditions, if necessary.

This change would also need to be reflected in Code Article 4.4.

PROVIDE FEEDBACK TO CONCEPT #6

We **agree** that an IF be allowed to add certain conditions if necessary, when recognising TUEs. Additionally, we are of the view that there are a number of considerations and further collaboration and actions that should occur if an IF wishes to do so.

However, this approach should only apply where an athlete falls within the jurisdiction of an IF for a period of time longer than a single international event. Where a national level athlete is only an international level athlete for a single event (and not a longer period of time) the NADO TUE should be recognised by the IF and the NADO should remain the custodian of the TUE.

By way of example, the NADO and IF may impose different conditions relating to the duration and monitoring requirements imposed on an athlete granted a TUE.

Foremost there needs to be clear guidelines as to the process and the responsibility of monitoring.

A preferred approach is for the IF and NADO to consult on the conditions and aim to reach agreement. If agreement cannot be reached, then the default position is for the IF to assume responsibility for managing the TUE. Any change required by the IF should then be managed by the IF, where the athlete falls within their jurisdiction, for a period of time (usually greater than a single event). NADOs could assist but the IF should be responsible for liaising with the athlete and ensuring the athlete understands the changed requirements.

We **don't agree** that it is necessary to expand these considerations to also cover MEOs. Most MEOs are responsible for one-off short term events. As such it is neither practical nor necessary to impose additional conditions on a TUE to cover these occasions. Unless there is a clear discrepancy in the TUE this situation should not arise.

Concept #7 – TUE Ownership following Recognition

Once a TUE is recognized (whether automatically or not), all the conditions associated with the TUE should thereafter be monitored by the IF, which has jurisdiction (for example, testosterone monitoring). As mentioned in Concept #6, this could be accomplished with agreement and assistance of a NADO.

To provide clarity and ensure a harmonized approach, the ISTUE Drafting Team is considering including an article explaining that once a TUE is recognized, the IF becomes the 'custodian'.

PROVIDE FEEDBACK TO CONCEPT #7

We **agree** guidance material should be provided to inform the circumstances, where it is agreed between the NADO and IF, that the IF should take over responsibility for a TUE (see Concept #6 above).

However, recognition of TUEs by the IF is usually not appropriate for one off international competitions (i.e. an athlete is not in the IF testing pool, has a NADO TUE and is classified as an International Level athlete for a certain competition). The NADO TUE should be recognised, and the custody should stay with the NADO, as once the competition is over the athlete is no longer classed as an International Level athlete.

Concept #8 – Recognition for a Single Event

Often lower-level athletes may compete in a one-time international-level event. This requires the recognition of their TUE according to most IF rules. Currently a TUE must be recognized for its full duration. This provides an inaccurate view of TUEs associated with international-level athletes. The IF would also become the TUE custodian for the duration of the TUE.
The ISTUE Drafting Team is looking for feedback or proposals on this issue.

PROVIDE FEEDBACK TO CONCEPT #8

We **do not agree** the IF should become the TUE custodian for lower level athletes competing at single international events.

We are of the view the NADO TUE should be recognised and the NADO should remain the custodian of the TUE. However, if the IF jurisdiction over the athlete is ongoing, then the IF should become the custodian, considering the comments relevant to Concepts #6 and #7.

Concept #9 – Consequences

WADA has a responsibility to monitor the global TUE process, not just individual TUEs. There are situations where some ADOs may repeatedly produce poor TUE decisions and/or are not responsive to WADA queries and suggestions.

The ISTUE Drafting Team is seeking feedback on appropriate consequences that would not be part of the compliance process. For example, WADA could extend ISTUE Article 8.8 to discretionary reviews.

PROVIDE FEEDBACK TO CONCEPT #9

We **agree** in principle that there should be consequences imposed on TUECs for 'poor performance'.

Possible remedies could include training and education from another TUEC at the cost of the TUEC making the 'poor TUE decisions' or even removing the function to another 'competent' TUEC. However, this solution may be impacted due to different medical practices around the world.

Concept #10 – Lower-level Athletes

Should athletes who are not international or national-level athletes be afforded extra flexibility when the ISTUE regulations are applied?

The ISTUE is fit for purpose for elite athletes, but the question has been raised as to whether it is too onerous for lower-level athletes who, in particular, do not receive the same amount of (if any) formal anti-doping education. Further, avoiding full TUE applications from the broad base of non-elite lower-level athletes who are otherwise subject to Code-compliant anti-doping rules would help to protect limited ADO (and TUEC) resources.

In an effort to provide fairness to lower-level athletes while still promoting the values instilled in the ISTUE, the ISTUE Drafting Team is seeking feedback on the possibility of allowing ADOs the ability to apply different rules to a designated class of lower-level athletes.

PROVIDE FEEDBACK TO CONCEPT #10

We **agree** in principle that lower-level athletes should be given more flexibility in the anti-doping system to take into account their level of competition, knowledge and understanding of anti-doping rules and reasons for participation.

However, we **disagree** that lower-level athletes should be subject to more flexible rules for granting TUEs. Changes would likely impact the standardisation of the process and create another inconsistency or complexity.

If an athlete is subject to anti-doping rules, then they should not be allowed to use a Prohibited Substance unless properly permitted to do so in accordance with Art. 4.2 of the ISTUE. A substance is included on the Prohibited List for strict reasons. It should not then be permitted for use simply due to the athlete competing at a lower level. The prioritising of testing and the sanctioning regime under the Code is the most appropriate way to deal with these situations.

Any changes would need to consider the recognition process across ADOs – we would be uncomfortable with a change that allowed "lesser" approaches to TUEs but required other ADOs to recognise those decisions.

Concept #11 – Appeal Panels

It is logical that TUE appeal bodies include physicians. The current appeal bodies description is an International Standard for Results Management provision and does not require the presence of a physician on the appeal panel in a TUE case. Indeed, the procedural rules and list of arbitrators of the Court of Arbitration for Sport do not currently seem compatible with the presence of a physician on the panel.

In an effort to harmonize the system for TUE appeal bodies (for national and international-level athletes) and to provide athletes with fair decisions on TUEs (i.e., medical matters), the Drafting Team is considering including further specific requirements in the Code/ISTUE on this matter to ensure that physicians are part of a TUE appeal panel. The ISTUE Drafting Team is seeking feedback from stakeholders on whether such a proposal would be supported.

PROVIDE FEEDBACK TO CONCEPT #11

We **agree** TUE Appeal Panels should include a physician.

The structure and operation of the Australian National Sports Tribunal (NST) provides a good example of how panels should be constructed and implemented.

Concept #12 – Sanctions for athletes who fulfill the ISTUE Article 4.2 criteria but do not meet the criteria for a retroactive TUE

When there is a clear medical condition and appropriate treatment (i.e., the ISTUE Article 4.2 conditions are fully satisfied), yet the athlete does not meet the requirements for a retroactive TUE for their positive test, concerns have been raised that the sanctions may be excessive and disproportionate.

This topic is also being addressed by the Code Drafting Team (see Concept #4 of the Code Concept Paper). WADA is seeking feedback on this issue from stakeholders.

PROVIDE FEEDBACK TO CONCEPT #12

We **agree** there should be flexibility in sanctioning where there is 'no fault/no significant fault'.

For example, there could be leniency in sanctioning if the Athlete has a diagnosed medical condition, can produce sound medical evidence but does not meet any of the retroactive TUE criteria. The NADO could impose a lighter sanction i.e. a warning in the first place followed by a sanction for a second offence.

However, we encourage the Drafting Team to ensure that the Article 4.1, Exceptional Circumstances Criteria can be applied broadly enough to ensure that a retroactive TUE is able to be granted where all other 4.2 criteria are satisfied. For example, to ensure that an Athlete is not improperly penalised where an administrative, or other error, they would have been granted a TUE under Article 4.2.

Other – provide feedback on other areas of the ‘International Standard for Therapeutic Use Exemptions’ you think needs reviewing or updating

PROVIDE FEEDBACK

NIL

2027 CODE & UPDATE PROCESS

International Standard for the Protection of Privacy and Personal Information

Concepts for Consideration and Feedback

Executive Summary

The International Standard for the Protection of Privacy and Personal Information (ISPPPI) was first adopted in 2009 and updated versions were introduced in 2015, 2018 and 2021, following consultations with Signatories, public authorities, and other relevant stakeholders.

The ISPPPI's main purpose is to ensure that Anti-Doping Organizations apply appropriate, sufficient, and effective privacy protecting measures to the personal information they process when conducting anti-doping activities. The ISPPPI is aligned with international and regional data protection frameworks and case law, such as the Organization for Economic Cooperation and Development's (OECD) 1980 Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, the Council of Europe's modernized Convention 108 and the EU and UK's General Data Protection Regulation.

The ISPPPI Drafting Team has identified three key concepts for the upcoming update of the ISPPPI, namely data retention periods, personal information disclosures, and privacy-by-design concepts, without foreclosing other possible changes to the ISPPPI. The ISPPPI Drafting Team also seeks stakeholder's views regarding a possible name change for the ISPPPI. Stakeholders are invited to provide their feedback on each of these concepts, as well as identify any other topics they wish the ISPPPI Drafting Team to consider.

The ISPPPI Drafting Team will work in close collaboration with the Code Drafting Team on matters addressed in the Code that have clear privacy implications, namely publication of anti-doping sanctions and use of samples and data in research. The ISPPPI Drafting Team will also work closely with other International Standard Drafting Teams where there are also clear privacy implications in their standard.

Concept #1 – Retention Periods

ISPPPI Annex A sets out appropriate retention periods and has a significant operational impact on stakeholders, while being an important data minimization and data protection control. Some stakeholders have suggested that the current twelve-month retention period for retaining whereabouts data is insufficient and hinders results management processes for whereabouts failures and other investigative efforts.

The ISPPPI Drafting Team intends to review the retention period applicable to whereabouts data, in particular, in light of this feedback. The ISPPPI Drafting Team also intends to consider whether new rules are required to govern the retention of intelligence and investigations-related data, as well as whether retention triggers in the Annex can be clarified.

PROVIDE FEEDBACK TO CONCEPT #1

The ISPPPI Drafting Team intends to review the retention period applicable to whereabouts data, in particular, as the current twelve-month retention period for retaining whereabouts data is insufficient and hinders results management processes for whereabouts failures and other investigative efforts.

We **support** this proposal, noting the need to balance the value of retaining information for anti-doping purposes, the need to protect personal information and also taking into account national regulations. It is essential for ADOs to have access to historical data to enable longitudinal analysis of patterns and trends. This includes being able to retroactively identify indicators, to help build models that assist us to proactively flag behaviours of potential concern in contemporaneous data.

In the Australian context, we are required to manage and retain personal information in accordance with Australian privacy legislation and the Australian Archives Act.

A possible solution may be to align retention periods with the 10 years for sample retention.

The ISPPPI Drafting Team also intends to consider whether new rules are required to govern the retention of intelligence and investigations-related data, as well as whether retention triggers in the Annex can be clarified.

We **support** the proposal to review the appropriateness of the rules governing the retention of intelligence and investigations-related data and whether retention triggers in the Annex can be clarified. As noted above, it is essential for this data to be accessible to enable the full extent and value of intelligence data being used in a longitudinal sense. We would support alignment with the 10-year statute of limitations.

Concept #2 – Personal Information Disclosures

ISPPPI Article 8 establishes the rules relating to the disclosure of personal information to other parties and could benefit from closer alignment with disclosures to Anti-Doping Organizations and third parties permitted under the Code and other International Standards.

The ISPPPI Drafting Team intends to review the categories of recipients referenced in Article 8 to better reflect existing practices within the anti-doping ecosystem while prescribing appropriate safeguards for disclosure. Requirements related to disclosures to law enforcement authorities may also require review in light of the new International Standard for Intelligence and Investigations, in coordination with the drafting team for this Standard.

PROVIDE FEEDBACK TO CONCEPT #2

The ISPPPI Drafting Team intends to review the categories of recipients referenced in Article 8 to better reflect existing practices within the anti-doping ecosystem while prescribing appropriate safeguards for disclosure.

We **support** the proposal to review disclosures under Article 8 of the ISPPPI to ensure the rules are appropriate and aligned with current practices and provisions of the Code and other International Standards.

Requirements related to disclosures to law enforcement authorities may also require review in light of the new International Standard for Intelligence and Investigations, in coordination with the drafting team for this Standard.

We also **support** a review of disclosures to LEA in line with the new ISII and taking into account national and international laws.

Concept #3 – Privacy-by-Design Concepts

As stakeholders explore new tools and technologies to become more efficient in the fight against doping, it is important to integrate privacy and data protection considerations into the design and development of such innovations. So-called “Privacy by Design” is a notion enjoying widespread support among privacy regulators and reflected in data protection statutes worldwide.

The ISPPPI Drafting Team intends to expand on ISPPPI Article 9.6 which requires Anti-Doping Organizations to assess privacy risks and integrate privacy-by-design considerations when leveraging new tools or technologies to conduct anti-doping activities.

PROVIDE FEEDBACK TO CONCEPT #3

The ISPPPI Drafting Team intends to expand on ISPPPI Article 9.6 which requires Anti-Doping Organizations to assess privacy risks and integrate privacy-by-design considerations when leveraging new tools or technologies to conduct anti-doping activities.

We **support** a review of the requirements for assessing privacy risks and the proposal to integrate privacy-by-design considerations into new initiatives. This is consistent with national privacy laws.

Concept #4 – Name change

The ISPPPI Drafting Team intends to propose a new, shorter name for the International Standard and welcomes stakeholder proposals.

PROVIDE FEEDBACK TO CONCEPT #4

The ISPPPI Drafting Team intends to propose a new, shorter name for the International Standard and welcomes stakeholder proposals.

We fully **support** this proposal.

- International Standard for Privacy

Other – provide feedback on other areas of the ‘International Standard for the Protection of Privacy and Personal Information’ you think needs reviewing or updating

PROVIDE FEEDBACK

NIL