

Case number: NST-E24-413979

Case Title: Jacquelin Honeywood v Australian Weightlifting Federation & Sport Integrity Australia

## Determination

### National Sports Tribunal Anti-Doping Division

sitting in the following composition:

Panel Members

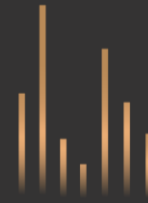
Mr Anthony A Nolan KC  
Ms Sarah Cook OLY  
Ms Elizabeth Bennett

in the arbitration between

**Jacquelin Honeywood** (Applicant)  
Represented by Sarah Farneden KC and Dane Marley, legal representatives

**Australian Weightlifting Federation** (Respondent)  
Represented by Ian Moir, Chief Executive Officer

**Sport Integrity Australia** (Respondent Organisation)  
Represented by Carolyn Maher, Senior Lawyer, Emily Fitton, Director Legal, and Eleanor Jones, legal representative



## PARTIES

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

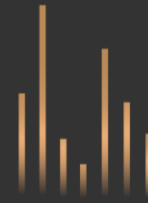
## INTRODUCTION

4. In 2020, the Athlete continued to receive medical treatment for her underlying medical conditions.<sup>1</sup> She consulted her general practitioner who prescribed Tibolone under the brand name Livial. The Athlete commenced taking Tibolone as prescribed. In 2022 the Athlete took up Olympic Weightlifting and competed at numerous Club, State and National events.
5. In about February 2023, the Athlete used the Sport Integrity App (**the App**) to check whether Tibolone was a prohibited substance according to the World Anti-Doping Code – International Standard Prohibited List 2023 (**the Prohibited List**) and the NAD Policy. She discovered it was prohibited in and out of competition.
6. On 20 February 2023, the Athlete made an application to the Australian Sports Drug Medical Advisory Committee (**ADSMAC**) for a Therapeutic Use Exemption (**TUE**) to use Tibolone for her medical conditions. The Athlete disclosed that she had been taking Tibolone on a daily basis since November 2020. The application was rejected by ADSMAC on 13 April 2023.
7. In March 2023, the Athlete was subject to the NAD Policy, and competed at the international masters weightlifting competition at the 2023 Masters World Cup in Auckland, New Zealand. On 4 March 2023, the Athlete was directed by Drug Free Sport New Zealand (**DFSNZ**) to complete an “in competition” doping control test. The sample was subsequently tested by the Australian Sports Drug Testing Laboratory and the presence of 17 $\alpha$ -ethynyl-7 $\alpha$ -methyl-estr-5(10)-ene-3 $\beta$ ,17 $\beta$ -diol (a metabolite of Tibolone) was detected.
8. On 26 September 2023, SIA issued a Notice of Adverse Analytical Finding and a possible Anti-Doping Rule Violations relating to the positive test.
9. The Athlete fully co-operated with the drug testing officers and investigators. During the investigation the Athlete gave detailed private information concerning her underlying medical conditions and made full and frank admissions. In particular, she freely admitted that since 2020, Tibolone had been prescribed by the Athlete’s general practitioner for underlying health reasons, and since then she had taken Tibolone daily. SIA has acknowledged the Athlete’s “candour” during the investigation.
10. On 27 June 2024, SIA, on behalf of the AWF, issued a notice under clause 4.08 of *the National Anti-Doping Policy Established by Sport Integrity Australia Act 2020 (Cth)* (**the Notice**). The Notice specified two Anti-Doping Rule Violations (**ADRVs**), being:
  - a) presence of a metabolite of the prohibited substance (Tibolone) on 4 March 2023; and
  - b) use of a Prohibited Substance (Tibolone) on and/or before 4 March 2023.

Pursuant to Article 10.2.1 of the NAD Policy, SIA determined that a period of ineligibility was four years.

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<sup>1</sup> The nature and scope of the Athlete’s medical conditions have been disclosed in the evidence given to the Panel. It is accepted by the Parties that the Athlete has been treated for these genuine medical conditions. To protect the Athlete’s privacy, the Panel has determined it is unnecessary to provide specific details of these medical conditions and the treatment by her doctors.



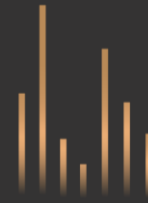
11. The Athlete accepts that the ADRVs have occurred, however, submits that the period of ineligibility ought to be reduced:
  - a) pursuant to Article 10.2.1 of the NAD Policy as her conduct was unintentional;
  - b) pursuant to Article 10.6.2 of the NAD Policy as there she acted without significant fault or negligence; and
  - c) pursuant to 10.7.2 of the NAD Policy, as she made admissions prior to the notice of sample collection.

#### NATIONAL SPORTS TRIBUNAL JURISDICTION

12. The National Sports Tribunal (**NST**) has jurisdiction pursuant to Section 22 of the *National Sports Tribunal Act 2019* (Cth) (**the Act**). The AWF has adopted and agreed to be bound by the NAD Policy. The NAD Policy has been approved by the Chief Executive Officer of SIA. Pursuant to Section 22(2)(b) of the Act, the Athlete is bound by the NAD Policy.
13. The NST also has jurisdiction to hear and determine the dispute under Article 8 of the NAD Policy. On 11 September 2024, the Athlete made an application to the NST to hear and determine the dispute. The Parties to the dispute have signed an Arbitration Agreement to refer the dispute to the Anti-Doping Division of the NST, and further agreed that the NST's jurisdiction is engaged until the resolution of the dispute.
14. All Parties have consented to the jurisdiction of the NST, and no objection has been made to the jurisdiction of the NST to deliver a Determination.
15. The Chief Executive Officer of the NST appointed Mr. Anthony Nolan KC as the Chair and Ms. Elizabeth Bennett and Ms. Sarah Cook as Panel Members for the purposes of this hearing. No party objected to the composition of the Panel.

#### DIRECTIONS AND PRELIMINARY MATTERS

16. In accordance with *National Sports Tribunal (Practice and Procedure) Determination 2024* (Cth) (**NST Determination**), the NST CEO made procedural directions for the filing of witness statements, documents and submissions. These directions were incorporated into the Arbitration Agreement.
17. On 20 November 2024, the Chair conducted a Pre-Hearing Conference in accordance with section 26 of the NST Determination. The Conference was held as SIA were required to locate new Senior Counsel and had requested the hearing date be adjourned. After hearing the oral submissions from the Parties, the Chair confirmed the hearing date to be 16 December 2024. Furthermore, directions were made pertaining to the filing of materials, witness statements and submissions.
18. The Athlete filed an expert witness statement of Dr Brooke O'Brien. On 11 December 2024, SIA filed and served an expert witness affidavit of Professor David J Handelsman AO. This affidavit and its annexures total 178 pages.
19. On 13 December 2024, the Athlete advised the NST that Dr O'Brien would be unable to review and respond to Professor Handelsman's report and requested either an adjournment of the hearing scheduled for 16 December 2024, or that the hearing commence on 16 December 2024 for the purposes of hearing the Athlete's evidence only, and that the balance of the hearing be adjourned to a date to be fixed.
20. On 14 December 2024, the Chair confirmed that the hearing of the matter would commence on 16 December 2024, and directed that the Applicant's requests for adjournment of the hearing be heard by the Panel at the commencement of the hearing scheduled for 9:30 AM (AEST) 16 December 2024.

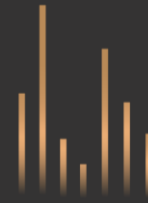


## THE HEARING

21. The hearing commenced at 9:30 AM on 16 December 2024, and was conducted on a Microsoft Teams platform. The hearing was recorded, and a copy of the transcript was subsequently provided to the Parties. Ms. Farnden SC and Mr. Marley of Counsel appeared for the Athlete. Ms. Jones of Counsel appeared for SIA. Mr. Moir, the AWF CEO, represented the AWF. Mr Moir told the Panel that he would leave most matters up to the lawyers. The Chair advised Mr Moir that he had every right to participate if he chose to do so. At the outset of the hearing, no objection was made to the composition of the Panel.
22. An application for adjournment was made by Senior Counsel for the Athlete. Ms. Farnden SC submitted that Dr. O'Brien was unable to respond in any meaningful way to the detailed report filed by Professor Handelsman. Ms. Farnden SC submitted that until she had a reasonable opportunity to seek instructions from Dr. O'Brien and to file a statement in reply, the entire hearing should be adjourned. Ms. Jones did not oppose the adjournment. The Chair raised various issues concerning the relevance and admissibility of the expert witness reports and stood down the hearing to enable counsel to consider these issues, before the Panel decided on the adjournment application.
23. When the hearing reconvened, Ms. Farnden SC advised the Panel that the Athlete would not rely on the evidence of the Dr. O'Brien and SIA would not rely on the evidence of Professor Handelsman. The adjournment of the hearing was no longer necessary. Ms. Jones confirmed that SIA would not rely upon the evidence of Professor Handelsman. The hearing was then conducted on this basis.

## FACTUAL BACKGROUND

24. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties, in this Determination the Panel has referred only to the submissions and evidence it considers necessary to explain its reasoning. The Panel was not required to and did not consider the Expert Reports of Dr. O'Brien and Professor Handelsman.
25. The two ADRVs were admitted by the Athlete. The only oral evidence was given by the Athlete. Other documents admitted into evidence by the Panel including the Athlete's Statement and Annexures, the Athlete's Record of Interview dated 17 October 2023, and documents which establish the ADRVs. All documents tendered were given exhibit numbers.
26. The Athlete gave her evidence in a clear and honest manner. She made concessions when appropriate. The evidence was consistent with the Record of Interview. The Panel accepts her uncontradicted evidence on most matters. However, there were instances where the Athlete's explanation of her conduct was confusing. These matters will be referred to in this Determination.
27. The Panel makes the following findings of fact.
28. The Athlete is currently aged 48 years. She has worked in government for more than 27 years. In 2018, her general practitioner advised the Athlete about one of the underlying medical conditions. Between 2017 and 2020, the Athlete undertook a series of medical tests. On 16 November 2020, the general practitioner prescribed Tibolone to treat the Athlete's underlying medical conditions.
29. The Athlete accepted the advice of her general practitioner and commenced taking a 2.5 mg Tibolone tablet daily, as well as magnesium, Vitamin D and calcium tablets. She also used Voltaren tablets as necessary. The Athlete believed that her general health improved because of the medications.
30. In 2021, the Athlete commenced training for the sport of Olympic Weightlifting. The Athlete became involved in the sport because her son was lifting. Her son's coach encouraged her to take up the sport. Initially, the Athlete trained for general fitness and mental health reasons. In approximately March 2022, the Athlete commenced competitive masters lifting at various club and State competitions. The Athlete also became involved in the administration of weightlifting.



31. In or about March 2022, the Athlete became aware of the restrictions on athletes taking prohibited substances through SIA. The Athlete downloaded the App on her phone, and used it to check various vitamins, supplements and medications. The Athlete knew that she needed to be particularly careful with medications in terms of whether they contain prohibited substances, and that there was a risk that prescribed medications could contain prohibited substances.
32. Tibolone is a prohibited substance under the Prohibited List. It is class S1.1 Anabolic Agents – Anabolic Androgenic Steroids and is classified as a Non-Specified Substance.<sup>2</sup>
33. Prior to February 2023, the Athlete did not use the App to check for Tibolone. The Athlete told the Panel *“It’s just not something that crossed my mind”* and *“It was just not anything I’d ever considered.”* When asked by counsel for SIA whether her general practitioner advised that Tibolone was a synthetic steroid, the Athlete stated that she could not recall.
34. In February 2023, the Athlete decided to use the App again and discovered that Tibolone was a prohibited substance. The Athlete became aware that a TUE application could be made to ADSMAC. On 20 February 2023, the Athlete consulted her general practitioner and advised her that she *“was competing in the weightlifting and that she was unaware that tibolone was included as a prohibited substance.”* After the consultation with her general practitioner, the Athlete continued to take the daily dose of Tibolone. On 20 February 2023, the general practitioner issued another prescription for Tibolone. The Athlete filled that prescription in May 2023.
35. On 21 February 2023, the Athlete lodged a TUE application with ADSMAC. The application was also signed by her general practitioner. The general practitioner provided a supporting letter dated 20 February 2023. The TUE application discloses that since 16 November 2020 the Athlete had taken a daily 2.5mg dose of Tibolone.
36. The Athlete believed that the TUE application would be successful because she had a genuine medical condition, and Tibolone had been prescribed by her general practitioner for that condition. The Athlete states that she had been advised by another athlete that there was “precedence” in relation to Tibolone being given TUE status. The Athlete declined to provide details of the identity of the other athlete.
37. When asked questions by the Panel, the Athlete acknowledged that she did not seek any advice whether she should compete in New Zealand.
38. The 2023 Masters World Cup in Auckland, New Zealand was scheduled to commence on 3 March 2023. The Athlete decided to compete in New Zealand knowing that the TUE had not been approved and that there was a risk associated with this decision. On 17 October 2023, the Athlete conducted a formal record of interview with SIA investigators. During that interview she was asked questions concerning her decision to compete whilst taking Tibolone and the risk associated with it:

*Q163 Yep. Okay. And just to clarify when you started the process and submitted your application you understood that the risk you were taking by competing before getting the outcome?*

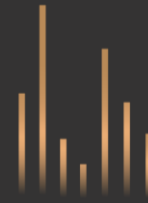
*A Yep. Yeah.*

*Q212 ..... was there any consideration at the time, as soon as you realised was there any consideration, obviously you mentioned stopping the medication and totally understand that’s, that’s not always possible.*

*A Yeah.*

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<sup>2</sup> Tibolone is an anabolic androgenic steroid listed under Class S1.1 of the *World Anti-Doping Code – International Standard – Prohibited List 2023*.



Q213 - - - in terms of your health. But not competing?

A ---Yeah, yeah. I, I did, I considered that. Then I thought if I don't compete well there's no reason to go to New Zealand. And going to New Zealand on a holiday with my hubby was really important as well. He's going through his own stuff, so it was - - -

SENIOR INVESTIGATOR MITCHELL

Q 214 Ah hmm.

A - - - an opportunity to get away. Um, yeah, so you know, **there's heaps of sliding doors moments that could have occurred** (Emphasis added).

39. The Athlete was asked questions by the Panel about the risks of competing in Auckland:

Q. You've said that you were sure that the TUE would be granted because the prescription for Tibolone was for a medical condition, but you also have said that you were aware that taking any medication, even for a medical condition that has a performance enhancing effect is still prohibited. So, you simultaneously appear to have held those two views. I mean, given the latter, and I know that you have been asked some questions about this. **Why did you not think that the risk of competing was just too great?**

A. **I don't. I don't really know.** Again, to my mind, well, I didn't. People on to my mind was not performance enhancing. I know that I am not a medical professional, but I you know, when I read that it was a prohibited substance. I read it as well. You know, if someone doesn't have a medical condition and takes it well, perhaps, it is performance enhancing. In my mind, I had a genuine medical condition and it was a genuine prescription for a, you know, a medication that a legitimate medication, So, the the risk was it, it, it wasn't. **Obviously. There's, there's a risk, but it wasn't that significant of risk in my mind that because I thought for sure I would get a TUE through.**

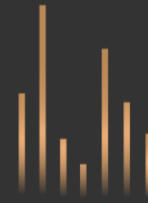
Q. I guess that just comes back to my initial premise of that question and that was that you held those two views simultaneously.

A. **Yes, that's correct. It makes no sense, I understand**" (Emphasis added).<sup>3</sup>

40. In March 2023, the Athlete travelled to Auckland, New Zealand to compete at the Masters World Cup. The Masters World Cup was subject to the doping control testing regime conducted by DFSNZ. The Athlete had taken her daily dose of Tibolone the night before competing.
41. On 4 March 2023, the Athlete competed in the Age Group W45 Category 64 event. She won. The risk faced by the Athlete immediately crystallised. The Athlete was selected for an "in competition" doping control test by the DFSNZ Doping Control Officer. It was the first doping test the Athlete had undertaken. The Athlete provided the Doping Control Officer with the required test sample and information, including the medications and supplements which had been taken. This information included the declaration - "Tibolone 1 x tabs x 7days."
42. The Athlete expected that the doping test would return a positive result.
43. The Athlete actively pursued her application for a TUE. On 10 March 2023, ASDMAC requested further information. The Athlete's general practitioner provided a further report dated 13 March 2023.

<sup>3</sup> The transcript provided to the Panel contains numerous typographical, grammatical and formatting errors. Those errors do not affect the substance of the answers provided by the Athlete. The transcript has been reviewed by the Chair and edited to accord with the evidence actually given. A video of the evidence is available.





44. On 13 April 2023, ADSMAC refused to grant the Athlete a TUE as her application did not meet the criteria. The Athlete sought a review of the refusal. Ultimately, ADSMAC confirmed its refusal to grant a TUE. On 15 August 2024, ADSMAC advised the Athlete:

*“Your application does not fulfil all of the WADA ISTUE criteria for granting a TUE. In particular sections:*

*- “4.2.b: The Therapeutic Use of the Prohibited Substance or Prohibited Method will not, on the balance of probabilities, produce any additional enhancement of performance beyond what might be anticipated by a return to the Athlete’s normal state of health following the treatment of the medical condition.”*

*- “4.2.c: The Prohibited Substance or Prohibited Method is an indicated treatment for the medical condition, and there is no reasonable permitted Therapeutic alternative.”*

45. On 27 April 2023, the test sample was analysed by the Australian Sports Drug Testing Laboratory. The test report recorded that no prohibited substances or their metabolites or markers were detected. On 27 April 2023, the Athlete rang DFSNZ and made enquiries about the test results. On 1 May 2023, Mr Greg Papadopoulos of DFSNZ responded by email to the Athlete, and advised *“your test results came up negative.”*
46. On 19 May 2023, DFSNZ requested SIA to become the Results Management Authority for a possible non-analytical ADRV based upon the admissions made by the Athlete to the Doping Control Officer.
47. The test sample results were subsequently reviewed by the Australian Sports Drug Testing Laboratory, and the sample was retested in August 2023. An updated Test Report was issued which disclosed *“the presence of 17 $\alpha$ -ethynyl-7 $\alpha$ -methyl-estr-5(10)-ene-3 $\beta$ ,17 $\beta$ -diol”*. On 18 August 2023, Dr Brooker, a manager at the Australian Sports Drug Testing Laboratory, stated that the reason for the false negative finding was human error. The “B” sample was subsequently tested, which confirmed the presence of the prohibited substance.
48. On 17 October 2023, SIA investigators conducted a Record of Interview with the Athlete. During the Record of Interview, the Athlete co-operated with the investigators and made open and frank admissions concerning her use of Tibolone.

## APPLICABLE RULES

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

### **“WARNING TO ATHLETES AND OTHER PERSONS**

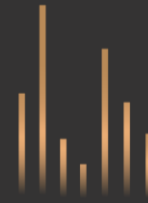
- You are responsible for knowing what the anti-doping rule violations are.*
- You must find out which substances and methods are prohibited.*
- Ignorance is no excuse.*
- You must be aware of the rules in this Anti-Doping Policy.*
- This Anti-Doping Policy adopts the strict liability principle.*
- Athletes are responsible for anything found in their system.*
- You must be aware of the sanctions that could be applied to you in this Anti-Doping Policy.”*

50. The NAD Policy specifies the persons who are subject to the policy. The relevant provisions of Article 1.3 the NAD Policy state:

### *“1.3 Application to Persons*

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

.....



1.3.1.4 all Athletes who do not fall within one of these provisions of this Article 1.3.1 but who wish to be eligible to participate in International Events or National Events must be available for Testing under this Anti-Doping Policy. Athletes wishing to be eligible to participate in International Events must be available for Testing for the period of time specified by the International Federation for the relevant sport. Athletes wishing to be eligible to participate in National Events must be available for Testing under this Anti-Doping Policy for at least six (6) months before they will be eligible for such Events.”

51. Article 2.1.1 of the NAD Policy states:

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

52. Article 2.2.1 of the NAD Policy states:

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

53. Article 2.6.1 of the NAD Policy states:

*“Possession by an Athlete In-Competition of any Prohibited Substance or any Prohibited Method, or Possession by an Athlete Out-of-Competition of any Prohibited Substance or any Prohibited Method which is prohibited Out-of-Competition unless the Athlete establishes that the Possession is consistent with a Therapeutic Use Exemption (TUE) granted in accordance with Article 4.4 or other acceptable justification.”*

54. Article 4.3 of the NAD Policy provides that all Parties are bound by the WADA’s classification of substances which have been included on the Prohibited List, as follows:

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

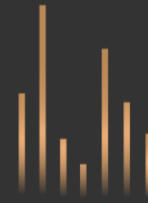
55. Article 4.4 of the NAD Policy enables an Athlete to apply for a TUE:

*“Therapeutic Use Exemptions (TUEs)*

*4.4.1 The presence of a Prohibited Substance or its Metabolites or Markers, and/or the Use or Attempted Use, Possession or Administration or Attempted Administration of a Prohibited Substance or Prohibited Method shall not be considered an anti-doping rule violation if it is consistent with the provisions of a TUE granted in accordance with the International Standard for Therapeutic Use Exemptions.*

*4.4.2 The TUE Committee for Australia is the Australian Sports Drug Medical Advisory Committee (ASDMAC), the membership and operation of which is*





described in the SIA Act and SIA Regulations. Unless otherwise specified by ASDMAC in a notice posted on its website, **any National-Level Athlete who needs to Use a Prohibited Substance or Prohibited Method for therapeutic purposes should apply to ASDMAC for a TUE as soon as the need arises and in any event (or where Articles 4.1 or 4.3 of the International Standard for Therapeutic Use Exemptions applies in regard to retroactive TUEs) at least 30 days before the Athlete's next Competition, by completing the form at [www.sportintegrity.gov.au](http://www.sportintegrity.gov.au) with assistance from their doctor.** ASDMAC will consider applications for the grant of TUEs. ASDMAC shall promptly evaluate and decide upon the application in accordance with the relevant provisions of the International Standard for Therapeutic Use Exemptions and the specific ASDMAC protocols posted on the TUE section of [www.sportintegrity.gov.au](http://www.sportintegrity.gov.au). ASDMAC's decision shall be final (except as outlined in Article 4.4.6) and where ASDMAC has granted a TUE, the decision shall be reported to WADA and other relevant Anti-Doping Organisations in accordance with the International Standard for Therapeutic Use Exemptions. ASDMAC will consider applications for the grant of TUEs. ASDMAC shall promptly evaluate and decide upon the application in accordance with the relevant provisions of the International Standard for Therapeutic Use Exemptions and the specific ASDMAC protocols posted on the TUE section of [www.sportintegrity.gov.au](http://www.sportintegrity.gov.au). ASDMAC's decision shall be final (except as outlined in Article 4.4.6) and where ASDMAC has granted a TUE, the decision shall be reported to WADA and other relevant Anti-Doping Organisations in accordance with the International Standard for Therapeutic Use Exemptions (Emphasis added).<sup>4</sup>

#### 4.4.3 Retroactive TUE Applications

*If an Anti-Doping Organisation chooses to test an Athlete who is not an International-Level or a National-Level Athlete, and that Athlete was not required to obtain a TUE in advance in accordance with Article 4.4.2, the Athlete may apply for a retroactive TUE for any Prohibited Substance or Prohibited Method that they are Using for therapeutic reasons.*

#### 4.4.4 TUE Recognition

*A TUE granted by ASDMAC is valid at any national level in any country and does not need to be formally recognised by any other National Anti-Doping Organisation."*

56. The commentary on Article 4.4 of the NAD Policy states:

*"An Athlete should not assume that his/her application for grant or recognition of a TUE (or for renewal of a TUE) will be granted. **Any Use or Possession or Administration of a Prohibited Substance or Prohibited Method before an application has been granted is entirely at the Athlete's own risk**" (Emphasis added).*

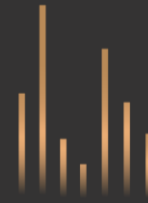
57. Article 10.2 of the NAD Policy specifies the period of ineligibility for an ADRV is four years:

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

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

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

<sup>4</sup> The Panel has underlined this part of Article 4.4.2 as it appears to be a duplication of the previous sentences.



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

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

58. Article 10.2.3 of the NAD Policy defines the term “intentional” as follows:

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

59. Article 10.6.2 of the NAD Policy states:

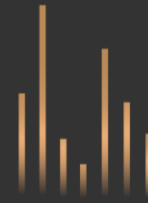
*“If an Athlete or Other Person establishes in an individual case where Article 10.6.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.7, the otherwise applicable period of Ineligibility may be reduced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

60. “Fault” is defined in Appendix 1 of the NAD Policy:

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

61. “No Significant Fault or Negligence” is also defined in Appendix 1 of the NAD Policy:

*“The Athlete or other Person’s establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.”*



62. The footnote to Article 10.5 of the of the NAD Policy provides useful guidance about “No Fault or Negligence”, and “No Significant Fault or Negligence”.

*“This Article and Article 10.6.2 apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. They will only apply in exceptional circumstances, for example where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, **No Fault or Negligence would not apply in the following circumstances:** (a) a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.) and have been warned against the possibility of supplement contamination); (b) the Administration of a Prohibited Substance by the Athlete’s Personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical Personnel and for advising medical Personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete’s food or drink by a spouse, coach or Other Person within the Athlete’s circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). **However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.6 based on No Significant Fault or Negligence**” (Emphasis added).*

63. The footnote to Article 10.6 of the of the NAD Policy states:

*“Comment to Article 10.6.2” Article 10.6.2 may be applied to any anti-doping rule violation **except those Articles where intent is an element of the anti-doping rule violation** (for example Article 2.5, 2.7, 2.8 or 2.9 or 2.11) **or an element of a particular sanction** (for example Article 10.2.1) **or a range of Ineligibility is already provided in an Article based on the Athlete or Other Person’s degree of Fault**” (Emphasis added).*

64. Article 10.7.2 of the NAD Policy states:

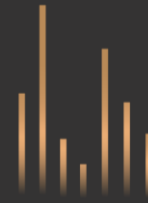
*“Admission of an Anti-Doping Rule Violation in the Absence of Other Evidence” Where an Athlete or Other Person voluntarily admits the commission of an anti-doping rule violation **before having received notice of a Sample collection which could establish an anti-doping rule violation** (or, in the case of an anti-doping rule violation other than Article 2.1, before receiving first notice of the admitted violation pursuant to Article 7) **and that admission is the only reliable evidence of the violation at the time of admission**, then the period of Ineligibility may be reduced, but not below one-half of the period of Ineligibility otherwise applicable)” (Emphasis added).*

65. The footnote to Article 10.7.2 of the of the NAD Policy states:

*“Comment to Article 10.7.2: This Article is intended to apply when an Athlete or Other Person comes forward and admits to an anti-doping rule violation in circumstances where no Anti-Doping Organisation is aware that an anti-doping rule violation might have been committed. It is not intended to apply to circumstances where the admission occurs after the Athlete or Other Person believes he or she is about to be caught. The amount by which Ineligibility is reduced should be based on the likelihood that the Athlete or Other Person would have been caught had he or she not come forward voluntarily.”*

## THE MAIN SUBMISSIONS OF THE PARTIES

66. The Panel acknowledges the detailed oral and written submissions filed by Parties.



## THE ATHLETE'S SUBMISSIONS

67. The Athlete filed a detailed Outline of Submissions dated 12 November 2024. Ms Farnden SC made oral submissions on 16 December 2024. In summary, the Athlete submits:
- a) that the ADRVs are admitted;
  - b) the Athlete's conduct was unintentional;
  - c) there is no significant fault or negligence; and
  - d) the Athlete made admissions prior to the notice of sample collection.

## UNINTENTIONAL CONDUCT

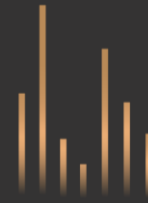
68. The Athlete submits that Article 10.2.3 effectively defines the word 'intentional' for the purposes of 10.2.1.1 as meaning intentional or reckless, as those terms are commonly understood. The Athlete places reliance on *SIA & WADA v Jack & Swimming Australia, CAS 2020/A/7579*. It has previously been held that "intentional is meant to identify those athletes who cheat." Her intention was to use Tibolone to treat her genuine medical condition, rather than to obtain an unfair enhancement or advantage in her sports performance.
69. The Athlete submits sufficient evidence exists to enable the Panel to be comfortably satisfied that she did not have the culpable intent to commit an ADRV and she was not reckless about her conduct. The factual basis to support these findings is that she was confident she would receive a TUE, given her genuine medical condition. The Athlete's use of Tibolone did not result in an enhancement beyond restoring her health to normal levels.
70. The Athlete submits that pursuant to Article 10.2.2 of the NAD Policy the Athlete is entitled to have the sanction reduced by 2 years.

## NO SIGNIFICANT FAULT OR NEGLIGENCE

71. The Athlete submits that her Fault or Negligence was not significant in relations to the ADRVs and any departure from the expected standard of behaviour for Athletes is minor. The Athlete's general practitioner prescribed Tibolone, for a genuine medical condition. Tibolone was an indicated treatment for her medical condition. At the relevant times, the Athlete orally consumed the prescribed daily 2.5mg dose of Tibolone. When the Athlete became aware that Tibolone was a prohibited substance, she immediately made a TUE application. From that point and beyond she reasonably believed the TUE application would be approved. That belief was reasonable given that that:
- a) anecdotally, the Applicant knew of another athlete who was granted a TUE for Tibolone; and
  - b) TUEs for Tibolone have previously been granted to other athletes.
72. The Athlete submits the degree of fault should be assessed under the framework outlined in *Cilic v ITF, CAS 2013/A/2237*. When the Panel considers an appropriate penalty it should have regard to *FIS v Johaug, CAS 2017/A/5015* and *USADA v Gickuel, AAA 01-20-0004-9764*.
73. The Athlete submits that pursuant to Article 10.6.2 the period of suspension be reduced by further one half.

## THE ATHLETE'S ADMISSIONS

74. The Athlete submits that:
- a) the Athlete's the cooperation with SIA;
  - b) the Athlete's submission of the TUE application (which expressly related to the use of Tibolone) prior to competing;
  - c) the Athlete's attempts to obtain a TUE prior to competing;
  - d) the Athlete's disclosure to the Doping Control Officer that she had taken Tibolone;



- e) the Athlete’s written submission to SIA fully disclosed that she had taken Tibolone and the surrounding circumstances; and
- f) the Athlete’s participation and full cooperation with the SIA investigators,

demonstrates the open and clear admissions made.

75. The Athlete further submits that:

- a) but for her candour in disclosing her Tibolone use to DFSNZ, it was unlikely that the ADRV would have been detected. There was an initial error in the interpretation of the “A” sample by the laboratory. During the interview with the SIA investigators, the Athlete was advised that the only reason that negative finding was reviewed was because it was inconsistent with the reported Tibolone use; and
- b) the Athlete’s candour is corroborated by the fact that she did, in fact, apply for a TUE prior to competing. By necessary implication, ASDMAC was aware of her use prior to competing. At the time of that admission, it was the only reliable source of evidence of the ADRV. It remained the only evidence until her samples were ultimately reinterpreted.

76. The Athlete submits that pursuant to Article 10.7.2, the period of suspension be reduced by a further one-half.

**CALCULATION OF SUSPENSION**

77. The Athlete submits that the period of suspension should be calculated as follows:

Step	Cumulative total
A 2-year period of ineligibility (Article 10.2.2)	2 years
Reduced by 50%, to account for No Significant Fault or Negligence (Article 10.6.2)	12 months
Reduced by a further 50% to account for the Applicants admissions (Article 10.7.2)	6 months

**BACKDATING THE PERIOD OF INELIGIBILITY**

78. The Athlete further submits that any period of ineligibility should commence on 4 March 2023. It is noted that SIA and AWF had agreed to this commencement date.

**AWF’s SUBMISSIONS**

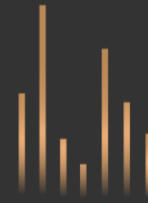
79. The AWF did not make any written or oral submissions.

**SIA’s SUBMISSIONS**

80. SIA filed detailed Outline of Submissions dated 10 December 2024. Ms Jones made oral submissions on 16 December 2024. In summary, SIA submits:

- a) Article 10.2.3 of the NAD Policy defines a wider definition of intentional conduct than asserted by the Athlete. Whether or not the Athlete meant to cheat is not the relevant question. The Athlete has not established that her conduct was unintentional. The Athlete is not entitled to any reduction by reason of Article 10.2.2 of the NAD Policy;
- b) Article 10.6.2 of the NAD Policy cannot be applied because intent is an element of the sanction pursuant to Article 10.2.1, or alternatively;
- c) The Athlete is not entitled to any reduction by reason of Article 10.6.2 of the NAD Policy as the conduct by the Athlete constituted a significant departure from her duty to avoid prohibited substances;





- d) Article 10.7.2 of the NAD Policy is relevant because the Athlete had disclosed that she was using Tibolone prior to testing on 4 March 2023. This admission did not involve a genuine or compelling admission against interest that warrants a significant reduction; and
- e) An appropriate reduction would be three months from the base sanction of 4 years, commencing on 4 March 2023.

#### UNINTENTIONAL CONDUCT

- 81. SIA submits that the Applicant must show both that she did not intentionally use a prohibited substance and that she did not take the risk of using a substance which might lead to an ADRV. SIA relied on *WADA v Swimming Australia, SIA & Shayna Jack*, CAS 2020/A/7579 at [178].
- 82. SIA submits the fact that the Athlete's primary purpose in taking Tibolone might have been medical treatment but this does not preclude a finding of intention.
- 83. The Athlete acted recklessly by:
  - a) failing to check the status of Tibolone prior to February 2023;
  - b) continuing to use Tibolone after she was aware it was a prohibited substance; and
  - c) competing on 4 March 2023, when she knew she had ingested a prohibited substance and had not obtained a TUE prior to competing.
- 84. The Athlete thereby disregarded the risk of an ADRV where a TUE had not been granted *c/f Ashley Kratzer v International Tennis Federation*, CAS 2020/A/7536 at [94].

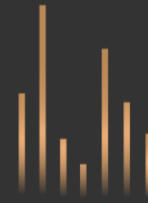
#### NO SIGNIFICANT FAULT OR NEGLIGENCE

- 85. SIA submits No Significant Fault or Negligence is defined in Appendix 1 to mean that the Athlete's fault or negligence is shown not to be significant in relation to the ADRV. Article 10.6.2 cannot be applied in the present case because intent is an element of the sanction pursuant to Article 10.2.1.
- 86. If that submission is rejected by the Panel, SIA submits that the conduct of the Athlete as described in her evidence involved a significant departure from the duty to exercise caution to avoid using Prohibited Substances which resulted in the ADRVs. Therefore Article 10.6.2 does not provide any reduction to the sanction.
- 87. The subjective beliefs held by the Athlete concerning the outcome of the TUE application relied upon hope and speculation, and were not reasonable. The subjective belief that the Athlete did not intend to, and did not gain, a competitive advantage does not explain her departure from the standards expected of athletes, in reference to *Filip Radojevic v. Federation Internationale de Natation (FINA)*, CAS 2018/A/5581 at [60].
- 88. SIA submits that the Athlete has failed to establish that there was no significant fault or negligence.

#### ADMISSIONS

- 89. SIA submits that Article 10.7.2 is directed towards admissions which reveal the commission of an ADRV where that commission would not otherwise be discovered. SIA concedes that the Athlete made a full and frank admission when the TUE was lodged, and this was the only reliable admission at that time. SIA submits that all admissions made on 4 March 2023, after the Doping Control Officer commenced the testing procedures, are not relevant as the testing regime would have ensured that there was independent reliable evidence of the ADRV.
- 90. SIA concedes the Athlete is entitled to some credit, bearing in mind the admissions and the "candid and cooperative" interactions between the Athlete and SIA. SIA submits that the maximum reduction from the base sanction is six months but an appropriate reduction is three months.





## MERITS

91. The Notice of the ADRV specified two ADRVs. The “presence of a metabolite of the prohibited substance” violation refers to a specific date – 4 March 2023. This is the date the Athlete was tested. The “use of a prohibited substance” violation specifies a period of time – on and/or before 4 March 2023. The Notice of Adverse Analytical Finding dated 26 September 2023 sets out the particulars of the ADRVs. Those particulars specify the use of Tibolone which resulted in the positive test of the sample taken on 4 March 2023. Obviously, the Athlete must have used Tibolone on or before 4 March 2023 for the Tibolone metabolite to have been present. The “use of prohibited substance” violation does not allege any other use immediately prior to the Athlete’s “in competition” testing on 4 March 2023. The Athlete admitted taking her daily dose of Tibolone prior to competing at the Masters World Cup. The Athlete also made further admissions to the use of Tibolone over a greater period.
92. The Panel determines that the use of prohibited substance violation relates to the time immediately prior to the Athlete’s in competition testing on 4 March 2023, and the two ADRVs are thereby linked. The Panel accepts the Athlete’s admission of the ADRVs on this basis. The further admissions that she had regularly taken Tibolone earlier are not relevant when considering whether the Athlete has breached the ADRVs on or immediately prior to 4 March 2023, but are relevant when considering any penalty.
93. The Panel proceeds on the basis that the ADRVs will be considered together as one single first violation and the sanction will be imposed based on the violation that carries the more severe sanction. As both sanctions are identical, there is no practical difference.
94. The Athlete admits she has committed the ADRVs.
95. The Panel is required to consider appropriate sanctions.

## UNINTENTIONAL CONDUCT

96. The Parties agree that for the purposes of determining whether the ADRVs occurred, the subjective intention of the Athlete is not relevant. The Athlete acknowledges that the ADRVs are “charges of strict liability and intention, fault or negligence are not elements of the breaches”. This admission is supported by the commentary to the NAD Policy:

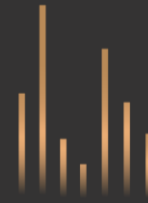
*“Comment to Article 2.1.1: An anti-doping rule violation is committed under this Article without regard to an Athlete’s Fault. This rule has been referred to in various CAS decisions as ‘Strict Liability’. An Athlete’s Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.”*

97. Appendix 1 of the NAD Policy provides a definition of “intentional” as follows:

*“As used in Article 10.2, the term ‘intentional’ is meant to identify those Athletes or Other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.”*

98. This definition has been adopted and applied in Sports Law jurisprudence including *SIA & WADA v Jack & Swimming Australia, CAS 2020/A/7579 & 7580*, where the CAS panel stated at [93]:

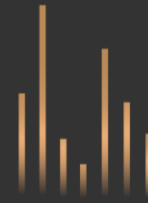
*“Athletes who have committed an ADRV and seek to reduce the period of ineligibility under Article 10.2.1 WADC need to prove both that they did not intentionally use a prohibited substance and (on the assumption that the explanation given in Article 10.2.3 is binding) that they did not take the risk of using a substance which might lead to an ADRV.”*



99. The Panel is satisfied that, in application of the terms described in Article 10.2.3, the Athlete engaged in conduct in each instance of the asserted ADRVs which she knew constituted an ADRV, or that there was a significant risk that the conduct might constitute or result in an ADRV. The Athlete manifestly disregarded that risk. The Panel is of that opinion for the following reasons.
100. The Athlete is an experienced professional and intelligent person. In approximately November 2020, her general practitioner prescribed Tibolone for her genuine underlying medical conditions. At that time, the Athlete was not subject to the NAD Policy. In approximately March 2022 the Athlete commenced competitive masters lifting at various Club and State competitions. She became aware of the restrictions on athletes taking prohibited substances through SIA. The Athlete downloaded the App. Prior to February 2023, the Athlete did not use the App to check for Tibolone.
101. In February 2023, the Athlete decided to use the App again and discovered that Tibolone was a prohibited substance. The Athlete promptly applied for a TUE. ADMSAC was still considering the application. The Athlete knew that if she continued to take Tibolone daily, there was a substantial risk of returning a positive ADRV at the Masters World Cup unless she obtained a TUE. The Athlete intentionally continued to take Tibolone daily, and disregarded the obvious risk by continuing to take Tibolone. The Athlete asserted that she continued to take Tibolone because she was worried about the health consequences of not taking a prescribed medication. The Panel does not accept that is a valid reason to continue to take a prohibited substance.
102. The Athlete intentionally decided to compete at the Masters World Cup knowing that she continued to take her daily dose of Tibolone. Had the Athlete withdrawn, the risk of an ADRV was remote, as it was highly unlikely she would have been subject to an out of competition test. The Masters World Cup provided her with the opportunity to have a holiday in New Zealand with her husband. The failure to withdraw from the competition was a decision made by the Athlete for personal reasons and exposed her to the risk of an in-competition test.
103. The Athlete asserts that it was reasonable for her to compete at the Masters World Cup because she genuinely believed that she would obtain a TUE. Her belief, if genuinely held, was not based upon any reasonable or objective grounds. The Athlete had no assurances from ADMSAC or SIA that the TUE would be granted. The Commentary on Article 4.4 expressly warns athletes that they should not assume that a TUE application will be granted, and any use before the TUE is granted is entirely at the athlete's own risk. What was relayed to her by another athlete, who remains unidentified, cannot be said to have been reliable or the basis of a reasonable belief.
104. The period of ineligibility under Article 10.2.1.1 is 4 years as the Athlete has not established the anti-doping rule violations were not intentional.
105. The Panel is required to consider appropriate sanctions.

#### **NO SIGNIFICANT FAULT OR NEGLIGENCE**

106. Article 10.6.2 of the NAD Policy canvasses the possibility of to a reduction of a sanction when athletes can establish that they acted without intent and any significant fault or negligence. It has no application when athletes intentionally take prohibited substances.
107. In *Ashcroft v Powerlifting Australia and Sport Integrity Australia NST – E20 – 157605 (Ashcroft)*, the NST considered the Powerlifting Australia Anti-Doping Policy 2015, which is almost identical to the NAD Policy. The athlete had obtained a TUE for certain prohibited substances. The athlete was subject to an in-competition doping control test which revealed the presence of other prohibited substances, including testosterone. The athlete applied for a retrospective TUE as the other prohibited substances were taken for genuine underlying medical reasons. The retrospective TUE was not granted. The NST held that the athlete had failed to establish the ADRVs were unintentional, and therefore the no substantial fault or negligence provisions were not available, to reduce the sanction, at [74]:



*“As a result of our finding that the Athlete has not established that the ADRVs (or any of them) were not intentional, it is not necessary to consider the submissions in relation to the existence of “No Fault or Negligence” or “No significant Fault or Negligence”. As noted above, the Athlete abandoned any argument in support of a conclusion that her use and possession of the substances could be regarded as being with “No Fault or Negligence”. In relation to the issue of “No Significant Fault or Negligence”, once intention is found as indicated above, there is no occasion for the application of a reduction.”*

108. The commentary on the NAD Policy is also relevant:

*“Comment to Article 10.6.2: **Article 10.6.2 may be applied to any anti-doping rule violation except those Articles where intent is an element of the anti-doping rule violation (for example Article 2.5, 2.7, 2.8 or 2.9 or 2.11) or an element of a particular sanction (for example Article 10.2.1) or a range of Ineligibility is already provided in an article based on the Athlete or Other Person’s degree of Fault**” (Emphasis added).*

109. This Panel considers the element of intent, as defined by the NAD Policy, as relevant when considering a period of ineligibility under Article 10.2.1.1. The Panel determined that the Athlete’s conduct was intentional. That determination necessarily involves a consideration of the Athlete’s subjective and objective intent. In these circumstances, Article 10.2.2 of the NAD Policy is not available to reduce any sanction.

110. As Article 10.6.2 of the NAD Policy is not available to reduce period of ineligibility, the Panel is not required to provide a determination whether the Athlete’s fault or negligence was significant. The Athlete and SIA made detailed submissions on the issue. The Panel has decided to publish its reasons on the issue.

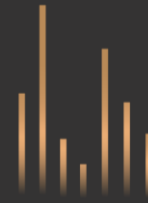
111. The Panel makes the following findings.

112. In approximately March 2022, the Athlete became an athlete as defined by the NAD Policy. Between March 2022 and February 2023, the Athlete:

- a) failed to inform her general practitioner that she was unable to use substances on the Prohibited List;
- b) failed to check the App to discover whether Tibolone was a prohibited substance; and
- c) continued to take Tibolone without checking whether it was a prohibited substance.

113. In February 2023, the Athlete became aware that Tibolone was on the Prohibited List and prohibited from use in and out of competition. The Athlete:

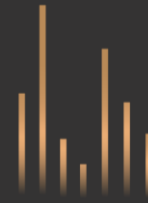
- a) continued to take her daily dose of Tibolone;
- b) was unable to lodge with ADSMAC an application for a TUE at least 30 days prior to the Masters World Cup;
- c) failed to seek the advice of ADSMAC, SIA or any official at AWF, as to her prospects of being granted a TUE, or upon the risks of competing at the Masters World Cup;
- d) apparently relied upon the advice of an unidentified athlete that she was likely to obtain a TUE which would enable the continued use of Tibolone;
- e) apparently became aware of that ADSMAC had approved the use of Tibolone as reported in Ashcroft. Had the Athlete read the decision she would have been aware that a TUE had been issued for a period of two weeks. A review of Ashcroft would reveal that the use of prohibited substances that are prescribed medications without a current TUE is likely to result in an ADRV. Reliance on a decision without reading the decision is another failure by the Athlete.
- f) failed to consider that a TUE may not be issued by ADSMAC prior to the commencement of the Masters World Cup; and
- g) decided to compete at the Masters World Cup knowing there was a risk that the TUE may not be granted.



114. On 3 and 4 March 2023, the Athlete:
- registered at the Masters World Cup;
  - continued to take her daily dose of Tibolone knowing that it was a prohibited substance;
  - knew that a TUE had not been issued by ADSMAC;
  - knew that drug testing may be conducted at the Masters World Cup;
  - decided to compete in her event at the Masters World Cup knowing that the TUE had not been issued; and
  - knew there was a risk that if she was tested, an ADRV was likely and that she would test positive to Tibolone.
115. The Panel is satisfied that the Athlete's conduct described above amounts to substantial fault and negligence, which resulted in the ADRVs. In February 2023, when the Athlete became aware that Tibolone was a prohibited substance she had two pathways to avoid an ADRV – cease taking Tibolone or withdraw from the Masters World Cup. Either of these pathways would have minimised the possibility of an ADRV.
116. The pathway chosen by the Athlete was to simply continue to taking her daily dose of Tibolone, lodge the TUE application, hope that it would be granted, and compete at Masters World Cup. The Athlete consulted her general practitioner to assist her in making a TUE application, but also received another prescription for Tibolone.
117. That pathway was fatally flawed and constitutes substantial fault and negligence by the Athlete. It exposed the Athlete to the risk of an ADRV. If testing occurred at the Masters World Cup and an ADRV was issued, the Athlete's only salvation would be if the TUE was granted.
118. The Athlete did not seek advice from ADSMAC, SIA or officials at AWF. Instead, the Athlete decided to seek the advice from another athlete about the prospects of success of the TUE. That conduct was grossly negligent.
119. The Panel agrees with the submissions made by SIA that, "the conduct of the Athlete as described in her evidence involved a significant departure from the duty to exercise caution to avoid using Prohibited Substances which resulted in the ADRVs."
120. If, contrary to this determination, Article 10.6.2 of the NAD Policy is available to the Athlete, the Panel finds that there was significant "Fault" or "Negligence" on the part of the Athlete for the reasons outlined above. The Panel determines Article 10.6.2 of the NAD Policy is not available to reduce any period of Ineligibility.

## ADMISSIONS

121. The Athlete submits that she is entitled to a reduction in the period of ineligibility by reason of Article 10.7.2 of the NAD Policy. The Athlete principally relies upon the voluntary admissions made in the TUE application, and the extensive and open admissions made to SIA and its investigators. The Athlete submits that she is entitled to a reduction of one-half of the period of ineligibility. The Athlete submits that this equates to 6 months. This is based upon the Athlete receiving reductions for unintentional conduct and no significant fault or negligence. The Panel has determined that the Athlete is not entitled to those reductions. Therefore, the maximum reduction by reason of Article 10.7.2 is one half of the period of ineligibility, two years.
122. SIA submits that Article 10.7.2 of the NAD Policy is directed towards admissions which reveal the commission of an ADRV, where that commission would not otherwise be discovered. SIA concedes that the Athlete made a full and frank admission when the TUE was lodged, and this was the only reliable admission at that time. SIA submits that all admissions made after the Doping Control Officer commenced the testing procedures on 4 March 2023 are not relevant as the testing regime would ensure that there was independent reliable evidence of the ADRV. SIA concedes the Athlete is entitled to some credit, bearing in mind the admissions and the "candid and cooperative"



interactions between the Athlete and SIA. SIA submits that an appropriate reduction is three months.

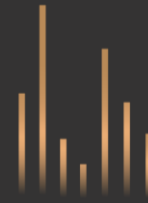
123. Article 10.7.2 of the NAD Policy establishes that an athlete may receive a reduction of the period of ineligibility in limited circumstances.
124. The Panel is satisfied that the admissions made by the Athlete contained in the TUE application dated 20 February 2023, are relevant admissions as defined by Article 10.7.2, and the Athlete is entitled to be considered for a reduction of the period of ineligibility. They are full and frank admissions. At the time those admissions were made, there was no other evidence which would support an ADRV.
125. On 4 March 2023, the Athlete undertook the doping control test. Any admissions made after the testing procedures commenced are not relevant when considering Article 10.7.2. Under the NAD Policy, the Athlete has a duty to disclose the medications and supplements she had taken. The Athlete cannot claim credit for disclosures she was duly bound to make. Further, the admission to the Doping Control Officer that the Athlete had consumed Tibolone as recorded in the Doping Control Form was likely to be reviewed and investigated by DFSNZ or SIA when the sample was analysed.
126. The Panel has considered all relevant circumstances in this case and determines that an appropriate reduction in the period of ineligibility by reason of Article 10.7.2 of the NAD Policy is three months.

## PUBLIC DISCLOSURE

127. The Athlete sought directions concerning the publication of any decision. The Athlete's Outline of Submissions acknowledged that publication of the results of the hearing is necessary but should be limited to one month.
128. At the conclusion of the hearing on 16 December Ms. Farnden SC submitted that, given the legislative framework which requires publication, the Panel should make directions limiting the scope of further publications.
129. SIA made submissions that the Panel is not empowered to circumvent the *Sport Integrity Australia Act 2020* (Cth) (**Sport Integrity Act**) by limiting the publication of the Athlete's details.
130. Section 19A of the Sport Integrity Act states:
  - (1) The CEO must establish and maintain a list, to be known as the Violations List.
  - (2) If the CEO becomes aware that an athlete, support person or non-participant has been sanctioned by a sporting administration body in relation to an anti-doping rule violation; and
    - (a) The time within any appeal in relation to the sanction may be instituted has expired, and no such appeal has been instituted; or
    - (b) any appeal in relation to the sanction has been completed; or
    - (c) the athlete, support person or non-participant has waived his or her right to any appeal in relation to the sanction;

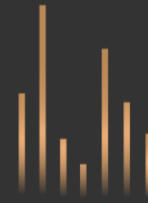
**the CEO must, within 20 days of being so aware, include in the Violations List the information required by subsection (3).**

- (3) The following information is required in relation to an anti doping rule violation:
  - (a) **the name of the athlete, support person or non-participant;**
  - (b) **for an athlete:**
    - (i) **the athlete's date of birth; and**

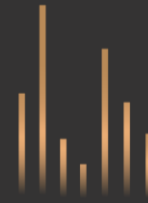


- (ii) **the athlete's sport; and**
      - (iii) **if the athlete is a member of a team—the team;**
    - (c) **the nature of the anti-doping rule violation;**
    - (d) **the date of the anti-doping rule violation;**
    - (e) **the consequences (within the meaning of the World Anti-Doping Code) of the anti-doping rule violation, including the period of ineligibility (if any) for the anti-doping rule violation.**
  - (4) **The CEO may include in the Violations List any other information he or she considers appropriate.**
  - (5) Despite subsection (2), the CEO is not required to include in the Violations List any information in relation to an anti-doping rule violation, if:
    - (a) the anti-doping rule violation:
      - (i) was committed by an individual who was, at the time the anti-doping rule violation was committed, aged under 18; and
      - (ii) is the first anti-doping rule violation committed by the individual of which the CEO is aware; or
    - (b) the CEO is satisfied that the inclusion of the information is likely to prejudice a current investigation into a possible violation of the anti-doping rules; or
    - (c) WADA has authorised non-inclusion of the information.
  - (6) Information included in the Violations List in relation to an anti-doping rule violation must be removed from the Violations List: if:
    - (a) if there is a period of ineligibility for the anti-doping rule violation – at the later of the following times:
      - (i) at the end of the period of ineligibility;
      - (ii) at the end of the period of 1 month after its inclusion; or
    - (b) otherwise – 1 month after its inclusion.
  - (7) The NAD scheme may make provision for and in relation to either or both of the following:
    - (a) the correction of entries in the Violation List;
    - (b) any other matter relating to the administration or operation of the Violations List.
  - (8) The Violations List is to be made available for public inspection on the internet.
  - (9) The Violations List is not a legislative instrument. The SIA CEO is required to maintain the Violations List and to include the information as required by the Act. The Tribunal does not have the power to limit what information is published by the CEO on the Violations List or the time the published information remains on the Violations List.
131. Section 48 of the NST Determination requires Tribunal to provide detailed reasons which include the name of the Athlete as follows:
- (1) The Tribunal's determination of an anti-doping dispute must include the following:
    - (a) the jurisdictional basis and applicable rules, including the sport;
    - (b) a detailed factual background of the dispute;
    - (c) **the name of the athlete or other person who was alleged to have committed the anti-doping rule violation** (Emphasis added);
    - (d) where applicable, the anti-doping rule violations that have been established;
    - (e) the prohibited substance or prohibited method involved (if any); and
    - (f) the applicable consequences and the date on which they are to take effect.





- (1A) The determination must also include the Tribunal's reasons, including its findings on material questions of fact and reference to the evidence or other material on which its findings were based.
  - (2) In this section, anti-doping rule violation, prohibited substance, prohibited method and consequences have the same meanings as those expressions in the World Anti-Doping Code.
  - (3) Where the determination is adverse to the applicant, the Tribunal must, at the same time it gives the determination to the applicant, give the applicant a written statement setting out their rights of appeal from the determination.
132. Section 49 of the NST Determination 2024 requires the NST CEO to publish all determinations made by the Tribunal as follows:
- (1) In accordance with the relevant anti-doping policy and subject to subsections (4) and (5), the CEO is to publish all determinations of the Anti-Doping Division, including the reasons for those determinations.
  - (2) The Tribunal member who prepared the determination may recommend to the CEO that the CEO publish a version of the determination containing a pseudonym so that a witness is not able to be identified.
  - (3) **A pseudonym is not to be applied to protect the identity of a party to the dispute** (Emphasis added).
133. This Panel and the NST CEO are not empowered to protect the identity of the Athlete by the use of a pseudonym. The NST CEO must publish any determination, including the reasons for the determination. This Panel is not empowered to control the publication of a determination by the CEO.
134. Section 49 of the NST Determination 2024 does enable the Panel to make directions concerning the confidentiality of the information before the Tribunal. The Panel heard evidence and received information concerning the nature and scope of the Athlete's medical conditions. It is accepted by the Parties that the Athlete has been treated for these genuine medical conditions. These matters are personal and confidential. The Panel believes that, so far as is practicable, this information should be kept confidential. To protect the Athlete's privacy, the Panel believes it is unnecessary to provide specific details of these medical conditions and the treatment provided to the Athlete by her doctors.
135. The Panel declines to provide any directions to the SIA CEO concerning any publication that may be made in the Violations List or to the NST CEO concerning any publication of any determination.



## DETERMINATION

### The Tribunal Determines:

1. That Jacquelin Honeywood has committed the following Anti-Doping Rule Violations:
  - b) Presence of a metabolite of the prohibited substance (Tibolone) on 4 March 2023.
  - c) Use of a Prohibited Substance (Tibolone) on and/or before 4 March 2023.
2. That a period of 3 years and 9 months ineligibility be imposed on Jacquelin Honeywood commencing on 4 March 2023.
3. That the results achieved by Jacquelin Honeywood in competitions dating from 4 March 2023 to the date of this Determination be disqualified with all resulting consequences including the forfeiture of any medals, points and prizes.

19 January 2025



Mr. Anthony Nolan KC (Chair)



Ms. Sarah Cook



Ms Elizabeth Bennett