

**BETWEEN            DRUG FREE SPORT NEW ZEALAND**

**Applicant**

**AND                 ANDREW CIANCIO**

**Respondent**

**AND                 OLYMPIC WEIGHTLIFTING NEW ZEALAND**

**Interested Party**

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**DECISION  
DATED 24 June 2015**

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**Hearing**            22 June 2015 by telephone conference

**Tribunal**            Sir Bruce Robertson (Chair)  
Ron Cheatley  
Georgina Earl

**Present**            Isaac Hikaka and David Bullock, counsel for Drug Free Sport  
New Zealand  
Graeme Steel and Jude Ellis, Drug Free Sport New Zealand

**Registrar**           Brent Ellis

1. Andrew Ciancio is a member of Olympic Weightlifting New Zealand (OWNZ) and is thus subject to the Sports Anti-Doping Rules (SADR).
2. On 8 April 2014 Drug Free Sport New Zealand (DFS) filed an application for Anti-Doping Rule Violation proceedings alleging six violations:

*On 21 October 2013 the Respondent evaded sample collection in breach of SADR 3.3. He did this by changing his whereabouts for his availability for testing under the International Standard for Testing ("IST") from an address given as his residence at 16/527 Burwood Road, Belmore, Sydney NSW to an address at 651 Kyola Road, Kulnura NSW with the intention of evading sample collection. He was not present at either address or at the address given as his training address in his whereabouts information when testing officials sought to locate him within the 60-minute time slot under the IST on 21 October 2013.*

*On 21 October 2013 the Respondent tampered with sample collection in breach of SADR 3.5. He tampered with sample collection by giving false and misleading information as to his whereabouts, namely by falsely stating that 651 Kyola Road, Kulnura NSW was his work address when it was not and that he would be present at that address during the 60-minute time slot under the IST when he would not be.*

*On 17 October 2013 the Respondent evaded sample collection in breach of SADR 3.3 by changing his whereabouts for his availability for testing under the IST from an address given as his residence at 16/527 Burwood Road, Belmore, Sydney NSW to an address at 651 Kyola Road, Kulnura NSW with the intention of evading sample collection.*

*On 17 October 2013 the Respondent tampered with sample collection in breach of SADR 3.5. He tampered with sample collection by giving false and misleading information as to his whereabouts, namely by stating that 651 Kyola Road, Kulnura NSW was his work address when it was not and that he would be present at that address when he would not be.*

*On about 22 July 2013 when he submitted a whereabouts change of plan for the quarter ending September 30 2013, the Respondent tampered with sample collection in breach of SADR 3.5. He did this by providing false and misleading information as to his whereabouts by stating that 651 Kyola Road, Kulnura NSW was his work address when it was not.*

*Between 22 July 2013 and 30 October 2013 the Respondent tampered with sample collection in breach of SADR 3.5. He did this by providing false and misleading information as to his whereabouts on 22,23,25,26,28,29,31 July, 1,3,5,6,8,12,13,19,20,26,29,30 August, 2,4,5,6,9,13,18 September and 3,4,9,17,18,21,25,29,30 October 2013 by giving as his work address 651 Kyola Road, Kulnura NSW when this was not his work address and by changing his whereabouts for the 60 minute time slot (under the IST) to 651 Kyola Road, Kulnura NSW when he would not be at that address.*

3. At the time Mr Ciancio was facing other and unrelated alleged anti-doping violations in Australia in respect of earlier acts and omissions. These were scheduled to be heard by the Court of Arbitration for Sport (CAS) on 19 May 2014.

4. On 29 April Mr Ciancio filed a Notice of Defence which relevantly stated:

*On the grounds that I was working at the property and ASADA, acting on behalf of DFSNZ didn't try every means possible to contact me during that hour.*

*I think I've been treated harshly as I didn't get paid to train therefore I need to work to support my hobby which all athletes get crucified for, for the most minor mistake.*

5. After an initial telephone conference on 5 May a Minute issued by the Tribunal provided in part:

*Separate proceedings brought by the Australian Sports Anti-Doping Authority against Mr Ciancio will be heard by the Court of Arbitration for Sport on 19 May. In light of this, the Chairperson*

*discussed with Mr Ciancio when he wished to proceed with the matter before this Tribunal. He was clear that he wanted to proceed now and did not want a postponement until the Australian matter was completed.*

*The following timetable orders were made:*

- (a) Mr Ciancio will file all his evidence by **5 pm on Monday 12 May 2014.***
- (b) DFS will file its response by **5 pm on Monday 19 May.***
- (c) A teleconference with the parties will be held at **11 am on Friday 23 May.***
- (d) The hearing is scheduled for **11 am on Monday 26 May.***

*Whether the hearing will be in person in Auckland or by teleconference will be decided when Mr Ciancio indicates whether he will attend. He lives in Sydney and preferred a hearing in person but was uncertain if he could afford to travel to New Zealand. Mr Ciancio will advise by **Tuesday 20 May** whether he will attend in person.*

6. Then Mr Ciancio changed his position and indicated he wanted a postponement until he had finished with the Australian proceedings which by then had a hearing date of 25 June.
7. DFS filed an application for a provisional suspension and there was a teleconference on 4 June in which Mr Ciancio did not participate. A provisional suspension order was made effective from that date. The New Zealand proceedings were adjourned until 24 July by which time it was anticipated there would be a decision in the CAS proceedings in Australia.
8. Meantime at Mr Ciancio's request timetabling was considered further on 2 July and another Minute issued which provided:

*We have had yet another telephone conference because of a further request from Mr Ciancio for more time to respond to the Drug Free Sport New Zealand (DFS) material in support of its allegations. Although advised of the conference Mr Ciancio did not ring in.*

*The case has a chequered and unsatisfactory history. Initially Mr Ciancio wanted the case heard as a matter of extreme urgency because of his hope of Commonwealth Games selection and notwithstanding that he was facing proceedings in Australia at the same time.*

*Timetable orders were made on 5 May and a hearing was set down for 26 May so as not to clash with the Australian proceeding that was then scheduled for 19 May.*

*Not surprisingly after a short time Mr Ciancio found that was not practical, particularly as he did not have confirmed legal representation. He initially sought time extensions to file his evidence which were granted.*

*On 15 May he sent a letter to the Tribunal seeking an adjournment of the 26 May hearing. He advised he was no longer seeking selection to the Commonwealth Games. He wished to defend both proceedings in Australia and New Zealand but sought leave from the Tribunal to first settle the Australian matter and said he had sought a two month adjournment from CAS in the Australian proceedings. A directions hearing was set down by CAS for 22 May.*

*As the Australian matters were not resolved and CAS was holding a directions conference, it was sensible that the Tribunal should await further action until after that. The hearing was adjourned and a teleconference was scheduled on 27 May to determine new timetable orders. However, Mr Ciancio advised that the CAS directions hearing was further adjourned until 28 May.*

*The Tribunal scheduled a teleconference for 3 June. Despite being notified of the teleconference, Mr Ciancio failed to participate. The following Timetable orders were made at that teleconference and communicated to the parties in a Minute of the same date:*

*Mr Ciancio shall file his evidence by 5 pm Friday 27 June 2014.*

*Drug Free Sport shall file its evidence by 5 pm Friday 18 July 2014.*

*The Hearing will take place at 11 am on Friday 1 August 2014.*

*Although Mr Ciancio has been provisionally suspended by Australian authorities, it appeared to me that there should be a normal regime in place in respect of the New Zealand proceedings. DFS applied for Mr Ciancio's provisional suspension. This application was heard by the Tribunal on 4 June. Despite being notified, Mr Ciancio failed to participate in the hearing. An order was made on the same date provisionally suspending him.*

*The matter was adjourned to be reviewed by teleconference at noon (NZ time) on 24 July by which stage it was anticipated that the evidence of Mr Ciancio would be available together with anything in reply from DFS as per the timetable of orders of 3 June.*

*Mr Ciancio obtained representation from a New Zealand lawyer who subsequently requested a time extension until 30 June to file Mr Ciancio's evidence, which was granted.*

*There was a request for further time by Mr Ciancio at the end of last week for him to file his evidence and I directed that such a request should come from the New Zealand lawyer who had been engaged by him. That led to advice that the New Zealand lawyer was no longer acting. Mr Ciancio says he is endeavouring to get another lawyer and needs a few more days.*

*There is still no final decision in the Australian case.*

*Earlier DFS had indicated its concerns that so much time was elapsing without resolution of the New Zealand allegations and so when there was a further request by Mr Ciancio for another revised timetable I convened this conference so everyone could be heard.*

*It is unusual to have an athlete subject to anti-doping proceedings simultaneously in two jurisdictions. The Tribunal is focussed on a New Zealand hearing at the first practicable date but it must be careful that in the course of achieving that goal process is not denied which could be subject to subsequent review or challenge elsewhere.*

*Mr Ciancio says he needs more time to finalise a lawyer and to get in his statements. DFS remain concerned as to the perpetual delay.*

*There is no simple answer and a balancing exercise has to be undertaken. For myself, the eventual conclusion of the Australian matter cannot be ignored in that process.*

### **Orders**

*I confirm the scheduled telephone conference on Thursday 24 July to continue to monitor matters. The existing obligation to file material remains in place and if there is a slight slippage that will be dealt with when it happens.*

*Additionally within 7 days of his receiving the decision in Australia, if that is in the immediate future, Mr Ciancio is to confirm to this Tribunal and to DFS whether he will continue to defend the New Zealand proceeding.*

*24 July has to be the critical date. If there is no decision from Australia, the New Zealand case has to be progressed and determined. If there are no statements, the hearing will proceed on the basis of the existing material on 1 August with or without Mr*

*Ciancio's participation. If there is material in challenge, then the sensible logistics for its determination will be assessed.*

9. The 24 July teleconference was no more conclusive as a Minute issued by the Tribunal noted:

*There was a scheduled telephone conference which, just before it started, Mr Ciancio advised that he would not participate in as he was under pressure and still awaiting an outcome of the Australian matters but was sure that the teleconference could be held without him. The Tribunal acknowledged Mr Ciancio's advice and confirmed that the teleconference would proceed. During the teleconference he emailed and confirmed that he still intended to defend the New Zealand charges.*

*That is a fine sentiment but there have been a series of timetables which he has ignored and has taken no steps to get evidence filed.*

*I requested the Registrar to endeavour to ascertain from the Australian Anti-Doping Authority (ASADA) the exact position of their proceedings and a response is awaited if they are prepared to share information with us.*

*Drug Free Sport is very anxious to have a determination of liability forthwith, although it recognises that the question of penalty could not be sensibly made until there is finality in Australia. In the meantime, after some urging by me for an application to be made, there is now a provisional suspension order in place in New Zealand.*

*The balance is not easy. Finality is desirable but the Tribunal has to be cautious not to create an environment whereby it virtually invites a subsequent application for re-hearing or an appeal on the basis of unfair process. The integrity of the regime is not compromised because of the suspension order.*

*What Mr Ciancio needs to understand is that there will be a hearing on the merits in the near future and he will be at serious*



*disadvantage if he has no evidential material available. His position is no doubt difficult, frustrating and disappointing but nothing is gained by his head in the sand approach.*

*When we have a reply from ASADA we will be in touch further. In the interim please note that, due to availability issues, there now cannot be a hearing on 1 August. However, if an immediate hearing is appropriate it will be in the week of 4 August.*

10. The ongoing position is then encapsulated in a further Minute of 30 July:

*We have seen the response from Australia to the enquiry made last week. It is regrettable that there cannot be a sharing of information between similar bodies. We have to reach a decision on the future conduct of the New Zealand proceedings in light of this attitude.*

*Mr Ciancio is provisionally suspended on the New Zealand proceedings so there is no threat to the integrity of the Drug Free Sport regime in this country.*

*Although Mr Ciancio has ignored all timetable orders he continues to say that he wants to defend the New Zealand allegations but has done nothing in advance of that position. His articulated reasons are understandable even if not excusable.*

*The Tribunal is not unmindful of the anxiety of Drug Free Sport New Zealand (DFS) to have liability determined immediately although it recognises that the issue of penalty would have to be postponed. It is accepted that there cannot be finality until after the conclusion of the Australian matters.*

*If we proceed to decide liability now on the existing material from DFS we would almost inevitably invite an application for a rehearing or an appeal on breach of natural justice grounds if Mr Ciancio maintains his wish to defend.*

*A balance must be struck and we are persuaded that the New Zealand case should be adjourned in its entirety until the Australian*

*decision is available. If Mr Ciancio has evidential material he wants to have considered he must file this in the meantime. He will not be given further opportunities to do so after the delivery of the Australian decision. There is no sensible impediment to his filing it now.*

*The proceedings are adjourned. A date of hearing will be allocated as soon as possible after the receipt of the Australian decision.*

11. The Australian proceedings were concluded by a Final Arbitral Award dated 10 April 2015. When the Tribunal was apprised of that on 13 May 2015 it scheduled a telephone conference for 11 June after which the following Minute was issued:

*On 13 May 2015, the Tribunal advised the parties that a teleconference would be held at 2 pm today 11 June.*

*On 5 June, My Ciancio called the Registrar of the Tribunal and said he would send an email, setting out his position, to the Tribunal before the teleconference. However, he did not do so.*

*The Tribunal received an email from Mr Ciancio this morning saying that he was not going to participate in today's teleconference. He said he still denied the claims against him.*

*The Tribunal is of the view that this matter must be brought to a head. The lengthy history is detailed in the various Minutes of the Tribunal issued in 2014.*

*The Australian matter has been completed, his appeal period has expired and no steps have been taken by Mr Ciancio.*

*A hearing by teleconference of the New Zealand matter will be held at **11.30 am on Monday 22 June 2015**. The matter will proceed on the basis of the filed evidence and the filed statements, both as to culpability and sanction.*

12. On 12 June DFS filed a request to prove its case on the basis of the statements which had been filed and in the absence of opposition or

comment an order was made accordingly on 19 June. These statements were:

*Statement by Kristin Farrell on behalf of DFSNZ dated 19 January 2014;*

*Statement by Gillian Cahill on behalf of DFSNZ dated 4 February 2014;*

*Statement by Keith William Mexsom on behalf of DFSNZ dated 24 March 2014;*

*Statement by Jude Ellis on behalf of DFSNZ dated 7 April 2014.*

13. At 11.27 am on 22 June (i.e. three minutes before the scheduled start of the teleconference hearing at 11.30 am) Mr Ciancio sent an email to the Registrar of the Tribunal stating:

*I'll be unable to call in today due to the fact my service won't let me. I would ask for it to be moved to end of the week. But understand if it can't be. I've also been very down in the whole situation as it's effected my whole sporting and working as a coach career and life in general I still strongly believe this should be over ruled by the previous ban. I deny all allegations and if it goes ahead I fully intend to appeal as I feel DFSNZ are set on to bring down an innocent athlete.*

14. Mr Ciancio did not participate in the teleconference call at 11.30 am. The Tribunal advised DFS of Mr Ciancio's email and enquired as to its position. DFS stated it wished to proceed with the hearing. The Tribunal adjourned the proceedings and retired for a brief period to consider Mr Ciancio's email and the response of DFS.
15. The Tribunal reconvened the proceedings and ruled that the hearing should proceed as scheduled. The Registrar immediately advised Mr Ciancio by email of its decision to proceed with the hearing.
16. The position of DFS was comprehensively summarised in a memorandum of 19 June which was served on Mr Ciancio and relevantly included:

**Summary of alleged violations**

*DFSNZ alleges that Mr Ciancio committed the following anti-doping rule violations:*

*On 21 October 2013 Mr Ciancio evaded sample collection in breach of (2013) SADR 3.3. He did this by changing his whereabouts for his availability for testing under the International Standard for Testing (IST) from an address given as his residence at 16/527 Burwood Road, Belmore, Sydney, NSW to an address at 651 Kyola Road, Kulnura, NSW with the intention of evading sample collection. He was not present at either address, or the address given as his training address in his whereabouts information when testing officials sought to locate him within the 60-minute time slot under the IST on 21 October 2013.*

*On 21 October 2013 Mr Ciancio tampered with sample collection in breach of (2013) SADR 3.5. He tampered with sample collection by giving false and misleading information as to his whereabouts, namely by falsely stating that 651 Kyola Road, Kulnura, NSW was his work address when it was not, and that he would be present at that address during the 60-minute time slot under the IST when he would not be.*

*On 17 October 2013 Mr Ciancio evaded sample collection in breach of (2013) SADR 3.3 by changing his whereabouts for his availability for testing under the IST from an address given as his residence at 16/527 Burwood Road, Belmore, Sydney, NSW to an address at 651 Kyola Road, Kulnura, NSW with the intention of evading sample collection.*

*On 17 October 2013 Mr Ciancio tampered with sample collection in breach of (2013) SADR 3.5. He tampered with sample collection by giving false and misleading information as to his whereabouts, namely by stating that 651 Kyola Road, Kulnura, NSW was his work address when it was not and that he would be present at that address when he would not be.*

*On about 22 July 2013 when he submitted a whereabouts change of plan for the quarter ending September 30 2013, the Respondent tampered with sample collection in breach of (2013) SADR 3.5. He did this by providing false and misleading information as to his whereabouts by stating that 651 Kyola Road, Kulnura, NSW was his work address when it was not.*

*Between 22 July 2013 and 30 October 2013 the Respondent tampered with sample collection in breach of (2013) SADR 3.5. He did this by providing false and misleading information as to his whereabouts on 22,23,25,26,28,29,31 July, 1,3,5,6,8,12,13,19,20,26,29,30 August, 2,4,5,6,9,13,18 September and 3,4,9,17,18,21,25,29,30 October 2013 by giving as his work address 651 Kyola Road, Kulnura, NSW when this was not his work address and by changing his whereabouts for the 60 minute time slot (under the IST) to 651 Kyola Road, Kulnura, NSW when he would not be at that address.*

### ***Factual basis for violations***

#### *Historical whereabouts failures*

*Mr Ciancio has a long history of whereabouts failures. He was assigned to DFSNZ's Registered Testing Pool (**RTP**) in April 2010. Mr Ciancio's first whereabouts failure was recorded against him in May 2010, for failing to submit his whereabouts information for the rest of that quarter when due. This failure was despite being granted extensions to the due date and offers of assistance from DFSNZ. Mr Ciancio was removed from the RTP when he indicated he was retiring on 30 August 2010.*

*On 28 November 2011 Mr Ciancio advised he wished to return from retirement and was placed back on the RTP. In December 2011 Mr Ciancio had a second whereabouts failure when he failed to submit whereabouts information for the upcoming quarter by the due date. This was despite three reminders in advance of this date to do so.*

*A third whereabouts failure was recorded against Mr Ciancio in March 2013 due to a missed test (by failing to be at his specified location during his specified 60-minute time slot).*

*Ms Farrell's statement records that between April 2011 and April 2013 the whereabouts system was explained to Mr Ciancio on numerous occasions and offers of assistance were frequently rendered. Ms Farrell's experience of Mr Ciancio over this period was that he required considerably more monitoring and assistance compared to other athletes on the RTP. She recalls that "he was also difficult to get hold of and would often wait until almost the last minute of any deadline to respond to requests for information".*

#### *17 October 2013 violations*

*In September 2013 DFSNZ formed the view that Mr Ciancio's whereabouts information was not meeting IST requirements because they provided only a residential address and did not provide information for training, work or any other regular activities. It wrote to Mr Ciancio on 27 September 2013 to advise him of his whereabouts responsibilities.*

*On 1 October 2013 Mr Ciancio complied with this request and added a work and training address. The work address was 651 Kyola Road, Kulnura NSW.*

*On 17 October 2013 attempts were made to locate Mr Ciancio for testing at his residential address. The first attempt was made outside the 60-minute time slot and the DCO was advised by an occupant that Mr Ciancio was not home. A second attempt was made that night during the specified time slot between 9pm and 10pm.*

*Mr Ciancio could not be located at this address. It eventuated that four minutes before the specified time slot (at 8.56pm) Mr Ciancio had changed his whereabouts information from his residential address to the Kyola Road work address. This address is located approximately 100km away from the residential address. The DCOs (who were not*

*aware of the late change in whereabouts) would not have been able to reach that address before the specified time elapsed.*

*Athletes are permitted to change their whereabouts information but are required to do so "as soon as possible". Further investigations revealed that Mr Ciancio had made similar change on earlier occasions. A summary of these changes can be found in the statement of Jude Ellis dated 7 April 2014 at [52]-[57] and at Document 15.*

#### *21 October 2013 violations*

*In light of Mr Ciancio's history of late changes to whereabouts information (described below), on 21 October, DFSNZ instructed ASADA to send a DCO to each of Mr Ciancio's specified address (i.e. his residential, work and training addresses) in an attempt to locate him during the 60-minute specified period notwithstanding any late change in his whereabouts. His specified time period for that date was between 5.30pm and 6.30pm and Mr Ciancio had specified his location at his training address in Sydney.*

*At 5.23pm, 7 minutes before the start of the 60-minute time slot, Mr Ciancio updated his whereabouts information by changing his specified location from his training address to his Kyola Rd work address.*

*Ms Cahill, a DCO for ASADA, arrived at 651 Kyola Rd at 5.30pm. She spoke to a neighbour, Peter, living at 649 Kyola Rd who identified the house at 651 Kyola Rd and the driveway he shared with that address. He told Ms Cahill that he had not seen anyone at 651 Kyola Rd in a long time. Ms Cahill also spoke to another neighbour, Ms Maxwell, who had lived at 650 Kyola Rd for 3 months. She only knew Peter (who ran a market garden at 649 Kyola Rd) and had only observed market gardeners at that address.*

*Ms Cahill used the shared driveway to access the house at 651 Kyola Rd. The dirt track to the house was overgrown and had no visible tyre marks. The house and property appeared unoccupied. Ms Cahill drove to the back of the house and walked around its veranda. She called*

out "hello" and "anyone home" with no response. She observed that the grass at the back of the house was waist high, there was no refrigerator in the kitchen, and no sign that maintenance was being carried out on the property. Ms Cahill left the location at 6.38pm.

The explanation given to DFSNZ by Mr Ciancio was that he works as a handyman meaning he is required to work at various job sites. He claimed that he was at the Kyola Rd site during the 60-minute time slot and that he must have been missed by the DCO as it is a 37 acre farm. He said that the DCO may have visited the wrong house as during the specified hour he normally worked around the house in case the DCOs arrived.

DFSNZ instructed an investigator, Mr Mexsom, to make further inquiries around Mr Ciancio's activities at the Kyola Rd address. Mr Mexsom ascertained that ownership of the property at 651 Kyola Rd is registered to a Mr Tom Con.

Mr Mexsom visited the address on 6 November 2013 (approximately a fortnight after the DCO had been unable to locate Mr Ciancio at the address). Nobody was at the address at the time. Mr Mexsom observed no evidence that maintenance work had been recently carried out on the house or surrounding property.

Mr Mexsom spoke with Peter at 649 Kyola Rd. Peter said that the last person he had seen at the address was the owner and another man approximately three months earlier. Mr Mexsom showed Peter a photograph of Mr Ciancio. Peter indicated that he had never seen Mr Ciancio before, either at the Kyola Rd property or elsewhere.

As noted, Peter operated a market garden at 649 Kyola Road. Mr Mexsom observed that the driveway to 651 Kyola Road was shared with that used by the market garden at 649 Kyola Road. The location and orientation of the market garden meant that any visitor to 651 Kyola Road would be noticed almost immediately by the field workers in the market garden.



*Mr Mexsom spoke with Mr Con by telephone on 11 November 2013. Mr Con indicated that he was Mr Ciancio's father-in-law. He indicated that he, his daughter, and Mr Ciancio had visited the property some two weeks prior, and at other times before that, but he was reluctant to provide specific details. Mr Con indicated that these visits were sometimes at night and hence unnoticed by the market gardeners. Mr Con indicated that Mr Ciancio was a "handyman" and did undertake some maintenance work for him on the property.*

*On a subsequent visit to the site on 12 March 2014 Mr Mexsom observed that little on the site had changed since his visit on 6 November 2013 and that, if anything, the grounds appeared more overgrown and the house more dilapidated.*

*Violations between 22 July 2013 and 30 October 2013*

*Between 22 July 2013 and 30 October 2013 Mr Ciancio changed his whereabouts information on 35 occasions, shortly before the commencement of his specified 60-minute time slot, to give his location as at 651 Kyola Road, Kulnura. Many of the changes to whereabouts information were made 5-10 minutes before the start of the 60-minute time slot (or, in a number of cases, after the specified time had begun or passed).*

17. We have considered with care the evidential material which has been filed by DFS which in its entirety is unchallenged in any meaningful way.
18. The frequency with which Mr Ciancio filed updates, together with the timing of them, in the absence of any persuasive or sensible explanation, speaks volumes. The totality of the evidence suggests that 651 Kyola Road was never a work address. Even if it was, the clear obligation was on Mr Ciancio to be available. His being just somewhere on a 37 acre block could never meet his responsibility.
19. On the material available to the Tribunal the inevitable and irresistible conclusion is that Mr Ciancio was engaged in a systematic and ongoing

plan to avoid the clear requirements to which he was subject. They are undoubted breaches of the words and spirit of the applicable regime.

### **Sanction**

20. For the Australian violations Mr Ciancio has been made ineligible for 7 years commencing on 24 November 2012. The New Zealand violations occurred after that date. The question of sanction is effected by an amendment to the SADR Rules.

21. DFS submitted the following about the SADR Rules:

*Under (2013) SADR:*

*If the sanction is determined using the (2013) SADR (the Rules in force at the time of the violations) then the sanction must be lifetime ineligibility. Under (2013) SADR 14.7.1 it is a second violation (with no reduction for a specified substance being available) where the first violation was for trafficking. This results in a mandatory sanction of lifetime ineligibility.*

*Under (2015) SADR:*

*Rule 10.7.1 provides*

*10.7.1 For an Athlete or other Person's second Anti-Doping Rule Violation, the period of Ineligibility shall be the greater of:*

*10.7.1.1 six months;*

*10.7.1.2 one-half of the period of Ineligibility imposed for the first Anti-Doping Rule Violation without taking into account any reduction under Rule 10.6; or*

*10.7.1.3 twice the period of Ineligibility otherwise applicable to the second Anti-Doping Rule Violation treated as if it were a first violation,*

*without taking into account any reduction under Rule 10.6.*

*If the sanction is determined using the (2015) SADR (the Rules currently in force, since 1 January 2015) then the sanction would be 8 years ineligibility (beginning 4 June 2014, the time provisional suspension was imposed). This is twice the period of ineligibility otherwise applicable to the second violation treated as if it were the first violation. Under (2015) SADR 10.3.1 the period of ineligibility for a first violation would be four years.*

#### *The Applicable Rules*

*The difficult question is which Rules apply. This comes down to a question of whether the doctrine of *lex mitior* is applicable. (2015) SADR 18.2 provides:*

#### *18.2 Non-Retroactive except for Rule 10.7.5 and Rule 16 or Unless Principle of "Lex Mitior" Applies*

*The retroactive periods in which prior violations can be considered for purposes of multiple violations under Rule 10.7.5 and the statute of limitations set forth in Rule 16 are procedural Rules and should be applied retroactively; provided, however, that Rule 16 shall only be applied retroactively if the statute of limitation period has not already expired by the Effective Date. Otherwise, with respect to any Anti-Doping Rule Violation case which is pending as of the Effective Date and any Anti-Doping Rule Violation case brought after the Effective Date based on an Anti-Doping Rule Violation which occurred prior to the Effective Date, the case shall be governed by the substantive Anti-Doping Rules in effect at the time the alleged Anti-Doping Rule Violation occurred, unless the Sports Tribunal hearing the case determines the principle of "*lex mitior*" as applied by CAS should be applied in the circumstances of the case.*

22. As DFS properly notes the orthodox position would be that the new Rule would normally be applied but submits that the delay in this matter was in part because Mr Ciancio wanted to have the Australian proceedings determined before he had to deal with the New Zealand violations. We do not see that as an unreasonable or sinister position to take. The substantial delays related to the time taken by CAS to issue a final award. We see that simply as a statement of fact. It is not as a matter which would be sufficient to justify deviating from the orthodox approach because of improper acts or omissions by Mr Ciancio. We are of the view that the Tribunal should in all the circumstances impose the applicable penalty under the 2015 Rules. We accept that no issues of totality apply.
23. We find that there have been violations as alleged all of which have on the evidence been established. Mr Ciancio will be ineligible for 8 years from 4 June 2014.

### **Costs**

24. DFS has sought costs. It has never previously done so before the Tribunal but argues it is appropriate here as Mr Ciancio has changed his position and although he has repeatedly said he would engage in the proceedings has never done so. They are factors which are out of the ordinary but not dealing simultaneously with proceedings in two jurisdictions was understandable and at the end of the day the onus was always on DFS to prove the allegations made.
25. The Tribunal's approach to costs was summarised in *Tim Curr v Motorcycling New Zealand* (ST 01/08, Decision 14 October 2009) and those principles have been applied consistently. We see no justification for varying the guidelines.
26. Although this is an unusual case we are not persuaded that it would be just in all the circumstances to deviate from the normal approach in anti-doping cases and the applications for costs is declined.

Dated 24 June 2015

A handwritten signature in black ink, appearing to read 'Bruce Robertson', with a long horizontal stroke extending to the right.

.....  
**Sir Bruce Robertson (Chair)**