



**Australian Government**

**Australian Sports  
Anti-Doping Authority**

# EXPLANATORY STATEMENT

NAD Scheme (Fees and Charges) 2008

This Explanatory Statement has been drafted for the purpose of fulfilling the Australian Sports Anti-Doping Authority's (ASADA's) obligations under section 26(1) of the *Legislative Instruments Act 2003*.

## **1. Purpose**

Section 9 of the *Australian Sports Anti-Doping Authority Act 2006* (the Act) provides that the regulations must prescribe a scheme about:

- (a) the implementation of the Council of Europe Anti-Doping Convention;
- (b) if the UNESCO Anti-Doping Convention has entered into force for Australia – the implementation of that Convention;
- (c) ancillary or incidental matters.

Section 4 of the Act provides that the scheme prescribed for the purposes of section 9 is to be known as the National Anti-Doping (NAD) scheme. Section 19 of the Act provides that the NAD scheme may authorise ASADA and/or the Australian Sports Medical Advisory Committee (ASDMAC) to charge fees for performing functions under the NAD scheme, so long as such fees:

- (a) are not such as to amount to taxation; and
- (b) are payable to the Commonwealth.

Schedule 1 of the *Australian Sports Anti-Doping Authority Regulations 2006* (the Regulations) prescribed the NAD scheme in accordance with section 9 of the Act.

This Legislative Instrument amends the NAD scheme with respect to fees that may be charged by ASADA and ASDMAC.



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## **2. Authority for making this instrument**

Section 10 of the Act provides that ASADA may, by legislative instrument, amend the NAD scheme so long as the amended NAD scheme is about any or all of the following matters:

- (a) the implementation of the Council of Europe Anti-Doping Convention;
- (b) if the UNESCO Anti-Doping Convention has entered into force for Australia – the implementation of that Convention;
- (c) ancillary or incidental matters.

## **3. Background to instrument**

Due to changes to the Code, adopted on 17 November 2007 for implementation on 1 January 2009, significant changes are being made to the NAD scheme to ensure Australia's continued compliance with the Code and the UNESCO Anti-Doping Convention. A number of further operational issues have been identified requiring amendments to be made. ASADA has therefore undertaken a major review of the NAD scheme, with a separate Legislative Instrument being made to address a number of major issues.

This instrument is made separately to those changes because the amendments to fees do not relate to ASADA's compliance with the Code, but rather to ASADA's ability to meet its obligations under the *Financial Management and Accountability Act 1997* to promote efficient and effective use of Commonwealth resources.

## **4. Public Consultation**

Section 11 of the Act provides that, before making an instrument that amends the NAD scheme, ASADA must:

- (a) publish a draft of the instrument and invite people to make submissions on the draft; and
- (b) consider any submissions that are received within the time limit specified by ASADA when it published the draft. The time limit must be at least 28 days after publication.



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ASADA released an exposure draft of the revisions to the NAD scheme on 21 July 2008, with public notification of the draft amendments provided in the sports sections of the *Weekend Australian*, *Canberra Times*, *Sydney Morning Herald* and *Age* newspapers on Saturday 26 July 2008. The draft amendments were also posted on ASADA's website. All national sporting organisations and other relevant stakeholders were advised of the proposal by direct e-mail. The time limit for submissions was set at close of business on Monday 18 August 2008.

The exposure draft of the NAD scheme which was released for public consultation contained the amendment relating to fees, subject of this Instrument, along with all other amendments being made.

Submissions were received from five national sporting organisations, a peak body representing athletes, a state government and the Office of the Privacy Commissioner. Only one of these submissions addressed the amendment related to fees. This submission requested that an element of 'reasonableness' be introduced into the clause addressing fees, which has subsequently been done.

### **5. Details of the instrument**

The previous version of the NAD scheme prescribed the fees that ASADA may charge for services. ASADA will need to adjust its fees from time to time to ensure it recovers the true costs of its services in accordance with its obligations under the *Financial Management and Accountability Act 1997* (FMA Act). The previous prescription of fees in clause 6.03 of the NAD scheme prevented ASADA from implementing updated fees in a timely way as increased costs occur. It did not provide for the charging of fees by ASDMAC whatsoever.

Clause 6.03 NAD scheme is therefore amended by this Instrument to allow ASADA and ASDMAC to determine the fees that may be charged under for performance of their functions under the NAD scheme and publish a schedule of those fees from time to time.



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This amendment is permitted by section 19 of the Act which does not require ASADA or ASDMAC to prescribe their fees by regulation or legislative instrument. A requirement for fees to be reasonably related to costs or expenses incurred by ASADA or ASDMAC has been included in the amended provision. Fees will also be subject to scrutiny through a number of mechanisms in meeting the requirements of the FMA Act and the Australian Government Cost Recovery Guidelines.

Upon commencement of the instrument, the fees to be charged by ASADA will be those published on its website, which will be the same as those contained in previous clause 6.03 of the NAD scheme.