

EXPLANATORY STATEMENT

AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY **LEGISLATIVE INSTRUMENT No. 001/2006**

Issued by the Authority of the Members of the Australian Sports Anti-Doping Authority

Australian Sports Anti-Doping Authority Act 2006

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 General 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 Scheme (NAD scheme). The NAD scheme provides a detailed framework for the performance of the powers and functions of the Australian Sports Anti-Doping Authority (ASADA). In particular, it:

- sets out anti-doping rules applicable to athletes and support persons;
- sets out sporting administration body rules applicable to sporting administration bodies;
- authorises and requires ASADA to do certain things;
- sets out procedures governing the exercise of ASADA's powers; and
- sets out certain rights of athletes.

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.

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 General 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 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.

Details of the amendments made by ASADA to the NAD scheme by Legislative Instrument No 001/2006 (the Legislative Instrument) appear in the Attachment.

ASADA provided public notification of the draft amendments in the Public Notices section of the *Weekend Australian* newspaper on Saturday 15 July 2006. The draft amendments were also posted at the same time 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 14 August 2006. No public submissions were received. Prior to the commencement of the public consultation process, the Office of the Federal Privacy Commissioner provided suggestions which have been incorporated into Provision 7 in the Legislative Instrument.

The Legislative Instrument commenced on the day after registration with the Federal Register of Legislative Instruments.

In the Explanatory Statement the following abbreviations are used:

Act	<i>Australian Sports Anti-Doping Authority Act 2006</i>
ASADA	Australian Sports Anti-Doping Authority
Code	World Anti-Doping Code
NAD scheme	National Anti-Doping Scheme

ATTACHMENT

DETAILS OF THE AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY
LEGISLATIVE INSTRUMENT NO 001/2006

Provision 1 – Powers of ASADA

This provision inserts a new clause 2A in the NAD scheme to clarify that the anti-doping rules for athletes and support persons under the NAD scheme can apply to matters arising before the commencement of section 13 of the Act on 13 March 2006, to the extent that those matters would have been a breach of the anti-doping rules of the relevant sport at the time. The new clause 2A expands on sub-section 13(2) of the Act, which provides that “*the anti-doping rules may deal with matters arising before or after the commencement of this section*”.

Consistent with Article 17, *Statute of Limitations*, of the Code, any action against an athlete or support person must be commenced within eight years of the matter arising.

Provision 2 – Drug testing officials

This provision inserts a new clause 13A in the NAD scheme to clarify that for the purposes of the NAD scheme drug testing officials include doping control officers, chaperones, investigators and blood collection officials. This serves to confirm which personnel can receive delegations from ASADA under section 47 of the Act, and which are protected under section 78 of the Act from civil actions arising from the performance of their duties

Provision 3 – The anti-doping rules

The current anti-doping rules for athletes in the NAD scheme do not specify that the presence of a metabolite or marker of a prohibited substance is a violation of the rules. The Code makes it clear that the presence of a metabolite or marker is an anti-doping rule violation, and in many cases a positive test result is based on the detection of a metabolite or marker rather than the original substance. This provision amends sub-clause 1(2)(j) to include a reference to metabolites and markers.

Provision 4 – Notice about failure to comply with request to provide sample

This provision corrects a drafting error in sub-clause 47(2)(b).

Provision 5 – What happens if result of test of Part A of sample is an adverse analytical finding

This provision corrects a drafting error in sub-clause 50(2)(b)(i).

Provision 6 – Disclosing information to sporting administration bodies – non entry information

The current version of the NAD scheme does not clearly enable ASADA to pass information arising out of an investigation to another party apart from an Australian sporting administration body, the Australian Federal Police or the Australian Customs Service. This prohibits ASADA from providing information to other organisations such as the Therapeutic Goods Administration; State or Territory law enforcement bodies; the International Olympic Committee, foreign sporting organisations; the World Anti-Doping Agency; or overseas National Anti-Doping Organisations, where information discovered through investigation indicates the need for assistance or further information from these other bodies. The amendment to clause 95(2) corrects this oversight.

Provision 7 – Disclosing information to sporting administration bodies – non-entry information

This provision, by including a new clause 95A, ensures that where ASADA discloses information under clause 95 arising from an investigation to a body not subject to the Information Privacy Principles (IPPs) in section 14 of the *Privacy Act 1988* (or a similar law), that body is required to treat that information substantially in accordance with the IPPs.

Provision 8 – Definition of “sporting administration body”

For the purposes of the NAD scheme, “sporting administration body” is currently defined as a national sporting organisation or a sporting organisation in Australia. The intent of this definition was to ensure that the rules for sporting administration bodies in the NAD scheme applied only to Australian based organisations, and not to bodies such as the International Olympic Committee or foreign sporting organisations (which are included in the definition of “sporting administration body” under the Act). However, one of the consequence of the narrower definition in the NAD scheme is that ASADA is prevented from giving information about the outcomes of its testing and investigations, including potential findings of anti-doping rule violations, to all the relevant sporting

bodies (as required by the Code), including, for instance, international federations. The amendments in this provision correct this unintended consequence.

Provision 9 – Miscellaneous

The amendments in this provision are consequential upon the amendments in Provision 2 and Provision 8.