



New South Wales

Sports Drug Testing Act 1995 No 45

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New South Wales

Sports Drug Testing Act 1995 No 45

Act No 45, 1995

An Act to enable the Australian Sports Drug Agency to carry out sports drug testing on State competitors and to confer related functions on the Agency, and for other purposes. [Assented to 26 October 1995]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Sports Drug Testing Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Object

The object of this Act is to confer functions and powers with respect to State competitors on the Australian Sports Drug Agency established by the *Australian Sports Drug Agency Act 1990* of the Commonwealth.

4 Definitions

In this Act:

accredited laboratory means a laboratory that is included in the list prepared and maintained by the Agency under section 66 of the Commonwealth Act.

Administrative Appeals Tribunal means the Tribunal of that name established by the *Administrative Appeals Tribunal Act 1975* of the Commonwealth.

Agency means the Australian Sports Drug Agency established by the Commonwealth Act.

applicable procedural requirements, in relation to a sample provided by a State competitor, has the meaning given by section 15.

Director-General means the Director-General of the Department of Sport and Recreation.

national sporting organisation for a sport means the national organisation controlling a particular sport.

negative test result, in relation to a State competitor, means a finding, made by an accredited laboratory by means of testing a sample provided by the competitor, that is not a positive test result.

positive test result, in relation to a State competitor, means a finding, made by an accredited laboratory by means of testing a sample provided by the competitor, to the effect that:

- (a) the testing reveals the presence of a drug in the sample or the use of a doping method by the competitor, being a drug, or doping method, that is a scheduled drug or doping method, and
- (b) if the schedule sets out a permitted level in relation to that drug or doping method—the testing reveals that the permitted level has been exceeded.

Register means the Register of Notifiable Events established and maintained by the Agency under the Commonwealth Act.

sample means any human biological fluid or tissue.

scheduled drug or doping method means a drug, or a doping method, included in the schedule maintained by the Agency under section 9 (1) (a) of the Commonwealth Act.

State competitor means a person aged 12 years or more:

- (a) who competes, or has been selected to compete, as a representative of the State, in a sporting event, or a series of sporting events, either as an individual or as a member of a team, or
- (b) who is included in a group of persons formed for the purpose of the selection of persons to compete, as representatives of the State, in a sporting event or series of sporting events, either as individuals or as members of a team, or
- (c) who competes in sporting activities, or participates in training for competition in sporting activities, and is receiving State support within the meaning of section 5, or
- (d) whose name is entered under this Act on the Register and who, as a direct or indirect result of having his or her name so entered, has been prevented from participating, or has become ineligible to participate, in sporting events or sporting activities.

the Commonwealth Act means the *Australian Sports Drug Agency Act 1990* of the Commonwealth.

5 Persons receiving State support

A reference in this Act to a person or a State competitor who is receiving State support is a reference to a person who, for the purpose of participating in sporting activities, or for the purpose of training for participation in sporting activities:

- (a) receives funding from the State or an agency of the State, or
- (b) receives funding under a program administered by a sporting organisation, a regional academy of sport or any other body prescribed by the regulations, being a program funded by the State or an agency of the State.

6 Request to provide a sample

- (1) A reference in this Act to a request to provide a sample, in relation to a State competitor, is a reference to such a request made for the purpose of detecting whether or not the competitor has used a scheduled drug or doping method.
- (2) Nothing in this Act is taken to imply that a person becomes subject to any criminal or civil liability merely because the person has failed to comply with a request to provide a sample.

7 Adoption of regulations under the Commonwealth Act

- (1) In this Act a reference to regulations made under the Commonwealth Act or a provision of the Commonwealth Act is a reference to those regulations with such adaptations as are necessary for the purposes of this Act.
- (2) The regulations may provide for the adaptation of the regulations made under the Commonwealth Act for the purposes of this Act.

Part 2 Australian Sports Drug Agency

8 Conferral of functions and powers on Agency

The Agency has the functions and powers conferred on it by or under this Act.

9 Functions

- (1) Without limiting section 8, the Agency has the following functions:
 - (a) to make entries in the Register in accordance with this Act and, in accordance with this Act, to notify persons and bodies of entries so made,
 - (b) to disseminate information about:
 - (i) penalties that are likely to be imposed if State competitors record positive test results or fail to comply with requests to provide samples for testing, and
 - (ii) testing procedures and the possibility of State competitors being requested to provide samples,
 - (c) to select:
 - (i) the State competitors who are to be requested to provide samples for testing, and
 - (ii) the dates on which, and the times and places at which, they are to be requested to provide the samples,
 - (d) subject to subsection (2) and section 12, to collect samples from State competitors and to arrange for the testing of samples by accredited laboratories and the secure transport of samples to accredited laboratories.
- (2) The Agency must not collect samples from State competitors for any purpose other than enabling the testing of the samples to determine whether competitors have been using scheduled drugs or doping methods.

- (3) Without limiting the manner in which the Agency may perform its functions under subsection (1) (c), the Agency may, in the performance of those functions, prepare and maintain a list of all persons whom the Agency knows to be State competitors.
- (4) The Agency's functions may be performed within or outside the State.
- (5) The Agency may perform any of its functions in co-operation with the Commonwealth, another State or a Territory or any person, body, association or organisation.

10 Powers

- (1) The Agency has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and, in particular, may do anything incidental to any of its functions.
- (2) The Agency may (subject to any agreement with the State) charge such fees, or impose such charges, as are reasonable in respect of the provision of services, information or advice by the Agency.
- (3) The amount or rate of a fee or charge must be reasonably related to the expenses incurred or to be incurred by the Agency in relation to the provision of services, information or advice to which the fee or charge relates, and must not be such as to amount to taxation.
- (4) The Agency's powers may be exercised within or outside the State.

Part 3 Sampling of State competitors

11 Agency may request samples

- (1) The Agency may request a State competitor to provide a sample of a kind specified by the Agency to the Agency.
- (2) For the purposes of this Act, a State competitor is not to be taken to have failed to comply with a request by the Agency to provide a sample unless the manner in which the Agency requested the competitor to provide the sample was in accordance with the regulations under section 12 of the Commonwealth Act.

12 Taking samples from children

The Agency must not collect or accept a sample from a State competitor who is under the age of 18 years unless:

- (a) a parent or guardian of the child has been given written notice of the requirements of this section, and
- (b) the parent or guardian consents to a sample being provided.

13 Notice to State competitor following failure to provide a sample

- (1) If a State Competitor has failed to comply with a request to provide a sample, the Agency must:
 - (a) give to the competitor a written notice stating:
 - (i) that the competitor has failed so to comply, and
 - (ii) that the competitor may, within the submission period, make submissions to the Agency to the effect that the competitor had reasonable cause for failing so to comply, and
 - (iii) the Agency's obligations under sections 14, 19 and 22, and
 - (b) after the end of the submission period, decide whether the competitor has reasonable cause for failing so to comply.
- (2) In deciding whether or not the State competitor had reasonable cause for failing so to comply, the Agency must have due regard to any submissions made by or on behalf of the competitor during the submission period.

- (3) The Agency must, as soon as practicable after deciding, give a written notice to the competitor informing him or her of its decision.
- (4) If the Agency decides that the State competitor did not have reasonable cause for failing so to comply, the Agency must include in its written notice:
 - (a) its reasons for so deciding, and
 - (b) a statement to the effect that, if the competitor is dissatisfied with the decision, he or she may, subject to the *Administrative Appeals Tribunal Act 1975* of the Commonwealth, apply to the Administrative Appeals Tribunal for review of the decision.
- (5) A failure to comply with subsection (4) does not affect the validity of the decision concerned.
- (6) Subject to the *Administrative Appeals Tribunal Act 1975* of the Commonwealth, application may be made to the Administrative Appeals Tribunal for a review of a decision of a kind referred to in subsection (4).
- (7) For the purposes of this section, the submission period is:
 - (a) the period of 14 days after the Agency gives notice to the State competitor under subsection (1), or
 - (b) if the Agency considers that the competitor is likely to participate in a sporting event before the end of that period of 14 days, such shorter period that the Agency reasonably considers appropriate in the circumstances.

14 Entry of State competitor's name on Register—failure to provide a sample

- (1) If:
 - (a) a State competitor has failed to comply with a request to provide a sample, and
 - (b) the Agency decides under section 13 (1) (b) that the competitor did not have reasonable cause for failing to comply with the request,

the Agency must, as soon as practicable, enter on the Register the competitor's name and such particulars as are specified in the regulations under section 14 of the Commonwealth Act.

- (2) If the Administrative Appeals Tribunal sets aside a decision of the Agency under section 13 (1) (b) that a State competitor did not have reasonable cause for failing to comply with a request to provide a sample, the Agency must, as soon as practicable, remove from the Register the entry that relates to that failure to comply.

15 Treatment of samples

- (1) A sample provided by a State competitor must be dealt with in accordance with the applicable procedural requirements.
- (2) The applicable procedural requirements are the following:
 - (a) the sample must be taken in accordance with the prescribed procedures,
 - (b) any container in which the sample is to be kept must:
 - (i) be sealed in accordance with the prescribed procedures, and
 - (ii) remain so sealed until opened for the testing of the sample,
 - (c) the identification and attestation, the transport, and the testing, of the sample must be carried out in accordance with the prescribed procedures,
 - (d) the testing of the sample must be carried out by an accredited laboratory,
 - (e) the Agency must:
 - (i) be notified of the results of any tests of the sample, and
 - (ii) notify the State competitor of those results, in accordance with the regulations under section 15 (2) (h) of the Commonwealth Act as soon as practicable.

- (3) In this section, *prescribed procedures* means the procedures prescribed by the regulations under section 15 (2) of the Commonwealth Act.

16 Agency must determine whether positive test result is valid or invalid

- (1) If a State competitor returns a positive test result, the Agency must, as soon as practicable:
- (a) notify the competitor of the result, and
 - (b) inform the competitor that, if the competitor has any information or evidence that may support the making of a determination that the result is invalid, he or she may, within the period of 7 days after receiving the notice, submit the information or evidence to the Agency, and
 - (c) determine under subsection (2) whether or not the positive test result is valid.
- (2) The Agency may determine that the positive test result is invalid only if the Agency is satisfied, after having due regard to any information or evidence submitted by the State competitor, that:
- (a) the applicable procedural requirements relating to the sealing of any container containing the sample have not been complied with, or
 - (b) the sample was not tested by an accredited laboratory, or
 - (c) the sample was tampered with by someone other than the State competitor or a person chosen by the competitor to oversee any part of the collection or testing of the sample.
- (3) The Agency must, as soon as practicable after making a determination that a positive test result is invalid, notify the State competitor in writing of the determination.
- (4) If the Agency determines that the positive test result is valid, the Agency must notify the State competitor, in writing, of the determination, including in the notice:
- (a) its reasons for so deciding, and
 - (b) a statement to the effect that, if the competitor is dissatisfied with the decision, application may, subject to

the *Administrative Appeals Tribunal Act 1975* of the Commonwealth, be made to the Administrative Appeals Tribunal for review of the decision.

- (5) A failure to comply with subsection (4) does not affect the validity of the decision concerned.
- (6) Subject to the *Administrative Appeals Tribunal Act 1975* of the Commonwealth, application may be made to the Administrative Appeals Tribunal for a review of a decision of a kind referred to in subsection (4).
- (7) If the Administrative Appeals Tribunal sets aside a decision of the Agency, the Agency must, as soon as practicable, remove from the Register the entry relating to the State competitor.

17 Entry of State competitor's name on Register—positive test result

If:

- (a) a State competitor returns a positive test result, and
- (b) the Agency makes a determination under section 16 (4) that the positive test result is valid,

the Agency must, as soon as practicable, enter on the Register the competitor's name and such particulars as are specified in the regulations under section 16A of the Commonwealth Act.

18 Manner of giving notice to a State competitor

For the purposes of this Act, the Agency is taken to have given notice to a State competitor if:

- (a) the notice is given by hand to the competitor and the competitor acknowledges, in writing, receipt of the notice, or
- (b) the notice is sent to the competitor by certified mail, or
- (c) if the competitor cannot be given the notice in the manner provided for in paragraph (a) or (b), the Agency gives the notice, in a sealed envelope, to any sporting organisation of which the competitor is a member for forwarding to him or her.

19 Notification of entries and removal of entries on Register

- (1) As soon as practicable after entering a State competitor's name on the Register, the Agency must give written notice of the contents of the entry to:
 - (a) the competitor, and
 - (b) each national sporting organisation:
 - (i) of which the competitor is, in his or her capacity as a competitor, a member, or
 - (ii) with which the competitor is, in that capacity, associated in any way, or
 - (iii) for the sporting organisation of which the competitor is, in that capacity, a member, or
 - (iv) for the sporting organisation with which the competitor is, in that capacity, associated in any way, and
 - (c) if the competitor receives State support, the Director-General and any agency of the State involved in providing support.
- (2) If, after an entry has been made on the Register in relation to a decision of the Agency under section 13 (1) (b) or 16 (4):
 - (a) the entry is removed from the Register under section 14 (2) or 16 (7), or
 - (b) an order is made, or orders are made, under section 41 of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth staying or otherwise affecting the operation or implementation of the decision,

the Agency must, as soon as practicable, give written notice of that fact to each person to whom, and each organisation to which, notice of the contents of the entry was given under subsection (1).
- (3) The forms of notices that the Agency gives under this section and the manner in which the notices are to be given to persons or organisations entitled under this section to be given them are the forms and manner prescribed by the regulations under section 17 of the Commonwealth Act.

- (4) For the purpose of giving notice to the Director-General or an agency of the State, the form of notice is to be determined by the Agency.

20 Notification of negative test results

If a State competitor returns a negative test result, the Agency may disclose details of the result to any of the persons or bodies referred to in section 19 (1) (b) and (c).

21 Certain State competitors' names to be removed from the Register

If:

- (a) at the time when a request to provide a sample was made to a State competitor, the competitor was under the age of 18 years, and
- (b) following that request, the competitor's name was entered on the Register for reasons arising out of the request, and
- (c) as a direct or indirect result of having his or her name so entered, the competitor has been prevented from participating, or has become ineligible to participate, in sporting events or sporting activities for a certain period (the *suspension period*),

the Agency must remove the competitor's name, and the particulars relating to that entry, from the Register as soon as practicable after the end of the suspension period.

22 Minister may request notification

- (1) The Minister may, in writing, request the Agency to give to the Minister a written notice stating, in respect of each State competitor specified in the request, whether the competitor's name has been entered on the Register.
- (2) The Minister may include in the request a further request that the Agency set out in the notice, in respect of each specified State competitor whose name has been entered on the Register, the contents of the entry.

- (3) The Minister may, in writing, request the Agency to give to the Minister a written notice stating, in respect of each State competitor specified in the request, whether the competitor has returned a negative test result.
- (4) The Agency must comply with any request under subsection (1) or (3) and any further request under subsection (2).

23 Notification by sporting organisations

- (1) A sporting organisation that is notified by a national sporting organisation that a State competitor who is, in his or her capacity as a competitor, a member of, or associated in any way with, the organisation has been entered on the Register must give the Director-General a written notice complying with subsection (2) not later than 3 months after being so notified.
- (2) The written notice must contain the contents of the entry in the Register and set out particulars of any action taken, or intended to be taken, by the sporting organisation in the matter.

Part 4 Miscellaneous

24 Conferral of jurisdiction, functions and powers on Administrative Appeals Tribunal

- (1) The Administrative Appeals Tribunal, and a member or officer of that Tribunal, have the jurisdiction, functions or powers conferred on them by this Act.
- (2) In addition to the powers mentioned in subsection (1), the Tribunal and persons referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance of the functions and exercise of the jurisdiction and powers referred to in that subsection.

25 Disclosure of confidential information

- (1) This section applies to a person who is or has been:
 - (a) a member of the Agency, or
 - (b) a member of a committee of the Agency, or
 - (c) an employee of, or consultant to, the Agency, or
 - (d) a person attending a meeting of the Agency or a committee of the Agency, or
 - (e) an employee of an accredited laboratory.
- (2) This section applies to information if the information concerns a person and is obtained by a person to whom this section applies:
 - (a) in the course of that person performing functions or duties or exercising powers under this Act, or
 - (b) as a result of another person performing functions or duties or exercising powers under this Act.
- (3) A person to whom this section applies must not disclose or communicate (whether directly or indirectly) to any person any information to which this section applies unless the information is disclosed or communicated:
 - (a) for the purposes of this Act, or
 - (b) for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (4) A person to whom this section applies must not be required:
- (a) to produce in a court any document containing information to which this section applies, or
 - (b) to divulge or communicate to any court any information to which this section applies,

except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

- (5) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

produce includes permit access to.

26 Proceedings for offences

Proceedings for an offence against this Act are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

27 Delegation by the Agency

- (1) The Agency may, by resolution, delegate to:
- (a) the Chairperson of the Agency, or
 - (b) the Chief Executive of the Agency, or
 - (c) any employee of the Agency,

all or any of the Agency's powers or functions under this Act, other than this power of delegation.

- (2) The delegate is, in the exercise of a power or function so delegated, subject to any directions given by the Agency.
- (3) Section 49 of the *Interpretation Act 1987* applies to a delegation under this section.

28 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, for or with respect to collecting samples from State competitors under the age of 18 years.

29 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

[Minister's second reading speech made in—
Legislative Assembly on 20 September 1995
Legislative Council on 19 October 1995]