

[Act 1995 No 45]



New South Wales

Sports Drug Testing Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to confer functions and powers with respect to State competitors on the Australian Sports Drug Agency (the “Agency”) established by the *Australian Sports Drug Agency Act 1990* of the Commonwealth (“the Commonwealth Act”). The proposed Act contains provisions conferring functions and powers on the Agency with respect to State competitors that are (with some minor adjustments) the same as those the Agency has under the Commonwealth Act. These functions and powers include testing competitors for the use of drugs and notifying and recording positive test results and failures to provide test samples.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 sets out the object of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act. Important definitions include *negative test result*, *positive test result* and *State competitor*.

Clause 5 defines persons receiving State support. They are persons who receive funding directly from the State, or directly under a State funded program, for the purpose of participating in sporting activities or for training for participation in sporting activities.

Clause 6 defines a request to provide a sample to mean a request to provide a sample for the purpose of detecting whether a competitor has used a scheduled drug or doping method. The proposed section makes it clear that there is no criminal or civil liability merely because of a failure to comply with a request to provide a sample.

Clause 7 adopts and adapts the Commonwealth *Australian Sports Drug Agency Regulations* (the “Commonwealth Regulations”) for the purposes of the proposed Act.

Part 2 Australian Sports Drug Agency

Clause 8 confers on the Agency the powers and functions conferred by the proposed Act.

Clause 9 sets out the functions of the Agency, including the following:

- making entries in the Register of Notifiable Events under the Commonwealth legislation (the “Register”)
- disseminating information about penalties and testing procedures under the proposed Act
- selecting competitors to be tested
- collecting samples from competitors for the purpose of determining whether competitors have been using scheduled drugs or doping methods and arranging for the testing of such samples

Clause 10 sets out the powers of the Agency, including charging fees for services.

Part 3 Sampling of State competitors

Clause 11 empowers the Agency to request samples from State competitors. A competitor will not be taken to have complied with a request to provide a sample unless the request is in accordance with the Commonwealth Regulations.

Clause 12 prohibits the Agency from collecting or accepting a sample from a State competitor under 18 years without first obtaining consent from a parent or guardian.

Clause 13 sets out the procedure to be followed if a State competitor fails to comply with a request to provide a sample for testing. The competitor is to be given an opportunity to provide a reasonable cause for the failure and can appeal to the Administrative Appeals Tribunal of the Commonwealth if the Agency decides that there was no reasonable cause for the failure.

Clause 14 requires a State competitor's name to be entered on the Register if the competitor failed to comply with a request to provide a sample and the Agency decides that there was no reasonable cause for the failure. Any such entry must be removed if the decision is set aside by the Administrative Appeals Tribunal.

Clause 15 sets out the requirements for dealing with samples provided by State competitors. Details of the requirements are contained in the Commonwealth Regulations.

Clause 16 sets out the procedure to be followed if a State competitor returns a positive test result. The competitor is to be given an opportunity to provide evidence that the result is invalid and can appeal to the Administrative Appeals Tribunal if the Agency decides that the result is valid. The Agency can decide a result is invalid if procedural requirements are not complied with, the sample was not tested by an accredited laboratory or the sample was tampered with.

Clause 17 requires a State competitor's name to be entered on the Register by the Agency if the competitor returns a valid positive test result.

Clause 18 sets out the way in which the Agency must notify a State competitor of results and rights under the proposed Act. Notice may be given by hand, by certified mail or, if notice in any of these ways is not possible, by sealed envelope to a sporting organisation of which the competitor is a member for forwarding to the competitor.

Clause 19 requires the Agency to notify a State competitor, any national sporting organisation of which the competitor is a member or with which the competitor is associated, and the Director-General of the Department of Sport and Recreation when an entry is made on, or removed from, the Register.

Clause 20 enables the Agency to notify any national sporting organisation of which a State competitor is a member or with which the competitor is associated and the Director-General of the Department of Sport and Recreation when the competitor returns a negative test result.

Clause 21 requires the Agency to remove a child (under 18) competitor's name from the Register at the end of any period of suspension resulting from the entry on the Register.

Clause 22 enables the Minister to ask the Agency to notify the Minister whether specified State competitors have been entered on the Register and of the contents of any such entry, as well as whether specified State competitors have returned a negative test result.

Clause 23 requires a sporting organisation given notice of an entry on the Register concerning one of its competitors to notify the Director-General of the Department of Sport and Recreation of the contents of the entry and any action taken, or intended to be taken, by the organisation.

Part 4 Miscellaneous

Clause 24 is a formal provision conferring necessary jurisdiction on the Administrative Appeals Tribunal.

Clause 25 prohibits, except for the purposes of the proposed Act or the performance of functions or duties under the proposed Act, the disclosure of confidential information obtained, in connection with powers and functions under the proposed Act, by members or employees of the Agency, members of a committee of the Agency, persons attending meetings of the Agency or a committee of the Agency and employees of accredited laboratories.

Clause 26 provides for offences under the proposed Act to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

Clause 27 enables the Agency to delegate powers or functions to the Chairperson of the Agency, the Chief Executive of the Agency or any employee of the Agency.

Clause 28 empowers the Governor to make regulations.

Clause 29 provides for a review of the operation of the proposed Act to be conducted by the Minister after 5 years from the date of assent.