

Sports Drug Testing Act 1995 No 45

[1995-45]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
Miscellaneous Acts (Local Court) Amendment Act 2007 No 94 (not commenced)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Sports Drug Testing Act 1995 No 45



New South Wales

An Act relating to the carrying out of sports drug testing on State competitors; and for other purposes.

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3 (Repealed)

4 Definitions

In this 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.

applied provisions means the Commonwealth sports drug testing laws that apply as laws of the State because of section 11.

Commonwealth sports drug testing laws means:

- (a) the provisions of Part 3 of the Commonwealth Act, and
- (b) the regulations made under those provisions.

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

exercise a function includes perform a duty.

function includes a power, authority or duty.

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

Register means the Register of Notifiable Events established and maintained by the Agency under 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 the applied provisions 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 sample

- (1) A reference in the applied provisions 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 or the applied provisions 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 (Repealed)

Part 2 Australian Sports Drug Agency

8 Conferral of functions on Agency

In accordance with section 9A of the Commonwealth Act, the Agency has:

- (a) the same functions under the applied provisions as the Agency has under the Commonwealth sports drug testing laws, and
- (b) such other functions as are 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 relating to State competitors in the Register in accordance with the applied provisions,
- (b) to notify persons and bodies, in accordance with this Act and the applied provisions, of such entries,
- (c) to disseminate information about:
 - (i) the 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, under the applied provisions, and
 - (ii) the testing procedures, and the possibility of State competitors being requested to provide samples, under the applied provisions,
- (d) to select:
 - (i) the State competitors who are to be requested to provide samples for testing under the applied provisions, and
 - (ii) the dates on which, and the times and places at which, they are to be requested to provide the samples,
- (e) to collect samples from State competitors under the applied provisions,
- (f) to arrange, under the applied provisions, for the testing of samples.

(2) The Agency must not collect samples from State competitors under the applied provisions for any purpose other than to enable the testing of the samples to determine whether State competitors have been using scheduled drugs or doping methods within the meaning of the Commonwealth Act.

(3) Without limiting the manner in which the Agency may exercise its functions under the

applied provisions, the Agency may, in exercising those functions, prepare and maintain a list of all persons whom the Agency knows to be State competitors.

- (4) The Agency's functions under this Act and the applied provisions in relation to State competitors may be exercised within or outside the State.
- (5) The Agency may exercise any of its functions in co-operation with the Commonwealth, another State or a Territory or any person, body, association or organisation.

9A Taking samples from persons under 18

The Agency must not, under the applied provisions, 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 State competitor has been given written notice of the requirements of this section, and
- (b) the parent or guardian consents to a sample being provided.

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 Application of Commonwealth sports drug testing laws as State laws

11 Commonwealth sports drug testing laws to apply as laws of the State

- (1) The Commonwealth sports drug testing laws, as in force from time to time, apply as laws of the State.
- (2) The Commonwealth sports drug testing laws so apply:
 - (a) with such adaptations as may be necessary for the purposes of this Act, and
 - (b) as if they extended to State competitors.

- (3) This section is subject to section 12.

12 Future amendments to Commonwealth sports drug testing laws

- (1) An amendment to the Commonwealth sports drug testing laws made after the commencement of this section applies automatically under section 11 until such time (if any) as the regulations under this Act provide for the amendment:
- (a) to apply under section 11 subject to such modifications as are prescribed by the regulations, or
 - (b) to be excluded from the operation of section 11.
- (2) A regulation made for the purposes of subsection (1) has effect only if it is made before the end of 6 months after the date of the Commonwealth amendment concerned.
- (3) For the purposes of this section, the date of the Commonwealth amendment is the date on which:
- (a) the Commonwealth Act effecting the amendment receives the Royal Assent, or
 - (b) the regulation effecting the amendment is notified in the Commonwealth of Australia Gazette.

13 Interpretation of applied provisions

- (1) The following provisions apply to the interpretation of the applied provisions:
- (a) section 2 of the Commonwealth Act,
 - (b) the [Acts Interpretation Act 1901](#) of the Commonwealth.
- (2) The [Interpretation Act 1987](#) does not apply to the applied provisions.

14-21 (Repealed)

Part 3A Additional notification provisions

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).

22A Requirement to notify Director-General

- (1) As soon as possible after entering a State competitor's name on the Register in accordance with the applied provisions, the Agency must, if the competitor is receiving State support, give written notice of the contents of the entry to the Director-General and any agency of the State involved in providing that support.
- (2) The requirement under subsection (1) is in addition to the notification requirements under the applied provisions.

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 functions and jurisdiction on Commonwealth AAT

In accordance with section 9A of the Commonwealth Act, the Administrative Appeals Tribunal, and any member or officer of that Tribunal, have:

- (a) the same functions and jurisdiction under the applied provisions as that Tribunal, member or officer has under the Commonwealth sports drug testing laws, and
- (b) such other functions as are necessary or convenient to be exercised in connection with those functions and jurisdiction.

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 within the meaning of the Commonwealth Act.

(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 the applied provisions, or
- (b) as a result of another person performing functions or duties or exercising powers under this Act or the applied provisions.

(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 the applied provisions, 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 or the applied provisions.

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 or the applied provisions.

(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 or the applied provisions, 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.

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.