

1993
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Sport)

Sports (Drug Testing) Bill 1993

**A BILL
FOR**

**An Act to confer functions and powers on the
Australian Sports Drug Agency to regulate the use of
drugs and doping methods in sport and for related
purposes**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Sports (Drug Testing) Act 1993*.

5 Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

10 (3) If the provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which

83056 1992/207 (T56/93)

this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

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

“Agency” means the Australian Sports Drug Agency established by section 6 of the Commonwealth Act;

10 “Commonwealth Act” means the *Australian Sports Drug Agency Act 1990* of the Commonwealth;

“competitor” means a person who—

15 (a) competes, or has been selected to compete, as a representative of the Territory in a sporting event, either as an individual or as a member of a team;

(b) is included in a group chosen as persons from whom selection is to be made of persons to compete, as representatives of the Territory, in a sporting event;

20 (c) is a member of a team based in the Territory that participates in a sporting event against a team based in a State or another Territory;

(d) competes at the highest level of competition for a sport in the Territory, other than a competition against a team based in a State or another Territory;

25 (e) competes in a sporting activity that receives funds from the Territory; or

(f) receives funding from the Territory for the purpose of competing in a sporting activity;

30 “positive test result”, in relation to a 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 competitor has used a scheduled drug or doping method; and

35 (b) where the schedule maintained by the Agency under paragraph 9 (1) (a) of the Commonwealth Act sets out a permitted level of use in relation to that drug or doping

method—his or her use of the scheduled drug or doping method has exceeded that level;

“register” means the part of the Register of Notifiable Events established and maintained under subsection 8 (1);

5 “sample” means any human biological fluid or tissue;

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

(2) For the purposes of this Act—

10 (a) a competitor is not to be taken to have failed to comply with a request to provide a sample unless the Agency requested the competitor to provide the sample in accordance with the regulations under section 12 of the Commonwealth Act; and

15 (b) a competitor is not to be taken to return a positive test result in relation to a sample he or she provides unless—

(i) the Agency requested the competitor to provide the sample in accordance with the regulations made for the purposes of section 12 of the Commonwealth Act;

20 (ii) the sample was taken, identified and attested, transported and tested in accordance with the regulations under section 15 of the Commonwealth Act;

(iii) the sample was tested by an accredited laboratory; and

(iv) the Agency notified the competitor of those results in accordance with section 15 of the Commonwealth Act.

25 **Request to provide a sample**

4. (1) A reference in this Act to a request that a competitor provide a sample shall be read as a reference to a request to provide a sample for the purposes of determining whether the competitor has used a scheduled drug or doping method.

30 (2) Nothing in this Act shall be taken to imply that a person shall be subject to any criminal or civil liability merely because the person failed to comply with a request to provide a sample.

Functions of Agency

5. The Agency has the following functions:

35 (a) to disseminate information within the Territory about—

- (i) the penalties likely to be imposed for the return of a positive test result or a failure to comply with requests to provide a sample for testing; and
- 5 (ii) testing procedures used by the Agency and the possibility of a competitor being requested to provide a sample at a sporting event, during training or at any other time;
- (b) to collect samples from competitors and arrange for the samples to be tested by accredited laboratories for the use of scheduled drugs and doping methods;
- 10 (c) to develop and implement educational programs in the Territory to discourage the use of drugs and doping methods in sport;
- (d) to advise the Minister on matters affecting competitors in relation to the use of drugs and doping methods;
- (e) such other functions as are conferred on the Agency by this Act.

15 Powers of Agency

6. Subject to this Act, the Agency has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Functions and powers

- 20 7. The Agency's functions and powers under this Act may be performed or exercised within or outside the Territory.

Register of Notifiable Events

- 25 8. The Agency shall establish and maintain a part in the Register of Notifiable Events established under the Commonwealth Act for the purpose of recording the name of each competitor who—

- (a) fails, without reasonable excuse, to comply with a request by the Agency to provide a sample or allow a sample to be taken; or
- (b) returns a positive test result.

Taking samples from children

- 30 9. (1) The Agency shall not take or accept a sample from a child unless—

- (a) it has given a parent or guardian of the child written notice of the obligations of the Agency under this subsection;
- 35 (b) a parent or guardian of the child, having been given notice under paragraph (a), consents to a sample being taken; and

(c) a parent, guardian or person other than a member or employee of the Agency is present while the sample is being provided.

(2) In subsection (1)—

“child” means a competitor who has not attained the age of 18 years.

5 **Notice to competitor after failure to provide sample**

10 **10. (1)** Where a competitor has failed to comply with a request to provide a sample, the Agency shall give the competitor written notice—

(a) stating—

10 (i) that the competitor has failed to comply with a request to provide a sample; and

(ii) the Agency’s obligations under subsection (3) and sections 12 and 13; and

15 (b) inviting the competitor to show, within a specified period, that he or she had reasonable cause for failing to comply with the request to provide a sample.

(2) After the expiration of the period specified in a notice under paragraph (1) (b), and taking into consideration any representation made by the competitor, the Agency shall—

20 (a) if satisfied that the competitor had reasonable cause for failing to comply with the request to provide a sample—notify the competitor in writing that it is so satisfied and that no further action will be taken with respect to the failure; or

(b) in any other case—find that the competitor did not have reasonable cause to fail to provide a sample on request.

25 (3) Where the Agency makes a decision under paragraph (2) (b), it shall, as soon as practicable, enter the competitor’s name, and any other particular prescribed for the purposes of subsection 14 (1) of the Commonwealth Act, in the register.

Registration

30 **11. If—**

(a) a competitor returns a positive test result; and

(b) the Agency ascertains in accordance with section 16 of the Commonwealth Act that the result was valid;

35 the Agency shall, as soon as practicable, enter in the register the name of the competitor to whom the result relates and such other particulars as are

specified in the regulations made for the purposes of subsection 16A (2) of the Commonwealth Act.

Notification of entries on register

5 12. (1) As soon as practicable after entering a competitor's name in the register, the Agency shall give written notice of the contents of the entry to—

- (a) the competitor;
- (b) the Minister; and
- (c) each sporting organisation—

- 10 (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.

15 (2) If, after an entry has been made in the register in accordance with this Act—

- (a) the entry is removed from the register as a result of an appeal to the Administrative Appeals Tribunal established by the *Administrative Appeals Tribunal Act 1975* of the Commonwealth; or
- 20 (b) an order is made under the *Administrative Appeals Tribunal Act 1975* of the Commonwealth staying or otherwise affecting the operation or implementation of the decision by virtue of which the entry was made;

25 the Agency shall, as soon as practicable, give written notice of that fact to each person to whom, and each person to which, notice of the contents of the entry was given under subsection (1).

Minister may request notification

30 13. (1) The Minister may, in writing, request the Agency to notify him or her as to whether a competitor's name has been entered in the register.

(2) On receiving a request in accordance with subsection (1) the Agency shall—

- (a) if the competitor's name is not on the register—notify the Minister that the competitor's name is not on the register; or
- 35 (b) in any other case—inform the Minister of the contents of the entry with respect to that competitor.

Confidentiality

5 14. (1) A person shall not, otherwise than for the purposes of this Act or as required by law, make a record of or divulge or communicate to any person any information or document, being information or a document that the first-mentioned person acquired under or by virtue of this Act.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(2) This section does not affect the operation of any other law relating to the confidentiality of information or documents.

Fees and charges

10 15. (1) The Agency may charge reasonable fees, or impose reasonable charges, in respect of the provision of services, information or advice by it.

15 (2) The amount or rate of a fee or charge shall 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 shall not be such as to amount to taxation.

Regulations

20 16. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.