

1999

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

DRUGS IN SPORT BILL 1999

EXPLANATORY MEMORANDUM

**Circulated by Authority of
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Minister for Education**

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OUTLINE

The purpose of this Bill is to confer functions and powers on the Australian Sports Drug Agency (ASDA) to conduct state level sports drug testing and associated functions in the ACT. The Bill enables ASDA to conduct these functions in respect of a class of ACT athletes not covered by the Commonwealth legislation.

This will implement a drugs in sport policy consistent with the agreed national framework for drugs in sport, including education and testing of state level athletes.

The Bill is the ACT response to the agreement by the Sport and Recreation Ministers' Council (SRMC) that there was a need for complementary state and territory sports drug legislation to enable ASDA to exercise drug testing functions on a wider range of athletes than that which is possible under the *Australian Sport Drug Agency Act 1990*.

The ASDA Act (1990) limits ASDA's testing functions to "national level" athletes. The Bill recognises the need to carry out testing of "state level" athletes - the future elite - to spread the drug testing deterrent to a wider target.

The Bill has been developed within the legislative framework of the recently amended *Australian Sports Drug Agency Amendment Act 1999*. This provides for State and Territory Governments to enact State drug testing legislation that confers functions and powers on ASDA that will enable ASDA to undertake drug testing on state level competitors.

The Bill is also in line with the National Framework on Drugs in Sport which aims for a co-ordinated national approach with commonality in legislation. In particular it redefines the categories of athletes liable to be tested and provides special consideration for the rights of children.

In accordance with the National Framework, the categories of ACT competitors specified in the Bill who can be tested by ASDA are:

- a person who represents the ACT in an open age sporting competition (defined as a sporting competition that is open to persons of any age who are competing either as individuals at the top level for a sport or as members of the top team for a sport);
- persons included in a squad from which ACT representatives may be selected; and
- individuals or team members receiving direct support under an ACT Government sports assistance program.

To protect young athletes the Bill provides that drug testing of an athlete under 18 years of age may take place only with the consent of the athlete and the athlete's parent or legal guardian.

All testing, recording, reporting and appeal procedures will be carried out according to the provisions of the ASDA Act. ASDA's functions in respect of ACT athletes would be allowed to be performed within or outside the ACT, thus enabling the testing of ACT athletes anywhere in Australia.

The Bill also specifies that ASDA can only use these powers according to the terms of an official agreement between ASDA and the Territory. This agreement is essentially a service agreement setting out the necessary funding and operational arrangements for a testing and associated education programs. Testing of athletes under the agreement would be subject to conditions agreed by the ACT Government and ASDA.

Financial Implications

It is anticipated it will cost an average of \$400 for each athlete tested by the Australian Sport Drug Agency for an estimated 60 tests per year. The cost of a minimum number of random tests across all sports is to be borne by the Government. This acts as a deterrent in the public interest and complements a more comprehensive education program.

CLAUSE NOTES

Clauses and 2 are formal requirements referring to the short title and commencement of the Bill.

Clause 3 defines certain terms that are relevant relating to definition of an ACT competitor, an open age sporting competition, relevant sporting organisation and ASDA to mean the Australian Sports Drug Agency.

Clause 4 specifies that the terms and expressions used in this Bill have the same meaning as in the Commonwealth Act, unless indicated otherwise.

Clause 5 refers to any notes in the Bill as being explanatory only.

Clause 6 - Conferral of functions and powers on ASDA

Subclause 6(1) empowers ASDA to perform its functions and exercise its powers on an ACT competitor the same as under the Commonwealth Act in relation to a Commonwealth or 'national' competitor.

Subclause 6(2) gives the Federal Court of Australia and the Administrative Appeals Tribunal the same jurisdiction, function and powers under the Act in relation to an ACT competitor as they have under the Commonwealth Act in relation to a Commonwealth or 'national' competitor.

Subclause 6 (3) specifies how references to certain competitors, sporting competitions, sporting organisations and representatives in the Commonwealth Act apply in relation to an ACT competitor.

Subclause (4) specifies that this section of the Act is subject to section 7 (taking samples from an ACT competitor under 18 years old) and section 8 (agreement with ASDA about performance of functions and powers under the Act).

Clause 7 - Taking samples from an ACT competitor under 18 years old

Subclause 7(1) prohibits ASDA from obtaining a sample from an ACT competitor who is under 18 years old, unless the competitor and his or her parent or guardian have given written consent.

Subclause 7(2) provides that this consent may be given either generally (such as in an athlete's contract with the ACT Academy of Sport) or in relation to a particular request for a sample.

Clause 8 - Agreement with ASDA about performance of functions under this Act

Subclause 8(1) specifies that the Minister may enter into an official agreement with ASDA as to how ASDA can exercise its powers.

Subclause 8(2) specifies that ASDA must perform its functions and exercise its powers according to the terms of the agreement. This is a service agreement setting out the necessary funding and operational arrangements for the testing and associated program. Testing of athletes under the agreement would be subject to conditions agreed by the ACT Government and ASDA.

Clause 9 provides powers for the Executive to make regulations for the purposes of the Act.