

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

(Presented and read a first time, 27 May 1992)

(MINISTER REPRESENTING THE MINISTER FOR THE ARTS, SPORT,
THE ENVIRONMENT AND TERRITORIES, SENATOR COLLINS)

A BILL

FOR

**An Act to amend the *Australian Sports Drug
Agency Act 1990***

The Parliament of Australia enacts:

Short title etc.

1. (1) This Act may be cited as the *Australian Sports Drug Agency
Amendment Act 1992*.

5 (2) In this Act, “Principal Act” means the *Australian Sports Drug
Agency Act 1990*¹.

Commencement

2. This Act commences on the day on which it receives the Royal
Assent.

10 **Interpretation**

3. Section 2 of the Principal Act is amended:

(a) by inserting after paragraph (a) of the definition of
“competitor” in subsection (1) the following paragraph:

15 “(aa) who competes in an Australian national sporting
event; or”;

- (b) by omitting "and who:" and paragraphs (f), (g) and (h) from the definition of "competitor" in subsection (1) and substituting the following words and paragraphs:

- “; or (f) who has been prevented from participating, or has become ineligible to participate, in sporting events or sporting activities as a direct or indirect result of an approved anti-doping body’s or sporting organisation’s finding that he or she used a scheduled drug or doping method; or 5
- (g) whom the Agency, following a request from: 10
- (i) a foreign anti-doping body; or
- (ii) a sporting organisation in a foreign country of which the person is a member; or
- (iii) a foreign government sports agency; requests to provide a sample; or 15
- (h) whom the Agency, in accordance with an anti-doping arrangement, requests to provide a sample; or
- (i) whom the Agency, in accordance with a contract or arrangement entered into under section 66B, requests to provide a sample; 20

and who:

- (j) is an Australian citizen; or
- (k) is a permanent resident; or
- (l) is present in Australia;” 25
- (c) by omitting "Register of Defaulting Competitors" from the definition of "Register" in subsection (1) and substituting "Register of Notifiable Events";
- (d) by inserting in subsection (1) the following definitions: 30
- “**‘applicable procedural requirement’**, in relation to a sample provided by a competitor, has the meaning given by section 15;
- ‘approved anti-doping body’** means a foreign anti-doping body approved by the Agency under section 66C;
- ‘at competition’** has the meaning given by subsection (3); 35
- ‘Charter’** means the International Olympic Charter Against Doping in Sport;
- ‘foreign anti-doping body’** means:
- (a) an organisation established in a foreign country for the purpose of discouraging or eliminating the use of drugs or doping methods in sport; or 40
- (b) an accredited laboratory in a foreign country; or
- (c) an International Sporting Federation;
- ‘foreign government sports agency’** means:

(a) a Department of State of a foreign country; or

(b) a government agency in a foreign country;

that oversees sport in that country;

'foreign sampling request', in relation to a competitor, means a request from:

(a) a foreign anti-doping body; or

(b) a sporting body in a foreign country of which the competitor is a member; or

(c) a foreign government sports agency;

to the Agency to take a sample from the competitor for the purpose of testing for the presence, in the sample, of a scheduled drug or doping method;

'International Sporting Federation', in relation to a particular type of sporting event or sporting activity, means a body having international control over that sport or sporting event;

'Territory' means the Australian Capital Territory, the Northern Territory or Norfolk Island.”;

(e) by adding at the end the following subsection:

“(3) For the purposes of this Act, a competitor is taken to provide a sample **at competition** if the competitor provides the sample:

(a) on a day on which the competitor is to take, or takes, part in a sporting event or sporting activity; or

(b) if the sporting event or sporting activity in which the competitor is to take part is one of a number of related events or activities (like the Olympic Games or a World Cup Series)—on any day in the period during which the events or activities take place.”.

Request to provide a sample

4. Section 4 of the Principal Act is amended by omitting from subsection (1) “by the Agency” and substituting “made”.

Functions

5. Section 9 of the Principal Act is amended:

(a) by omitting from paragraph (1)(b) “Register of Defaulting Competitors” and substituting “Register of Notifiable Events”;

(b) by omitting from subsection (6) “or by virtue of any functions that are conferred or expressed to be conferred on the Agency by any law of a State or Territory,”.

6. After section 9 of the Principal Act the following section is inserted:

States may confer powers and functions on Agency

“9A. If a law of a State or Territory that makes provision for:

(a) the collection of samples from persons taking part in sporting events or sporting activities; and

(b) the testing of those samples for the presence of a scheduled drug or doping method; 5

confers a power or function on the Agency, the Agency may exercise that power or function.”.

Heading to Part 3

7. The heading to Part 3 of the Principal Act is omitted and the following heading is substituted: 10

“PART 3—REGISTER OF NOTIFIABLE EVENTS”.

Agency to maintain Register of Notifiable Events

8. Section 11 of the Principal Act is amended:

(a) by omitting “Register of Defaulting Competitors” and substituting “Register of Notifiable Events”; 15

(b) by inserting in paragraph (a) “or an approved anti-doping body” after “Agency”;

(c) by adding at the end of paragraph (b) “in relation to a sample provided as a result of such a request”. 20

Failure to provide a sample

9. Section 12 of the Principal Act is amended:

(a) by inserting “by the Agency” after “request” in subsection (1);

(b) by inserting after subsection (1) the following subsection:

“(1A) For the purposes of this Act, a competitor is not to be taken to have failed to comply with a request by an approved anti-doping body to provide a sample unless the manner in which the body requested the competitor to provide the sample was in accordance with the relevant procedures in the Charter.”. 25

Return of a positive test result 30

10. Section 15 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

“(1) A sample provided by a competitor must be dealt with in accordance with the applicable procedural requirements in relation to the sample. 35

“(2) If:

(a) either:

(i) a competitor provides a sample to the Agency in Australia; or

- (ii) a competitor who is an Australian citizen or permanent resident provides a sample to the Agency outside Australia; and
 - 5 (b) at the time when the sample is provided the competitor is not at competition for an international sporting event; and
 - (c) the Agency's request to the competitor for the sample was not made following a foreign sampling request;
- the applicable procedural requirements are the following:
- 10 (d) the sample must be taken in accordance with the prescribed procedures;
 - (e) any container in which the sample is to be kept must:
 - (i) be sealed in accordance with the prescribed procedures; and
 - 15 (ii) remain so sealed until opened for the testing of the sample;
 - (f) the identification and attestation, the transport, and the testing, of the sample must be carried out in accordance with the prescribed procedures;
 - 20 (g) the testing of the sample must be carried out by an accredited laboratory;
 - (h) the Agency must:
 - (i) be notified of the results of any tests of the sample; and
 - (ii) notify the competitor of those results;
 - in the prescribed manner as soon as possible.
 - 25 “(2A) If:
 - (a) a competitor provides a sample to the Agency:
 - (i) at competition for an international sporting event held in Australia; or
 - (ii) following a foreign sampling request; or
 - 30 (b) the Agency collects a sample from a person under an anti-doping arrangement or under a contract or arrangement entered into under section 66B; or
 - (c) a competitor provides a sample to an approved anti-doping body;
- 35 the applicable procedural requirements are the procedural requirements for:
- (d) sample collection; and
 - (e) sealing of containers containing the samples; and
 - (f) transportation of the sample to an accredited laboratory; and
 - 40 (g) analysis of the sample; and
 - (h) the competitor's rights in relation to the testing of the sample; set out in the Charter.”.

11. Section 16 of the Principal Act is repealed and the following sections are substituted:

Determination that positive test result is invalid

“16.(1) If a competitor returns a positive test result, the Agency must, as soon as practicable: 5

- (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 under subsection (2), he or she may, within the period of 7 days after receiving the notice, submit the information or evidence to the Agency; and 10
- (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 that: 15

- (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 competitor or a person chosen by the competitor to oversee any part of the collection or testing of the sample. 20

“(3) If the Agency determines that the positive test result is invalid, the Agency must, as soon as practicable after making the determination, notify the competitor in writing accordingly. 25

“(4) If the Agency determines that the positive test result is valid, the Agency must notify the 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*, be made to the Administrative Appeals Tribunal for review of the decision. 30

“(5) A failure to comply with subsection (4) does not affect the validity of the decision concerned. 35

“(6) 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 competitor. 40

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

“16A.(1) This section applies in relation to a competitor who is an Australian citizen or a permanent resident.

“(2) If:

- 5 (a) a competitor to whom this section applies returns a positive test result; and
(b) the Agency makes a determination under subsection 16(4) that the positive test result is valid;

10 the Agency must, as soon as practicable, enter on the Register the competitor's name and such particulars as are specified in the regulations.

Notification to a competitor

15 “16B. For the purposes of paragraphs 13(1)(a) and 15(3)(b) and subsections 16(1), (3) and (4), the Agency is taken to have given notice to the 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 registered mail; or
20 (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.

25 **Notice of possibility of possible positive test result may be given to International Sporting Federation**

“16C. If:

- (a) a competitor has provided a sample to the Agency to be tested; and
30 (b) the initial testing of the sample reveals the possibility of a positive test result being found in relation to the sample;
the Agency may notify any International Sporting Federation of which the competitor is a member:
(c) that the initial testing of the competitor's sample reveals the possibility of a positive test result in respect of the sample; and
35 (d) of any other matter relating to the initial testing that, under the Charter, may be notified to a Federation.

Notification of test results if competitor is not an Australian etc.

“16D.(1) This section applies in relation to a competitor who:

- 40 (a) is not an Australian citizen or permanent resident; and
(b) has provided a sample to the Agency.

“(2) As soon as practicable after the testing of the sample is completed, the Agency may give written notice of:

- (a) the competitor's name and
- (b) any particulars of the test results that are prescribed particulars; to the persons or bodies specified in subsection (3).

“(3) The following persons or bodies are specified for the purposes of subsection (2):

- (a) the competitor;
 - (b) each 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;
 - (c) any other person or organisation who:
 - (i) under the Charter; or
 - (ii) if the competitor was tested under an anti-doping arrangement—under the arrangement;
- the Agency is required to notify.”.

12. After section 17A of the Principal Act the following sections are inserted:

Notification of Australian competitor's refusal to provide a sample or a finding of a positive test result without competitor's name being registered

“17B.(1) This section applies to a competitor who is an Australian citizen or permanent resident.

“(2) If:

- (a) a foreign anti-doping body (other than an approved anti-doping body) informs the Agency that a competitor to whom this section applies has:
 - (i) refused to provide a sample to the body; or
 - (ii) returned a positive test result in relation to a sample provided to the body; and
 - (b) the Agency is satisfied that at the time when the sample was collected the body's procedures relating to the matters referred to in paragraphs 66C(1)(a) to (e) accorded with the procedures contained in the Charter; and
 - (c) the body is subsequently approved under section 66C;
- the Agency may disclose details of the refusal or of the result (as the case may be) to any of the persons or bodies referred to in subsection 17(1).

Certain competitors' names to be removed from the Register

“17C. If:

- (a) at the time when a request to provide a sample was made to a competitor, the competitor was less than 18 years of age; 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 (**'suspension period'**);
- the Agency must remove the competitor's name, and the particulars relating to that entry, from the Register as soon as practicable:
- (d) after the end of the suspension period; or
 - (e) if, as a result of the competitor's name being so entered on the Register, the Commission has disqualified the competitor from:
 - (i) receiving funding from the Commission; or
 - (ii) using facilities that are provided, in whole or in part, by the Commission, or that are operated or maintained, in whole or in part, with funding received from the Commission;
- for a period that ends after the suspension period—after the end of that period.”.

13. After section 66A of the Principal Act the following sections are inserted:

Agency may contract with overseas sporting organisations to collect and test samples

“66B.(1) The Agency may enter into a contract or arrangement with a sporting organisation in a foreign country, a foreign anti-doping body or a foreign government sports agency under which the Agency may:

- (a) collect samples from persons for the purpose of testing whether any scheduled drug or doping method is present in the samples; and
- (b) arrange for the testing of the samples by an accredited laboratory; and
- (c) arrange the secure transport of the samples to an accredited laboratory; and
- (d) give notice of the results of the testing to:
 - (i) the persons from whom the samples were collected; and
 - (ii) such organisations as are specified in the contract.

“(2) The Agency may do anything required or necessary to be done to give effect to the contract or arrangement.

Agency may approve anti-doping bodies

“66C.(1) If the Agency is satisfied that the procedures of a foreign anti-doping body relating to:

- (a) sample collection; and

(b) the sealing of the containers in which the sample is to be kept until it is tested; and

(c) transportation of samples to an accredited laboratory; and

(d) analysis of samples at an accredited laboratory; and

(e) the competitor's rights in relation to the testing of the sample; 5

accord with the procedures contained in the Charter relating to those matters, the Agency may approve the anti-doping body.

“(2) The Agency is to prepare and maintain a list of bodies so approved.

Agency may request approved anti-doping body to test an Australian competitor 10

“66D. The Agency may request an approved anti-doping body to take a sample from a competitor who:

(a) is an Australian citizen or a permanent resident; and

(b) is in a foreign country.”. 15

NOTE

1. No. 18, 1991, as amended. For previous amendments, see Nos. 33 and 179, 1991; and No. 21, 1992.



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