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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AUSTRALIAN SPORTS DRUG AGENCY AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Arts, Sport,  
the Environment and Territories,  
The Hon Ros Kelly MP)





**AUSTRALIAN SPORTS DRUG AGENCY  
AMENDMENT BILL 1992**

**GENERAL OUTLINE**

The purpose of this Bill is to make amendments to the Australian Sports Drug Agency Act 1990 which have become necessary due to recent developments both overseas and in Australia.

The definition of a 'competitor' for the purpose of the Act will be expanded, and related amendments made, to enable the Agency to test a wider range of persons for the presence of prohibited drugs both in Australia and overseas. ASDA is increasingly being recognised overseas and domestically as having the professional expertise to arrange for the collecting and testing of samples in order to detect the presence of prohibited drugs, and will therefore increasingly be called on to conduct such tests overseas and in Australia, at the request of both overseas and Australian authorities.

Other amendments will enable the States of Australia, as well as the Governments of the ACT, the Northern Territory and Norfolk Island to pass complementary legislation authorising the Agency to conduct tests on their behalf.

The Act is being amended to ensure that ASDA can recognise procedures adopted by foreign anti-doping authorities testing on ASDA's behalf and consequently make entries on the Register of Notifiable Events, even if these procedures do not precisely follow those set out in the *Australian Sports Drug Agency Regulations*. The minimum standard to be adopted and recognised will now be that provided for in the International Olympic Charter Against Doping in Sport.

Other amendments will entitle a competitor to make a submission to ASDA challenging the validity of a positive test result where there is a question about the sealing of the container holding the sample, whether the sample was tested by an accredited laboratory, or if there is evidence the sample was tampered with. If ASDA decides that the test was valid, the competitor will be entitled to apply to the Administrative Appeals Tribunal (AAT) to have the decision reviewed. If the AAT sets aside the ASDA decision, the competitor's name must be removed from the Register.

If the competitor does not make a submission, ASDA will be required to check and verify that all procedures relating to these specific matters were followed before validating a positive test result. ASDA will no longer be required to check procedures where the noncompliance with them would not cast doubt on the result of the test.

Other amendments will provide for notification, in writing, to approved sporting and anti-doping organisations of a positive test result, as well as the notification of the possibility of a positive result in certain specified circumstances.

The name of the Register will be changed to 'Register of Notifiable Events' to reduce the misconception that the entry of a person's name on the Register itself implies some finding of 'guilt' by ASDA.

Provision is made for the removal of a name from the Register once the period of any sanctions imposed by sporting organisations has elapsed, if at the time of the request to provide a sample the person was under 18 years of age.

Further amendments will give ASDA the power to enter into contracts or arrangements with overseas government and other sporting authorities and anti-doping authorities to arrange for the collection and testing of samples. The Agency will also be able to pass on information from approved anti-doping bodies, approve foreign anti-doping bodies and be required to maintain a list of such bodies. The Agency will also be given the power to request such an approved body to take a sample from a competitor who is an Australian citizen or permanent resident when that competitor is overseas.

#### **FINANCIAL IMPACT STATEMENT**

There will be no additional financial obligations imposed on the Commonwealth by this Bill. Any additional costs arising from the Agency entering into contracts or arrangements with overseas sporting organisations or anti-doping bodies will be fully recovered. Once complementary legislation is passed by States and Territories to confer collection and testing powers on the Agency, there is likely to be cost implications for the Agency. The cost of additional tests will be borne by the States and Territories.

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**NOTES ON CLAUSES**

**Clause 1 : Short title**

1. Provides that the Act may be cited as the *Australian Sports Drug Agency Amendment Act 1992*, and that the *Australian Sports Drug Agency Act 1990* will be referred to as the "**Principal Act**".

**Clause 2 : Commencement**

2. Provides that the Act will commence on the day on which it receives Royal Assent.

**Clause 3 : Interpretation**

3. This clause inserts a number of new definitions into the Principal Act, required to assist in the interpretation of the new provisions added by this Bill. The definition of 'competitor' is widened to enable the Australian Sports Drug Agency ('ASDA', or 'the Agency') to request, and to comply with requests from, other anti-doping bodies and sporting organisations to provide samples from athletes. The definition will also include competitors who have been prevented from participating, or being able to participate, in sporting events or related activities as a direct result of such bodies or organisations finding that the competitor has used a prohibited drug or doping method.

4. Definitions of 'approved anti-doping body', 'foreign anti-doping body', 'foreign government sports agency', 'foreign sampling request' and 'International Sporting Federation' are provided, to support provisions in this Bill that give effect to the intention to considerably extend the activities of the Agency both in Australia and overseas, and to enable the Agency to recognise the activities of overseas agencies.

5. A new subsection 2(3) is added to define 'at competition'. A competitor will be deemed to be 'at competition' not only on the day on which he or she is scheduled to take, or actually takes, part in the relevant sporting event, but, if the competitor is competing at a sequence of events in the same competition, also on any of the days on which the relevant events take place.

6. A definition of 'Territory' is added, which will enable the ACT, the Northern Territory and Norfolk Island to confer jurisdiction on the Agency. This will enable those Territories to pass legislation similar to that being proposed by the States (see clause 6, below), which is intended to result in consistent provisions applying throughout Australia.

#### **Clause 4 : Request to provide a sample**

7. This clause amends section 4 of the Principal Act to provide for the situation where a request for a sample for testing may also be initiated by bodies other than ASDA, such as a recognised sporting organisation. It will not be necessary for the Agency to make the request on every occasion.

#### **Clause 5 : Functions**

8. Clause 5(a) amends Section 9 of the Principal Act to account for the change of the name of the Register effected under clause 8 (below).

9. Clause 5(b), in conjunction with the amendment in clause 6 (below), will remove some restraints and allow the States to confer broader powers on ASDA through complementary State legislation.

#### **Clause 6 : States may confer powers and functions on Agency**

10. This clause inserts new section 9A, which makes provision for the Australian States and Territories (as defined in clause 3, above) to confer broader powers on ASDA, if they wish, through complementary State or Territory legislation, to enable ASDA to work more closely with them, to ensure that a consistent and comprehensive approach is maintained toward the elimination of the use of prohibited drugs and doping methods in sport.

#### **Clause 7 : Heading to Part 3**

11. This clause amends the heading to change the title of the Register from the 'Register of Defaulting Competitors' to the 'Register of Notifiable Events' (see next paragraph).

#### **Clause 8 : Maintain Register of Notifiable Events**

12. Section 11 of the Principal Act is amended by including the new name of the Register provided under Clause 5(a) and enables the Agency to enter on the Register names of competitors who fail to comply with requests from an anti-doping body whose sample collection, testing and competitors' rights procedures are in accord with the Olympic Charter. The name of the Register is being changed to remove any perception of an implied judgement of 'guilt' or 'innocence' regarding the provision of a sample for testing.

#### **Clause 9: Failure to Provide a Sample**

13. This clause amends Section 12 of the Principal Act by providing the conditions which must be satisfied before a competitor is deemed to have failed to comply with a request to provide a sample to an anti-doping body whose sample collection, testing and competitors' rights procedures are in accord with the Olympic Charter (as defined in clause 3). The effect of this provision is that the manner in which the body made the request must accord with the Olympic Charter.

#### **Clause 10: Return of a Positive Test Result**

14. This clause repeals subsections 15(1) and (2) of the Principal Act, and replaces them with new subsections 15(1), (2) and (2A). Different procedures will now be required to be followed, depending on the circumstances of the collection of a sample. New subsection (1) confirms that a sample will be dealt with under the procedural requirements applying to that particular sample.

15. Under new subsection (2), if a competitor provides a sample to the Agency in Australia, or if the competitor is an Australian citizen or is a permanent resident and provides a sample to the Agency anywhere in the world, and if the sample is provided neither while the competitor is at competition (as defined in clause 3, above) for an international sporting event nor in response to a foreign sampling request (as defined in clause 3, above), then the relevant provisions of the procedures prescribed in the *Australian Sports Drug Agency Regulations* must be complied with.

16. On the other hand, under new subsection (2A), if a competitor provides a sample to the Agency while competing at an international sporting event in Australia, or following a foreign sampling request; or if the sample is collected (whether from a competitor or other persons for the purpose of detecting the presence of a prohibited drug or doping method) under an anti-doping arrangement or contract entered into under new section 66B (inserted by clause 13, below); or if the competitor provides a sample to an approved anti-doping body (as defined in clause 3, above), then the relevant provisions of the Olympic Charter must be complied with.

#### **Clause 11 : Positive Tests, Entry of Names on Register and Notification**

17. This Clause repeals section 16 of the Principal Act and replaces it with new subsections 16(1) to 16(7). It also adds new sections 16A to 16D inclusive.

#### **Determination that Positive Test is Valid.**

18. New subsection 16(1) will require the Agency to notify the competitor of a positive test result, inform the competitor of his or her entitlement to make a submission to the Agency within 7 days of the notice and to determine whether or not the positive test is valid.

19. New subsection 16(2) will enable the Agency to determine that a test is invalid only when certain procedural variations occur. The only procedural variations which may cast doubt on the validity of the test are those relating to the sealing of containers, whether the test was done by an accredited laboratory and tampering with samples. New subsections 16(3) and (4) also require the Agency to notify the competitor of the results of its determination, and if its determination was that the test was valid, the Agency is required to advise the competitor why and that the competitor is entitled to apply to the Administrative Appeals Tribunal (AAT) for a review of the decision.

20. New subsection 16(5) also provides that if the Agency does not advise the competitor, this will not invalidate the Agency's decision. New subsection 16(6) provides that applications for a review of the decision may be made to the AAT and new subsection 16(7) provides that if the AAT reverses any decision the Agency must remove the competitor's name from the Register as soon as practicable.

#### **Entry of Competitor's Name on Register - Positive Test Result.**

21. New section 16A will require the Agency to enter the names of Australian competitors on the Register as soon as practicable, once a positive test has been validated.

#### **Notification to a Competitor**

22. New section 16B will provide for what is considered to be a notification to a competitor. It is where written notice is either handed to the competitor or sent to him or her by registered mail, and the competitor acknowledges receipt in writing. If this is not possible, notice is deemed to have been given if the Agency gives the notice to the competitor's sporting organisation in a sealed envelope.

#### **Notice of Possibility of Positive Test Result to an International Sporting Federation**

23. New section 16C will, in cases where the Agency is arranging for the collection and testing of samples, enable the Agency to advise International Sporting Federations of the possibility of a positive test result. This will be after the initial sample has returned a positive test but before the result has been confirmed by the follow-up sample.



**Notification of Test Results if Competitor is not an Australian.**

24. New section 16D will enable the Agency to provide the prescribed details of test results of foreign competitors (including the names) to a specified list of people and organisations. These are the competitor, sporting organisations of which the competitor is a member or associated with in their capacity as a competitor, or any other group which the Agency is required to notify under the Olympic Charter or an anti-doping arrangement which the Agency may enter into.

**Clause 12 : Notification and Removal of Minor's Names from Register**

**Notification of Positive Test Results and Refusals to Provide a Sample not as a Result of a Request by ASDA to Conduct a Test.**

25. This clause inserts new section 17B, which will enable the Agency to pass on information it receives (in relation to Australian competitors who return a positive test or refuse to provide a sample) from anti-doping bodies when the receipt of that information is not provided as a result of a request by the Agency to conduct a test. The Agency may only pass this information on to the same organisations that it would pass similar information to if it had conducted the test, and may only pass on this information if it is satisfied that, at the time of the sample was requested or collected, the anti-doping body was following procedures which were in accord with the Olympic Charter.

**Removal of Minors' Names from the Register**

26. New section 17C, also inserted by this clause, will require the Agency to remove a name from the Register once the period of any sanction imposed by sporting organisations has elapsed if, at the time of the request to provide a sample that led to the entry in the Register, the person was under 18 years of age.

**Clause 13 : Contracts and Approved Anti-doping Bodies**

**Agency may Contract with Overseas Sporting Organisations.**

27. Under new section 66B added by this clause the Agency will be able to enter into contracts or arrangements with specified overseas organisations to arrange for the collection and testing of samples for the purpose of detecting the presence of prohibited drugs or doping methods.

**Agency may Approve Anti-doping Bodies.**

28. This clause also inserts new section 66C, which will enable the Agency to approve anti-doping bodies whose procedures relating to sample collection, testing and competitor's rights are in accord with the Olympic Charter and will require the Agency to maintain a list of anti-doping bodies it approves.

**Agency may Request Approved Anti-doping Body to Test an Australian Competitor.**

29. New section 66D, which is also added under this clause, will enable the Agency to request an anti-doping body to test Australian athletes overseas, providing that body's sample collection, testing and competitors' rights procedures are in accord with the Olympic Charter.











