

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AUSTRALIAN SPORTS DRUG AGENCY AMENDMENT BILL 1996

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Sport, Territories and Local Government,  
the Honourable Warwick Smith MP)



## **AUSTRALIAN SPORTS DRUG AGENCY AMENDMENT BILL 1996**

### **GENERAL OUTLINE**

The purpose of this Bill is to ensure that the Australian Sports Drug Agency can continue to undertake its responsibilities effectively and to provide leadership in the international fight against the use of prohibited drugs in sport up to and beyond the Sydney 2000 Olympic Games.

The aim of this Bill is to:

- simplify the legislation and make it easier to understand and to implement;
  - ensure the Agency is able to comply with requirements of International Sporting Federations;
  - require substantial, rather than strict compliance in appropriate areas to reduce the risk of legal challenge on technical grounds;
  - protect the rights of the athletes;
- recognise the rights of sporting organisations; and
- refine the objects and functions of the Agency.

The amendments simplify the Act by consolidating the information on testing procedures into one section. In addition, the definition of a competitor has been redrafted to clarify the focus of the Agency's testing activities.

The sample collection procedures of most International Sporting Federations vary in a number of small ways. There is no uniform international procedure for sample collection and testing. The Agency will be expected to undertake an increasing number of tests on behalf of International Sporting Federations in the lead-up to the year 2000 Olympic Games. The amendments will enable the Agency to comply with requests from all International Sporting Federations.

The amendments will allow the Agency to conduct its testing procedures under the rule of substantial compliance. This will enable ASDA to recognise test results even if there are minor irregularities, provided that the irregularities do not cast doubt on the validity of the test result. Procedures that must be strictly complied with are specified in the amending Act.

Provisions have been included to protect the interests of under aged competitors and those with an intellectual disability by allowing the Agency to notify the results of drug tests to a person who has long term parental responsibility or is a guardian of the competitor.

Other amendments recognise the role of national sporting organisations in deterring drug use in sport. The amendments will allow the Agency to notify a national sporting organisation of a possible positive test result, but not at that stage, to divulge the identity of the competitor. The Agency will also be able to provide a competitor's submission (if the competitor consents) to the national sporting organisation to assist in its hearing process.

The amendments will allow the Agency to pass information to a national sporting organisation regarding a third person who interferes with the sample collection and testing procedures. This will allow the national sporting organisation to investigate the matter and take any appropriate action.

Since its establishment in 1991 the activities of the Agency have been regularly reviewed in the light of national and international developments. Amendments to the objectives and functions will better reflect the current role of the Agency and its strategic direction.

## **FINANCIAL IMPACT STATEMENT**

There will be no additional financial obligations imposed on the Commonwealth by this Bill. The inclusion of substantial, rather than strict compliance in appropriate areas will reduce the risk of legal challenge on technical grounds. This reduced scope for legal challenge on technicalities could result in savings. The predicted increase in testing conducted on behalf of International Sporting Federations will have limited cost implications for the Agency. This additional testing will be conducted on a cost recovery basis.

## **NOTES ON CLAUSES**

### **Clause 1 - Short Title**

1. This clause provides for this Act to be cited as the Australian Sports Drug Agency Amendment Act 1996.

### **Clause 2 - Commencement**

2. This clause provides that Sections 1 and 2 of the Act shall commence on the day it receives Royal Assent.

3. Subclause 2(2) provides for the Schedule to commence on a day to be fixed by Proclamation. Alternatively, subclause 2(3) allows a 6 month period for the Schedule to commence beginning on the day that the Act receives the Royal Assent.

### **Clause 3 - Amendments**

4. This clause provides for the amendment to the Australian Sports Drug Agency Act 1990 as set out in the Schedule. Item 23 in the Schedule has effect according to its terms.

## **SCHEDULE**

### **Item 1 - Definitions**

5. This item inserts a number of new definitions into the Principal Act, which are required to assist in the interpretation of the new provisions added by this Bill.

6. Definitions of "applicable procedures", "assessed", "contract" and "drug testing program" are provided.

7. A definition of "foreign sporting organisation" is provided to support provisions in the Bill that will enable the Agency to increase its involvement with foreign sporting organisations for the provision of testing services and to recognise the activities of overseas agencies.

8. Definitions of "national sporting organisation", "relevant national sporting organisation", "relevant International Sporting Federation", "relevant sporting organisation", "sporting organisation" and "foreign national sporting organisation" are provided to support the interpretation of the Bill. These definitions clarify the sporting organisations that the Agency will work with and the hierarchical relationship between the competitor and these organisations.

9. Definitions of "non-Australian" and "temporarily resident non-Australian" are added to distinguish the Agency's powers where testing under a request or under a contract with an Australian national sporting organisation. In most cases an Australian national sporting organisation will have no jurisdiction to sanction a non-Australian competitor following a

positive test result. It is important the Agency is able to notify the relevant International Sporting Federation to ensure action can be taken against the non-Australian competitor. However there are limited circumstances, in particular in the professional sporting leagues which may have a non-Australian competitor for a particular season, in which the Australian national sporting organisation will be the appropriate organisation to take action against a non-Australian competitor. This is important in ensuring the Agency's drug testing activities are effective.

10. A definition of "organisation" is included to ensure that agencies such as State Institutes and Academy's of Sport are included in the definition of sporting organisation. This will allow the Agency to notify these organisations if they are providing direct or indirect support to any competitor who is entered on the Register.

11. A definition of "reviewable decision" is added to state the two types of decisions made by the Agency which a competitor can appeal to the Administrative Appeals Tribunal for a review of the decision. These are decisions that there is no reasonable cause for failing to comply with a request and decisions that a positive test result is valid.

12. Definitions of "sporting competition" and "sporting event" are provided as this is the basis of sport and the definition of competitor.

13. Definition of "support" is provided to assist in the interpretation of the new provisions added by this Bill.

#### Item 2 - Definitions of "applicable procedural requirements", "at competition" and "Charter"

14. This item omits definitions of "applicable procedural requirements", "at competition" and "Charter" from the Principal Act. The term "applicable procedural requirement" is replaced with the definition "applicable procedures". The term "Charter" is deleted as it refers to the International Olympic Committee (IOC) Charter against Doping in Sport which is no longer in use.

#### Item 3 - Definition of "competitor"

15. This item repeals the definition of competitor to account for the new definition effected under Item 5 (below).

#### Item 4 - Definition of "at competition"

16. This item repeals the definition of "at competition". The term "at competition" is no longer referred to in the amended Act.

#### Item 5 - Competitors

17. This item inserts a new definition of "competitor" to replace the definition repealed in Item 3. New sub sections 2A(1), (2) and (3) are provided. New subsection (1) defines the level of competitor that the Agency's drug testing activities are aimed at. It allows the

Agency to test national or international level Australians training or competing inside or outside Australia. It also allows international level non-Australians training or competing in Australia, national or international level Australians and non-Australians training or competing inside or outside Australia (if the Agency is requested to under take a testing program ) and athletes competing in professional sports leagues. Persons receiving support from the Commonwealth and athletes whose names are listed on the Register are also considered a competitor for the purposes of the amended Act.

18. New subsection (2) ensures that the Agency can test competitors at sporting events and out-of-competition. Out-of-competition testing may occur at training or at any other reasonable time. The nature of drug use to enhance performance is such that it may be used at an event to gain a slight competitive edge, or in the months leading up to an event to allow the athlete to recover faster, perform better at training, become stronger, etc. Therefore to ensure an effective out of competition testing program can be achieved competitors who have trained to compete or competed in sporting competition within the last 12 months are considered to be a competitor for the purposes of the amended Act.

19. New subsection (3) states that if the competitor has retired from sporting competition he or she is not, for the purposes of the amended Act, considered a competitor. The competitor must have notified his or her relevant national sporting organisation of their retirement from competition. The national sporting organisation will then notify the Agency.

#### Item 6 - People receiving support

20. This item repeals section 3 of the Principal Act and replaces it with new subsections 3(1) and (2). This section has been broadened to include direct or indirect support received from State or Territory Governments, including State Institutes and Academy's of Sport. These bodies provide support for competitors as defined in this Bill and it is imperative that they are notified of an entry on the Register for any competitor to whom they are providing support. This will ensure effective deterrence through withdrawal of funding support. New subsection (1) defines persons who are competing or training to compete in sporting competition, who will be deemed to be receiving Commonwealth and/or State or Territory support for the purposes of the amended Act.

21. New subsection 3(2) defines "government" and "government agency" for the purposes of this section.

#### Item 7- Objects

22. This item amends section 8 of the Principal Act to better reflect the Agency's current role and strategic direction and to more clearly express the activities of the Agency in output terms. The objectives of the Agency are:

- to deter the use of scheduled drugs or doping methods in sport; and

- to encourage the development of programs to educate the sporting community about matters relating to drugs in sport; and

- to advocate the international adoption of consistent and effective anti-doping programs; and
- to co-ordinate the development of a consistent and effective national response to matters relating to drugs in sport.

#### Item 8 - Functions

23. Changes to the functions are required to reflect the strategic approach being followed by the Agency. This item repeals paragraphs 9(1)(c) to (q) of the Principal Act and substitutes new paragraphs (c) to (l). The modifications better reflect the strategies employed by the Agency to achieve its objectives. Paragraphs (c) to (l) provides for the Agency to have the following functions:

- to develop and implement drug testing programs;
- to advocate the international development and implementation of consistent and effective anti-doping programs;
- to encourage Australian national sporting organisations, State and Territory sporting organisations and professional sporting organisations to develop and implement comprehensive and consistent anti-doping initiatives (including initiatives relating to testing for the use of drugs and education about matters relating to drugs in sport), and to use the services of the Agency and accredited laboratories;
- to develop and implement initiatives that increase the skills and knowledge of people involved in sporting activities about matters relating to drugs in sport;
- to advocate and support research in and outside Australia about drugs in sport;
- to implement anti-doping arrangements;
- to encourage the establishment of means for the carrying out by government Departments and authorities of the States and Territories of initiatives relating to drugs in sport;
- to co-operate with those Departments and authorities and with non-Government sporting organisations to implement those initiatives;
- any other functions conferred on the Agency under this Act;
- to advise the Minister on matters falling within any of the above mentioned functions and related matters.

#### Item 9 - Functions

24. This item amends subsection 9(2) to link the collection of samples by the Agency to the functions as stated in Item 8.



#### Item 10 - Functions

25. This item repeals subsection 9(3) of the Principal Act and replaces it with new subsections (3) and (3A). New subsection (3) allows the Agency to keep a list of people whom it knows to be competitors. This list may only be kept for the purposes of performing the Agency's functions.

26. New subsection (3A) lists the particulars that the Agency may collect in relation to each competitor.

#### Item 11 - Heading to Part 3

27. This item amends the heading of Part 3 to better reflect the composition of this Part. The heading is changed from the "Register of Notifiable Events" to "Requesting, Collecting and Testing of Samples by Agency".

#### Item 12

##### **Division 1 - Application of the Part**

28. New section 10A defines when Part 3 is applicable. This Part will be applicable for all testing other than testing conducted by the Agency on behalf of a foreign sporting organisation.

#### Item 13

##### **Division 2 - Register of Notifiable Events**

29. This item repeals sections 12 to 17C and replaces these with new sections 12 to 17ZB. The new sections simplify and provide greater clarity in the sample collection, testing and notification process.

##### **Division 3 - Request to provide sample**

30. New subsection 12(1) allows the Agency to request a competitor to provide a sample.

31. New subsection 12(2) provides for the Regulations to include details of the procedures to be used by the Agency in requesting a competitor to provide a sample.

32. Under the previous legislation strict compliance was required with all aspects of the sample collection, testing and notification process. This created an environment conducive to legal challenge on minor technical matters which did not effect the validity of the collection and testing process. New subsection 12(3) provides for the Regulations to specify that substantial compliance with the Regulations detailing how the request is to be made is sufficient. This will ensure that competitors cannot intentionally avoid a drug test by preventing the Agency from completing the notification process required prior to a drug test. This is particularly relevant where it is necessary to advise the competitor by phone of their selection to undertake a drug test.

33. New subsection 13(1) provides for the Regulations to include provision for the competitor to have a representative of his or her choice present to oversee the sample collection process. This subsection no longer includes provision for the competitor's representative to be present during the actual passing of the sample. However, exception has been made for competitors with a disability who may require assistance to collect the sample, to have their representative present. For example an amputee or blind athlete. It also provides for the competitor to be made aware of the procedures for collection and testing of the sample, his or her rights under the provisions of the Regulations and the amended Act, the possible consequences of failing to comply with a request to provide a sample or returning a positive test result, the classes of persons, organisations and bodies that are required to be notified of an entry on the Register, or a negative test result and his or her right to make a submission.

34. New sub section 13(2) provides for the Regulations to specify that substantial compliance, with the Regulations which outline the details the athlete must be notified of, is sufficient. This will ensure that the Agency can complete the test without the likelihood that a minor irregularity in the notification procedures may effect the validity of the collection, testing and notification process.

35. New section 14 provides for the Agency to have additional powers to use national sporting organisations to reduce the number of competitors who are entered on the Register through failure to comply with a request to provide a sample. The provisions allow the Agency to notify a national sporting organisation of a competitor who is likely to fail to comply with a request. This provides the organisation with an opportunity to attempt to persuade the competitor to provide the sample. It further provides for the Agency to confirm with the relevant national sporting organisation whether a competitor has retired from sporting competition if the competitor claims to have retired at the time the Agency requests the competitor to provide a sample.

#### **Division 4 - Failure to provide sample**

##### **Subdivision A - General**

36. New section 15 provides that, for the purposes of this Part, a competitor fails to provide a sample only if the request was made in accordance with the Regulations. In addition, if the competitor fails to provide a sample, or fails to complete or sign any form required or, after providing the sample the competitor fails to do anything in relation to the sample that is required, the competitor is deemed to have failed to provide a sample.

##### **Subdivision B - Failure by Australian citizen, permanent resident or temporarily resident non-Australian to provide sample**

37. New section 16 specifies that Subdivision B only applies to a competitor who is an Australian citizen, permanent resident or a temporarily resident non-Australian who has failed to comply with a request to provide a sample.

38. New subsection 17(1) requires the Agency to provide written notification, to a competitor who has failed to comply with a request to provide a sample, that the competitor failed to comply. The written notification must also include advice of the competitor's entitlement to make a submission, or have a submission made on his or her behalf, to the Agency to the effect that he or she had reasonable cause for failing to comply. The notification should also include advice of the competitor's right to waive the making of a submission. It further provides that the Agency must include in its written notice to the competitor the Agency's obligations to enter the name of the competitor on the Register of Notifiable Events, the notification of prescribed persons and organisations of the entry on the Register and of the Minister's ability to request information contained on the Register.

39. New subsection 17(2) allows the Agency to shorten the length of the submission period stated in the written notification given by the Agency under subsection 17(1) if the Agency considers the competitor is likely to compete in an international sporting competition. This subsection has included an additional circumstance (taking part in trials to select Australian representatives) which can be taken into account by the Agency when determining the length of the submission period.

40. New subsection 17A(1) requires the Agency to decide whether a competitor had reasonable cause for failing to comply with a request to provide a sample.

41. New subsection 17A(2) prevents the Agency from deciding that a competitor did not have reasonable cause for failing to comply with a request to provide a sample before the time fixed in subsection 17A(3) (below) or without considering any written submission made by or on behalf of the competitor.

42. New subsection 17A(3) provides that the Agency cannot decide that the competitor did not have reasonable cause for failing to comply with a request to provide a sample before the end of the time stated in the notice provided to the competitor. An exception to this is where the Agency receives a written notice by or on behalf of the competitor waiving his or her right to make a submission or receives a written submission by or on behalf of the competitor. The Agency can begin its decision making process when the submission is received.

43. New subsection 17B(1) specifies the provisions in this section which apply when the Agency has decided whether a competitor had reasonable cause for failing to comply with a request to provide a sample.

44. New subsection 17B(2) requires the Agency to give written notification, as soon as practicable, to the competitor advising of its decision as to whether he or she had reasonable grounds for failing to comply with a request to provide a sample. This provision is the same as that contained in repealed subsection 13(3).

45. New subsection 17B(3) provides a new provision relating to national sporting organisations who were notified under section 14(a) of a likely failure to comply with a request to provide a sample. The provision requires the Agency to advise the national sporting organisation, in writing, if it decides that the competitor had reasonable cause for failing to comply.

46. New subsection 17B(4) -if the Agency decides that the competitor has failed to comply with a request to provide a sample without reasonable cause, written notice must include the reasons for the decision and advice that the competitor may appeal to the Administrative Appeals Tribunal if dissatisfied with the Agency's decision. This provision is the same as that contained in repealed subsection 13(4).

47. New subsection 17B(5) provides that the validity of the decision made by the Agency is not affected by non-compliance with subsections (3) or (4).

#### **Subdivision C - Failure by non-Australian other than a temporarily resident non-Australian to provide sample**

48. New section 17C specifies that Subdivision C applies to a competitor who is a non-Australian other than a temporarily resident non-Australian and has failed to comply with a request to provide a sample.

49. New subsection 17D(1) requires the Agency to notify the relevant International Sporting Federation of the failure to comply with a request to provide a sample.

50. New subsection 17D(2) allows the Agency, if requested by the International Sporting Federation, to take further action so far as it is capable of doing so.

#### **Division 5 - How sample is to be dealt with**

51. New section 17E ensures that a competitor's sample is dealt with according to the 'applicable procedures' set out in section 17F, but notes that substantial compliance with some procedures may be sufficient.

52. New subsection 17F(1) provides for the Regulations to establish the applicable procedures to be followed by the Agency in dealing with a sample.

53. New subsection 17F(2) provides that the Regulations can be sufficiently flexible to ensure the Agency can meet its requirements in a variety of different sporting environments by being of general or special application and according to different circumstances.

54. New subsection 17F(3) provides an example of seven types of requirements for procedures that can be prescribed in the Regulations, such as collection and testing of samples.

55. New subsection 17G(1) provides for the Regulations to specify where substantial compliance with procedures in relation to a sample will be sufficient. This will allow the Agency to conduct its testing procedures under the rule of substantial compliance and to recognise test results even if there are minor irregularities, provided that the irregularities do not cast doubt on the validity of the test result. This is intended to reduce the technical grounds used in the past by athletes to challenge the validity of a test.

56. New subsection 17G(2) lists those procedures which must be strictly complied with and are essential for ensuring the integrity and accuracy of the test result. The six listed procedures will override the substantial compliance procedures in subsection 17G(1). These procedures include using an accredited laboratory for testing, ensuring that a sample is not tampered, ensuring that a sample's container is securely sealed and identified, the entering, on forms relating to the provision of a sample for testing, of numbers of containers or number of seals of containers holding the sample and the signing of those forms by people required to do so.

#### **Division 6 - Return of negative test result**

57. New subsection 17H(1) provides that Section 17H applies if either the initial or final testing of a sample provided by a competitor returns a negative result.

58. New subsection 17H(2) lists the persons and organisations who the Agency may notify of a negative test result of a competitor who is an Australian citizen, permanent resident of Australia or a temporarily resident non-Australian.

59. New subsection 17H(3) lists the persons and organisations who the Agency may notify of a negative test result of a competitor who is a non-Australian other than a temporarily resident non-Australian. There is an additional requirement which seeks to protect the interests of competitors under the age of 18 years and those with an intellectual disability by allowing the Agency to notify a person who has long term parental responsibility for, or is a guardian of, the competitor, of the results.

#### **Division 7 - Return of positive test result by Australian citizen, permanent resident or temporarily resident non-Australian**

60. New section 17J provides that Division 7 only applies in relation to a sample provided by a competitor who is an Australian citizen, permanent resident of Australia or a temporarily resident non-Australian.

61. New subsection 17K(1) provides for the section to apply only if the initial testing of a competitor's sample returns a positive test result. A competitor's sample is divided into two parts (called the A and B Sample) and the initial testing refers to the analysis of the A Sample.

62. New subsection 17K(2) provides that the competitor is entitled to be present at, or represented at, the unsealing and final testing of the sample.

63. New subsection 17K(3) requires the Agency to provide written notification to a competitor who has returned an initial positive test result stating that the initial testing of the sample has returned a positive test result, the competitor's right to be present or represented at the unsealing and final testing of the sample, the possible consequences of the final testing returning a positive test result and the classes of persons or bodies that would be required to be notified of an entry on the Register relating to that competitor.

64. New subsection 17K(4) provides for the Agency to give information regarding a positive initial test result to a competitor's relevant national sporting organisation. It also prevents the Agency from giving any information to the national sporting organisation that may disclose the identity of the competitor.

65. New subsection 17L(1) provides for the section to apply only if the final testing of the sample returns a positive test result. The final testing refers to the analysis of the B Sample.

66. New subsection 17L(2) requires the Agency to provide written notification to a competitor who returns a positive final test result stating that the final testing of the sample has returned a positive test result. The written notification must also include advice of the competitor's entitlement to make a submission, or have a submission made on his or her behalf, to the Agency setting out information or evidence that may affect the validity of the results. The notification should also include advice of the competitor's right to waive the making of a submission. It further provides that the Agency must include in its written notice to the competitor the Agency's obligations to enter the name of the competitor on the Register of Notifiable Events, the notification of prescribed persons and organisations of the entry on the Register and of the Minister's ability to request information contained on the Register.

67. New subsection 17L(3) allows the Agency to shorten the length of the submission period (7 days) stated in the written notification given by the Agency under subsection 17L(2) if the Agency considers the competitor is likely to compete in an international sporting competition or take part in trials to select Australian representatives to compete in international sporting competition.

68. New subsection 17M(1) requires the Agency to decide whether a positive test result from the final testing of a sample is valid.

69. New subsection 17M(2) prevents the Agency from deciding that a positive test result is valid before the time fixed in subsection 17M(3) (below) or without considering any written submission made by or on behalf of the competitor.

70. New subsection 17M(3) provides that the Agency cannot decide that the positive test result is valid before the end of the time stated in the notice provided to the competitor unless the Agency receives a written notice by or on behalf of the competitor waiving his or her right to make a submission or receives a written submission by or on behalf of the competitor. If such a submission is received the Agency can begin its decision making process when the submission is received. The mechanism set up in this subsection seeks to clarify when a decision can be made and is for the benefit of both the Agency and the competitor.

71. New subsection 17M(4) enables the Agency to determine that a test is invalid only when three procedural variations occur. The only procedural variations which may cast doubt on the validity of the test are those relating to the sealing of any container holding the sample, whether the sample was tested by an accredited laboratory and whether a sample was tampered with by unauthorised persons.

72. New subsection 17N(1) requires the Agency to provide written notification to the competitor, as soon as practicable, advising of its decision as to whether the positive test result was valid.

73. New subsection 17N(2) requires the Agency to give the competitor reasons for the decision and advise of their appeal rights and is similar to the omitted section 16(4).

74. New subsection 17N(3) provides that the validity of a decision made by the Agency is not affected by failure to give reasons or review rights.

**Division 8 - Return of positive test result by non-Australian other than a temporarily resident non-Australian**

75. New section 17P provides for Division 8 to apply only in relation to a sample provided by a competitor who is a non-Australian other than a temporarily resident non-Australian.

76. New subsection 17Q(1) requires the Agency to notify the relevant International Sporting Federation, as soon as practicable, of a positive result from the initial testing of a sample provided by a competitor who is a non-Australian other than a temporarily resident Australian.

77. New subsection 17Q(2) allows the Agency to take further action as far as it is capable of doing so, if the International Sporting Federation requests the Agency to take further action.

**Division 9 - Entry of competitor's name on Register**

78. New section 17R requires the Agency to enter an Australian competitor on the Register if they fail to comply with a request to provide a sample and the Agency decided they did not to have reasonable cause for failing to provide a sample.

79. New section 17S requires the Agency to enter an Australian competitor on the Register if they returned a positive test result from the final testing of a sample and the Agency decides that the positive test result is valid.

80. New subsection 17T(1) provides for the section to apply when a competitor's name and other particulars are entered on the Register.

81. New subsection 17T(2) lists the persons and organisations who the Agency must advise of an entry on the Register. There are two additional requirements. The first seeks to protect the interests of competitors under the age of 18 years and those with an intellectual disability by allowing the Agency to notify a person who has long term parental responsibility for, or is a guardian of, the competitor, of results. The second requires notification of a State or Territory body where the body provides support for the competitor.

82. New subsection 17T(3) requires the Agency to include in its notification of an entry on the Register the other persons and organisations that the Agency has or intends to notify of the entry.

83. New subsection 17T(4) allows the Agency to give to a national sporting organisation a statement of the Agency's reasons for the decision regarding the validity of a positive test result or that the competitor did not have reasonable cause for failing to comply with a request to provide a sample. It further provides for the Agency to give the national sporting organisation, if the competitor consents, a copy of any submission made by or on behalf of the competitor to the Agency under section 17 or 17L.

84. New subsection 17T(5) provides that the validity of an entry of a competitor's name and particulars on the Register is not affected by a failure to comply with subsections (2), (3) or (4).

85. New section 17U requires the Agency to remove a competitor's name from the Register once the period of any sanction imposed by a sporting organisation or the Commission, whichever is longer, has elapsed, if the competitor was under 18 years of age at the time of the event causing the competitor's name to be entered on the Register. Subsection (1) defines which competitors' names can be removed from the Register.

86. New subsection (2) requires the Agency to remove the competitor's name and other particulars from the Register, subject to subsection (3) (below), as soon as practicable after the suspension period imposed by a sporting organisation has elapsed.

87. New subsection (3) defines the implications of disqualification by the Commission after their name is entered on the Register. It further requires that if the disqualification period imposed by the Commission is longer than the suspension period imposed by the sporting organisation, that the Agency must as soon as practicable after the end of the disqualification period remove the competitor's name and other particulars from the Register.

#### **Division 10 - Review of decisions**

88. New section 17V allows a competitor to apply to the Administrative Appeals Tribunal for review and Section 3 clarifies and defines a reviewable decision made by the Agency.

89. New subsection 17W(1) requires the Agency to remove the competitor's name from the Register after an adverse finding of the Tribunal.

90. New subsection 17W(2) requires the Agency to notify all persons and bodies of changes to the Register after an adverse finding or order by the Tribunal.



## **Part 3A - Requesting, Collecting and Testing of Samples on behalf of or by a Foreign Sporting Organisation**

### **Division 1 - Testing on behalf of a foreign sporting organisation**

91. New subsection 17X(1) will allow the Agency to enter into contracts with foreign sporting organisations to arrange for the collection and testing of samples for the purpose of detecting scheduled drug or doping methods and the notification of the results of the testing. Such contracts are expected to increase with the lead-up to the Olympics and could also then cover out-of-competition testing. Previous section 66B of the Act which allowed flexible adoption of overseas procedures is to be repealed in favour of a more consistent approach to testing as outlined in Part 3A.

92. New subsection 17X(2) allows the Agency to do anything required, permitted by the contract or necessary to be done to give effect to the contract.

93. New section 17Y allows for the Agency to request a competitor to provide a sample for testing, either to give effect to a contract with or request from a foreign sporting organisation or where the Agency is required or permitted under an anti-doping arrangement to request that competitor.

94. New section 17Z allows the Agency to vary its usual testing procedures and either to negotiate and formalise the procedures to be followed with the foreign sporting organisation or use the procedures stated in the anti-doping arrangement.

95. New subsection 17ZA(1) allows the Agency to notify the relevant foreign sporting organisation of any matters arising out of the making of the request to the competitor under a contract with a foreign sporting organisation. The section further clarifies and provides examples of matters that can be notified including additional provisions relating to interference with the collection process, impersonation of a competitor and failure, by the competitor, to comply with testing requirements.

96. New subsection 17ZA(2) lists persons and organisations the Agency intends to notify of the results of testing conducted on behalf of a foreign sporting organisation, subject to the agreement of the foreign sporting organisation. This replaces provisions contained in previous section 66B and expands the list of persons and organisations the Agency proposes to notify. The provisions now include the national sporting organisation, persons with long term parental responsibility for the competitor and State or Territory bodies which provide support to a competitor.

97. New subsection 17ZA(3) prevents the Agency from notifying the persons and organisations listed in subsection (2) if the foreign sporting organisation directs the Agency not to do so.

## **Division 2 - Testing by a foreign sporting organisation**

98. New subsection 17ZB(1) allows the Agency to disclose information received from an approved anti-doping body regarding the outcome of a request to provide a sample made by the foreign sporting organisation to a competitor who is an Australian citizen or permanent resident of Australia to the same persons and organisations that would be notified of an entry on the Register.

99. New subsection 17ZB(2) provides that if the anti-doping body was not approved (i.e. its procedures had not been assessed and approved by the Agency) when the request to provide a sample was made, the Agency must approve the anti-doping body pursuant to section 66C of the Act before the Agency can disclose the information to the same persons and organisations that would be notified of an entry on the Register.

### **Item 14 - Minister may request notification**

100. This item inserts new subsection 18(2B), which enables the Minister to request the Agency to give written advice to the Minister regarding the outcome of the Agency's request to a competitor to provide a sample. This advice can be requested for outcome of testing conducted under an agreement with a foreign sporting organisation or for non-Australian competitors tested under Part 3.

### **Item 15 - Agency to comply with request by Minister**

101. This item extends to new subsection 18(2B) the requirement at subsection 18(3) of the Principal Act that the Agency must comply with any request by the Minister for notification. New subsection 18(2B) enables the Minister to request the Agency to give written advice to the Minister regarding the outcome of the Agency's request to certain competitors to provide a sample.

### **Item 16 - Strategic Plans**

102. This item repeals sub sections 47(2) and (3) of the Principal Act and replaces them with new subsections 47(2) and (3). New subsection (2) aligns the Agency's strategic plan with the financial year as opposed to the calendar year to allow the Agency to better link strategic planning with financial planning.

103. New subsection (3) allows for variation of the period of strategic plans from 3 years to up to 5 years. This is to allow alignment, where appropriate, with the 4 year Olympic cycle and to provide the Agency with more flexibility in its planning.

### **Item 17 - Employees**

104. New subsection 56(2) of the Principal Act is amended to update the Agency's terms and condition of employment due to the introduction of work place bargaining agreements within the Public Service.

#### Item 18 - Investment of Money

105. Section 64 of the Principal Act is repealed and replaced with new sections 64(1) and (2). New sections 64(1) and (2) link the approved investments with recent amendments approved under Finance Regulations.

#### Item 19 - Agency may contract with overseas sporting organisations to collect and test samples

106. This item repeals section 66B. To simplify the Act and to keep all sections relating to testing for foreign sporting organisations together, this section has been moved to Part 3A.

#### Item 20 - Agency may approve anti-doping bodies

107. This item amends subsection 66C(1) in the Principal Act by deleting reference to the IOC Charter which is no longer in use.

#### Item 21 - Agency may request approved anti-doping body to test an Australian competitor

108. This item inserts a new subsection 66D(2), which allows the Agency to recognise the procedures of foreign anti-doping bodies when the Agency requests such a body to test an Australian competitor. This will allow the Agency to satisfy itself that the procedures are satisfactory and be able to act on the results of such testing.

#### Item 22 - Disclosure of confidential information

109. New subsection 67(4A) allows the Agency to fulfil its notification requirements when testing for foreign sporting organisations. Most foreign anti-doping bodies require the results of testing conducted on its behalf to be sent directly from the Australian Sports Drug Testing Laboratory (ASDTL) to the body. This notification procedure is imperative for the Agency to be able to enter into testing agreements with these foreign bodies. It will also allow the ASDTL to fulfil its commitments as an IOC accredited laboratory. The ASDTL is required to provide a quarterly statistical summary of its testing activities to the IOC and relevant International Sporting Federations.

#### Item 23 - Provisions relating to giving of notices

110. This item inserts a new section 67A and 67B. New section 67A outlines how written notices may be given to competitors and allows the manner to be further prescribed by regulations. It allows the Agency to deliver a notice personally, by post, courier, facsimile, or by giving the notice to the competitor's sporting organisation to give to the competitor.

111. New section 67B allows the Agency to notify the relevant national sporting organisation of circumstances surrounding any apparent interference in the sample collection procedures, such as a person impersonating a competitor during the provision of a sample, or interfering with the sealing of the sample etc. This will allow the national sporting organisation to be aware of such incidents. It can then investigate and take appropriate action.

Item 24 - Savings and transitional provisions

112. This item inserts several savings and transitional provisions numbered (1) to (6). Paragraph (1) defines "Principal Act" and "the Agency" for the purposes of this item.

113. Paragraph (2) states that any request to provide a sample made by the Agency to a competitor before commencement of this Bill must continue to be dealt with as outlined in the Principal Act.

114. Paragraph (3) allows the Agency to keep its current list of competitors, despite the amendment to subsection 9(3) upon commencement of this Schedule.

115. Paragraph (4) ensures the continuation of any contract entered into under section 66B of the Principal Act upon commencement of this Schedule.

116. Paragraph (5) ensures the continued approval of any foreign anti-doping body approved under subsection 66C(1) of the Principal Act upon commencement of this Schedule.

117. Paragraph (6) ensures that the current Australian Sports Drug Agency Regulations continue to apply until they are amended.









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