

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AUSTRALIAN SPORTS DRUG AGENCY BILL 1990**

**EXPLANATORY MEMORANDUM**

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



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## AUSTRALIAN SPORTS DRUG AGENCY BILL 1990

### OUTLINE

The purpose of this Bill is to establish the Australian Sports Drug Agency as a statutory authority.

The Australian Sports Drug Agency will collect samples from sportspeople and arrange for the testing of those samples to detect the use of substances and practices included in the International Olympic Committee List of Doping Classes and Methods. The Agency will also implement education programs to make the sporting and general community aware of the dangers of using such drugs and doping methods.

The Bill defines the functions of the Agency, which include: maintaining a schedule of substances and practices referred to in the International Olympic Committee List of Doping Classes and Methods; establishing and maintaining a Register of Defaulting Competitors; notifying persons and bodies of entries to the Register; disseminating information about the penalties likely to be imposed if competitors record positive test results or fail to comply with requirements to provide samples for testing; selecting competitors who are to be required to provide samples for testing; collecting samples from competitors; arranging for the testing of samples by accredited laboratories and the secure transit of samples to an accredited laboratory; developing and implementing educational programs to discourage the use of drugs in sport; consulting with and providing information to government and non-government organisations and other persons within Australia and overseas; undertaking research, and arranging for research to be undertaken, into the use of drugs in sport; encouraging the pursuit of optimal sports performance in an environment free from the use of drugs.

The Bill defines the powers and responsibilities of the Minister in respect of the Agency, in order to ensure that the Agency operates within the framework of overall Government objectives and policies, guided by a strategic plan and an annual operating plan, to be approved by the Minister. These provisions make it clear that the Agency will remain directly responsible to the Government and ensure a due and proper degree of Ministerial control and responsibility.

The Bill has regard to the principles of natural justice. The rights of competitors requested to provide samples by the Agency are protected by comprehensive appeal provisions. The Agency will conduct an internal review of all positive test results to ensure that sample collection and testing procedures have been strictly adhered to, and that no competitor's name is unfairly entered on the Register. All

competitors who fail to comply with requests to provide samples will also have the right to lodge submissions to the Agency if they believe they had reasonable cause for failing to comply with the request. Where the Agency finds a competitor did not have reasonable cause, the competitor will have the right to seek a review of the Agency's decision under the provisions of the Administrative Appeals Tribunal Act 1975. Should the Tribunal uphold the competitor's appeal the Agency will be required to remove the competitor's name from the Register and advise all those it previously notified of the entry of the competitor's name on the Register of its removal.

The Bill makes provision for administrative and operational matters. With regard to financial management, the Bill requires the Agency to provide estimates of receipts and expenditure as requested by the Minister, and provides that the Agency is subject to the scrutiny of the Auditor-General.

#### **FINANCIAL IMPACT STATEMENT**

The administrative and operational expenses relating to staff, travel, meetings and day-to-day running costs of the Agency, following proclamation of the Act, will be determined annually in the Budget.



**NOTES ON CLAUSES****PART I - PRELIMINARY****Clause 1 - Short title**

1. The short title of the Act will be the Australian Sports Drug Agency Act 1990.

**Clause 2 - Definitions**

2. Defines the meaning of terms used in subsequent clauses of the Act.

**Clause 3 - Persons etc. receiving Commonwealth support**

3. Defines those persons who are participating in sporting activities, or in training for participation in sporting activities, who will be deemed to be receiving Commonwealth support for the purpose of the Act.

**Clause 4 - Request to provide a sample**

4. Defines a request to provide a sample to the Agency, for the purpose of the Act, as being to detect whether or not the competitor has used scheduled drugs or doping methods. It further provides that a competitor will not be subject by virtue of the Act to civil or criminal prosecution if he or she fails to comply with a request to provide a sample.

**Clause 5 - Extension to external Territories**

5. Provides that the Act will extend to all the external Territories.

**PART 2 - ESTABLISHMENT, OBJECTS, FUNCTIONS AND  
POWERS OF THE AGENCY****Clause 6 - Establishment**

6. Establishes the Australian Sports Drug Agency.

**Clause 7 - Agency is body corporate etc.**

7. Provides for the Agency to have the normal incidents of corporate personality.

## Clause 8 - Objects

8. Clause 8 provides that the objectives of the Agency are to:

- encourage the practice of sport free from the use of drugs in a manner consistent with protecting the health of competitors, the values of fair play and competition, and the rights of those who take part in sport;
- encourage the development of programs to educate the sporting community and the community at large about the dangers of using drugs in sport;
- provide leadership in the development of a national strategy concerning drugs in sport;
- encourage the establishment of a centralised drug sampling and testing program that exposes all competitors to drug sampling and testing at short notice in and out of competition;
- encourage State and Territory governments, and national, State and Territory sporting organisations to adopt uniform drug sampling and testing procedures;
- encourage the development and maintenance of sports drug testing laboratories accredited by the International Olympic Committee; and
- promote and encourage the adoption of uniform drug sampling and testing procedures and educational programs relating to the use of drugs in sport internationally.

## Clause 9 - Functions

9. Subclause 9(1) provides that the functions of the Agency include:

- maintain a schedule of substances and practices referred to in the International Olympic Committee List of Doping Classes and Methods;
- establish and maintain a Register of Defaulting Competitors;
- notify persons and bodies of entries to the Register;
- disseminate information about the penalties likely to be imposed if competitors record positive test results or fail to comply with requirements to provide samples for testing;
- select competitors who are to be required to provide samples for testing;
- collect samples from competitors and arrange for the testing of samples by accredited laboratories and the secure transit of samples to an accredited laboratory;
- develop and implement educational programs to discourage the use of drugs in sport;
- consult with and provide information to government and non-government organisations and other persons within Australia and overseas;

- take steps aimed at ensuring Australia's compliance with international agreements and arrangements concerning the use of scheduled drugs and doping practices in sport to which Australia is a party;
- undertake research, and arrange for research to be undertaken, into the use of drugs in sport; and
- encourage the pursuit of optimal sports performance in an environment free from the use of drugs. Samples collected by the Agency may only be used to determine whether competitors have been using scheduled drugs or doping practices.

10. Subclause 9(2) limits the purposes for which samples from competitors may be used. Samples collected by the Agency may only be used to determine whether competitors have been using scheduled drugs or doping practices.

11. Subclause 9(3) enables the Agency to prepare and maintain a list of all persons known to be competitors.

12. Subclauses 9(4) and 9(5) provide that the Agency's functions may be performed within or outside Australia, and in co-operation with a State or Territory or any person, association or organisation.

13. Subclause 9(6) provides that the Agency's functions may be performed only to the extent that they are not in excess of the functions that may be conferred on it by any of the legislative powers of Parliament.

#### **Clause 10 - Powers**

14. Subclause 10(1) provides that the powers of the Agency include:

- enter into contracts;
- acquire, hold and dispose of real and personal property;
- occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Agency;
- appoint agents and attorneys;
- engage persons to perform services for the Agency;
- accept gifts, grants, bequests and devises made to the Agency and act as trustee of money or other property vested in the Agency on trust; and
- develop, maintain, distribute and publish information on procedures for, and developments concerning, the collection and testing of samples.

15. Subclauses 10(2) and 10(3) allows the Agency to impose reasonable fees and charges for services, information and advice provided by the Agency.

16. Subclause 10(4) provides for the Agency to exercise its powers inside and outside Australia.

### **PART 3 - REGISTER OF DEFAULTING COMPETITORS**

#### **Clause 11 - Agency to maintain Register of Defaulting Competitors**

17. Requires the Agency to establish a Register of Defaulting Competitors for the purpose of recording the names of competitors who return a positive test result, or fail without reasonable cause to comply with a request to provide a sample.

#### **Clause 12 - Failure to provide a sample**

18. Subclause 12(1) provides that a competitor will not be taken to have failed to comply with a request to provide a sample for the purpose of the Act unless the competitor has been requested to provide a sample in accordance with the regulations and fails to comply with that request.

19. Subclause 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.

20. Subclause 12(3) requires that the regulations include provision for the competitor requested to provide a sample to have a witness of his or her choice present to oversee the process of sample collection. It further provides that the competitor must 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 Act, and the possible consequences of failing to comply with a request to provide a sample or returning a positive test result.

#### **Clause 13 - Notice to competitor following failure to provide a sample**

21. Subclause 13(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, of the competitor's entitlement to make a submission to the Agency to the effect that he or she had reasonable cause for failing to comply, and of the Agency's obligations to enter the name of the competitor on the Register of Defaulting Competitors. It also provides for the notification of prescribed people and organisations of the entry on the Register. It further requires the Agency to determine whether a competitor had reasonable cause for failing to comply if a competitor lodges a submission to that effect.

22. Subclause 13(2) ensures that the Agency must wait until the end of the submission period before deciding whether the competitor had reasonable cause not to comply, and it ensures that the Agency cannot make a decision without considering any submission made by a competitor or a representative during the submission period.

23. Subclause 13(3) requires the Agency to give written notification to the competitor advising of its decision as to whether the competitor had reasonable grounds for failing to comply with a request to provide a sample as soon as practicable.

24. Subclause 13(4) details the information, including advice that the competitor may appeal to the Administrative Appeals Tribunal if dissatisfied with the Agency's decision under subclause 13(3), to be given to a competitor should the Agency decide that the competitor has failed to comply with a request to provide a sample without reasonable cause.

25. Subclause 13(5) provides that the validity of a decision made by the Agency is not affected by noncompliance with subclause 13(4).

26. Subclause 13(6) enables the competitor to submit an application to the Administrative Appeals Tribunal seeking a review of the decision made by the Agency following its consideration of any submission made under Subclause 13(1).

27. Subclause 13(7) prescribes the period in which a competitor may make a submission to the Agency to establish a reasonable cause for not responding to a request to provide a sample.

#### **Clause 14 - Entry of competitor's name on Register - failure to provide a sample**

28. Subclause 14(1) sets out the circumstances under which the name of a competitor who has failed to comply with a request to provide a sample, or who is found by the Agency not to have had reasonable cause for failing to comply, will be entered on the Register.

29. Subclause 14(2) requires the Agency to remove a competitor's name from the Register in cases where the Administrative Appeals Tribunal overturns any decision made by the Agency that a competitor did not have reasonable cause for failing to comply.

### **Clause 15 - Returning of a positive test result**

30. Subclause 15(1) lists the conditions under which a positive test result can be returned.

31. Subclause 15(2) provides for the regulations to establish the procedures to be followed by the Agency in sampling, testing and the notification of test results.

32. Subclause 15(3) provides for the regulations to require the Agency to inform the competitor at the time of sampling of his or her entitlements in relation to the testing of the sample and the consequences of returning a positive result.

### **Clause 16 - Entry of competitor's name on Register - return of a positive test result**

33. Provides for the circumstances under which the name of a competitor who has returned a positive test result will be entered on the Register. The clause requires the Agency to check that sampling and testing procedures have been carried out in accordance with the regulations, and only to enter a competitor's name and particulars relating to the competitor on the Register if the regulations have been correctly followed.

### **Clause 17 - Notification of entries on Register**

34. Subclause 17(1) lists the persons and organisations who must be advised by the Agency of an entry on the Register.

35. Subclause 17(2) provides for the Australian Sports Commission to be advised of the relevant sporting organisation(s) to which notice has also been given when the Commission is advised of a competitor's name being entered on the Register.

36. Subclause 17(3) requires the Agency to remove the name of the competitor from the Register where the Administrative Appeals Tribunal makes such a determination following the resolution of an appeal for review of a decision by the Agency that a competitor did not have reasonable cause for failing to comply. It further requires the Agency to remove a competitor's name from the Register if an order is made by the Administrative Appeals Tribunal under the provisions of section 41 of the Administrative Appeals Tribunal Act 1975 which puts a stay on or otherwise affects the implementation of the decision to enter the name on the Register. Should the Agency be required to remove a competitor's name from the Register for either of these reasons, the Agency must notify all those previously notified of the decision to enter the name on the Register in accordance with subclause 17(1) of the removal of the competitor's name from the Register.

37. Subclause 17(4) provides for the regulations to include the form and procedures to be followed by the Agency when it notifies those listed in subclause 17(1) that it is entering a name on the Register.

#### **Clause 18 - Minister may request notification**

38. Subclause 18(1) provides for the Minister to request the Agency to give written advice to the Minister as to whether the names of competitors specified in the Minister's request have been entered on the Register.

39. Subclause 18(2) provides for the Minister, subject to subclause 18(1), to also request the contents of the Register entry for each specified competitor.

40. Subclause 18(3) requires the Agency to comply with any request received under subclauses 18(1) and 18(2).

### **PART 4 - CONSTITUTION AND MEETINGS OF THE AGENCY ETC.**

#### ***Division 1 - Constitution of the Agency***

##### **Clause 19 - Constitution**

41. Defines the composition of the Agency, and provides that the operations of the Agency will not be affected by vacancies in the Agency's membership.

##### **Clause 20 - Appointment of members**

42. Subclauses 20(1) and 20(2) provide for the Minister to appoint all members, and that such appointments be made on the basis of a person's qualifications, special experience or interest in a field related to the Agency's activities.

43. Subclause 20(3) sets a maximum age of 65 for members of the Agency.

44. Subclause 20(4) provides that an appointment is not invalid due to some irregularity in connection with the appointment.

#### ***Division 2 - Meetings of the Agency***

##### **Clause 21 - Convening of meetings**

45. Provides for situations in which a meeting of the Agency is called.

**Clause 22 - Presiding at meetings**

46. Outlines arrangements for determining who will preside at meetings of the Agency.

**Clause 23 - Quorum**

47. Sets the quorum for meetings of the Agency.

**Clause 24 - Voting at meetings**

48. Describes the voting arrangements at meetings.

**Clause 25 - Conduct of meetings**

49. Provides for the Agency to adopt such meeting procedures as it considers appropriate.

**Clause 26 - Resolutions without meetings**

50. Subclauses 26(1) and 26(2) provide for the Agency to make resolutions without members being present in each other's company.

51. Subclause 26(3) provides that the same provisions in relation to the direct or indirect pecuniary and other interests of members which apply to resolutions in meetings also apply to resolutions made without meetings.

**Clause 27 - Records relating to meetings**

52. Requires the Agency to keep a record of its meetings and resolutions.

**Clause 28 - Disclosure of interests**

53. Establishes the procedures that must be followed by a member with a direct or indirect pecuniary interest in a matter to be considered by the Agency, or who is involved in any way in the administration of a sport, sporting organisation, or sporting event or venue, or who is related to or involved in the affairs of a competitor under consideration by the Agency. It provides that any such interest or interests disqualifies such members from being involved in deliberations and voting on such matters.

**Clause 29 - Persons may be invited to attend meeting**

54. Provides for the Agency to invite people to attend meetings of the Agency for the purpose of advising or informing members on any matters.



**Division 3 - Provisions relating to members**

**Clause 30 - Terms of office**

55. Establishes the tenure and terms of office for the Chairperson, Deputy Chairperson, Chief Executive and other members of the Agency. Provides for all members to be eligible for reappointment.

**Clause 31 - Terms and conditions of appointment not provided by Act**

56. Provides for the Minister to determine the terms and conditions for members holding office, in addition to those outlined in the Act.

**Clause 32 - Remuneration and allowances**

57. Provides for the remuneration of the Chairperson, Deputy Chairperson, Chief Executive and other members of the Agency, subject to the provisions of the Remuneration Tribunal Act 1973.

**Clause 33 - Leave of absence**

58. Outlines the approval arrangements for leave of absence of members.

**Clause 34 - Resignation**

59. Provides for the method of resignation of members.

**Clause 35 - Outside employment**

60. Subclause 35(1) provides that the Chief Executive may not engage in any paid employment outside the duties of his or her office without the approval of the Minister.

61. Subclause 35(2) provides that other members may not engage in paid employment which, in the Minister's opinion, conflicts with the proper performance of the member's functions.

**Clause 36 - Termination of appointment**

62. Details the grounds on which the Minister may terminate the appointment of a member.

**Clause 37 - Acting appointments**

63. Subclauses 37(1) to 37(4) empower the Minister to appoint specified persons to act during temporary Agency vacancies.

64. Subclauses 37(5) and 37(6) provide that such acting appointments must not continue beyond 12 months, and are made on terms and conditions as far as practicable equivalent to the terms and conditions of the office to which the person is appointed.

65. Subclause 37(7) provides for the validation of actions by people purporting to be acting under the arrangements in this Clause.

#### ***Division 4 - Committees of the Agency***

##### **Clause 38 - Establishment of committees**

66. Provides for the Agency to establish committees to assist its operation.

##### **Clause 39 - Constitution of committees**

67. Defines the composition of a committee of the Agency and provides that a member of the Agency must be the chairperson of any committee.

##### **Clause 40 - Reimbursement of expenses**

68. Provides for the reimbursement of expenses of committee members who are not members or employees of the Agency.

##### **Clause 41 - Quorum**

69. Establishes the quorum for meetings of committees.

##### **Clause 42 - Voting at meetings**

70. Establishes the voting arrangements for meetings of committees.

##### **Clause 43 - Persons may be invited to attend meeting**

71. Provides for any committee of the Agency to invite people to attend meetings of the committee for the purpose of advising or informing members on any matters.

##### **Clause 44 - Report to the Agency**

72. Requires the Chairperson of each committee to report to the Agency on the committee's activities.

##### **Clause 45 - Minutes**

73. Requires committees to keep a record of their meetings.

**Clause 46 - Applied provisions**

74. Provides that the disclosure of interest and voting provisions in the Act that apply to members of the Agency at Agency meetings also apply to members of committees and committee meetings.

**PART 5 - STRATEGIC PLANS AND ANNUAL OPERATIONAL PLANS**

***Division 1 - Strategic plans***

**Clause 47 - Strategic plans**

75. Subclauses 47(1) to 47(3) require the Agency to prepare and implement a strategic plan relating to the performance of the Agency's functions every three years, and that the first plan be developed and implemented within 12 months of the Act coming into effect.

76. Subclause 47(4) requires that all strategic plans be approved by the Minister and that each plan be tabled in each House of Parliament within 15 sitting days of it being approved.

**Clause 48 - Approval and commencement of strategic plans**

77. Establishes the procedures for approval and commencement of strategic plans.

**Clause 49 - Variation of strategic plans**

78. Requires the Agency to consider whether changes to a current strategic plan are necessary and provides for the Agency to vary a strategic plan with the approval of the Minister if necessary.

***Division 2 - Annual operational plans***

**Clause 50 - Annual operational plans**

79. Requires the Agency to develop an annual operational plan consistent with the strategic plan which must be approved by the Minister and tabled in each House of Parliament within 15 sitting days of being approved.

**Clause 51 - Revision of annual operational plans**

80. Provides for the Minister to request the Agency to revise its annual operational plans.

**Clause 52 - Approval and commencement of annual operational plans**

81. Establishes the procedures for approval and commencement of annual operational plans and revised operational plans.

***Division 3 - Compliance with plans***

**Clause 53 - Compliance with plans**

82. Requires the Agency to perform its functions and exercise its powers in accordance with the provisions of the strategic and annual operational plans.

**Clause 54 - Reporting requirements**

83. Requires the Agency to include in its annual report information relating to the strategic and operational plans.

**PART 6 - CHIEF EXECUTIVE, STAFF AND CONSULTANTS**

**Clause 55 - Duties of the Chief Executive**

84. Provides that the Chief Executive will manage the affairs of the Agency subject to the directions of the Agency and in accordance with the policies determined by it.

**Clause 56 - Employees**

85. Subclause 56(1) provides for the Chief Executive to employ people.

86. Subclause 56(2) provides for the Agency to determine the terms and conditions of its employees.

87. Subclause 56(3) provides for the Chief Executive to arrange the secondment of employees from any Commonwealth Department or Statutory Authority.

**Clause 57 - Consultants**

88. Provides for persons with suitable qualifications and experience to be engaged as consultants by the Agency under terms and conditions determined by the Agency.

**PART 7 - FINANCE**

**Clause 58 - Appropriation of money**

89. Provides for the appropriation of money to the Agency by Parliament, payable as determined by the Minister for Finance.

**Clause 59 - Estimates**

90. Requires the Agency to prepare financial estimates for approval by the Minister and that money held in trust by the Agency not be included in the estimates. Further requires that the money appropriated to the Agency is to be spent in accordance with the approved estimates.

**Clause 60 - Application of money**

91. Establishes the basis for the application of the Agency's money.

**Clause 61 - Borrowing from the Commonwealth**

92. Requires the Agency to borrow only from the Commonwealth, and outlines the arrangements for such borrowings.

**Clause 62 - Contracts**

93. Determines limitations to the Agency's ability to enter into contracts.

**Clause 63 - Application of Division 3 of Part XI of Audit Act**

94. Subclause 63(1) declares that the Agency is a public authority to which Division 3 of Part XI of the Audit Act 1901 applies.

95. Subclause 63(2) requires the provision of an annual report on the Agency's activities to the Minister for tabling in Parliament and prescribes information that must be included in each annual report.

96. Subclause 63(3) provides that regulations may be made requiring further specified information to be included in the annual report.

**Clause 64 - Investment of money**

97. Requires the Agency to invest any money not immediately required for the purposes of the Agency in specified ways.

**Clause 65 - Trust money**

98. Establishes the obligations of the Agency in relation to money received or held in trust by the Agency.

## **PART 8 - MISCELLANEOUS**

### **Clause 66 - Accredited laboratories**

99. Requires the Agency to keep a list of laboratories accredited by the International Olympic Committee and that these laboratories may be either within or outside Australia.

### **Clause 67 - Disclosure of confidential information**

100. Subclause 67(1) specifies those people who are bound by the disclosure of confidential information provisions under this Act.

101. Subclause 67(2) defines what constitutes confidential information.

102. Subclause 67(3) requires nondisclosure of information unless it is to carry out the functions or exercise a power provided by this Act, or in certain circumstances, the Australian Sports Commission Act 1989. It further provides that the penalty for unauthorised disclosure of confidential information is two years imprisonment.

103. Subclause 67(4) provides that people bound by these provisions should not be required to produce records or disclose information in any court except where necessary for the purposes of this Act.

104. Subclause 67(5) defines the meaning of "court" and "to produce" for the purposes of this Clause.

### **Clause 68 - Minister may give directions**

105. Empowers the Minister to give written directions to the Agency in relation to the performance of its functions and the exercise of its powers, and outlines procedures to be followed by the Minister in giving such directions.

### **Clause 69 - Reports to Minister**

106. Requires the Agency to furnish the Minister with periodical reports on its operations and any information the Minister requires on its activities.

### **Clause 70 - Delegation by the Agency**

107. Empowers the Agency to delegate to the Chairperson or the Chief Executive any of its powers except for the powers to: delegate; establish committees; prepare and/or vary the

Agency's strategic and annual operational plans; and determine the policies of the Agency and direct the Chief Executive to manage the affairs of the Agency in accordance with those policies.

**Clause 71 - Delegation by the Chief Executive**

108. Empowers the Chief Executive to delegate in writing and with the agreement of the Agency any of his or her powers to an employee of the Agency except the power to delegate.

**Clause 72 - Protection from civil actions**

109. Provides that no member or employee of the Agency is liable for any action arising out of the performance of the Agency's functions or the exercise of the Agency's powers in good faith.

**Clause 73 - Regulations**

110. Provides for the Governor-General to make regulations consistent with the Act.



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