

South Australia



ANNO QUADRAGESIMO NONO
ELIZABETHAE II REGINAE
A.D. 2000

SPORTS DRUG TESTING ACT 2000

No. 32 of 2000

[Assented to 6 July 2000]

An Act to provide for the collection of samples from State competitors for testing for scheduled drugs and doping methods; to confer functions and powers on the Australian Sports Drug Agency in relation to collecting and testing those samples; and for other related purposes.

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Interpretation
4. State competitors
5. Functions and powers of the Agency
6. Agency may request samples
7. Obtaining samples from competitors under the age of 18 years
8. Entry of information on Register
9. Notification of entry on Register
10. Review by the Administrative Appeals Tribunal of Agency's decisions
11. Removal of entries from Register
12. Additional requirements as to notification
13. Giving of notices
14. Drug testing schemes to be laid before Parliament
15. Regulations

The Parliament of South Australia enacts as follows:**Short title**

1. This Act may be cited as the *Sports Drug Testing Act 2000*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"**Administrative Appeals Tribunal**" means the Tribunal of that name established under the *Administrative Appeals Tribunal Act 1975* of the Commonwealth;

"**Agency**" means the Australian Sports Drug Agency established by the Commonwealth Act;

"**Commonwealth Act**" means the *Australian Sports Drug Agency Act 1990* of the Commonwealth as in force from time to time, and includes regulations and orders as in force from time to time under that Act;

"**drug testing scheme**" means a drug testing scheme under the Commonwealth Act, as modified (if at all) by the regulations under this Act;

"**Minister**" means the Minister responsible for the administration of this Act;

"**Register**" means a Register of Notifiable Events established and maintained by the Agency under a drug testing scheme;

"**relevant sporting organisation**", in relation to a State competitor, means a sporting organisation (State or national)—

- (a) of which the competitor is, in that capacity, a member; or
- (b) with which the competitor is, in that capacity, associated in any way;

"**scheduled drugs or doping methods**" means drugs, or doping methods, included in a schedule set out in a drug testing scheme;

"**senior open sporting event**", in relation to any particular sport, means a national sporting competition that is open to persons of all ages who are competing, either as individual competitors or as members of a team, at the top level for that sport;

"**State competitor**" *see* section 4.

(2) Expressions used in this Act that are also used in the Commonwealth Act have in this Act, unless the contrary intention appears, the same respective meanings as those expressions have in the Commonwealth Act.

(3) Where this Act refers to a drug testing scheme in relation to a State competitor, the scheme must be read as applying with the necessary adaptations.

State competitors

4. For the purposes of this Act, a person is a State competitor if the person—

- (a) represents, or has been selected to represent, a particular sport or South Australia in that sport, either as an individual competitor or as a member of a team, in senior open sporting events;
- (b) is a member of a squad for a particular sport from which persons are selected to represent South Australia or to represent that sport, either as individual competitors or as members of a team, in senior open sporting events; or
- (c) is on a scholarship with the South Australian Sports Institute under which he or she receives financial assistance, or has the right to use Institute services and facilities, or both; or
- (d) as a direct or indirect result of having had his or her name entered on a Register pursuant to this Act, has been prevented from participating, or has become ineligible to participate, in sporting events.

Functions and powers of the Agency

5. (1) The Agency has the following functions:

- (a) to disseminate information about—
 - (i) the possibility of State competitors being requested to provide samples for testing and the procedures involved in providing and testing samples; and
 - (ii) the likely consequences for State competitors who fail to comply with requests for samples or who record positive test results; and
- (b) subject to this Act, to collect samples from State competitors selected by the Agency and cause them to be tested for the purpose only of determining whether the competitors have been using scheduled drugs or doping methods; and
- (c) such other functions as are conferred on the Agency by this Act or the regulations.

(2) The Agency has the powers necessary, convenient or incidental to the performance of its functions.

(3) Without limiting the generality of subsection (2), the Agency may—

- (a) charge reasonable fees for services, information or advice provided by the Agency;
- (b) establish and maintain a list of all persons whom it knows to be State competitors;
- (c) delegate any of its powers (other than this power of delegation) to the Chairperson, the Chief Executive or any employee of the Agency.

(4) If the Agency delegates any of its powers—

- (a) the delegation is revocable at will; and
- (b) the Agency is not prevented from exercising the delegated power; and

(c) the delegate is, in exercising the power, subject to any directions given by the Agency.

(5) The Agency may perform its functions and exercise its powers under this Act within or outside Australia.

Agency may request samples

6. (1) The Agency may, in accordance with a drug testing scheme—

- (a) request a State competitor to provide a sample to the Agency; and
- (b) make any other ancillary request of the competitor; and
- (c) if it appears to the Agency that the competitor is likely to fail to comply with a request to provide a sample, tell any relevant sporting organisation of the likely failure, with a view to the organisation persuading the competitor to comply with the request; and
- (d) seek information from any relevant sporting organisation about any claim of the competitor that he or she has retired from sporting competition.

(2) The Agency must notify the competitor in accordance with the scheme of the possible consequences of failure to comply with a request to provide a sample.

(3) The competitor will be taken to have failed to comply with the request to provide a sample if and only if—

- (a) the competitor fails to provide a sample as required; or
- (b) the competitor fails to complete or sign any form required under the scheme to be completed or signed by the competitor; or
- (c) after providing the sample, the competitor—
 - (i) fails to do something in relation to the sample that is required under the scheme to be done by the competitor; or
 - (ii) does something in relation to the sample that the competitor is required under the scheme not to do.

(4) A person incurs no criminal or civil liability by reason only of failing to comply with a request to provide a sample.

(5) The Agency will, in accordance with the drug testing scheme, cause a sample provided by a State competitor to be tested and will follow the procedures set out in the scheme for dealing with samples.

Obtaining samples from competitors under the age of 18 years

7. (1) The Agency cannot exercise its powers to obtain a sample from a State competitor who is under the age of 18 years unless a parent or guardian of the child, or any other person who stands *in loco parentis* to the child, has given written consent to the giving of the sample.

(2) A consent may be given for the purposes of subsection (1) either generally or in relation to a particular request for a sample.

Entry of information on Register

8. If a State competitor fails, without reasonable excuse, to comply with a request to provide a sample to the Agency or a positive test result is returned in relation to a sample provided by a State competitor, the Agency will enter the name of the competitor on the relevant Register in accordance with the drug testing scheme, together with such other particulars as the scheme requires.

Notification of entry on Register

9. (1) Where the Agency has entered the name and other particulars of a State competitor on a Register, the Agency must, in accordance with the relevant drug testing scheme—

- (a) notify the competitor in writing of the making of the entry; and
- (b) notify each relevant sporting organisation in writing of the making and particulars of the entry.

(2) The Agency must also notify the competitor of the competitor's right to have the Agency's decision reviewed and of any other rights conferred on the competitor by the scheme.

Review by the Administrative Appeals Tribunal of Agency's decisions

10. A State competitor whose name has been entered on a Register may apply to the Administrative Appeals Tribunal for review of the Agency's decision and, for that purpose, the Administrative Appeals Tribunal has the same jurisdiction as it has in relation to competitors under the Commonwealth Act.

Removal of entries from Register

11. (1) If the Administrative Appeals Tribunal sets aside a decision of the Agency to enter a State competitor's name on a Register, the Agency must, as soon as practicable, remove from the Register any entry that was made as a result of the Agency's decision.

(2) If—

- (a) an entry is removed from a Register under subsection (1); or
- (b) an order is made under section 41 of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth staying or otherwise affecting the operation or implementation of a decision of the Agency to make such an entry; or
- (c) an order referred to in paragraph (b) is revoked,

the Agency must, as soon as practicable, give written notice of that fact to each person or body to whom notice of the making of the entry was given.

Additional requirements as to notification

12. (1) Where the Agency is required to give notice to a State competitor of the entry of information on, or the removal of information from, a Register, the Agency will, if it is aware that the competitor is on a scholarship with the South Australian Sports Institute, also give notice of the entry or removal to the Minister.

(2) The Agency will, if requested by the Minister in writing to do so, furnish the Minister with a written notice stating, in respect of each State competitor specified in the request—

- (a) whether the competitor has returned a negative test result; or

- (b) whether the competitor's name and other particulars have been entered on a Register and, if so, the contents of the entry.

(3) If a sporting organisation is notified by the Agency of the entry of information on the Register in relation to a State competitor, the organisation must give the Minister written notice of the contents of the entry and of any action taken, or to be taken, by the organisation as a result of the entry.

Giving of notices

13. Where the Agency is required or authorised to give a written notice to a person or body under this Act, the notice must be given in a manner set out in section 67A(a) of the Commonwealth Act or in any other manner prescribed by the regulations.

Drug testing schemes to be laid before Parliament

14. The Minister will—

- (a) within 6 sitting days of the commencement of this Act, cause copies of all drug testing schemes that have been promulgated (but have not been revoked) under the Commonwealth Act to be laid before both Houses of Parliament; and
- (b) within 6 sitting days of a drug testing scheme being promulgated under the Commonwealth Act or of any amendments to a drug testing scheme being so promulgated, cause copies of the scheme or amendments to be laid before both Houses of Parliament.

Regulations

15. The Governor may make such regulations as are necessary or expedient for the purposes of this Act.