



New South Wales

Sports Drug Testing Amendment Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The *Sports Drug Testing Act 1995* (***the State Act***) presently confers functions relating to the sports drug testing of State competitors on the Australian Sports Drug Agency established under the *Australian Sports Drug Agency Act 1990* of the Commonwealth (***the Commonwealth Act***). When the State Act was enacted, it conferred functions on the Agency in relation to State competitors by including provisions that were based on the provisions of the Commonwealth Act. However a number of changes to the Commonwealth Act have subsequently been made, resulting in inconsistencies between the State Act and the Commonwealth Act and the Agency no longer being able to drug test State competitors.

The object of this Bill is provide that, instead of the State Act mirroring the provisions of the Commonwealth Act in relation to the Agency's drug testing functions, the relevant sports drug testing provisions of the Commonwealth Act (and regulations) will apply as laws of the State. This means that the drug

testing of State competitors will be done in accordance with the relevant Commonwealth sports drug testing laws (as applied as laws of the State) rather than under the separate and inconsistent provisions of the State Act. The Bill also provides that any future amendment of the Commonwealth laws will automatically apply at the State level unless the regulations under the State Act provide for the amendment to be modified in its application (or to be excluded from so applying).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Sports Drug Testing Act 1995* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1]–[3] and [5]–[8] make amendments that are consequential on the proposed Act providing for the Commonwealth sports drug testing laws to apply as laws of the State. The Agency will, as a result of the proposed Act, no longer carry out sports drug testing functions under the provisions of the State Act, but rather under the new applied provisions scheme.

Schedule 1 [4] inserts the definitions of *applied provisions* (meaning the Commonwealth sports drug testing laws that will apply as State laws as a result of the proposed Act) and *Commonwealth sports drug testing laws*. This term refers to the provisions of Part 3 of the Commonwealth Act (that Part deals with the requesting, collecting and testing of samples by the Agency) and the regulations made under those provisions.

Schedule 1 [9] enables the Agency to exercise its functions under the applied provisions in relation to State competitors and at the State level generally. Also, the Agency will continue to have such other functions as may be conferred or imposed on it by or under the State Act.

Schedule 1 [10] recasts the existing provision specifying the functions of the Agency under the State Act in order to take into account the new applied provisions scheme.

Schedule 1 [11] re-inserts existing section 12 of the State Act (that section is repealed by Schedule 1 [13]) in the appropriate Part of the State Act. The retained provision requires the Agency to give notice to, and obtain the consent of, a parent or guardian of a State competitor who is under the age of 18 years before the Agency collects or accepts a sample for drug testing from the competitor.

Schedule 1 [12] and **[13]** replace the existing provisions in the State Act relating to the Agency's sports drug testing functions at the State level with the new applied provisions scheme. Under this scheme, the Commonwealth sports drug testing laws will apply as laws of the State (with necessary modifications such as the Commonwealth laws extending to State competitors). Future amendments to the Commonwealth laws will automatically apply at the State level unless regulations under the State Act are made within 6 months of the amendments to modify or exclude the application of the amendments.

Schedule 1 [15] restates an existing provision that requires the Agency to notify the Director-General of the Department of Sport and Recreation about State competitors who are listed in the Agency's register under the Commonwealth Act. That register records the names of those competitors who have refused to provide samples or who have returned positive test results.

Schedule 1 [14] is a consequential amendment.

Schedule 1 [16] provides that the Commonwealth Administrative Appeals Tribunal will have the same functions and jurisdiction under the applied provisions in relation to State competitors as it has at the Commonwealth level.

Schedule 1 [17]–[19] make a number of amendments that are consequential on the introduction of the applied provisions scheme.

Schedule 1 [20] removes from the regulation making power under the State Act the reference to the making of regulations about collecting samples from State competitors under the age of 18 years. As a result of the proposed Act, the collection of samples will be carried out under the applied provisions and not under the provisions of the State Act or the regulations under the State Act.

First print



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New South Wales

Sports Drug Testing Amendment Bill 1997

No. , 1997

A Bill for

An Act to amend the *Sports Drug Testing Act 1995* to apply as laws of New South Wales certain Commonwealth laws relating to sports drug testing; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Sports Drug Testing Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Sports Drug Testing Act 1995 No 45

The *Sports Drug Testing Act 1995* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Long title

Omit the long title. Insert instead:

An Act relating to the carrying out of sports drug testing on State competitors; and for other purposes. 5

[2] Section 3 Object

Omit the section.

[3] Section 4 Definitions

Omit the definitions of *accredited laboratory*, *applicable procedural requirements*, *negative test result*, *positive test result*, *sample* and *scheduled drug or doping method*. 10

[4] Section 4

Insert in alphabetical order:

applied provisions means the Commonwealth sports drug testing laws that apply as laws of the State because of section 11. 15

Commonwealth sports drug testing laws means:

(a) the provisions of Part 3 of the Commonwealth Act, and 20

(b) the regulations made under those provisions.

exercise a function includes perform a duty.

function includes a power, authority or duty.

[5] Section 4, definition of "State competitor"

Omit "this Act" from paragraph (d).
Insert instead "the applied provisions".

[6] Section 6 Request to provide sample

Omit "this Act" from section 6 (1).
Insert instead "the applied provisions".

5

[7] Section 6 (2)

Insert "or the applied provisions" after "this Act".

[8] Section 7 Adoption of regulations under the Commonwealth Act

Omit the section.

10

[9] Section 8

Omit the section. Insert instead:

8 Conferral of functions on Agency

In accordance with section 9A of the Commonwealth Act, the Agency has:

15

- (a) the same functions under the applied provisions as the Agency has under the Commonwealth sports drug testing laws, and
- (b) such other functions as are conferred on it by or under this Act.

20

[10] Section 9

Omit the section. Insert instead:

9 Functions

- (1) Without limiting section 8, the Agency has the following functions: 5
 - (a) to make entries relating to State competitors in the Register in accordance with the applied provisions,
 - (b) to notify persons and bodies, in accordance with this Act and the applied provisions, of such entries, 10
 - (c) to disseminate information about:
 - (i) the penalties that are likely to be imposed if State competitors record positive test results, or fail to comply with requests to provide samples for testing, under the applied provisions, and 15
 - (ii) the testing procedures, and the possibility of State competitors being requested to provide samples, under the applied provisions, 20
 - (d) to select:
 - (i) the State competitors who are to be requested to provide samples for testing under the applied provisions, and 25
 - (ii) the dates on which, and the times and places at which, they are to be requested to provide the samples,
 - (e) to collect samples from State competitors under the applied provisions, 30
 - (f) to arrange, under the applied provisions, for the testing of samples.

- (2) The Agency must not collect samples from State competitors under the applied provisions for any purpose other than to enable the testing of the samples to determine whether State competitors have been using scheduled drugs or doping methods within the meaning of the Commonwealth Act. 5
- (3) Without limiting the manner in which the Agency may exercise its functions under the applied provisions, the Agency may, in exercising those functions, prepare and maintain a list of all persons whom the Agency knows to be State competitors. 10
- (4) The Agency's functions under this Act and the applied provisions in relation to State competitors may be exercised within or outside the State.
- (5) The Agency may exercise any of its functions in co-operation with the Commonwealth, another State or a Territory or any person, body, association or organisation. 15

[11] Section 9A

Insert after section 9: 20

9A Taking samples from persons under 18

The Agency must not, under the applied provisions, collect or accept a sample from a State competitor who is under the age of 18 years unless:

- (a) a parent or guardian of the State competitor has been given written notice of the requirements of this section, and 25
- (b) the parent or guardian consents to a sample being provided.

[12] Part 3, heading

Omit the heading.

Insert instead "**Part 3 Application of Commonwealth sports drug testing laws as State laws**".

[13] Sections 11–21

5

Omit the sections. Insert instead:

11 Commonwealth sports drug testing laws to apply as laws of the State

- (1) The Commonwealth sports drug testing laws, as in force from time to time, apply as laws of the State. 10
- (2) The Commonwealth sports drug testing laws so apply:
 - (a) with such adaptations as may be necessary for the purposes of this Act, and
 - (b) as if they extended to State competitors.
- (3) This section is subject to section 12. 15

12 Future amendments to Commonwealth sports drug testing laws

- (1) An amendment to the Commonwealth sports drug testing laws made after the commencement of this section applies automatically under section 11 until such time (if any) as the regulations under this Act provide for the amendment: 20
 - (a) to apply under section 11 subject to such modifications as are prescribed by the regulations, or 25
 - (b) to be excluded from the operation of section 11.
- (2) A regulation made for the purposes of subsection (1) has effect only if it is made before the end of 6 months after the date of the Commonwealth amendment concerned.

- (3) For the purposes of this section, the date of the Commonwealth amendment is the date on which:
 - (a) the Commonwealth Act effecting the amendment receives the Royal Assent, or
 - (b) the regulation effecting the amendment is notified in the Commonwealth of Australia Gazette. 5

13 Interpretation of applied provisions

- (1) The following provisions apply to the interpretation of the applied provisions:
 - (a) section 2 of the Commonwealth Act, 10
 - (b) the *Acts Interpretation Act 1901* of the Commonwealth.
- (2) The *Interpretation Act 1987* does not apply to the applied provisions.

[14] Part 3A, heading 15

Insert “**Part 3A Additional notification provisions**” before section 22.

[15] Section 22A

Insert after section 22:

22A Requirement to notify Director-General 20

- (1) As soon as possible after entering a State competitor’s name on the Register in accordance with the applied provisions, the Agency must, if the competitor is receiving State support, give written notice of the contents of the entry to the Director-General and any agency of the State involved in providing that support. 25
- (2) The requirement under subsection (1) is in addition to the notification requirements under the applied provisions.

[16] Section 24

Omit the section. Insert instead:

**24 Conferral of functions and jurisdiction on
Commonwealth AAT**

In accordance with section 9A of the Commonwealth Act, the Administrative Appeals Tribunal, and any member or officer of that Tribunal, have: 5

(a) the same functions and jurisdiction under the applied provisions as that Tribunal, member or officer has under the Commonwealth sports drug testing laws, and 10

(b) such other functions as are necessary or convenient to be exercised in connection with those functions and jurisdiction.

[17] Section 25 Disclosure of confidential information 15

Insert “within the meaning of the Commonwealth Act” after “laboratory” in section 25 (1) (e).

[18] Section 25 (2)–(4)

Insert “or the applied provisions” after “this Act” wherever occurring. 20

[19] Section 27 Delegation by Agency

Insert “or the applied provisions” after “this Act” in section 27 (1).

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Schedule 1 Amendments

[20] Section 28 Regulations

Omit “, and in particular, for or with respect to collecting samples from State competitors under the age of 18 years”.