

Queensland



SPORTS DRUG TESTING BILL 1995

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DICTIONARY

1995

A BILL

FOR

**An Act to enable the Australian Sports Drug Agency to carry out
sports drug testing on State competitors and for related purposes**

The Parliament of Queensland enacts—

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PART 1—PRELIMINARY

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Short title

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1. This Act may be cited as the *Sports Drug Testing Act 1995*.

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Commencement

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2. This Act commences on a day to be fixed by proclamation.

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Objects of Act

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- 3.(1) The objects of this Act are—

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(a) to discourage drug use by State competitors; and

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(b) to establish a drug sampling and testing program in the State to complement the program established under the *Australian Sports Drug Agency Act 1990* (Cwlth); and

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(c) to protect the State's financial investment in sport.

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(2) The objects are to be achieved principally by conferring functions and powers on the Australian Sports Drug Agency.

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Definitions—the dictionary

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4. The dictionary in the schedule defines particular words used in this Act.¹

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¹ In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14(4).

References to request to supply a sample

5.(1) A reference in this Act to a request to supply a sample, in relation to a State competitor, is a reference to the competitor being asked to supply a sample for testing to detect whether or not the competitor has used a scheduled drug or doping method.

(2) Nothing in this Act implies that a person becomes subject to civil or criminal liability merely because the person does not comply with a request to supply a sample.

References to regulations under Commonwealth Act

6. In this Act, a reference to regulations made under the Commonwealth Act is a reference to the regulations with any changes necessary for them to apply under this Act.

PART 2—AUSTRALIAN SPORTS DRUG AGENCY**Conferral of functions and powers on agency**

7. The agency has the functions and powers given to it under this Act.

Functions of agency

8.(1) The functions of the agency are—

(a) to select—

(i) the State competitors who are to be asked to supply samples for testing; and

(ii) when and where the competitors are to be asked; and

(b) to collect samples from State competitors and arrange secure transport of the samples to, and testing of the samples by, an accredited laboratory; and

(c) under this Act, to make entries in the register and to notify entities about the entries; and

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- (d) to make known information about—
 - (i) the penalty that may be imposed if a State competitor returns a positive test result or does not comply with a request to supply a sample; and
 - (ii) testing procedures and the possibility of a State competitor being asked to supply a sample at competition, during training or at another time; and
 - (e) to perform other functions given to the agency under this Act.
- (2) Without limiting the way the agency performs its functions under subsection (1)(a), the agency may prepare and keep a list of all persons the agency knows to be State competitors.
- (3) The agency may perform its functions—
- (a) within or outside the State; and
 - (b) in cooperation with the Commonwealth, another State or any entity.
- Powers of agency**
- 9.(1) The agency has power to do all things necessary or convenient for the performance of its functions.
- (2) The agency may charge fees or impose charges that are reasonable for the expense incurred by the agency in supplying services, information or advice.
- (3) The fee or charge must not amount to a tax.
- (4) The agency may exercise its powers within or outside the State.

PART 3—SAMPLING OF STATE COMPETITORS

Agency may ask for a sample

- 10.(1) The agency may ask a State competitor to supply a sample to it.

(2) The agency must not collect a sample from a State competitor other than for the sample to be tested to detect whether or not the competitor has used a scheduled drug or doping method.

(3) A State competitor may be taken to have not complied with a request to supply a sample only if the agency asked for the sample in the way specified in the regulations made under the Commonwealth Act.

Restrictions on taking a sample from a child

11. The agency may take a sample, or accept a sample taken, from a State competitor who is a child only if—

- (a) the agency has given a parent or guardian of the competitor written notice that a sample is required; and
- (b) the parent or guardian has consented in writing to the sample being taken; and
- (c) the parent or guardian, or a person nominated by the parent or guardian for the purpose, is present when the sample is taken.

Failure to supply a sample

12.(1) If a State competitor does not comply with a request to supply a sample, the agency must give the competitor a written notice—

- (a) stating the competitor has not complied; and
- (b) inviting the competitor to show, within the submission period, a reasonable excuse for not complying; and
- (c) stating that, if the agency is satisfied the competitor did not have a reasonable excuse for not complying, the agency will—
 - (i) enter the competitor's name in the register; and
 - (ii) advise the chief executive of the department, and each sporting organisation with which the competitor is associated in his or her capacity as a competitor, or of which the competitor is a member in that capacity, of the entry.

(2) After the submission period ends, the agency must—

- (a) consider any submissions made by the competitor; and

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(b) decide whether or not the competitor had a reasonable excuse for not complying; and	1 2
(c) give written notice of its decision to the competitor.	3
(3) If the agency decides the competitor had a reasonable excuse for not complying, the notice must state that no further action will be taken about the failure to comply.	4 5 6
(4) If the agency decides the competitor did not have a reasonable excuse for not complying, the notice must include—	7 8
(a) the reasons for the agency’s decision; and	9
(b) a statement that, if the competitor is dissatisfied with the decision, the competitor may apply to the Commonwealth Administrative Appeals Tribunal for a review of the decision.	10 11 12
(5) A failure to comply with subsection (4) does not affect the validity of the decision.	13 14
(6) Application may be made to the tribunal for a review of the decision mentioned in subsection (4).	15 16
(7) In this section—	17
“submission period” means—	18
(a) 14 days after the agency gives notice to the competitor under subsection (1); or	19 20
(b) if the agency considers the competitor is likely to take part in a sporting event within the 14 days—a shorter period the agency considers appropriate.	21 22 23
Entry in register for not supplying a sample	24
13.(1) Subsection (2) applies if—	25
(a) a State competitor does not comply with a request to supply a sample; and	26 27
(b) the agency decides the competitor did not have a reasonable excuse for not complying.	28 29
(2) The agency must, as soon as practicable, enter in the register the competitor’s name and the particulars specified in the regulations made	30 31

under the Commonwealth Act, section 14.²

(3) If the Commonwealth Administrative Appeals Tribunal sets aside the agency's decision that a competitor did not have a reasonable excuse for not complying, the agency must, as soon as practicable, remove the entry about the competitor from the register.

Treatment of samples

14.(1) A sample supplied by a State competitor must be dealt with in the following way—

- (a) the sample must be taken in the way prescribed;
- (b) the container in which the sample is kept must—
 - (i) be sealed in the way prescribed; and
 - (ii) remain sealed until opened for testing the sample;
- (c) the identification and attestation, the transport and the testing of the sample must be carried out in the way prescribed;
- (d) the testing of the sample must be carried out by an accredited laboratory;
- (e) the laboratory must notify the agency of the results of the test as soon as practicable and in the prescribed way;
- (f) the agency must notify the competitor of the results of the test as soon as practicable and in the prescribed way.

(2) In this section—

“prescribed” means prescribed by the regulations made under the Commonwealth Act.

Agency to decide whether test result valid or invalid

15.(1) If a State competitor returns a positive test result, the agency must, as soon as practicable—

² Commonwealth Act, section 14 (Entry of competitor's name on Register—failure to provide a sample)

(a) give the competitor written notice of the result; and	1
(b) invite the competitor to submit, within 7 days after receiving the notice, any information or evidence the competitor might have to support a decision that the result is invalid; and	2 3 4
(c) after the end of the 7 days, decide whether the result is valid or invalid.	5 6
(2) The agency may decide the result is invalid only if, taking into account any submissions made by the competitor, the agency is satisfied—	7 8
(a) the requirements about sealing the container, mentioned in section 14, ³ have not been complied with; or	9 10
(b) the sample was not tested by an accredited laboratory; or	11
(c) the sample was tampered with by someone other than the competitor or a person chosen by the competitor to oversee any part of the collection or testing of the sample.	12 13 14
(3) The agency must give written notice of its decision to the competitor as soon as practicable after making the decision.	15 16
(4) If the agency decides the result is valid, the agency must include in the notice—	17 18
(a) the reasons for its decision; and	19
(b) a statement that, if the competitor is dissatisfied with the decision, the competitor may apply to the Commonwealth Administrative Appeals Tribunal for a review of the decision.	20 21 22
(5) A failure to comply with subsection (4) does not affect the validity of the decision.	23 24
(6) Application may be made to the tribunal for a review of the decision mentioned in subsection (4).	25 26
Entry in register for positive test result	27
16.(1) Subsection (2) applies if—	28
(a) a State competitor returns a positive test result; and	29

³ Section 14 (Treatment of samples)

(b) the agency decides the result is valid.

(2) The agency must, as soon as practicable, enter in the register the competitor's name and the particulars specified in the regulations made under the Commonwealth Act, section 16A⁴.

(3) If the Commonwealth Administrative Appeals Tribunal sets aside the agency's decision that the result is valid, the agency must, as soon as practicable, remove the entry about the competitor from the register.

Notification to State competitor

17. The agency is taken to have given notice under this Act to a State competitor if—

- (a) the notice is given to the competitor personally and the competitor acknowledges, in writing, receiving the notice; or
- (b) the notice is sent to the competitor by security post or certified mail; or
- (c) notice is given in the way prescribed in the regulations made under the Commonwealth Act; or
- (d) if the competitor cannot be given notice in a way mentioned in paragraph (a), (b) or (c)—the agency gives the notice, in a sealed envelope, to a sporting organisation of which the competitor is a member for forwarding to the competitor.

Notification of entries in, and removal of entries from, register

18.(1) As soon as practicable after entering a State competitor's name in the register, the agency must give written notice of the contents of the entry about the competitor to—

- (a) the competitor; and
- (b) each sporting organisation with which the competitor is associated in his or her capacity as a competitor, or of which the competitor is a member in that capacity; and

⁴ Commonwealth Act, section 16A (Entry of competitor's name on Register—positive test result)

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- (c) if the competitor receives State support—the chief executive of the department, and any State agency supplying the support. 1
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- (2) Subsection (3) applies if, after an entry has been made in the register under section 13(2) or 16(2)⁵— 3
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- (a) the entry is removed from the register under section 13(3) or 16(3); or 5
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- (b) an order is made under the *Administrative Appeals Tribunal Act 1975* (Cwlth) staying or otherwise affecting the operation or implementation of the agency’s decision. 7
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- (3) The agency must, as soon as practicable, give written notice of the removal or order to the entities to whom notice was given under subsection (1). 10
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- (4) Notice to an entity mentioned in subsection (1)(b) or (c)⁶ is to be in the form, and given in the way, prescribed in the regulations made under the Commonwealth Act, section 17.⁷ 13
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- Notification of negative test result** 16
- 19.** If a State competitor returns a negative test result, the agency may give notice of the result to— 17
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- (a) the competitor; or 19
- (b) each sporting organisation with which the competitor is associated in his or her capacity as a competitor, or of which the competitor is a member in that capacity; or 20
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- (c) if the competitor receives State support—the chief executive of the department, and any State agency supplying the support. 23
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⁵ Section 13 (Entry in register for not supplying a sample)
Section 16 (Entry in register for positive test result)

⁶ For the method of giving notice to a State competitor—see section 17.

⁷ Commonwealth Act, section 17 (Notification of entries on Register)

Name to be removed from register after suspension period

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20.(1) The agency must remove the name of a State competitor, and all particulars about the competitor, from the register as soon as practicable after the suspension period for the competitor ends.

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(2) In this section—

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“suspension period” for a State competitor is the longer of the following—

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(a) the period when the competitor is prevented from participating, or is ineligible to participate, in sporting events or sporting activities because the competitor’s name is entered in the register;

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(b) if the competitor was, before the suspension period began, receiving State support—the period when the competitor is disqualified from receiving, or is ineligible to receive, the support because the competitor’s name is entered in the register.

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Chief executive may ask for register details

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21.(1) The chief executive of the department may ask the agency for all or any of the following information—

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(a) whether a State competitor has returned a negative test result;

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(b) whether a State competitor’s name has been entered in the register;

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(c) if a State competitor’s name has been entered in the register—details of the entry about the competitor.

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(2) The agency must comply with a request under subsection (1).

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(3) The chief executive’s request, and the agency’s response, must be in writing.

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Sporting organisation to notify chief executive of entry in register

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22.(1) This section applies if a sporting organisation is notified by the agency that the name of a State competitor who, in his or her capacity as a competitor, is associated with, or a member of, the organisation has been entered in the register.

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(2) The organisation must give the chief executive of the department written notice of the contents of the entry about the competitor and particulars of the action taken, or intended to be taken, by the sporting organisation because of the entry.

PART 4—GENERAL

Confidential information

23.(1) This section applies to a person (the “**relevant person**”) who is or has been—

- (a) a member of the agency; or
- (b) a member of a committee of the agency; or
- (c) an employee of, or consultant to, the agency; or
- (d) a person attending a meeting of the agency or a committee of the agency; or
- (e) an employee of an accredited laboratory; or
- (f) an officer or employee of the department.

(2) This section also applies to information (the “**information**”) about a State competitor obtained by a relevant person—

- (a) in the course of performing functions or exercising powers under this Act; or
- (b) as a result of someone else performing functions or exercising powers under this Act.

(3) The relevant person must not disclose the information to anyone else unless the disclosure is necessary—

- (a) under this Act; or
- (b) for performing a function or exercising a power under this Act; or
- (c) to comply with an order of a court.

Maximum penalty—100 penalty units or 6 months imprisonment.

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(4) In this section—	1
“court” includes a tribunal, authority or person having power to require the production of documents or the answering of questions.	2 3
Agency may delegate	4
24. The agency may delegate the agency’s powers under this Act to an officer or employee of the agency.	5 6
Regulations	7
25. The Governor in Council may make regulations under this Act.	8 9

SCHEDULE	1
DICTIONARY	2
section 4	3
“accredited laboratory” has the meaning given by the Commonwealth Act. ⁸	4 5
“agency” means the Australian Sports Drug Agency established under the Commonwealth Act.	6 7
“at competition” for a State competitor, has the same meaning as the expression has under the Commonwealth Act ⁹ for a competitor.	8 9
“child” means an individual under 18 years.	10
“Commonwealth Act” means the <i>Australian Sports Drug Agency Act 1990</i> (Cwlth).	11 12
“Commonwealth Administrative Appeals Tribunal” means the tribunal established under the <i>Administrative Appeals Tribunal Act 1975</i> (Cwlth).	13 14 15
“negative test result” for a State competitor, has the same meaning as the	16

⁸ Commonwealth Act, section 2—

‘ **“accredited laboratory”** means a laboratory that is included in the list prepared and maintained by the Agency under section 66.’.

⁹ Commonwealth Act, section 2—

‘(3) For the purposes of this Act, a competitor is taken to provide a sample **at competition** if the competitor provides the sample—

(a) on a day on which the competitor is to take, or takes, part in a sporting event or sporting activity; or

(b) if the sporting event or sporting activity in which the competitor is to take part is one of a number of related events or activities (like the Olympic Games or a World Cup Series)—on any day in the period during which the events or activities take place.’.

- expression has under the Commonwealth Act¹⁰ for a competitor. 1
- “positive test result”** for a State competitor, has the same meaning as the 2
expression has under the Commonwealth Act¹¹ for a competitor. 3
- “register”** has the same meaning as **‘Register’** has under the 4
Commonwealth Act.¹² 5
- “sample”** has the meaning given by the Commonwealth Act.¹³ 6
- “scheduled drug or doping method”** means a drug, or a doping method, 7
included in the schedule maintained by the agency under the 8
Commonwealth Act, section 9(1)(a).¹⁴ 9
- “State competitor”** means a person who— 10
- (a) competes, or has been selected to compete, as a representative of 11
the State in a sporting event or series of sporting events, either as 12
an individual or as a member of a team; or 13
 - (b) is included in a group of persons from which persons are to be 14
selected to compete, as representatives of the State, in a sporting 15
event or series of sporting events, either as individuals or as 16
members of a team; or 17

¹⁰ Commonwealth Act, section 2—

‘ **“negative test result”**, in relation to a competitor, means a finding, made by an accredited laboratory by means of testing a sample provided by the competitor, that is not a positive test result.’.

¹¹ Commonwealth Act, section 2—

‘ **“positive test result”**, in relation to a competitor, means a finding, made by an accredited laboratory by means of testing a sample provided by the competitor, to the effect that—

(a) the testing reveals the presence of a drug in the sample or the use of a doping method by the competitor, being a drug, or doping method, that is included in the schedule of drugs or doping methods maintained by the Agency under paragraph 9(1)(a); and

(b) where that schedule sets out a permitted level in relation to that drug or doping method—the testing reveals that the permitted level has been exceeded.’.

¹² Commonwealth Act, section 2—

‘ **“Register”** means the Register of Notifiable Events established and maintained by the Agency under section 11.’.

¹³ Commonwealth Act, section 2—

‘ **“sample”** means any human biological fluid or tissue.’.

¹⁴ Commonwealth Act, section 9 (Functions)

- (c) competes in sporting activities or participates in training for competition in sporting activities, and is receiving State support; or 1
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 - (d) has been prevented from participating, or has become ineligible to participate, in sporting events or sporting activities because the person's name is entered in the register under this Act. 4
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- “State support”** means financial support from the State or a State agency to compete, or train for competition, in sporting activities. 7
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