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Australian Sports Drug Agency Amendment Bill 2004

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Australian Sports Drug Agency Amendment Bill 2004

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1 March 2004

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Australian Sports Drug Agency Amendment Bill 2004

Date Introduced: 19 February 2004

House: House of Representatives

Portfolio: Arts and Sport

Commencement: On Proclamation or, if this does not occur within 6 months of Royal Assent, the first day after the end of that period.

Purpose

To amend the *Australian Sports Drug Agency Act 1990* so as to enable the Australian Sports Drug Agency to comply with the provisions of the World Anti-Doping Code (the Code).

Background

The World Anti-Doping Agency and Code

The World Anti-Doping Agency (WADA) was established in November 1999, following a proposal from the World Conference on Doping in Sport (Lausanne, February 1999) which was convened by the International Olympic Committee (IOC). WADA is comprised of representatives of both the Olympic movement and governments. The major functions of WADA are as follows:

- conducting unannounced out-of-competition doping control among elite athletes
- developing the World Anti-Doping Code
- funding scientific research to develop new detection methods
- providing anti-doping education to athletes, coaches and administrators, and
- fostering the development of National Anti-Doping Organizations.

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The Chairman of the WADA Board and Executive Committee is Mr Richard Pound, a member of the IOC. The Minister for Arts and Sport, Senator Rod Kemp, is one of the eleven members of the Executive Committee.¹

The World Anti-Doping Code was developed by WADA and approved at the World Conference on Doping in Sport (Copenhagen, March 2003). The Code provides a framework for anti-doping policies, rules and regulations within sport organisations and among public authorities. It is intended that the Code will be operational prior to the commencement of the Athens Olympic Games in August 2004.²

The Australian Sports Drug Agency

The Australian Sports Drug Agency (ASDA) is a Commonwealth statutory authority within the Communications and Information Technology portfolio. It reports to the Minister for Arts and Sport. ASDA operates under the *Australian Sports Drug Agency Act 1990*, which established the Agency and provides for the drug testing schemes that it administers. ASDA's mission is to deter the use of banned doping practices in sport through education, testing, advocacy and coordination of Australia's anti-doping program. The Chairperson of ASDA is Dr Brian Sando, who is also the Chair of the Australian Olympic Committee Medical Commission and a member of the Commonwealth Games Federation Medical Commission.³

Under the Act, ASDA is required to administer drug testing schemes for sporting competitors, which includes both Australians and international competitors performing in Australia. Persons who fail to provide samples or who return positive test results are entered on a Register of Notifiable Events. The Act does not itself impose any penalties on persons who are entered on the Register: that is a matter for the relevant sporting administration body. ASDA has the power to provide to such bodies information about the events that resulted in an entry on the Register.

Government Policy

The Government's policy on drugs in sport was set out in *Tough on Drugs in Sport*, which was announced before the Sydney Olympics.⁴ Additional measures were announced in the national sports policy, *Backing Australia's Sporting Ability - A More Active Australia*, released in April 2001.⁵ This included measures for funding anti-doping research and supporting international commitments to WADA.

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Main Provisions

Item 16 of Schedule 1 inserts a new section 4A in the Australian Sports Drug Agency Act which defines ‘tampering’ with a ‘sports drug matter’. This includes altering, interfering or attempting to influence the requesting, collection, handling or testing of samples under a drug testing scheme. It also includes improperly altering or interfering with the disclosure or publication of information relating to a matter covered by a drug testing scheme.

Items 18 inserts a new paragraph 11(2)(ca) which authorises ASDA to request a competitor to keep the Agency informed of where the competitor can be found.

Item 19 inserts new paragraphs 11(2)(fa) to (fd) which have the effect of requiring ASDA to enter the name of a competitor on the Register if the competitor evades requests from the Agency or tampers with a sports drug matter.

Item 25 replaces existing subsection 11(5) to allow a drug testing scheme to make provision for matters contained in the World Anti-Doping Code or international standards in support of that Code.

Item 37 substitutes subsection 17B(2) which permits the Agency to inform sporting administration bodies if competitors:

- fail to comply with requests for samples
- return positive test results
- evade attempts by the Agency to request samples
- fail to disclose where they can be found
- avoid requests for samples by failing to disclose where they can be found, and
- tamper with a sports drug matter.

Item 39 inserts a new section 17BB which permits the Agency to publicly release information relating to entries concerning competitors on the Register.

Item 62 substitutes new section 67B which enables ASDA to inform sporting administration bodies about tampering with sports drug matters by persons who are not competitors (and who would thus not be subject to an entry on the Register).

Item 62 also inserts a new section 67BA which permits ASDA to disclose information about persons who are not competitors to sporting administration bodies, the Federal Police or the Australian Customs Service. Such information must relate, or appear to

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relate, to the use, possession, trafficking or any other complicit activity by a person with regard to a scheduled drug or doping method.

Item 69 inserts a new section 72A to ensure that the operation of the *Privacy Act 1988* is not affected by any measures in the Act.

Comment

The existing subsection 17B(2) requires an entry in the Register before the Agency can inform a sporting administration body of the identity of the competitor involved. The new subsection dispenses with this requirement, although ASDA must take reasonable steps to satisfy itself that the information will not be disclosed by the body, in a way that would be prejudicial to the competitor. While required by the World Anti-Doping Code, the new provision thus represents a substantial dilution of the protection afforded to competitors who are under suspicion, but whose status is not yet determined. Given how broadly “tampering with sports drugs matters” is defined in the Bill, there is a danger that persons could have their reputations sullied for innocent activities.

In his Second Reading Speech, the Minister noted that the Act has also been amended to ensure that the operation of the *Privacy Act 1988* is not limited. He also stated that it is intended that the privacy aspects of these amendments would be reviewed after three years of operation. Such a review would need to examine how officers of the Agency are managing to balance their responsibilities under this legislation with those of the Privacy Act. The review should also consider whether there are effective practical remedies for those whose reputations have been damaged.

Endnotes

- 1 More information on WADA can be obtained from: <http://www.wada-ama.org/en/t1.asp>
- 2 Copies of the Code can be obtained from: http://www.wada-ama.org/docs/web/standards_harmonization/code/code_v3.pdf. A list of countries and sporting organisations that have accepted the Code is at: <http://www.wada-ama.org/en/t2.asp?p=42149>
- 3 More information on ASDA can be obtained from: <http://www.asda.org.au/default.htm>
- 4 See: http://www.dcita.gov.au/tough_on_drugs/content.htm
- 5 This statement can be obtained from: http://www.dcita.gov.au/Article/0,,0_1-2_14-3_494-4_105331,00.html

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