



Australian Sports Drug Agency Act 1990

No. 18 of 1991

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Australian Sports Drug Agency Act 1990

No. 18 of 1991

An Act to establish the Australian Sports Drug Agency, and for related purposes

[Assented to 21 January 1991]

[Date of commencement 17 February 1991]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Australian Sports Drug Agency Act 1990*.

Definitions

2. (1) In this Act, unless the contrary intention appears:
“**accredited laboratory**” means a laboratory that is included in the list prepared and maintained by the Agency under section 66;
“**Agency**” means the Australian Sports Drug Agency established by section 6;
“**Australia**” includes the external Territories;

“Chairperson” means the Chairperson of the Agency;

“Chief Executive” means the Chief Executive of the Agency;

“Commission” means the Australian Sports Commission established by the *Australian Sports Commission Act 1989*;

“competitor” means a person:

- (a) who competes, or has been selected to compete, as a representative of Australia in an international sporting event, or a series of international sporting events, either as an individual or as a member of a national team; or
- (b) who competes in an international sporting event held in Australia; or
- (c) who is included in a group of persons formed for the purpose of the selection of persons to compete, as representatives of Australia, in an international sporting event or a series of international sporting events, either as individuals or as members of a national team; or
- (d) who competes in sporting activities, or participates in training for competition in sporting activities, and:
 - (i) is receiving Commonwealth support (within the meaning of section 3); or
 - (ii) is a party to an arrangement with the Commission or the Commonwealth under which the person will receive Commonwealth support (within the meaning of that section); or
- (e) whose name is entered on the Register, and who, as a direct or indirect result of having his or her name so entered, has been prevented from participating, or has become ineligible to participate, in sporting events or sporting activities;

and who:

- (f) is an Australian citizen; or
- (g) is a permanent resident; or
- (h) is present in Australia;

“Deputy Chairperson” means the Deputy Chairperson of the Agency;

“International Olympic Committee” means the organisation created by the Congress of Paris on 23 June 1894, being the organisation entrusted with the control and development of the modern Olympic Games;

“member” means a member of the Agency, and includes:

- (a) the Chairperson; and
- (b) the Deputy Chairperson; and
- (c) the Chief Executive;

of the Agency;

“operational plan” means an operational plan of the Agency developed and prepared by the Agency under section 50;

“permanent resident” means a person who has been granted, or who is included in, an entry permit under the *Migration Act 1958* that is in force, other than a temporary entry permit within the meaning of that Act;

“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 and 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;

“Register” means the Register of Defaulting Competitors established and maintained by the Agency under section 11;

“sample” means any human biological fluid or tissue;

“scheduled drug or doping method” means a drug, or a doping method, included in the schedule maintained by the Agency under paragraph 9 (1) (a);

“strategic plan” means a strategic plan of the Agency developed and prepared by the Agency under subsection 47 (1).

(2) A reference in this Act to the use of drugs includes a reference to the use of doping methods.

Persons etc. receiving Commonwealth support

3. A reference in this Act to a person or a competitor who is receiving Commonwealth support is a reference to a person who, for the purpose of participating in sporting activities, or for the purpose of training for participation in sporting activities:

- (a) receives funding from the Commission or the Commonwealth; or
- (b) uses facilities that are provided (in whole or in part) by the Commission or the Commonwealth, or that are operated or maintained (in whole or in part) with funding received from the Commission or the Commonwealth; or
- (c) is a member of, or is in any way associated with, a sporting organisation that:
 - (i) receives funding from the Commission or the Commonwealth; or
 - (ii) uses facilities that are provided (in whole or in part) by the Commission or the Commonwealth, or that are operated or maintained (in whole or in part) with funding received from the Commission or the Commonwealth.

Request to provide a sample

4. (1) A reference in this Act to a request to provide a sample, in relation to a competitor, is a reference to such a request by the Agency for the purpose of detecting whether or not the competitor has used a scheduled drug or doping method.

(2) Nothing in this Act is taken to imply that a person becomes subject to any criminal or civil liability merely because the person has failed to comply with a request to provide a sample.

Extension to external Territories

5. This Act extends to all the external Territories.

PART 2—ESTABLISHMENT, OBJECTS, FUNCTIONS AND POWERS OF THE AGENCY

Establishment

6. The Australian Sports Drug Agency is established.

Agency is body corporate etc.

7. (1) The Agency:

- (a) is a body corporate with perpetual succession; and
- (b) is to have a common seal; and
- (c) may sue and be sued in its corporate name.

(2) The common seal of the Agency is to be kept in such custody as the Agency directs, and is not to be used except as authorised by the Agency.

(3) All courts, judges and persons acting judicially must:

- (a) take judicial notice of the imprint of the common seal of the Agency appearing on a document; and
- (b) presume the imprint was duly affixed.

Objects

8. The objects of the establishment of the Agency are:

- (a) to encourage the practice of sport free from the use of drugs, in a manner consistent with the objectives of protecting:
 - (i) the health of competitors; and
 - (ii) the values of fair play and competition; and
 - (iii) the rights of those who take part in sport; and
- (b) to encourage the development of programs to educate the sporting community and the community at large about the dangers of using drugs in sport; and
- (c) to provide leadership in the development of a national strategy concerning drugs in sport; and

- (d) to encourage the establishment of a centralised drug sampling and testing program that exposes all competitors to sampling and drug testing, at short notice, at sporting events, during training and at any other time; and
- (e) to encourage State and Territory governments, and national, State and Territory sporting organisations, to adopt uniform drug sampling and testing procedures; and
- (f) to encourage the development and maintenance of drug testing laboratories accredited by the International Olympic Committee; and
- (g) to promote and encourage the adoption, at an international level, of uniform sampling and drug testing procedures, and of educational programs relating to the use of drugs in sport.

Functions

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

- (a) to maintain an up-to-date schedule of drugs and doping methods, and permitted levels (if any) in relation to each drug or method, listed by the International Olympic Committee as drugs and doping methods in respect of which competitors may be tested, and to disseminate the contents of the schedule;
- (b) to establish and maintain, in accordance with Part 3, a Register of Defaulting Competitors and, in accordance with that Part, to notify persons and bodies of entries made in the Register;
- (c) to disseminate information about:
 - (i) penalties that are likely to be imposed if competitors record positive test results or fail to comply with requests to provide samples for testing; and
 - (ii) testing procedures and the possibility of competitors being requested to provide samples at competition, during training or at any other time;
- (d) to select:
 - (i) the competitors who are to be requested to provide samples for testing; and
 - (ii) the dates on which, and the times and places at which, they are to be requested to provide the samples;
- (e) subject to subsection (2), to collect samples from competitors and to arrange for the testing of samples by accredited laboratories and the secure transport of samples to accredited laboratories;
- (f) to develop and implement educational programs to discourage the use of drugs in sport;
- (g) to encourage national, State and Territory sporting organisations, and professional sporting organisations, to implement uniform

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policies towards drug testing, and to use the services of the Agency and accredited laboratories;

- (h) to consult with and provide information to:
 - (i) government and non-government organisations in Australia that, and persons in Australia who, can assist in eliminating the use of scheduled drugs and doping methods in sport; and
 - (ii) government and non-government organisations, and other persons, overseas for the purpose of promoting the adoption of uniform international drug testing procedures;
- (j) to take steps aimed at ensuring Australia's compliance with international agreements and arrangements to which Australia is a party concerning the use of scheduled drugs and doping methods in sport;
- (k) to undertake research, and to arrange for research to be undertaken, into the use of drugs in sport and related matters;
- (m) to encourage, through the promotion of sports medicine and sports science research, the pursuit of optimal sports performance in an environment free from the use of drugs;
- (n) to establish a national information service that identifies:
 - (i) the problems associated with the misuse of drugs in sport; and
 - (ii) alternative ways of improving sports performance without the use of drugs;
- (p) to advise the Minister on matters referred to in this subsection and related matters;
- (q) such other functions as are conferred on the Agency by this Act.

(2) The Agency must not collect samples from competitors for any purpose other than enabling the testing of the samples to determine whether competitors have been using scheduled drugs or doping methods.

(3) Without limiting the manner in which the Agency may perform its functions under paragraph (1)(d), the Agency may, in the performance of those functions, prepare and maintain a list of all persons whom the Agency knows to be competitors.

(4) The Agency's functions may be performed within or outside Australia.

(5) The Agency may perform any of its functions in co-operation with a State or Territory or any person, body, association or organisation.

(6) The Agency may perform its functions to the extent only that they are not in excess of the functions that may be conferred on it by

virtue of any of the legislative powers of the Parliament, or by virtue of any functions that are conferred or expressed to be conferred on the Agency by any law of a State or Territory, and, in particular, may perform its functions:

- (a) for purposes related to money appropriated for the purposes of the Commonwealth; and
- (b) for purposes related to the granting of financial assistance to a State on such terms and conditions as the Parliament thinks fit; and
- (c) for purposes related to the executive power of the Commonwealth; and
- (d) for purposes related to the collection of statistics; and
- (e) for purposes related to external affairs; and
- (f) for purposes in relation to a Territory; and
- (g) for purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

Powers

10. (1) The Agency has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and, in particular, may:

- (a) enter into contracts; and
- (b) acquire, hold and dispose of real or personal property; and
- (c) 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; and
- (d) appoint agents and attorneys, and act as an agent for other persons; and
- (e) engage persons to perform services for the Agency; and
- (f) accept gifts, grants, bequests and devises made to the Agency (whether on trust or otherwise) and act as trustee of money or other property vested in the Agency on trust; and
- (g) develop, maintain, distribute and publish information on procedures for, and developments concerning, the collection and testing of samples; and
- (h) do anything incidental to any of its powers.

(2) The Agency may charge such fees, or impose such charges, as are reasonable in respect of the provision of services, information or advice by the Agency.

(3) The amount or rate of a fee or charge must be reasonably related to the expenses incurred or to be incurred by the Agency in relation to the provision of services, information or advice to which the fee or charge relates, and must not be such as to amount to taxation.

(4) The Agency's powers may be exercised within or outside Australia.

PART 3—REGISTER OF DEFAULTING COMPETITORS

Agency to maintain Register of Defaulting Competitors

11. The Agency is to establish and maintain a Register of Defaulting Competitors for the purpose of recording the name of each competitor who:

- (a) fails, without reasonable cause, to comply with a request by the Agency to provide a sample; or
- (b) returns a positive test result.

Failure to provide a sample

12. (1) For the purposes of this Act, a competitor is not to be taken to have failed to comply with a request to provide a sample unless the manner in which the Agency requested the competitor to provide the sample was in accordance with the regulations.

(2) The regulations are to provide for the manner in which the Agency may request competitors to provide samples.

(3) Regulations made for the purposes of subsection (2) are to provide that:

- (a) a competitor who is requested to provide a sample is entitled to have a witness of his or her choice present to oversee the process of the collection of the sample; and
- (b) the Agency is to notify a competitor who is requested to provide a sample:
 - (i) of the procedure for collecting and testing samples; and
 - (ii) of the competitor's entitlement to have a witness of his or her choice present to oversee the process of the collection of the sample; and
 - (iii) the possible consequences of a failure to comply with a request to provide a sample; and
 - (iv) the possible consequences of returning a positive test result; and
 - (v) the competitor's right to make submissions under section 13.

Notice to competitor following failure to provide a sample

13. (1) Where a competitor has failed to comply with a request to provide a sample, the Agency must:

- (a) give to the competitor a written notice stating:
 - (i) that the competitor has failed so to comply; and
 - (ii) that the competitor may, within the submission period,

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make submissions to the Agency to the effect that the competitor had reasonable cause for failing so to comply; and

(iii) the Agency's obligations under sections 14, 17 and 18; and

(b) subject to subsection (2), decide whether the competitor had reasonable cause for failing so to comply.

(2) The Agency must not:

(a) before the end of the submission period, decide that the competitor did not have reasonable cause so to comply; or

(b) make such a decision without having had due regard to any submissions made by or on behalf of the competitor during the submission period.

(3) When the Agency has decided whether the competitor had reasonable cause for failing so to comply, the Agency must, as soon as practicable, give a written notice to the competitor informing him or her of its decision.

(4) If the Agency decides that the competitor did not have reasonable cause for failing so to comply, the Agency must include in its written notice:

(a) its reasons for so deciding; and

(b) a statement to the effect that, if the competitor is dissatisfied with the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision.

(5) A failure to comply with subsection (4) does not affect the validity of the decision concerned.

(6) Application may be made to the Administrative Appeals Tribunal for a review of a decision of a kind referred to in subsection (4).

(7) For the purposes of this section, the submission period is:

(a) the period of 14 days after the Agency gives notice to the competitor under subsection (1); or

(b) if the Agency considers that the competitor is likely to participate in an international sporting event before the end of that period of 14 days—such shorter period that the Agency reasonably considers appropriate in the circumstances.

Entry of competitor's name on Register—failure to provide a sample

14. (1) If:

(a) a competitor has failed to comply with a request to provide a sample; and

(b) the Agency decides under paragraph 13(1)(b) that the

competitor did not have reasonable cause for failing to comply with the request;
the Agency must, as soon as practicable, enter on the Register the competitor's name and such particulars as are specified in the regulations.

(2) If the Administrative Appeals Tribunal sets aside a decision of the Agency under paragraph 13 (1) (b) that a competitor did not have reasonable cause for failing to comply with a request to provide a sample, the Agency must, as soon as practicable, remove from the Register the entry that relates to that failure to comply.

Return of a positive test result

15. (1) For the purposes of this Act, a competitor is not to be taken to return a positive test result in relation to a sample provided by the competitor unless:

- (a) the manner in which the Agency requested the competitor to provide the sample was in accordance with the regulations made for the purposes of section 12; and
- (b) the:
 - (i) taking; and
 - (ii) identification and attestation; and
 - (iii) transport; and
 - (iv) testing;of the sample were carried out in accordance with the regulations; and
- (c) the testing of the sample was carried out by an accredited laboratory; and
- (d) the Agency:
 - (i) was notified of the results of any tests of the sample; and
 - (ii) as soon as practicable notified the competitor of those results;in accordance with the regulations.

(2) The regulations are to provide for the procedures that are to be followed in:

- (a) taking samples from competitors; and
- (b) the identification and attestation of such samples; and
- (c) the transport of such samples to accredited laboratories; and
- (d) the testing of such samples; and
- (e) the notification of the results of such testing to the Agency; and
- (f) the notification of those results by the Agency to competitors.

(3) Regulations made for the purposes of subsection (2) are to provide that:

- (a) a competitor who has provided a sample is entitled to be

present at, or represented at, any subsequent testing of the sample (including the unsealing of the sample) if the initial testing of the sample reveals the possibility of a positive test result; and

- (b) the Agency must notify each competitor who provides a sample:
 - (i) of the competitor's entitlements to be present at, or represented by, any subsequent testing of the sample if the initial testing of the sample reveals the possibility of a positive test result; and
 - (ii) the possible consequences of the sample returning a positive test result, including the persons or bodies who would be notified if a positive test result were to be returned.

Entry of competitor's name on Register—return of a positive test result

16. (1) Subject to subsection (2), if a competitor has returned a positive test result, the Agency must, as soon as practicable after being notified, enter on the Register the competitor's name and such particulars as are specified in the regulations.

(2) The Agency must not enter a competitor's name, or any particulars relating to the competitor, on the Register unless:

- (a) the Agency has carried out such checking procedures as are required by the regulations; and
- (b) in carrying out the checking procedures, the Agency has not discovered any contravention of regulations made for the purposes of section 15.

Notification of entries on Register

17. (1) As soon as practicable after entering a competitor's name on the Register, the Agency must give written notice of the contents of the entry to:

- (a) the competitor; and
- (b) each sporting organisation;
 - (i) of which the competitor is, in his or her capacity as a competitor, a member; or
 - (ii) with which the competitor is, in that capacity, associated in any way; and
- (c) if the competitor receives Commonwealth support and the Commission is involved in providing the support—the Commission.

(2) Where the Commission is given a notice relating to the entry of a competitor's name on the Register, the Agency must include in the notice a statement naming each sporting organisation to which the Agency has given notice of the entry of the competitor's name on the Register.

(3) If, after an entry has been made on the Register in relation to a decision of the Agency under paragraph 13 (1) (b) that a competitor did not have reasonable cause for failing to comply with a request to provide a sample:

- (a) the entry is removed from the Register under subsection 14 (2); or
- (b) an order is made, or orders are made, under section 41 of the *Administrative Appeals Tribunal Act 1975* staying or otherwise affecting the operation or implementation of the decision;

the Agency must, as soon as practicable, give written notice of that fact to each person to whom, and each organisation to which, notice of the contents of the entry was given under subsection (1) of this section.

(4) The regulations are to provide for the forms of notices that the Agency gives under this section and the manner in which the notices are to be given to persons or organisations entitled under this section to be given them.

Minister may request notification

18. (1) The Minister may, in writing, request the Agency to give to the Minister a written notice stating, in respect of each competitor specified in the request, whether the competitor's name has been entered on the Register.

(2) The Minister may include in the request a further request that the Agency set out in the notice, in respect of each specified competitor whose name has been entered on the Register, the contents of the entry.

(3) The Agency must comply with any request under subsection (1) and any further request under subsection (2).

PART 4—CONSTITUTION AND MEETINGS OF THE AGENCY ETC.

Division 1—Constitution of the Agency

Constitution

19. (1) The Agency consists of:

- (a) the Chairperson; and
- (b) the Deputy Chairperson; and
- (c) the Chief Executive; and
- (d) not fewer than 1 nor more than 3 other members.

(2) The performance of the functions and the exercise of the powers of the Agency are not affected merely because of vacancies in the Agency's membership.

Appointment of members

20. (1) The members of the Agency are to be appointed by the Minister.

(2) The Minister must not appoint a person as a member unless the Minister is satisfied that the person has qualifications relevant to, or special experience or interest in, a field related to the Agency's functions.

(3) The Minister must not:

- (a) appoint a person who has attained the age of 65 years as a member; or
- (b) appoint a person as a member for a term that extends beyond the day on which the person will attain the age of 65 years.

(4) The appointment of a member is not invalid because of a defect or irregularity in connection with the member's appointment.

Division 2—Meetings of the Agency

Convening of meetings

21. (1) The Agency is to hold such meetings as are necessary for the efficient performance of its functions.

(2) The Chairperson:

- (a) may, at any time, convene a meeting of the Agency; and
- (b) must, on receipt of a written request from the Minister or from not less than 2 other members, convene a meeting of the Agency.

Presiding at meetings

22. (1) The Chairperson is to preside at all meetings at which he or she is present.

(2) Where the Chairperson is not present at a meeting, the Deputy Chairperson is to preside.

(3) Where the Chairperson and Deputy Chairperson are not present at a meeting, the members present are to elect one of their number to preside at the meeting.

Quorum

23. At a meeting, 3 members constitute a quorum.

Voting at meetings

24. At a meeting:

- (a) all questions are to be decided by a majority of votes of the members present and voting; and
- (b) the person presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Conduct of meetings

25. (1) The Agency may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

(2) Without limiting subsection (1), the Agency may permit a member to participate in a meeting by telephone, closed circuit television or any other means of communication.

(3) A member who is permitted to participate in a meeting under subsection (2) is to be regarded as being present at that meeting.

Resolutions without meetings

26. (1) Where a majority of the members (being a majority that includes the Chairperson) sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is to be taken to have been passed at a duly constituted meeting of the Agency held on the day the document was signed, or, if the members sign the document on different days, on the last of those days.

(2) For the purposes of subsection (1), 2 or more separate documents containing statements in identical terms each of which is signed by one or more members are together to be taken to constitute one document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents.

(3) A member must not sign a document containing a statement in favour of a resolution if the resolution is in respect of a matter in which the member would, for the purposes of section 28, be taken to have an interest.

Records relating to meetings

27. The Agency is to keep minutes of its meetings and records of resolutions taken to have been passed in accordance with section 26.

Disclosure of interests

28. (1) A member who has an interest in a matter being considered, or about to be considered, by the Agency must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Agency.

(2) The disclosure is to be recorded in the minutes of the meeting and, unless the Minister or the Agency otherwise determines, the member must not:

- (a) be present during any deliberation of the Agency in relation to the matter; or
- (b) take part in any decision of the Agency in relation to the matter.

(3) For the purposes of the making of a determination by the Agency under subsection (2) in relation to a member who has made a

disclosure under subsection (1), a member who has an interest in the matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Agency for the purposes of making the determination; or
 - (b) take part in the making by the Agency of the determination.
- (4) For the purposes of this section, a member is to be taken to have an interest in a matter if:
- (a) the member has a direct or indirect pecuniary interest in the matter; or
 - (b) the matter concerns a particular sport and the member participates in, or is involved in any way in the administration of, that sport; or
 - (c) the matter concerns a particular sporting organisation and the member is a member of, or is involved in any way in the administration of, that organisation; or
 - (d) the matter concerns a particular sporting event or sporting venue and the member is involved in any way in the administration of that event or venue; or
 - (e) the matter concerns a particular competitor and the member is related to, or has some involvement in the affairs of, that competitor.

Persons may be invited to attend meeting

29. The Agency may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

Division 3—Provisions relating to members

Terms of office

30. (1) The Chairperson and the Deputy Chairperson:

- (a) are to be appointed on a part-time basis; and
- (b) hold office for such periods (not exceeding 5 years) as are specified in their instruments of appointment, but are eligible for re-appointment.

(2) The Chief Executive:

- (a) is to be appointed on a full-time basis; and
- (b) holds office for such period (not exceeding 5 years) as is specified in the instrument of appointment, but is eligible for re-appointment.

(3) A member referred to in paragraph 19 (1) (d):

- (a) is to be appointed on a part-time basis; and
- (b) holds office for such period (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible for re-appointment.

Terms and conditions of appointment not provided for by Act

31. A member holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

Remuneration and allowances

32. (1) The Chairperson, the Deputy Chairperson, the Chief Executive and the other members are to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, are to be paid such remuneration as is prescribed.

(2) A member is to be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Leave of absence

33. (1) The Minister may grant leave of absence to the Chairperson on such terms and conditions as to remuneration or otherwise as the Minister considers appropriate.

(2) The Chairperson may grant leave of absence to another member on such terms and conditions as to remuneration or otherwise as the Chairperson considers appropriate.

(3) The Chairperson must notify the Minister if the Chairperson grants to the Chief Executive leave of absence for a continuous period of more than 4 weeks.

Resignation

34. A member may resign by writing signed by the member and delivered to the Minister.

Outside employment

35. (1) The Chief Executive must not, except with the Minister's approval, engage in paid employment outside the duties of the Chief Executive's office.

(2) A member (other than the Chief Executive) must not engage in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's functions.

Termination of appointment

36. (1) The Minister may terminate a member's appointment for misbehaviour or physical or mental incapacity.

(2) The Minister may terminate a member's appointment if the member:

- (a) fails, without reasonable excuse, to comply with an obligation imposed by subsection 26 (3) or section 28; or
- (b) commits an offence against section 67; or
- (c) is absent, except on leave of absence granted under section 33, from 3 consecutive meetings of the Agency; or
- (d) being the Chief Executive, engages, without the Minister's approval, in any paid employment outside the duties of the Chief Executive's office; or
- (e) being a member other than the Chief Executive, engages in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's functions.

Acting appointments

37. (1) The Minister may appoint the Deputy Chairperson, or a member (other than the Chief Executive) to act as Chairperson:

- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

(2) The Minister may appoint a member (other than the Chief Executive) to act as Deputy Chairperson:

- (a) during a vacancy in the office of Deputy Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from Australia or is, for any reason (including the reason that the Deputy Chairperson is acting as the Chairperson), unable to perform the duties of the office.

(3) The Minister may appoint a person, whether or not the person is a member, to act as the Chief Executive:

- (a) during a vacancy in the office of the Chief Executive, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chief Executive is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

(4) The Minister may appoint a person to act as a member (other than the Chairperson, Deputy Chairperson or Chief Executive):

- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the member is absent from duty or from Australia or is, for any reason

(including the reason that the member is acting as the Chairperson, Deputy Chairperson or Chief Executive), unable to perform the duties of the office.

(5) A person appointed to act during a vacancy under paragraph (1) (a), (2) (a), (3) (a) or (4) (a) must not continue so to act for more than 12 months.

(6) In its application in relation to a person appointed to act under this section, section 33A of the *Acts Interpretation Act 1901* is modified by inserting at the end of subparagraph (b) (i) “, being terms and conditions that are, as far as practicable, equivalent to the terms and conditions that are applicable to that particular office”.

(7) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Division 4—Committees of the Agency

Establishment of committees

38. The Agency may establish committees to assist it in the performance of its functions and the exercise of its powers.

Constitution of committees

39. (1) A committee is to be constituted wholly by members of the Agency or partly by members of the Agency and partly by other persons.

(2) In all cases, the Chairperson of the committee must be a member of the Agency.

Reimbursement of expenses

40. Where:

- (a) a member of a committee who is not a member or an employee of the Agency has incurred reasonable expenses in performing his or her duties as a member of the committee; and
- (b) the Chairperson of the committee has approved the reimbursement of such expenses;

the Agency must reimburse such expenses.

Quorum

41. The number of members of a committee required to constitute a quorum at a meeting of the committee is:

- (a) if the number of committee members is an odd number—the

number of committee members that constitute a majority of the committee's membership; or

- (b) if the number of committee members is an even number—the number of committee members equal to one more than half the committee's membership.

Voting at meetings

42. At a meeting of a committee:

- (a) all questions are to be decided by a majority of votes of the members of the committee present and voting; and
- (b) the person presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Persons may be invited to attend meeting

43. A committee may invite a person to attend a meeting of the committee for the purpose of advising or informing it of any matter.

Report to the Agency

44. The Chairperson of a committee must report to the Agency, at meetings of the Agency, on the committee's activities carried on since the last time (if any) a report was given, concerning those activities, at a meeting of the Agency.

Minutes

45. A committee is to keep minutes of its meetings.

Applied provisions

46. Section 28 applies to a member of a committee as if references in that section:

- (a) to a member were references to the member of the committee; and
- (b) to a meeting were references to a meeting of the committee; and
- (c) to the Agency were references to the committee; and
- (d) to the Minister were references to the Agency.

PART 5—STRATEGIC PLANS AND ANNUAL OPERATIONAL PLANS

Division 1—Strategic plans

Strategic plans

47. (1) The Agency must develop, and prepare in writing, for each successive period referred to in subsections (2) and (3), a strategic plan setting out:

- (a) the Agency's broad objectives in performing its functions during the period; and
- (b) the manner in which it proposes to perform its functions during that period.

(2) The first strategic plan is to be expressed to relate to a period of 3 years commencing on a day occurring within 12 months after the commencement of this Act.

(3) Each subsequent strategic plan is to be expressed to relate to the period of 3 years commencing at the end of the period to which the immediately preceding strategic plan relates.

(4) Each strategic plan must be laid before each House of the Parliament within 15 sitting days of that House after approval by the Minister of the plan.

Approval and commencement of strategic plans

48. (1) A strategic plan must be submitted to the Minister for approval not less than 3 months, or such shorter period as the Minister, in special circumstances, allows, before the day of commencement of the period to which the strategic plan relates.

(2) A strategic plan does not come into operation until:

- (a) the day on which it is approved by the Minister; or
- (b) the day of commencement of the period to which it relates;

whichever is the later.

Variation of strategic plans

49. (1) The Agency must, from time to time, during the period in respect of which a strategic plan is in force, consider whether a variation of the plan is necessary.

(2) Where the Agency considers that a variation of the strategic plan is necessary, the Agency may, with the approval of the Minister, vary the plan.

(3) Where a variation of the strategic plan is approved by the Minister the plan as so varied continues in force on and after the day on which the variation is so approved as if the plan had originally been approved by the Minister as so varied.

Division 2—Annual operational plans

Annual operational plans

50. (1) The Agency must develop, and prepare in writing, in respect of each financial year ending after the commencement of this Act, an operational plan, setting out particulars of:

- (a) the programs the Agency proposes to carry out; and

- (b) the resources the Agency proposes to allocate to each such program; and
 - (c) the mechanisms by which the Agency's performance in carrying out these programs is to be regularly monitored and evaluated;
- during that year in giving effect to the strategic plan that relates, or the intended strategic plan that will relate, to a period that includes that year or a part of that year.

(2) Each operational plan must be laid before each House of the Parliament within 15 sitting days of that House after approval by the Minister of that plan.

Revision of annual operational plans

51. (1) If the Minister is of the opinion that an operational plan in relation to a financial year is inconsistent with the strategic plan relating to the period that includes that year or a part of that year, the Minister may, in writing, request the Agency to revise the operational plan.

(2) The Agency may, at any time, revise an operational plan, and must revise the plan if the Minister requests it under subsection (1) to do so and gives written reasons for the request.

Approval and commencement of annual operational plans

52. (1) An operational plan, or a revision of an operational plan:

- (a) must be submitted to the Minister as soon as practicable; and
- (b) comes into force when it is approved, in writing, by the Minister.

(2) The Minister must approve an operational plan, or a revision of an operational plan, unless the Minister is of the opinion that the plan, or the plan as proposed to be revised (as the case may be), is inconsistent with the strategic plan.

Division 3—Compliance with plans

Compliance with plans

53. To the extent that it is practicable to do so and subject to this Act, the Agency must perform its functions and exercise its powers in a manner that is consistent with, and is designed to give effect to, any strategic plan and any operational plan that are in force.

Reporting requirements

54. The Agency must, in each annual report, include particulars of the extent to which:

- (a) the Agency has complied with any strategic plan, and the operational plan, in force during the financial year to which the report relates; and
- (b) its operations during the financial year to which the report relates have:

- (i) achieved its objectives as stated in any relevant strategic plan; and
- (ii) implemented the operational plan in force during that financial year.

PART 6—CHIEF EXECUTIVE, STAFF AND CONSULTANTS

Duties of the Chief Executive

55. (1) The Chief Executive is to manage the affairs of the Agency subject to the directions of, and in accordance with policies determined by, the Agency.

(2) All acts and things done in the name of, or on behalf of, the Agency by the Chief Executive, for the purposes of this Act, are to be taken to have been done by the Agency.

Employees

56. (1) The Chief Executive may, on behalf of the Agency, employ such persons as the Agency considers necessary for the performance of its functions and the exercise of its powers.

(2) An employee is to be employed on such terms and conditions as are determined by the Agency, being terms and conditions that are, as far as practicable, equivalent to terms and conditions that are applicable to similar employment in the Australian Public Service.

(3) The Chief Executive may arrange with the Secretary of any Department of the Australian Public Service, or with a body established by an Act, for the services of officers or employees of that Department or of that body to be made available to the Agency.

Consultants

57. (1) The Agency may engage persons having suitable qualifications and experience as consultants to the Agency.

(2) The terms and conditions of engagement are to be determined by the Agency.

PART 7—FINANCE

Appropriation of money

58. (1) There is payable to the Agency such money as is appropriated by the Parliament for the purposes of the Agency.

(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, money referred to in subsection (1) is to be paid to the Agency.

Estimates

59. (1) The Agency must prepare estimates, in such form as the Minister directs, of the receipts and expenditure of the Agency for each financial year and, if the Minister so directs, for any other period specified by the Minister.

(2) The Agency must submit estimates so prepared to the Minister not later than such date as the Minister directs.

(3) Estimates so prepared are not to include estimates of receipts by the Agency of money to be held on trust or of expenditure by the Agency of money held on trust.

(4) The Agency's money, other than money held on trust, must not be spent otherwise than in accordance with estimates of expenditure approved by the Minister.

Application of money

60. The Agency's money is to be applied only:

- (a)** in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Agency in the performance of its functions and the exercise of its powers; and
- (b)** in payment of remuneration and allowances payable under this Act.

Borrowing from the Commonwealth

61. (1) The Minister for Finance may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the Agency at such rates of interest and on such other terms and conditions as that Minister determines.

(2) The Agency must not borrow money except in accordance with subsection (1).

(3) The Agency may give security over the whole or part of its assets for the repayment of amounts borrowed under subsection (1) and the payment of interest on amounts so borrowed.

Contracts

62. (1) The Agency must not, except with the Minister's written approval:

- (a)** enter into a contract involving the payment or receipt by the Agency of an amount exceeding \$100,000; or
- (b)** enter into a lease of land for a period of 10 years or more.

(2) Paragraph (1) (a) does not apply to the investment of money by the Agency in accordance with subsection 64 (1).

Application of Division 3 of Part XI of Audit Act

63. (1) It is hereby declared that the Agency is a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies.

(2) The Agency must, in each report prepared under section 63M of the *Audit Act 1901* (as that section applies by virtue of subsection (1) of this section):

- (a) include the particulars (if any) that the Agency is required to include under regulations made for the purposes of subsection (3) of this section; and
- (b) include the list of accredited laboratories maintained under subsection 66 (1); and
- (c) include particulars of each direction given to the Agency by the Minister under subsection 68 (1) that is applicable in relation to the financial year to which the report relates; and
- (d) include the particulars that the Agency is required to include under section 54; and
- (e) include particulars of:
 - (i) significant capital works programs (if any) undertaken by the Agency during the financial year to which the report relates; and
 - (ii) significant acquisitions and dispositions of real property by the Agency during the financial year; and
 - (iii) variations to the strategic plan and to the operational plan agreed to by the Minister during that financial year.

(3) The regulations may provide for further particulars to be included in each such report prepared by the Agency, being particulars relating to one or more of the following:

- (a) the provision of samples by competitors;
- (b) the testing of samples so provided;
- (c) the extent of the participation by sporting organisations in testing programs operated or supported by the Agency.

Investment of money

64. (1) The money of the Agency not immediately required for the purposes of the Agency must be invested:

- (a) on deposit with an approved bank; or
- (b) in Commonwealth securities; or
- (c) in any other manner approved by the Treasurer.

(2) In subsection (1):

“approved bank” means:

- (a) a bank as defined in subsection 5 (1) of the *Banking Act 1959*;
or
- (b) another bank approved by the Treasurer, or by a person

authorised by the Treasurer to give approvals under section 63E of the *Audit Act 1901*.

Trust money

65. (1) The Agency must ensure that any money received or held by the Agency on trust is paid into an account, or more than one account, opened and maintained under section 63J of the *Audit Act 1901* (as that section applies by virtue of section 63 of this Act) that does not contain any money of the Agency not held on trust.

(2) Notwithstanding sections 59, 60, 63 and 64:

(a) money or other property held by the Agency on trust is to be applied or dealt with only in accordance with the powers and duties of the Agency as trustee; and

(b) money held by the Agency on trust may be invested:

(i) in any manner in which the Agency is authorised to invest that money by the terms of the trust; or

(ii) in any manner in which trust money may, for the time being, be invested under law;

but not otherwise.

(3) Section 63K of the *Audit Act 1901* (as that section applies by virtue of section 63 of this Act) has effect as if:

(a) the reference in that section to transactions and affairs included a reference to transactions and affairs relating to money or property received or held by the Agency on trust; and

(b) the reference in that section to moneys or to assets included a reference to money, or assets, as the case may be, received or held by the Agency on trust.

(4) Section 63L of the *Audit Act 1901* (as that section applies by virtue of section 63 of this Act) has effect as if:

(a) the reference in subsection 63L(1) to financial transactions included a reference to transactions relating to money received or held by the Agency on trust; and

(b) the reference in subsection 63L(4) to moneys or to assets included a reference to money, or assets, as the case may be, received or held by the Agency on trust.

PART 8—MISCELLANEOUS

Accredited laboratories

66. (1) The Agency is to prepare and maintain a list of the laboratories that the International Olympic Committee recognises as accredited laboratories for the purpose of testing for the use of drugs in sport.

(2) The laboratories may be situated either within or outside Australia.

Disclosure of confidential information

67. (1) This section applies to a 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) a member of the Commission; or
- (f) a member of a committee of the Commission; or
- (g) an employee of, or consultant to, the Commission; or
- (h) a person attending a meeting of the Commission or a committee of the Commission; or
- (j) an employee of an accredited laboratory.

(2) This section applies to information if the information concerns a person and is obtained by a person to whom this section applies:

- (a) in the course of that person performing functions or duties or exercising powers under this Act; or
- (b) as a result of another person performing functions or duties or exercising powers under this Act.

(3) A person to whom this section applies must not disclose or communicate (whether directly or indirectly) to any person any information to which this section applies unless the information is disclosed or communicated:

- (a) for the purposes of this Act; or
- (b) for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act; or
- (c) where the person is a person of a kind referred to in paragraph (1) (e), (f), (g) or (h)—for the purposes:
 - (i) of the *Australian Sports Commission Act 1989*; or
 - (ii) of, or in connection with, the performance of a function or duty or the exercise of a power under that Act.

Penalty: Imprisonment for 2 years.

(4) A person to whom this section applies must not be required:

- (a) to produce in a court any document containing information to which this section applies; or
- (b) to divulge or communicate to any court any information to which this section applies;

except where it is necessary to do so for the purposes of carrying into effect the provisions of this Act.

(5) In this section:

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to.

Minister may give directions

68. (1) The Minister may give to the Agency written directions as to the performance of its functions and the exercise of its powers.

(2) The Minister must, before giving a direction:

(a) inform the Agency, in writing, that the Minister is considering giving the direction; and

(b) give the Chairperson a reasonable opportunity to discuss the proposed direction with the Minister.

(3) The Agency must comply with the directions.

(4) The Minister must cause a copy of each direction given under subsection (1):

(a) to be published in the *Gazette* as soon as practicable after giving the direction; and

(b) to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.

Reports to Minister

69. The Agency must:

(a) from time to time inform the Minister concerning the general conduct of its activities; and

(b) furnish to the Minister such information in relation to its activities as the Minister from time to time requires.

Delegation by the Agency

70. (1) The Agency may, by resolution, delegate to:

(a) the Chairperson; or

(b) the Chief Executive;

all or any of the Agency’s powers under this Act, other than the Agency’s powers under sections 38, 47, 49, 50 and 51 and subsection 55 (1).

(2) The delegate is, in the exercise of a power so delegated, subject to any directions given by the Agency.

Delegation by the Chief Executive

71. (1) The Chief Executive may, by instrument in writing, delegate to an employee of the Agency all or any of the Chief Executive’s powers under this Act.

(2) The Chief Executive must not delegate powers under subsection (1) to an employee of the Agency unless the Agency has, by resolution,

determined that it is desirable, for the efficient running of the Agency, that powers of the Chief Executive be delegated under this section to the person holding the office or position in the Agency that the employee holds.

(3) The delegate is, in the exercise of a power so delegated, subject to any directions given by the Chief Executive.

Protection from civil actions

72. A member or an employee of the Agency is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in the performance or purported performance of any function, or in the exercise or purported exercise of any power, of the Agency.

Regulations

73. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 15 November 1990
Senate on 6 December 1990]*