

SPORTS DRUG TESTING BILL 2003

EXPLANATORY NOTES

Short Title of the Bill

The short title of the Bill is the Sports Drug Testing Bill 2003.

Objective of the Bill

The policy objective of the Sports Drug Testing Bill 2003 (the Bill) is to provide a legislative framework for the conduct of testing of State level athletes for the use of drugs or doping methods.

By discouraging Queensland athletes from using drugs or doping methods, the Bill aims to:

- protect the health and well being of Queensland athletes;
- protect Queensland's outstanding sporting reputation;
- protect the Queensland Government's financial investment in sport; and
- recognise community expectations that athletes representing Queensland or receiving Government support are obliged to compete fairly without the use of drugs and doping methods.

Policy rationale

The Australian Sports Drug Agency (ASDA) was established in 1990 by the Commonwealth Government under the *Australian Sports Drug Agency Act 1990* (the Commonwealth Act) to, amongst other functions, conduct testing of National level athletes for the use of scheduled drugs or doping methods and to provide education on matters relating to the safety of participants in sporting events and the use of drugs and doping methods in sport.

In 1999, the Queensland Government Drug Testing Program was initiated in conjunction with ASDA to enable State level athletes to be tested by ASDA until State legislation could be enacted. As a result of this

policy initiative, Queensland conducts more testing than any other State or Territory. ASDA has conducted approximately 335 tests in approximately 21 sports under the Queensland Government Drug Testing Program since its commencement in 1999.

Participation by individual sports in the Queensland Government Drug Testing Program is voluntary. The Bill gives ASDA a legally enforceable right to test State level or Government funded Queensland athletes in any sport, not just those voluntarily participating in the Queensland Government Drug Testing Program.

How objectives are achieved

The objectives of the Bill are achieved by conferring powers on ASDA to test Queensland athletes in accordance with the procedures prescribed in the Commonwealth Act.

For the purposes of the Bill, a Queensland athlete (State competitor) will include a person who:

- competes or has been selected to compete as a State representative in an open aged sporting competition;
- is included in a group of persons from which they may be selected to compete as a representative of the State in an open aged sporting competition;
- competes or participates in training for competition in an open aged sporting competition and is receiving State Government support; or
- has been prevented from participating, or has become ineligible to participate, in open aged sporting competitions because they have been entered on the Register of Notifiable Events by ASDA under the Commonwealth Act as a result of the powers conferred on ASDA by the Bill.

Alternative method of achieving the policy objectives

The alternative option is to continue sports drug testing under the Queensland Government Drug Testing Program, without introducing legislation. Unlike under the Bill, the Queensland Government Drug Testing Program does not give ASDA a legally enforceable right to test State athletes. All other mainland Australian States and the Australian Capital Territory have introduced similar sports drug testing legislation.

Conferral of powers on ASDA, over other drug testing bodies, has been identified as the most appropriate method of achieving the objectives of the Bill for the following reasons:

- conferral of powers on ASDA enables a coordinated National approach to deterring the use of drugs and doping methods in sport;
- all mainland States and the Australian Capital territory have introduced drug testing legislation conferring powers on ASDA to test their State level athletes;
- as well as conducting testing, ASDA delivers education, which is the keystone of the deterrence strategy employed at both National and State levels;
- the Commonwealth Act has well established procedures to ensure the safety and security of samples, so whilst other agencies, such as hospitals or workplaces may have the capacity to carry out testing, no other agency has the capacity to deliver the chain of custody provided by ASDA; and
- testing by ASDA is administratively simpler to implement, given it has tested Queensland athletes under the voluntary program since 1999.

The Bill ensures a comprehensive approach across the State to testing for the use of drugs and doping methods in sport, which is in accordance with the National approach.

Estimated cost for Government implementation

The financial implications for both sport and the Government are limited. Through the agreement between the Minister and ASDA required under the Bill, the Queensland Government will have the power to negotiate the number of tests to be conducted each year.

Whilst the Bill would require all State sporting organisations to address the need for testing, ASDA will target their testing to athletes in those sports, which are considered to be most susceptible to using drugs or doping methods. ASDA estimates that, in practice, a similar number of tests will be conducted under the legislation as are conducted under the Queensland Government Drug Testing Program. ASDA advise that by targeting high risk sports, the estimated level of testing, together with a comprehensive education campaign will be an effective measure in the deterrence of the use of drugs and doping methods in sport.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with regard to fundamental legislative principles as defined in s. 4 of the *Legislative Standards Act 1992*, although by its very nature, mandatory testing infringes individual rights and liberties. It is argued that the infringement of individuals' rights is outweighed by the public interest in protecting athlete health and Queensland's good sporting reputation. It is Nationally and Internationally accepted by athletes competing at elite levels of sport that they may be subject to testing.

The Bill reinforces the ethos of fair play in sport and aims to minimise the unfair advantage that some athletes seek to gain through the use of drugs or doping methods. The Bill ensures that Queensland athletes are treated the same as athletes in other Australian jurisdictions that have introduced drug testing legislation.

The Commonwealth Act includes a number of provisions to protect the rights of athletes and the confidentiality of information obtained about those athletes by ASDA in the performance of its functions. The State Act ensures that these provisions apply equally to State competitors. For example, under the Commonwealth Act:

- ASDA is the only agency authorised to request samples from competitors;
- ASDA is required to discharge its functions in a secure and confidential manner using only accredited laboratories;
- ASDA can only disclose information relating to a competitor to authorised sporting organisations and relevant Government agencies;
- ASDA may only conduct testing for the purpose of ascertaining whether a competitor has used a scheduled drug or doping method; and
- athletes who test positive to recreational or other drugs are not reported to police authorities by ASDA.

As under the Commonwealth Act, State competitors aggrieved by a decision of ASDA may appeal the decision to the Commonwealth Administrative Appeals Tribunal and ultimately the Federal Court.

The Commonwealth Act also provides adequate protection against self-incrimination. A positive test or failure to supply a sample does not imply any civil or criminal liability on a competitor, and opportunities to show reasonable cause for such a result are provided by the Commonwealth Act. ASDA does not undertake a law enforcement role.

ASDA does not have any responsibility for disciplining athletes who have tested positive. Discipline remains a matter for the relevant State sporting organisations, their National sporting organisation or if relevant, the International Sporting Federation responsible for the sport. Accordingly, it will be important for a State sporting organisation's Anti-doping Policy to be consistent with their National sporting organisation or the model Anti-doping Policy developed by the Australian Sports Commission.

The Bill balances the need to protect the rights of minors with the need to deter the use of drugs and doping methods by our young State athletes. The Bill provides that ASDA may not request a sample from a minor without consent of a parent or guardian. This consent may either be obtained by ASDA in relation to a particular request for a sample or more generally, for example, through registration with a State sporting organisation or registration for a State competition.

Further, the Bill only applies to athletes competing in open aged competition. Accordingly, testing would not extend to age level competition or school events.

The Bill may be seen as undermining the institution of Parliament by adopting drug testing schemes established under Commonwealth Act. If the Commonwealth were to vary the drug testing schemes, the amended schemes would apply to testing of State athletes without the Queensland Parliament having the opportunity to consider the changes. It is appropriate that the Bill enable ASDA to continue drug testing of State athletes in accordance with the established Commonwealth procedures to maintain consistency with the National approach to sports drug testing and the deterrence of the use of drugs and doping methods in sport.

Consultation

All Queensland Government Departments have been consulted on the Bill. The Bill was also released for public consultation in November 2002, at which time, a consultation draft of the Bill, together with a discussion paper and draft Explanatory Notes was placed on the Sport and Recreation Queensland and the Office of Youth Affairs' *Generate* websites. The following organisations were also specifically consulted on the Bill:

- Queensland Academy of Sport;
- Queensland State sporting organisations;
- Sports Federation of Queensland;

- Sports Medicine Australia;
- Australian Sports Drug Agency;
- Australian Sports Commission;
- Queensland Outdoor Recreation Federation;
- Fitness Queensland;
- Australian Commonwealth Games Association;
- Deaf Sports and Recreation Queensland;
- Australian Paralympic Federation Queensland;
- Queensland Olympic Council;
- Australian Olympic Council;
- Queensland Recreation and Sport Association for People with an Intellectual Disability;
- Recreation Training Queensland; and
- Sporting Wheelies and Disabled Sport and Recreation Association Queensland.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 provides that the short title of the Act is the *Sports Drug Testing Act 2003*.

Clause 2 provides that the Act commences on a day fixed by proclamation.

Clause 3 outlines the objectives of the Act. *Clause 3(1)* provides that the objectives of the Act are to:

- (i) protect the health of State competitors by discouraging the use of drugs or doping methods;
- (ii) protect Queensland's sporting reputation;

- (iii) protect the Queensland Government's financial investment in sport; and
- (iv) recognise community expectations that athletes representing Queensland or receiving State support compete without the use of drugs or doping methods.

Clause 3(2) provides that the objects of the Act are mainly achieved by conferring powers and functions on ASDA to carry out testing on State competitors for the presence of scheduled drugs or doping methods.

The dictionary in the schedule to the Bill clarifies that "Commonwealth Act" means the *Australian Sports Drug Agency Act 1990* (Cwlth).

The dictionary in the schedule to the Bill clarifies that "ASDA" means the Australian Sports Drug Agency established under section 6 of the Commonwealth Act.

"State competitor" is defined in the dictionary in the schedule to the Bill to mean a person who:

- (i) competes, or has been selected to compete, as a representative of the State in an open age sporting competition; or
- (ii) is included in a group of persons from which persons are to be selected to compete, as representatives of the State, in an open age sporting competition; or
- (iii) competes in an open age sporting competition or participates in training for competition in an open age sporting competition, and is receiving State support; or
- (iv) has been prevented from participating, or has become ineligible to participate, in open age sporting competitions as a representative of the State because the person's name is entered in the register.

"Open age sporting competition" is defined in the dictionary in the schedule to the Bill to mean a competition that is open to a person of any age who is competing at the top level for a sport, or to a person up to a stated age, that is over the age of 18, who is competing at the top level for a sport. An example of the latter category is an 'under 23' cycling competition.

"Compete" is defined in the dictionary in the schedule to the Bill to mean compete as an individual or as a member of a team.

"State support" is defined in the dictionary in the schedule to mean support from the State or the agency responsible for the administration of

sport in the State to take part in, or train for taking part in, sporting activities.

The term “support” has the same meaning as given to it under sections 2 and 3 of the Commonwealth Act. Under the Bill, a person is receiving State support if they:

- (i) receive, or are a member of, or associated with a sporting organisation that receives, funding from the State; or
- (ii) use, or are a member of, or associated with a sporting organisation that uses, facilities that are provided (in whole or in part) by State, or that are operated or maintained (in whole or in part) with funding received from the State.

PART 2—INTERPRETATION

Clause 4 provides that the dictionary of terms relevant to the Bill is in the schedule to the Bill.

Clause 5 provides that any term used in the Bill that is also used in the Commonwealth Act has the same meaning that the term has in the Commonwealth Act. For instance, any reference to the “register” in the Bill is a reference to the Register of Notifiable Events, established under the Commonwealth Act.

Clause 6 varies the meanings of a number of terms used in the Commonwealth Act to make them relevant in the context of the functions and powers conferred on ASDA by this Bill in relation to State competitors. Clause 6 provides that for the purpose of the Bill, the Commonwealth Act is to be read as if:

- (i) a reference to a competitor were a reference to a State competitor;
- (ii) a reference to an international sporting competition were a reference to a national sporting competition;
- (iii) a reference to a relevant sporting organisation or relevant national sporting organisation includes a reference to a State sporting organisation;

- (iv) a reference to representing Australia were a reference to representing the State;
- (v) a reference to a national team were a reference to a State team;
- (vi) a reference to something occurring within or outside Australia were a reference to its occurring within or outside the State;
- (vii) a reference to a sporting administration body includes a reference to:
 - (a) a State sporting organisation;
 - (b) the agency responsible for the administration of sport in the State; and
- (viii) any other changes necessary for the operation of this Act were made.

PART 3—FUNCTIONS AND POWERS

Clause 7 confers functions on ASDA. *Clause 7(1)* provides that ASDA has the same functions in relation to a State competitor as it has in relation to a Commonwealth competitor under the Commonwealth Act.

“Commonwealth competitor” is defined in the dictionary in the schedule to the Bill to mean a competitor under the Commonwealth Act. Section 2A of the Commonwealth Act defines competitor for the purpose of that Act.

Sections 9 of the Commonwealth Act prescribes ASDA’s functions in relation to competitors. ASDA’s primary function is the conduct of drug testing of competitors in accordance with drug testing schemes established under the Commonwealth Act. Section 11 of the Commonwealth Act prescribes the matters that may be included in a drug testing scheme.

ASDA’s functions in relation to State competitors, under the Commonwealth drug testing schemes, include:

- (i) requesting the provision of a sample for testing for the purpose of detecting whether the State competitor has used a scheduled drug or doping method;
- (ii) collecting a sample and arranging for the secure delivery of the sample to, and testing of the sample by, an accredited laboratory;

- (iii) recording the name of and other specific information about a State competitor on the Register of Notifiable Events (the register) if:
 - (a) the competitor fails, without reasonable cause, to comply with a request to provide a sample; or
 - (b) the competitor returns a positive test result in relation to the sample taken; and
- (iv) giving written notification to the State competitor, the State competitor's National and State Sporting Organisation and the relevant government agency of entries made in the register in relation to that State competitor.

Clause 7(2) provides that, for State competitors, ASDA also has the function to make known information about the use of drugs or doping methods in sport, including:

- (i) testing procedures and the possibility of a State competitor being requested to provide a sample at competition, during training or other times; and
- (ii) the consequences that follow if a State competitor records a positive test result or fails to comply with a request to provide a sample.

Clause 7(3) clarifies that ASDA may exercise its functions within or outside Queensland.

Clause 8 confers powers on ASDA to carry out its functions under the Bill. Clause 8(1) provides that, in relation to a State competitor, ASDA has the powers to do all things necessary or convenient for the performance of its functions.

Clause 8(2) provides that ASDA has the power to charge fees or impose charges that are reasonable for the expenses it incurs in supplying its services, information or advice.

Clause 8(3) provides that ASDA may exercise its powers within or outside Queensland.

Clause 9 ensures that ASDA enters into an agreement with the Queensland Minister for Sport before performing its functions or exercising its powers in relation to State competitors under the Bill. Clause 9(1) provides that ASDA may perform its functions and exercise its powers under this Act only if ASDA has entered into an agreement with the

Minister about the performance of the functions and the exercise of the powers.

Clause 9(2) provides that the agreement under clause 9(1) may prescribe conditions on ASDA in relation to the performance of its functions or exercise its powers under the Bill. By way of example, the agreement could prescribe:

- the tests ASDA will conduct in a year, both in and out of competition;
- the fees charged for those tests;
- the support the Government will provide to ASDA for the conduct of tests, such as provision of event programs, test numbers and competitor contact details and arranging access to facilities for the conduct of tests; and
- parties to be notified following test results and the order of notification.

Clause 10 enables State competitors, aggrieved by a decision made by ASDA in the performance of its functions under this Bill, to appeal that decision to the Commonwealth Administrative Appeals Tribunal and ultimately to the Federal Court. Clause 10 provides that the Federal Court, the Administrative Appeals Tribunal and members and officers of the court and the tribunal have the same jurisdiction, functions and powers under this Act in relation to a State competitor as they have in relation to a competitor under the Commonwealth Act.

PART 4—MISCELLANEOUS PROVISIONS

Clause 11 ensures the rights of State competitors under 18 years of age are protected, whilst still deterring young Queensland athletes from using drugs or doping methods. Whilst the Bill enables ASDA to test athletes under 18 years of age, clause 11(1) provides that ASDA may only request and obtain a sample from a competitor under the age of 18 years if their parent or guardian has consented in writing to the sample being taken.

Clause 11(2) provides that the consent may be given generally or in relation to a particular request. This provision enables the consent to be given generally, for example through the person's registration with their

State sporting organisation, upon registration for a open age sporting competition, or in relation to a particular request by ASDA.

In accordance with the definition of State competitor, only athletes under 18 years of age who are competing in an open aged sporting competition may be tested. Testing would not extend to age level completions or school events.

Clause 12 provides that the Governor in Council may make regulations under the Act.

SCHEDULE

The schedule contains the dictionary that defines the terms used in the Bill.