



New Zealand Sports Drug Agency Amendment Act 2000

Public Act 2000 No 73
Date of assent 14 November 2000
Commencement see section 2

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Schedule
Consequential amendments to principal Act

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the New Zealand Sports Drug Agency Amendment Act 2000.

- (2) In this Act, the New Zealand Sports Drug Agency Act 1994 is called “the principal Act”.

2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

3 Interpretation

Section 2(1) of the principal Act is amended by adding, after the definition of **working day**, the following definition:

“**World Anti-Doping Agency** means the body founded by the International Olympic Committee and constituted as a foundation in Lausanne by an instrument of foundation signed on 10 November 1999, and named in that instrument as the Agence mondiale antidopage, World Anti-Doping Agency”.

4 Purpose and principles

Section 3(2)(f) of the principal Act is amended by adding the words “or the World Anti-Doping Agency”.

5 Functions of Agency

- (1) Section 6(1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) preparing, maintaining, and disseminating a schedule of—

“(i) drugs and doping methods that are banned for the purposes of this Act; and

“(ii) drugs and doping methods that are banned for the purposes of this Act except at specified permitted levels (including levels defined relative to levels of other substances); and

“(iii) circumstances in which specified drugs or doping methods, or levels of drugs or doping methods, that are otherwise banned for the purposes of this Act, are not banned; and

“(iv) evidence that the Board will accept as establishing the existence of circumstances described in subparagraph (iii) including, where appropriate, procedures for the collection and interpretation of that evidence:”.

- (2) Section 6(1)(b) of the principal Act is amended by inserting, after the word “Committee”, the words “or the World Anti-Doping Agency”.
- (3) Section 6(1) of the principal Act is amended by inserting, after paragraph (f), the following paragraph:
“(fa) collecting evidence in accordance with any procedures specified in the schedule under paragraph (a)(iv):”.

6 New section 6A inserted

The principal Act is amended by inserting, after section 6, the following section:

“6A Review of schedule

The Agency must from time to time review the contents of the schedule maintained under section 6(1)(a) having regard to the substances and doping methods specified for the time being by the International Olympic Committee or the World Anti-Doping Agency, or both, as prohibited substances and prohibited doping methods.”

7 New section 11 substituted

The principal Act is amended by repealing section 11, and substituting the following section:

“11 Requirements of regulations in regards to tests

Subject to this Act, a sample provided by a competitor must be dealt with in accordance with the requirements of the regulations.”

8 Action following failure to provide a sample

Section 13 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

- “(2) For the purposes of this Act, a competitor must not be taken to have failed to comply with a request to provide a sample unless the competitor was notified in the manner required by the regulations of the requirement that he or she provide the sample.”

9 Determination by Board of Agency on failure to provide a sample

Section 14 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

- “(2) In making its determination the Board must take into consideration—
- “(a) the nature and effect of any departure by any person from the procedures in the regulations; and
 - “(b) any submissions made by or on behalf of the competitor.”

10 New heading and sections 15 to 16F substituted

The principal Act is amended by repealing the heading above section 15 and sections 15 and 16, and substituting the following heading and sections:

“Positive and negative test results

“15 Determination by Board as to whether specified circumstances exist

- “(1) This section applies to a competitor who has, after the initial testing of the sample, returned a positive test result for a drug or doping method that is not banned in circumstances specified in the schedule under section 6(1)(a)(iii).
- “(2) The Board must determine under subsection (3) whether it is established that the circumstances specified in the schedule in respect of the drug or doping method existed in the competitor’s case at the time the competitor was tested.
- “(3) The Board must determine that it is established that the circumstances existed at the time the competitor was tested if either—
- “(a) the evidence specified in the schedule under section 6(1)(a)(iv) in relation to the specified circumstances, that was required to exist at the time the competitor was tested, existed in the competitor’s case at that time; or
 - “(b) the schedule specifies other evidence under section 6(1)(a)(iv) in relation to the specified circumstances and that evidence exists in the competitor’s case.
- “(4) Where the Board determines that it is established that the specified circumstances existed in the competitor’s case at the time the competitor was tested, the competitor’s test result is,

for the purposes of this Act, a negative test result returned after the initial testing of the sample.

- “(5) Where the Board determines that it is not established that the specified circumstances existed in the competitor’s case at the time the competitor was tested, the competitor’s test result remains a positive test result returned after the initial testing of the sample for the purposes of this Act.

“16 **Notification of negative test result**

Where a competitor returns a negative test result after the initial testing of the sample, the Agency must, as soon as practicable, give written notification of that result, in the prescribed form, to the competitor and to the national sporting organisation or organisations concerned.

“16A **Notification of positive test result**

Where a competitor returns a positive test result after the initial testing of the sample, the Agency must, as soon as practicable, give the competitor written notification in the prescribed form stating—

- “(a) the result of the test; and
- “(b) that further testing of the sample will be conducted by a laboratory within 4 working days after service of the notice; and
- “(c) that the competitor may attend or have a representative attend this further testing of the sample, the attendance to be at the expense of the competitor; and
- “(d) that if the competitor does not notify the Agency that the competitor seeks attendance or representation under paragraph (c), the Agency will appoint an independent representative for the competitor, to attend at the second testing at the expense of the Agency; and
- “(e) that the competitor may, by 5 pm on the 5th working day following service of the notice, advise the Agency in writing of any matters which the competitor considers the Board of the Agency, before making a determination, should take into consideration under section 16D(a) if the second test result confirms the initial test result; and

- “(f) that the competitor or the competitor’s representative may advise the Agency in writing of any matters concerning the second testing that it is considered the Board should take into consideration under section 16D(a), before the making of the determination, such advice to be provided to the Agency within 3 working days after the second testing; and
- “(g) if the positive test result is in respect of a drug or doping method that is not banned in circumstances specified in the schedule under section 6(1)(a)(iii),—
 - “(i) the nature of those circumstances; and
 - “(ii) the nature of the evidence specified in the schedule under section 6(1)(a)(iv) that the competitor may provide to the Agency, including any procedures for the collection and interpretation of that evidence that are specified in the schedule.

“16B Determination by Board on positive test result

- “(1) Where the initial testing of a sample has returned a positive test result, the Board must determine whether or not the competitor has committed a doping infraction.
- “(2) The Board must make its determination within the time limit set out in section 16C.
- “(3) When the Board is making its determination, it must take into consideration the matters set out in section 16D.
- “(4) The Board must determine that the competitor has not committed a doping infraction if it is satisfied of 1 or more of the matters set out in section 16E.
- “(5) Subject to sections 20 to 23, a determination under this section is final and conclusive.

“16C Time limits

- “(1) The Board must make its determination under section 16B within the time limit set out in subsection (2) or subsection (3).
- “(2) The Board must make its determination within 7 days after the completion of the procedures where—
 - “(a) the initial testing of a sample returns a positive test result in respect of a drug or doping method, or level of

drug or doping method, that is not banned in circumstances specified in the schedule under section 6(1)(a)(iii); and

“(b) the schedule specifies procedures for the collection or interpretation, or both, of evidence in relation to the specified circumstances and the procedures require or allow the completion of the procedures after the second testing of the sample.

“(3) In any other case the Board must make its determination,—

“(a) if advice is received in accordance with both paragraphs (e) and (f) of section 16A, or section 16A(f) only, within 7 days after receiving advice from the competitor in accordance with section 16A(f); or

“(b) if advice is received in accordance with section 16A(e), but not section 16A(f), within 7 days after the expiry of the period referred to in section 16A(f); or

“(c) if advice is not supplied in accordance with either paragraph (e) or paragraph (f) of section 16A, within 7 days after the 7th working day after the date of notification under section 16A.

“16D Matters to be taken into consideration

When the Board is making its determination under section 16B, it must—

“(a) take into consideration any submissions made by or on behalf of the competitor; and

“(b) take into consideration whether the second testing confirmed the initial test result; and

“(c) where the initial testing of a sample produced a positive test result in respect of a drug or doping method, or level of drug or doping method, that is not banned in circumstances specified in the schedule under section 6(1)(a)(iii), consider—

“(i) any evidence specified in the schedule under section 6(1)(a)(iv) that is available to the Board in relation to the specified circumstances; and

“(ii) whether the evidence in subparagraph (i) was collected and interpreted in accordance with procedures (if any) specified in the schedule under section 6(1)(a)(iv); and

- “(iii) any other relevant evidence available to the Board; and
- “(iv) any advice on the interpretation of the evidence in subparagraph (i) or subparagraph (iii) received from any person for the time being appointed under clause 12(3) of the Schedule of this Act.

“16E Matters Board to be satisfied of

The matters referred to in section 16B(4) are that—

- “(a) the second testing of the sample has not supported the initial test result; or
- “(b) the positive test result relates to a drug or doping method that is not banned in circumstances specified in the schedule under section 6(1)(a)(iii), and those circumstances existed in the competitor’s case at the time the competitor was tested; or
- “(c) the sample was not tested by a laboratory; or
- “(d) the identity or integrity of the sample or the reliability of the test result were compromised, or are likely to have been compromised, by any failure of the Agency or the laboratory to comply with the requirements of the regulations relating to the sealing of any container containing the sample or the recording of information relating to the sample; or
- “(e) the identity or integrity of the sample or the reliability of the test result were compromised, or are likely to have been compromised, by any failure of the Agency or the laboratory to comply with the requirements of this Act or the regulations in any respect other than one described in paragraph (c) or paragraph (d); or
- “(f) the identity or integrity of the sample or the reliability of the test result were compromised, or are likely to have been compromised, by anything other than a matter described in any of paragraphs (c) to (e).

“16F Board’s actions following determination on positive test result

- “(1) Where the Board determines that a competitor has committed a doping infraction, the Agency must enter the determination on the Register in accordance with section 17(2).

- “(2) Where the Board determines that a competitor has not committed a doping infraction, the Agency must give written notification of the determination, in the prescribed form, to the competitor and the national sporting organisation or organisations concerned.”

11 Notification of entry on Register

Section 18(3) of the principal Act is amended by inserting, after the words “failing to”, the words “comply with a request to”.

12 Competitor may appeal to District Court

- (1) Section 20(1) of the principal Act is amended by omitting the expression “section 16 of this Act,”, and substituting the expression “section 16B,”.

- (2) Section 20(2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) in the case of a determination under section 16B, that—

“(i) the second testing of the sample did not support the initial test result; or

“(ii) the positive test result relates to a drug or doping method that is not banned in circumstances specified in the schedule under section 6(1)(a)(iii) and those circumstances existed in the competitor’s case at the time the competitor was tested; or

“(iii) the sample was not tested by a laboratory; or

“(iv) the Agency or the laboratory failed to comply with the requirements of the regulations relating to the sealing of any container containing the sample or the recording of information relating to the sample; or

“(v) the Agency or the laboratory failed to comply with the requirements of this Act or the regulations in any respect other than one described in subparagraph (iii) or subparagraph (iv); or

“(vi) the identity or integrity of the sample or the reliability of the test result were compromised, or are likely to have been compromised, by anything other than a matter described in any of subparagraphs (iii) to (v).”

13 Procedures relating to appeal to District Court

Section 21 of the principal Act is amended by inserting, after subsection (6), the following subsection:

“(6A) Without limiting subsection (6), the Court may ask the Agency for information or assistance in the course of satisfying itself of the matters described in section 22(1A).”

14 Decision of District Court

Section 22 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) The District Court must not quash a determination by reason of a failure referred to in subparagraph (iv) or subparagraph (v) of section 20(2)(b) if the District Court is satisfied that the failure did not compromise the identity or integrity of the sample or the reliability of the test result.”

15 Contract testing

(1) Section 25(2) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

“(ba) testing a New Zealand competitor out-of-competition; or”.

(2) Section 25 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

“(4) The procedures for testing under a contract or arrangement are those set out in this Act and the regulations, unless the contract or arrangement provides otherwise.”

16 Foreign anti-doping body may take sample for Agency

(1) Section 26(2) of the principal Act is amended by omitting the words “substantially in accordance with”, and substituting the words “of a similar effect to”.

(2) Section 26 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) If the Board is satisfied that the procedures carried out were of a similar effect to the procedures set out in this Act and the regulations,—

- “(a) the Agency must notify the competitor in terms of section 13 or section 16A, as the case may be, of the advice from the body; and
- “(b) the Board must make a determination under section 14 or section 16B, as the case may be.”

17 Decisions notified by foreign anti-doping body

Section 27(1) of the principal Act is amended by omitting the words “substantially in accordance with”, and substituting the words “of a similar effect to”.

18 Regulations

Section 31(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

- “(aa) prescribing ways in which a competitor fails to comply with a request to provide a sample, without limiting the ways in which it may appear to the Agency that a competitor has failed to comply with a request:”.

19 Use of experts

Clause 12 of the Schedule of the principal Act is amended by repealing subclause (2), and substituting the following subclauses:

- “(2) The Agency must pay a person appointed under subclause (1), for services rendered by that person, fees or commission, or both, at such rates as the Agency thinks fit and may separately reimburse that person for expenses reasonably incurred in rendering services to the Agency.
- “(3) The Board may, from time to time, appoint a suitably qualified person to provide it with specialist medical advice, including, but not limited to, advice on—
 - “(a) matters to be specified in the schedule under subparagraphs (iii) and (iv) of section 6(1)(a); and
 - “(b) any evidence or procedures for collection or interpretation of evidence being considered by the Board under section 16D.
- “(4) A person appointed under subclause (3) may be appointed on such terms and conditions as are agreed between the person and the Board.”

20 Consequential amendments to principal Act

The principal Act is amended in the manner set out in the Schedule.

Schedule

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Consequential amendments to principal Act**Section 2(1)**

Omit from the definition of **determination** the expression “section 16 of this Act” and substitute the expression “section 16B”.

Omit from the definition of **doping infraction** the expression “section 16(1) of this Act” and substitute the expression “section 16B.”

Section 17(1)(a)(ii)

Omit the expression “section 16 of this Act” and substitute the expression “section 16B”.

Section 22(4)

Omit the expression “section 16 of this Act” and substitute the expression “section 16B”.

Section 23

Omit the expression “section 16 of this Act” and substitute the expression “section 16B”.

Section 24(1)

Omit the expression “section 16 of this Act” and substitute the expression “section 16B”.

Section 27(2)

Omit the expression “section 16 of this Act” and substitute the expression “section 16B”.

Section 28

Omit the expression “section 16 of this Act” and substitute the expression “section 16B”.

Section 29(1)(a)

Omit the expression “16 of this Act” and substitute the expression “16B”.

Schedule 3

Omit from clause 3 the expression “section 16 of this Act” and substitute the expression “section 16B”.

Omit from clause 21 the expression “Agency under sections 14 and 16 of this Act” and substitute the expression “Board under section 14 and section 16B”.

Legislative history

9 November 2000	Divided from the Statutes Amendment Bill (No 7) as reported from the Justice and Electoral Committee (Bill 334–A2), third reading
14 November 2000	Royal assent

This Act is administered in the Department of Internal Affairs.
