

## NEW ZEALAND SPORTS DRUG AGENCY BILL

---

### EXPLANATORY NOTE

THIS Bill establishes an independent Sports Drug Agency to implement a sports drug testing regime. The Agency is to provide leadership in the development of a national strategy concerning the use of drugs in sport and will have a role in encouraging the development of educational programmes to promote drug-free sport.

The testing regime will meet the terms of international agreements and conform to the requirements of the International Olympic Committee.

It is intended that testing will primarily be at national and international level. The Agency may arrange for the testing of New Zealand competitors in New Zealand and overseas. It may test overseas competitors when in New Zealand.

Testing of samples will be carried out at a laboratory accredited to the International Olympic Committee.

The Agency will maintain a Register of Notifiable Events to record the names of competitors who have failed without reasonable excuse to provide a sample to the Agency when required to, or who have committed a doping infraction. The Agency will be responsible for determining whether or not individual competitors have complied with the rules regarding doping in sport, that is, if a competitor has committed a doping infraction.

Any action in terms of the subsequent suspension or banning of the competitor from sports activity will be a matter for the sport concerned.

*Clause 1* relates to the Short Title and date of commencement.

The date of commencement is to be fixed by Order in Council.

### PART I

#### PRELIMINARY

*Clause 2* defines various terms used in the Bill.

The more significant definitions are the definitions of the terms "approved anti-doping body", "competitor", "doping infraction", "foreign anti-doping body", "foreign government sports organisation", "national sporting organisation", "notifiable event", "positive test result", "Register", "sample", "scheduled drug or doping method", and "test result".

In addition, *subclause (2)* provides that a reference in the Act to the use of drugs includes a reference to the use of doping methods.

*Clause 3* sets out, in detail, the purpose and principles of the Bill.

## PART II

## ESTABLISHMENT AND FUNCTIONS OF NEW ZEALAND SPORTS DRUG AGENCY

*Clause 4* establishes the New Zealand Sports Drugs Agency and declares it to be a body corporate.

The provisions of the Schedule to the Act have effect as to the constitution and operation of the Agency and as to the other matters relating thereto.

The Schedule provides for—

- (a) Term of office of members of the Board of the Agency;
- (b) Meetings of the Board;
- (c) The chairperson or a designated member to act alone for competition purposes;
- (d) The remuneration, allowances, and expenses of members of the Board and committees of the Board;
- (e) The disclosure of interests of members;
- (f) Deputies of members;
- (g) Proceedings not to be affected by irregularities;
- (h) Employees of the Agency;
- (i) Personnel policy;
- (j) Equal employment opportunities;
- (k) Choice of procedure in relation to personal grievances of employees;
- (l) Superannuation or retiring allowances;
- (m) Use of experts by Board;
- (n) Application of State Sector Act 1988 and Government Superannuation Fund Act 1956 to members and employees;
- (o) Protection of members and employees from certain civil actions;
- (p) The Audit Office to be the auditor of the Agency;
- (q) Bank accounts;
- (r) Investment of money;
- (s) Borrowing powers;
- (t) The Crown to provide services for the Agency;
- (u) Reporting by the Agency to the Minister for Sport, Fitness, and Leisure, and the laying of the report before the House of Representatives;
- (v) The proceedings of the Board and committees of the Board not to be held bad for want of form.

*Clause 5* provides for the membership of the Board of the Agency.

The Board is to consist of not more than 5 members appointed by the Minister, one of whom is to be appointed as Chairperson.

When considering whether a person is suitable to be appointed as a member of the Board, the Minister is to have regard to the need to ensure that the Board possesses a mix of knowledge and experience in matters coming before the Board, including knowledge and experience in—

- (a) Law; or
- (b) Sports science; or
- (c) Sports participation and administration.

*Clause 6* sets out the functions of the Agency.

They are—

- (a) Maintaining a schedule of drugs and doping methods, and permitted levels (if any) in relation to each drug or method, having regard to those drugs or methods listed by the International Olympic Committee as drugs and doping methods in respect of which competitors may be tested, and disseminating the content of the schedule:

- (b) Preparing and maintaining a list of laboratories which the International Olympic Committee recognises as accredited laboratories for the purpose of testing for the use of drugs in sport:
- (c) Establishing and maintaining a Register of Notifiable Events and notifying competitors and appropriate sporting organisations of entries made in the Register:
- (d) Disseminating information about—
  - (i) Action that is likely to be taken if competitors record positive test results or fail to comply with requests to provide samples for testing; and
  - (ii) Testing procedures adopted by the Agency:
- (e) Determining which classes of competitors and which individual competitors may be tested in any year, together with the sporting events and the activities at which testing may be carried out:
- (f) Selecting competitors to provide samples for testing, and testing the samples:
- (g) Making determinations regarding compliance with requests for the provision of samples and in respect of test results from samples from competitors:
- (h) Notifying competitors, national sporting organisations, and other organisations of determinations made by the Agency:
- (i) Testing competitors and notifying the test results following sampling requests made by other organisations:
- (j) Developing and implementing educational programmes to discourage the use of drugs in sport, and related matters:
- (k) Collecting and disseminating information about the use of drugs in sport, and related matters:
- (l) Consulting with, advising, and assisting Government departments, local authorities, national sporting organisations, and other bodies or persons on any matters concerned with the use of drugs in sport, and related matters:
- (m) Consulting with, advising, and assisting Government and non-Government organisations and other persons overseas, for the purpose of promoting the adoption of uniform international drug-testing procedures:
- (n) Taking steps aimed at ensuring New Zealand's compliance with international agreements and arrangements to which New Zealand is a party, concerning the use of scheduled drugs and doping methods in sport:
- (o) Establishing an 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) Advising the Minister on any matters related to the use of drugs in sport, and related matters:
- (q) Generally taking all such steps as may be necessary or desirable to achieve the purpose of this Act:
- (r) Such other functions as are conferred on the Agency by the Act or any other Act.

In the exercise of its functions and powers, the Agency is to establish for its use, and for the use of its committees, procedures that are appropriate and fair in the circumstances, and must comply with the principles of natural justice.

*Clause 7 sets out the powers of the Agency.*

The Agency is to have all powers that are reasonably necessary or expedient to enable it to perform its functions.

Without limiting that general power, the Agency may—

- (a) Acquire and hold real or personal property or any interest in real or personal property:
- (b) Improve, manage, develop, sell, lease, hire, or otherwise deal with, or dispose of, any real or personal property vested in the Agency:
- (c) Appoint agents, and act as an agent for other persons:
- (d) Accept, for the purpose of the Agency, 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:
- (e) Make grants or advances of money, on such conditions as it thinks fit, or pay any fee or subscription, to any organisation or person with similar or related functions or carrying out work related to that of the Agency:
- (f) Appoint committees, whether or not comprised (wholly or partly) of members of the Agency:
- (g) Do anything incidental to any of its powers.

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.

The amount or rate of a fee or charge must be reasonably related to the expenses incurred or to be incurred in relation to the provision of services, information, or advice to which the fee or charge relates.

The Agency's powers may be exercised within and outside New Zealand.

*Clause 8* provides that, in performing and exercising its functions and powers, the Agency is to develop appropriate procedures to—

- (a) Reflect the needs of competitors who are under the age of 18 years and the cultural, language, and other special concerns of competitors; and
- (b) Protect the right to privacy of competitors.

### PART III

#### TAKING, TESTING, AND NOTIFICATION OF RESULTS OF SAMPLES

##### *Taking of Samples*

*Clause 9, subclause (1)* empowers the Agency to require a competitor to provide a sample for analysis for the purpose of detecting the presence or otherwise of a scheduled drug or doping method.

*Subclause (2)* provides that, without limiting *subclause (1)*, the Agency may from time to time consult with national sporting organisations on the number and names of competitors in each sport to be tested in any year, and the sporting activities and events at which testing may be carried out.

*Clause 10, subclause (1)* provides that the Agency may not request, or collect, samples from a competitor for any purpose other than to enable the testing of the samples to determine the presence or otherwise of scheduled drugs or doping methods.

*Subclause (2)* provides that nothing in the Act is to be taken to imply that a person becomes subject to any criminal or civil liability because that person has failed to comply with a request to provide a sample.

*Subclause (3)* provides that a test result provided for the Agency, or any determination made by the Agency, shall not be admissible as evidence in any criminal proceedings against the competitor from whom any sample has been taken.

*Failure to Provide Sample*

*Clause 11* prescribes the action to be taken by the Agency where it appears to the Agency that a competitor has failed to comply with a request to provide a sample.

*Clause 12* prescribes the procedure to be followed by the Agency when determining whether or not a competitor had reasonable cause for failing to comply with a request to provide a sample.

*Positive Test Result*

*Clause 13* requires a sample provided by a competitor to be dealt with substantially in accordance with the requirements of regulations in force under the Act.

*Clause 14, subclause (1)* requires the Agency to give written notice of a test result to the competitor to whom it relates.

*Subclause (2)*: If an initial test result is positive, the Agency is to give the competitor written notice of the result stating the matters set out in paragraphs (a) to (e) of subclause (2).

*Subclause (3)* provides that where testing is being conducted by the Agency pursuant to a contract or arrangement entered into pursuant to *clause 26*, written notification of test results is to be given to such persons and organisations and on such terms and conditions as may be specified by the terms of that contract or arrangement.

*Clause 15, subclause (1)* provides that, where the initial testing of a sample has produced a positive test result, the Board of the Agency is to determine, within a specified period, whether or not the competitor has committed a doping infraction.

*Subclause (2)*: Where the initial test result is positive, the Board may determine that a doping infraction has not been committed only if it is satisfied that—

- (a) A second testing of the sample has not supported the initial test result; or
- (b) The applicable requirements of the regulations relating to the sealing of any container containing the sample, and the recording of information relating to that sample, have not been substantially complied with; or
- (c) The sample was not tested by an accredited laboratory; or
- (d) The sample was tampered with by someone other than the competitor or a person chosen by the competitor to oversee any part of the collection or testing of the sample; or
- (e) In other respects, the procedures were not substantially in accordance with the regulations.

*Subclause (3)* requires the Agency, as soon as practicable, to give written notice of the Board's determination to the competitor and to the national sporting organisation concerned.

*Subclause (4)* requires the Agency to include in the notice reasons for the Board's determination if the Board determines that there has been a doping infraction.

*Subclause (5)*: Subject to the rights of appeal set out in *clauses 16 to 21*, a determination by the Board under this clause is final and binding on all persons and bodies concerned.

*Appeals to District Court*

*Clause 16, subclause (1)* provides that a competitor who has received notification of a determination by the Board under *clause 12* or *clause 15* may appeal to the District Court against the determination.

*Subclause (2)* limits the grounds of appeal to—

- (a) In the case of a determination under *clause 12*, whether there was reasonable cause for the competitor failing to provide a sample as requested by the Agency;
- (b) In the case of a determination under *clause 15*, that—
  - (i) A second testing of the sample did not support the initial test result; or
  - (ii) The applicable requirements of the regulations relating to the sealing of any container containing the sample and the recording of information relating to that sample were not substantially complied with; or
  - (iii) The sample was not tested by an accredited laboratory; or
  - (iv) The sample was tampered with by someone other than the competitor or a person chosen by the competitor to oversee any part of the collection or testing of the sample; or
  - (v) In other respects, the procedures were not substantially in accordance with the regulations.

*Clause 17* provides for the appointment of up to 6 persons to be members of a panel of assessors to assist in the hearing of any appeal under *clause 16*.

*Clause 18* provides for one assessor (appointed by the Court from the panel) to assist the Court in determining an appeal. However, the appeal is to be determined by the Court alone.

Provision is also made for the payment of fees, allowances, and expenses to assessors.

*Clause 19* sets out the procedure to be followed in bringing an appeal, and in the hearing of the appeal.

The District Court is to avoid unnecessary delay or formality, and receive such evidence as it considers relevant, whether or not it would be admissible in a Court of law.

The appeal is to be heard in chambers, and the District Court Rules do not apply in respect of the appeal.

The procedure at the hearing is to be determined by the Judge, subject to the Act and regulations.

*Clause 20* provides that, on the completion of the hearing of the appeal, the District Court may quash the determination appealed against or confirm it, with or without modification.

A decision of the District Court confirming a determination is to be given effect to as if it were a determination of the Board of the Agency.

*Clause 21* provides that no proceedings, other than injunctive proceedings, are to be initiated in any Court by any person or organisation in respect of a determination of the Board under *clause 12* or *clause 15* unless the competitor has appealed under *clause 16*, and the appeal has been undertaken and a decision made under *clause 20*.

However, nothing in this clause will affect the right of any person or organisation to apply, in accordance with law, for a judicial review of any such determination if an applicable right of appeal against the determination is not available under the Act.

#### *Register of Notifiable Events*

*Clause 22* requires the Agency to establish and maintain a Register of Notifiable Events for the purpose of recording the name of each competitor who is a New Zealand citizen and in respect of whom—

- (a) A determination has been made by the Board of the Agency to the effect that—
- (i) Under *clause 12*, the competitor did not have reasonable cause for failing to comply with a request to provide a sample; or
  - (ii) Under *clause 15*, the competitor has committed a doping infraction—
- and that determination has not been quashed as a result of an appeal to the District Court under *clause 16*; or
- (b) The Agency has been advised, pursuant to *clause 29* or *clause 30*, as the case may be, that the competitor did not have reasonable cause for failing to comply with a request to provide a sample, or a doping infraction has been committed.

The Agency must also enter on the Register such other details and particulars as may be prescribed.

Provision is also made for the deletion of entries from the Register.

*Clause 23* requires the Agency to give written notice of the contents of any entry on the Register to—

- (a) The competitor; and
- (b) Each national sporting organisation (to the Agency's knowledge)—
  - (i) Of which the competitor is, as a competitor, a member; or
  - (ii) With which the competitor is associated as an administrator or coach.

If it comes to the knowledge of the Agency that a competitor whose name has been entered on the Register under *clause 22*—

- (a) Has, as a competitor, become a member; or
- (b) Is associated as an administrator or coach—

with another national sporting organisation, the Agency is to give notice in writing of the contents of the Register in respect of that competitor to that other national sporting organisation.

The Agency may give notification of the contents of the entry, excluding the competitor's name, to the Chief Executive of the Hillary Commission for Sport, Fitness, and Leisure.

*Clause 24* requires a national sporting organisation which receives notification under *clause 23* to advise the Agency in writing, as soon as possible, of any action taken by the organisation in relation to the competitor, administrator, or coach concerned as a result of that notification.

#### *Appeal to High Court*

*Clause 25* provides for a right of appeal to the High Court, on a question of law, against any decision of the District Court under *clause 20*.

### PART IV

#### TESTING FOR AND BY OTHER ORGANISATIONS

*Clause 26* empowers the Agency to enter into a contract or arrangement with other organisations, both within New Zealand and overseas, under which the Agency may—

- (a) Collect samples from specified persons for the purpose of testing whether any scheduled drug or doping method is present in the samples; and
- (b) Arrange for the testing of the samples by an accredited laboratory; and
- (c) Arrange for the secure transport of the samples to an accredited laboratory; and
- (d) Give notice of the results of the testing to such persons and organisations as may be specified in the contract or arrangement.

*Clause 27* provides that the Agency may approve a foreign anti-doping body, for the purpose of testing New Zealand competitors, if it is satisfied that the procedures of the body relating to the following matters are substantially in accordance with the procedures contained in the Act and the regulations in respect of—

- (a) The manner in which the sample is requested; and
- (b) The collection of samples; and
- (c) The sealing of the containers in which the sample is to be kept until it is tested; and
- (d) The transportation of samples to an accredited laboratory; and
- (e) The analysis of samples at an accredited laboratory; and
- (f) The competitor's rights in relation to the testing of the sample.

*Clause 28, subclause (1)* provides that the Agency may only request an approved anti-doping body to take a sample from a competitor who is a New Zealand citizen and who is in a foreign country if it has entered into a contract or arrangement with that approved anti-doping body.

*Subclause (2)* provides that if an approved anti-doping body informs the Agency, pursuant to a contract or arrangement, that a competitor who is a New Zealand citizen has—

- (a) Refused to provide a sample to that body without reasonable cause; or
- (b) Has committed a doping infraction in relation to a sample provided to that body—

the Agency is to enter the information on the Register as if it were a determination of the Agency under *clause 12* or *clause 15*, as the case may be.

*Clause 29* provides that if—

- (a) A foreign anti-doping body informs the Agency that a competitor who is a New Zealand citizen has—
  - (i) Refused to provide a sample to that body without reasonable cause; or
  - (ii) Has committed a doping infraction in relation to a sample provided to that body; and
- (b) The Agency is satisfied that, at the time when the sample was collected, the body's procedures relating to the matters referred to in *clause 27 (a)* to *(f)* were in accordance, or substantially in accordance, with those matters—

the Agency may approve the anti-doping body pursuant to *clause 28*, and enter the information on the Register under *clause 22*.

*Clause 30* provides that where, pursuant to an arrangement or contract entered into under *clause 26*, or otherwise under *clause 12* or *clause 15*, the Agency is to give notification in relation to a competitor and that competitor is not a New Zealand citizen, notification is to be given to—

- (a) The competitor; and
- (b) The New Zealand national sporting organisation concerned; and
- (c) Each overseas sporting organisation known to the Agency—
  - (i) Of which the competitor is, as a competitor, a member; or
  - (ii) With which the competitor is associated as an administrator or coach; and
- (d) If the competitor was tested under a contract or arrangement entered into by the Agency under *clause 26*, every other person or organisation the Agency is required to notify under the contract or arrangement.



PART V

MISCELLANEOUS PROVISIONS

*Clause 31* empowers the Board of the Agency to delegate its functions, powers, rights, and duties under the Act to its committees and employees, other than—

- (a) The power of the Board to make determinations under *clauses 12 and 15*; and
- (b) The fixing of fees and charges under *clause 7*; and
- (c) The power of delegation.

*Clause 32* provides for the service of notices on competitors.

*Clause 33* provides for the making of regulations.

*Paragraphs (a) to (m) of subclause (1)* set out in detail the purposes for which regulations may be made.

Provision is made for consultation before regulations are made, except regulations which the Minister considers should, in the public interest, be made urgently.

*Clause 34* provides for the extension of time limits by the Agency and the District Court.

*Clause 35* provides for the Agency to be subject to the Ombudsman Act 1975. As a result the Agency will also be subject to the Official Information Act 1983.

*Clause 36* provides for the Agency to be a Crown entity.

The Agency is included in the Fourth Schedule to the Public Finance Act 1989, which means that it is a Crown entity and is required to prepare annual financial statements pursuant to section 41 of that Act (as substituted by section 31 of the Public Finance Amendment Act 1992).

The Agency is also included in the Fifth Schedule to the Public Finance Act 1989, which means that it is required to include statements of service performance in its annual financial statements.

---

## NEW ZEALAND SPORTS DRUG AGENCY

---

### ANALYSIS

Title	
1. Short Title and commencement	
PART I	
PRELIMINARY	
2. Interpretation	
3. Purpose and principles	
PART II	
ESTABLISHMENT AND FUNCTIONS OF NEW ZEALAND SPORTS DRUG AGENCY	
4. New Zealand Sports Drug Agency	
5. Membership of Board of Agency	
6. Functions of Agency	
7. Powers of Agency	
8. Recognising the needs and privacy of competitors	
PART III	
TAKING, TESTING, AND NOTIFICATION OF RESULTS OF SAMPLES	
<i>Taking of Samples</i>	
9. Providing a sample	
10. Sampling for purposes of Act only	
<i>Failure to Provide Sample</i>	
11. Action following failure to provide a sample	
12. Determination by Board of Agency on failure to provide a sample	
<i>Positive Test Result</i>	
13. Requirements of regulations in regard to tests	
14. Notification by Agency in regard to a test	
15. Determination by Board in regard to testing of sample	
<i>Appeals to District Court</i>	
16. Competitor may appeal to District Court	
17. Panel of assessors	
18. Assessor to assist District Court	
19. Procedures relating to appeal to District Court	
20. Decision of District Court	
21. Limitation on proceedings in relation to appeals to District Court	
<i>Register of Notifiable Events</i>	
22. Agency to maintain Register of Notifi- able Events	
23. Notification of entry on Register	
24. National sporting organisation to advise Agency of action	
<i>Appeal to High Court</i>	
25. Appeal to High Court on question of law	
PART IV	
TESTING FOR AND BY OTHER ORGANISATIONS	
26. Testing for other organisations	
27. Agency may approve foreign anti- doping bodies	
28. Approved anti-doping body may take sample for Agency	
29. Notification by foreign anti-doping body	
30. Notification if competitor not a New Zealand competitor	
PART V	
MISCELLANEOUS PROVISIONS	
31. Delegation by Board	
32. Service of notices	
33. Regulations	
34. Time limits may be extended	
35. Ombudsman Act 1975 amended	
36. Agency to be Crown entity Schedule	

## A BILL INTITULED

**An Act to establish the New Zealand Sports Drug Agency, to provide for testing for the use of drugs in sport, to encourage drug-free sport, and for related purposes**

BE IT ENACTED by the Parliament of New Zealand as follows: 5

**1. Short Title and commencement**—(1) This Act may be cited as the New Zealand Sports Drug Agency Act 1994.

(2) This Act shall come into force on a date to be fixed by Order in Council.

## PART I 10

## PRELIMINARY

**2. Interpretation**—(1) In this Act, unless the context otherwise requires,—

“Accredited laboratory” means a laboratory that is included in the list prepared by the Agency under **section 6 (1) (b)** of this Act: 15

“Agency” means the New Zealand Sports Drug Agency established under **section 4** of this Act:

“Approved anti-doping body” means a foreign anti-doping body approved by the Agency under **section 27** of this Act: 20

“Board” means the Board of the Agency:

“Competitor” means a person who is registered as an athlete or who participates as an athlete in any activities of, or sanctioned by, an international federation, a national sporting organisation, a regional sporting organisation, or an affiliate of those bodies, or an affiliated club, team, association, or league, and who is— 25

(a) A New Zealand citizen; or 30

(b) Present in New Zealand.

“Determination” means a determination under **section 12** or **section 15** of this Act, as the case may be, and which has been confirmed under **section 20** of the Act, where that section is applicable: 35

“Doping infraction” means the use of banned substances or practices:

“Executive Director” means the Executive Director of the Agency:

“Foreign anti-doping body” means— 40

(a) An organisation established in a foreign country for the purpose of discouraging or eliminating the use of drugs or doping methods in sport; or

- (b) An accredited laboratory in a foreign country;
  - or
  - (c) An international sporting federation:
- 5 “Foreign country” means any country other than New Zealand:
- “Foreign Government sports organisation” means—
- (a) A department of State in a foreign country; or
  - (b) A Government agency in a foreign country that oversees sport in that country:
- 10 “Hillary Commission” means the Hillary Commission for Sport, Fitness, and Leisure established under the Sport, Fitness, and Leisure Act 1987:
- “International Olympic Committee” means the
- 15 Committee established by the Congress of Paris on the 23rd day of June 1894, being the organisation entrusted with the control and development of the modern Olympic Games:
- “Minister” means the Minister for Sport, Fitness, and Leisure:
- 20 “National sporting organisation” means a body which represents members involved in a particular type of sporting event or activity in New Zealand; and includes a local, regional, or other sporting organisation, where a national organisation does not exist for that sport:
- 25 “New Zealand citizen” means a person who has citizenship as provided in the Citizenship Act 1977 or the Citizenship (Western Samoa) Act 1982; and includes a permanent resident of New Zealand:
- 30 “Notifiable event” means a determination by the Agency, or a finding by an approved anti-doping body, that a competitor has—
- (a) Failed, without reasonable cause, to comply with a request to provide a sample; or
  - 35 (b) Committed a doping infraction:
- “Permanent resident of New Zealand” means a person who has been granted, or who is included in, a residence permit under the Immigration Act 1987 that is in force, other than a temporary entry permit within the meaning of that Act:
- 40 “Positive test result”, in relation to a competitor, means a finding made by an accredited laboratory, by means of testing a sample provided by a 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 maintained by the Agency under **section 6 (1) (a)** of this Act; and

5

(b) Where the 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 Notifiable Events established and maintained by the Agency under **section 22** of this Act:

10

“Regulations” means regulations in force under this Act:

“Sample” means a sample of urine:

“Scheduled drug or doping method” means a drug or doping method included in the schedule maintained by the Agency under **section 6 (1) (a)** of this Act:

15

“Test result” means a finding by an accredited laboratory that a sample test result is negative or positive:

“Working day” means any day except—

(a) A Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and

20

(b) A day in the period commencing with the 20th day of December in any year and ending with the 15th day of January in the following year.

25

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

**3. Purpose and principles**—(1) The purpose of this Act is to establish an independent agency to—

(a) Oversee sports drug testing of competitors within and outside New Zealand; and

30

(b) Implement drug sampling and testing measures substantially in accordance with internationally recognised practices.

(2) To achieve the purpose of this Act, regard shall be given to the need to—

35

(a) 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

40

(ii) The values of fair play and competition; and

(iii) The rights of those who take part in sport:

- (b) Encourage the development of programmes to educate the sporting community and the community at large about the dangers of using drugs in sport:
- 5 (c) Provide leadership in the development of a national strategy concerning the use of drugs in sport:
- (d) Develop a centralised drug sampling and testing programme that exposes competitors to sampling and drug testing:
- 10 (e) Encourage national sporting organisations to adopt uniform drug sampling, testing, and disciplinary procedures:
- (f) Encourage the development and maintenance of drug testing laboratories accredited by the International Olympic Committee:
- 15 (g) Promote and encourage the adoption, at an international level, of uniform sampling and drug testing and disciplinary procedures, and of educational programmes relating to the use of drugs in sport.

PART II

20 ESTABLISHMENT AND FUNCTIONS OF NEW ZEALAND SPORTS  
DRUG AGENCY

**4. New Zealand Sports Drug Agency**—(1) There is hereby established an Agency to be known as the New Zealand Sports Drug Agency.

25 (2) The Agency shall be a body corporate with perpetual succession and a common seal.

(3) The Agency shall be capable of—

- (a) Acquiring, holding, and disposing of real and personal property:
- 30 (b) Entering into contracts:
- (c) Suing and being sued:
- (d) Doing and suffering all such acts and things as bodies corporate may lawfully do and suffer:

(4) The common seal of the Agency shall be judicially noticed  
35 in all Courts for all purposes.

(5) The provisions of the Schedule to this Act shall have effect as to the constitution and operation of the Agency and as to the other matters set out in that Schedule.

40 **5. Membership of Board of Agency**—(1) The Board of the Agency shall consist of not more than 5 members appointed by the Minister, one of whom shall be appointed Chairperson of the Board.

(2) When considering whether a person is suitable to be appointed as a member of the Board, the Minister shall have regard to the need to ensure that the Board possesses a mix of knowledge and experience in matters coming before the Board, including knowledge and experience in—

5

- (a) Law; or
- (b) Sports science; or
- (c) Sports participation and administration.

**6. Functions of Agency**—(1) The Agency shall have the following functions under this Act:

10

- (a) Maintaining a schedule of drugs and doping methods, and permitted levels (if any) in relation to each drug or method, having regard to those drugs or methods listed by the International Olympic Committee as drugs and doping methods in respect of which competitors may be tested, and disseminating the contents of the schedule: 15
- (b) Preparing and maintaining a list of the laboratories which the International Olympic Committee recognises as accredited laboratories for the purpose of testing for the use of drugs in sport: 20
- (c) Establishing and maintaining a Register of Notifiable Events and notifying competitors and appropriate sporting organisations of entries made in the Register:
- (d) Disseminating information about— 25
  - (i) Action that is likely to be taken if competitors record positive test results or fail to comply with requests to provide samples for testing; and
  - (ii) Testing procedures adopted by the Agency:
- (e) Determining which classes of competitors and which individual competitors may be tested in any year, together with the sporting events and the activities at which testing may be carried out: 30
- (f) Selecting competitors to provide samples for testing, and testing the samples: 35
- (g) Making determinations regarding compliance with requests for the provision of samples and in respect of test results from samples from competitors:
- (h) Notifying competitors, national sporting organisations, and other organisations of determinations made by the Agency: 40
- (i) Testing competitors and notifying the test results following sampling requests made by other organisations:

- (j) Developing and implementing educational programmes to discourage the use of drugs in sport, and related matters:
- 5 (k) Collecting and disseminating information about the use of drugs in sport, and related matters:
- (l) Consulting with, advising, and assisting Government departments, local authorities, national sporting organisations, and other bodies or persons on any matters concerned with the use of drugs in sport, and related matters:
- 10 (m) Consulting with, advising, and assisting Government and non-Government organisations and other persons overseas, for the purpose of promoting the adoption of uniform international drug-testing procedures:
- 15 (n) Taking steps aimed at ensuring New Zealand's compliance with international agreements and arrangements to which New Zealand is a party, concerning the use of scheduled drugs and doping methods in sport:
- 20 (o) Establishing an 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:
- 25 (p) Advising the Minister on any matters related to the use of drugs in sport, and related matters:
- (q) Generally taking all such steps as may be necessary or desirable to achieve the purpose of this Act:
- (r) Such other functions as are conferred on the Agency by  
30 this Act or any other Act.
- (2) In the exercise of its functions and powers, the Agency shall establish for its use, and for the use of its committees, procedures that are appropriate and fair in the circumstances, and shall comply with the principles of natural justice.
- 35 **7. Powers of Agency**—(1) The Agency shall have all powers that are reasonably necessary or expedient to enable it to perform its functions.
- (2) Without limiting subsection (1) of this section, the Agency may—
- 40 (a) Acquire and hold real or personal property or any interest in real or personal property:
- (b) Improve, manage, develop, sell, lease, hire, or otherwise deal with, or dispose of, any real or personal property vested in the Agency:



- (c) Appoint agents, and act as an agent for other persons:
- (d) Accept, for the purpose of the Agency, 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: 5
- (e) Make grants or advances of money, on such conditions as it thinks fit, or pay any fee or subscription, to any organisation or person with similar or related functions or carrying out work related to that of the Agency: 10
- (f) Appoint committees, whether or not comprised (wholly or partly) of members of the Agency:
- (g) Do anything incidental to any of its powers.
- (3) 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. 15
- (4) The amount or rate of a fee or charge shall be reasonably related to the expenses incurred or to be incurred in relation to the provision of services, information, or advice to which the fee or charge relates. 20
- (5) The Agency's powers may be exercised within and outside New Zealand.

**8. Recognising the needs and privacy of competitors—**

In performing and exercising its functions and powers under this Act, the Agency shall develop appropriate procedures to— 25

- (a) Reflect the needs of competitors who are under the age of 18 years and the cultural, language, and other special concerns of competitors; and
- (b) Protect the right to privacy of competitors.

PART III 30

TAKING, TESTING, AND NOTIFICATION OF RESULTS OF SAMPLES

*Taking of Samples*

**9. Providing a sample—**(1) The Agency may require a competitor to provide a sample for analysis for the purpose of detecting the presence or otherwise of a scheduled drug or doping method. 35

(2) Without limiting the generality of subsection (1) of this section, the Agency may from time to time consult with national sporting organisations on the number and names of competitors in each sport to be tested in any year, and the sporting activities and events at which testing may be carried out. 40

**10. Sampling for purposes of Act only**—(1) The Agency shall not request, or collect, samples from a competitor for any purpose other than to enable the testing of the samples to determine the presence or otherwise of scheduled drugs or doping methods.

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

10 (3) A test result provided for the Agency, or any determination made by the Agency, shall not be admissible as evidence in any criminal proceedings against the competitor from whom any sample has been taken.

*Failure to Provide Sample*

**11. Action following failure to provide a sample**—  
15 (1) Where it appears to the Agency that a competitor has failed to comply with a request to provide a sample, the Agency shall give to the competitor a notice in the prescribed form stating—

- (a) That the competitor has failed so to comply; and
- 20 (b) That the competitor may, before 5.00 p.m. on the 5th working day following notification, advise the Agency in writing of the grounds on which the competitor had reasonable cause for failing so to comply.

(2) For the purposes of this Act, a competitor shall not be taken to have failed to comply with a request to provide a sample unless the manner in which the competitor was requested to provide the sample was substantially in accordance with the requirements of the regulations.

**12. Determination by Board of Agency on failure to provide a sample**—(1) The Board of the Agency shall determine whether or not the competitor had reasonable cause for failing to comply with a request to provide a sample within a period of 7 days after receiving advice from the competitor in accordance with section 11 (1) (b) of this Act or, if advice is not supplied, within 7 days after the expiration of the period of 5 working days referred to in that section.

35 (2) The Agency shall, as soon as practicable after the Board makes a determination under this section, give notice in writing in the prescribed form of that determination to the competitor, and to the national sporting organisation concerned.

40 (3) If the Board of the Agency has determined that the competitor did not have reasonable cause for failing to comply, the Agency shall also include in the notice the Board's reasons for so deciding.

(4) Subject to **sections 16 to 21** of this Act, a determination by the Board under this section shall be binding on all persons and bodies concerned.

*Positive Test Result*

**13. Requirements of regulations in regard to tests**—A sample provided by a competitor shall be dealt with substantially in accordance with the requirements of the regulations. 5

**14. Notification by Agency in regard to a test**—(1) The Agency shall, as soon as practicable following receipt of a test result, give written notice of the result to the competitor to whom it relates. 10

(2) Where a competitor returns a positive test result after the initial testing of the sample, the Agency shall, as soon as practicable, give the competitor written notice in the prescribed form stating— 15

- (a) The result of the test; and
- (b) That further testing of the sample will be conducted by the accredited laboratory within 4 days after service of the notice; and 20
- (c) That the competitor may attend or have a representative attend this further testing of the sample, such attendance to be at the expense of the competitor; and
- (d) That if the competitor notifies the Agency that the competitor does not seek attendance or representation pursuant to **paragraph (c)** of this subsection, the Agency will appoint an independent representative for the competitor, to attend at the second testing; and 25 30
- (e) That the competitor may, by 5 p.m. 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 account if the second test result confirms the initial test result. 35

(3) Where the Agency is conducting testing pursuant to a contract or arrangement entered into pursuant to **section 26** of this Act, written notification of test results shall be given to such persons and organisations and on such terms as may be specified by the terms of that contract or arrangement, and may or may not be in conformity with the provisions of **subsections (1) and (2)** of this section. 40

**15. Determination by Board in regard to testing of sample**—(1) Where the initial testing of a sample has produced a positive test result, the Board shall determine, within a period of 7 days after receiving advice from the competitor pursuant to **section 14** of this Act, or, if advice is not so supplied, within 7 days after the expiry of the period of the 5 working days referred to in that section, whether or not the competitor has committed a doping infraction.

(2) Where the initial test result is positive, the Board may determine that a doping infraction has not been committed only if it is satisfied that—

(a) A second testing of the sample has not supported the initial test result; or

(b) The applicable requirements of the regulations relating to the sealing of any container containing the sample, and the recording of information relating to that sample, have not been substantially complied with; or

(c) The sample was not tested by an accredited laboratory; or

(d) The sample was tampered with by someone other than the competitor or a person chosen by the competitor to oversee any part of the collection or testing of the sample; or

(e) In other respects, the procedures were not substantially in accordance with the regulations.

(3) The Agency shall, as soon as practicable after the Board makes a determination under this section, give written notice in the prescribed form of that determination to the competitor and to the national sporting organisation concerned.

(4) If the Board has determined that there has been a doping infraction, the Agency shall include in its notice the Board's reasons for so determining.

(5) Subject to **sections 16 to 21** of this Act, a determination by the Board under this section is binding on all persons and bodies concerned.

*Appeals to District Court*

**16. Competitor may appeal to District Court**—(1) A competitor who has received notification of a determination by the Board under **section 12** or **section 15** of this Act, as the case may be, may appeal to the District Court against that determination.

(2) The grounds for an appeal shall be limited to—

(a) In the case of a determination under **section 12** of this Act, whether there was reasonable cause for the

competitor failing to provide a sample as requested by the Agency:

- (b) In the case of a determination under **section 15** of this Act, that—
- (i) A second testing of the sample did not support the initial test result; or 5
  - (ii) The applicable requirements of the regulations relating to the sealing of any container containing the sample and the recording of information relating to that sample were not substantially complied with; or 10
  - (iii) The sample was not tested by an accredited laboratory; or
  - (iv) The sample was tampered with by someone other than the competitor or a person chosen by the competitor to oversee any part of the collection or testing of the sample; or 15
  - (v) In other respects, the procedures were not substantially in accordance with the regulations.

**17. Panel of assessors**—(1) The Minister may from time to time appoint and re-appoint up to 6 persons to be members of a panel of assessors to assist in the hearing of any appeal made under **section 16** of this Act. 20

(2) In considering the suitability of any person for inclusion on the panel, the Minister shall have regard not only to that person's personal attributes, but also to that person's knowledge of and experience in the matters likely to come before the Court. 25

(3) The name of a person shall be removed from the panel if—

- (a) The person dies or is, under the Insolvency Act 1967, adjudged bankrupt; or 30
- (b) The Minister directs that the name of the person be removed from the panel for inability to perform the duties of office, neglect of duty, or misconduct, proved to the satisfaction of the Minister; or 35
- (c) A period of 5 years has elapsed since the date on which the Minister last approved the entry of the person's name; or
- (d) The person requests, by writing addressed to the Minister, that his or her name be removed. 40

**18. Assessor to assist District Court**—(1) The District Court hearing an appeal under **section 16** of this Act shall hear the application with the assistance of an assessor, to be

appointed by the Court for the purposes of that appeal from the panel of assessors. The sole function of the assessor shall be to assist the Court in determining the appeal; and the appeal shall be determined by the Court alone.

- 5 (2) There shall be paid to the assessor appointed to so assist, out of money appropriated by Parliament to the Agency for the purpose, remuneration by way of fees or allowances, and travelling allowances or expenses, in accordance with the Fees and Travelling Allowances Act 1951; and that Act shall apply  
10 accordingly as if the assessor was a member of a statutory Board within the meaning of that Act.

**19. Procedures relating to appeal to District Court—**

- (1) An appeal shall be brought by the filing of a notice of appeal, in the prescribed form by the competitor in the District  
15 Court within 5 working days after service of notification of the determination concerned, and the notice shall set out the grounds on which the appeal is made.

- (2) As soon as practicable after such a notice of appeal has been filed, the Registrar shall lodge a copy of the notice with  
20 the Agency and the national sporting body concerned.

(3) The appeal shall be referred to a District Court Judge within 7 working days after receipt of a valid notice of appeal.

(4) The Registrar shall fix the time and place for the hearing of the appeal and shall notify the appellant.

- 25 (5) A copy of the notice of the time and place for hearing the appeal shall be served by the Registrar on the Agency and the national sporting body concerned.

- (6) The Agency shall furnish to the Registrar of the Court, before the hearing, a report on the manner in which the  
30 proceedings were conducted and the reasons for the making of the determination, supply to the Court such information or assistance as may be required of it by the Court, and shall be represented at the hearing.

- (7) The Registrar may require the competitor to provide  
35 documentation in support of the appeal and, if such documentation is requested, shall require the competitor to provide the national sporting organisation concerned with a copy of the documents accompanying the notice of appeal or otherwise provided under this subsection.

- 40 (8) The competitor and the national sporting organisation may speak (either personally or through a representative) and call evidence at the hearing in support of the appeal, whether or not such evidence is admissible in a court of law.

(9) The District Court shall—

- (a) Avoid unnecessary delay or formality; and
- (b) Receive such evidence as it considers relevant, whether or not it would be admissible in a Court of law.

(10) The appeal may from time to time be adjourned and, in the case of death or illness or if for any other reason a Judge or assessor cannot complete the hearing and determination of appeal, another Judge or assessor may be appointed to complete it. 5

(11) The appeal shall be heard in chambers.

(12) The District Court Rules shall have no application in respect of the appeal. 10

(13) The procedure at the hearing shall be as the Judge determines, subject to this Act and to any regulations.

**20. Decision of District Court—**(1) On the completion of the hearing of the appeal, the District Court may— 15

- (a) Quash the determination appealed against; or
- (b) Confirm the determination, with or without modification.

(2) The decision of the District Court shall include the reasons for the decision.

(3) Within 3 working days after the Registrar has received the written decision, the Registrar shall forward a copy of it to the appellant, the Agency, and the national sporting organisation concerned. 20

(4) A decision of the District Court confirming a determination shall be given effect to as if it were a determination of the Board under **section 12** or **section 15** of this Act, as the case may be. 25

**21. Limitation on proceedings in relation to appeals to District Court—**No proceedings, other than injunctive proceedings, shall be initiated in any Court by any person or organisation in respect of a determination of the Board under **section 12** or **section 15** of this Act unless the competitor has appealed under **section 16** of this Act, and the appeal has been undertaken and a decision made under **section 20** of this Act: 30

Provided that nothing in this section shall affect the right of any person or organisation to apply, in accordance with law, for a judicial review of any such determination if an applicable right of appeal against the determination is not available under this Act. 35

*Register of Notifiable Events* 40

**22. Agency to maintain Register of Notifiable Events—**

(1) The Agency shall establish and maintain a Register of

Notifiable Events for the purpose of recording the name of each competitor who is a New Zealand citizen and in respect of whom—

- 5 (a) A determination has been made by the Board of the Agency to the effect that—
- (i) Under **section 12** of this Act, the competitor did not have reasonable cause for failing to comply with a request to provide a sample; or
  - 10 (ii) Under **section 15** of this Act, the competitor has committed a doping infraction—  
and that determination has not been quashed as a result of an appeal to the District Court under **section 16** of this Act; or
- 15 (b) The Agency has been advised, pursuant to **section 29** or **section 30** of this Act, as the case may be, that the competitor did not have reasonable cause for failing to comply with a request to provide a sample, or a doping infraction has been committed.
- (2) The Agency shall also enter on the Register such other  
20 details and particulars as may be prescribed.
- (3) Where a determination has been quashed by the District Court pursuant to **section 20** of this Act, the Agency shall delete from the Register any entry relating to that determination.
- 25 (4) The Agency shall keep the contents of the Register under review and shall delete entries which are outdated or which it is otherwise appropriate to delete.

**23. Notification of entry on Register**—(1) The Agency shall, as soon as practicable after entering a competitor's name on the Register under **section 22** of this Act, give written notice  
30 of the contents of the entry to—

- (a) The competitor; and
  - (b) Each national sporting organisation (to the Agency's knowledge)—
    - 35 (i) Of which the competitor is, as a competitor, a member; or
    - (ii) With which the competitor is associated as an administrator or coach.
- (2) If it comes to the knowledge of the Agency that a competitor whose name has been entered on the Register  
40 under **section 22** of this Act—
- (a) Has, as a competitor, become a member; or
  - (b) Is associated as an administrator or coach—



with another national sporting organisation, the Agency shall give notice in writing of the contents of the Register in respect of that competitor to that other national sporting organisation.

(3) The Agency may give notification of the contents of the entry, excluding the competitor's name, to the Chief Executive of the Hillary Commission. 5

**24. National sporting organisation to advise Agency of action**—It shall be the duty of a national sporting organisation which receives notification from the Agency under **section 23** of this Act to advise the Agency in writing, as soon as possible, of any action taken by the organisation in relation to the competitor, administrator, or coach concerned as a result of that notification. 10

*Appeal to High Court*

**25. Appeal to High Court on question of law**—(1) Where the Board makes a determination under **section 12** or **section 15** of this Act and that determination has been appealed against under **section 16** of this Act, a competitor who is dissatisfied with the decision of the District Court on the appeal, as being erroneous in point of law, may appeal to the High Court on that question of law. 15 20

(2) Where a District Court makes a decision pursuant to **section 20** of this Act, which the Agency considers is erroneous in point of law, the Agency may appeal to the High Court on that question of law. 25

(3) Subject to this section, every appeal under this section shall be dealt with in accordance with Part X of the High Court Rules.

(4) The national sporting organisation concerned shall be a party to any appeal brought under this section. 30

PART IV

TESTING FOR AND BY OTHER ORGANISATIONS

**26. Testing for other organisations**—(1) The Agency may enter into a contract or arrangement with other organisations, both within New Zealand and overseas, under which the Agency may— 35

- (a) Collect samples from specified persons for the purpose of testing whether any scheduled drug or doping method is present in the samples; and
- (b) Arrange for the testing of the samples by an accredited laboratory; and 40

- (c) Arrange for the secure transport of the samples to an accredited laboratory; and
- (d) Give notice of the results of the testing to such persons and organisations as may be specified in the contract or arrangement.

5

(2) The Agency may do anything lawfully required or lawfully necessary to be done to give effect to the contract or arrangement.

**27. Agency may approve foreign anti-doping bodies—**

10 The Agency may approve a foreign anti-doping body, for the purpose of testing New Zealand competitors, if it is satisfied that the procedures of the body relating to the following matters are substantially in accordance with the procedures contained in this Act and the regulations in respect of—

15

- (a) The manner in which the sample is requested; and
- (b) The collection of samples; and
- (c) The sealing of the containers in which the sample is to be kept until it is tested; and
- (d) The transportation of samples to an accredited laboratory; and
- (e) The analysis of samples at an accredited laboratory; and
- (f) The competitor's rights in relation to the testing of the sample.

20

**28. Approved anti-doping body may take sample for**

25 **Agency—**(1) The Agency may only request an approved anti-doping body to take a sample from a competitor who is a New Zealand citizen and who is in a foreign country if it has entered into a contract or arrangement with that approved anti-doping body.

30

(2) If an approved anti-doping body informs the Agency, pursuant to a contract or arrangement, that a competitor who is a New Zealand citizen has—

35

- (a) Refused to provide a sample to that body without reasonable cause; or
- (b) Has committed a doping infraction in relation to a sample provided to that body—

the Agency shall enter the information on the Register as if it were a determination of the Agency under **section 12** or **section 15** of this Act, as the case may be.

40

**29. Notification by foreign anti-doping body—If—**

- (a) A foreign anti-doping body informs the Agency that a competitor who is a New Zealand citizen has—

- (i) Refused to provide a sample to that body without reasonable cause; or
  - (ii) Has committed a doping infraction in relation to a sample provided to that body; and
  - (b) The Agency is satisfied that, at the time when the sample was collected, the body's procedures relating to the matters referred to in **section 27 (a) to (f)** of this Act were in accordance, or substantially in accordance, with those matters—
- the Agency may approve the anti-doping body pursuant to **section 28** of this Act, and enter the information on the Register under **section 22** of this Act.

**30. Notification if competitor not a New Zealand competitor**—Where, pursuant to an arrangement or contract entered into under **section 26** of this Act, or otherwise under **section 12** or **section 15** of this Act, the Agency is to give notification in relation to a competitor and that competitor is not a New Zealand citizen, notification shall be given to—

- (a) The competitor; and
- (b) The New Zealand national sporting organisation concerned; and
- (c) Each overseas sporting organisation known to the Agency—
  - (i) Of which the competitor is, as a competitor, a member; or
  - (ii) With which the competitor is associated as an administrator or coach; and
- (d) If the competitor was tested under a contract or arrangement entered into by the Agency under **section 26** of this Act, every other person or organisation the Agency is required to notify under the contract or arrangement.

## PART V

### MISCELLANEOUS PROVISIONS

**31. Delegation by Board**—(1) The Board may delegate in writing to any committee appointed by the Board, or to any of the Board's employees, any of the Board's functions, powers, rights, and duties under this Act, other than—

- (a) The power of the Board to make determinations under **sections 12** and **15** of this Act; and
- (b) The fixing of fees and charges under **section 7** of this Act; and
- (c) The power of delegation conferred by this subsection.

(2) Any delegation under this section may be made on such terms and conditions as the Board thinks fit, and may be revoked at any time by notice to the delegate.

5 (3) Except as provided in the instrument of delegation, every person to whom any function, power, right, or duty has been delegated under this section may, without confirmation by the Board, exercise or perform the function, power, right, or duty in like manner and with the same effect as the Board could itself have exercised or performed it.

10 (4) Every person purporting to act under a delegation under this section is presumed to be acting in accordance with its terms in the absence of proof to the contrary.

15 (5) A delegation under this section does not affect the performance or exercise of any function, power, right, or duty by the Agency.

**32. Service of notices**—(1) Where, for the purposes of this Act, any competitor is to be notified of any matter, notice of that matter shall be given, served on, or supplied to that person in the following manner:

20 (a) The notice shall be—

(i) Given by hand to the competitor or otherwise proffered to the competitor for acceptance; and

25 (ii) Given or sent by pre-paid post, in a sealed envelope, to any sporting organisation of which the competitor is a member for forwarding to the competitor; or

(b) If the competitor cannot be given the notice in the manner specified in **paragraph (a) (i)** of this subsection, the notice shall be—

30 (i) Sent to the competitor by pre-paid post addressed to the competitor at the usual or last-known place of residence of the competitor; and

35 (ii) Given or sent by pre-paid post, in a sealed envelope, to any sporting organisation of which the competitor is a member for forwarding to the competitor.

(2) Where, for the purposes of this Act, notice is to be given to any national sporting organisation, that notice shall be given by giving it, or sending it by pre-paid post, to that organisation.

40 (3) A notice given pursuant to this section shall be deemed to have been given on—

(a) The day on which it was given to, or proffered for acceptance by, a competitor or sporting organisation; or

- (b) If posted, on the day on which it would be expected to be delivered to the competitor or sporting organisation in the ordinary course of post.

**33. Regulations**—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 5

- (a) Prescribing the procedure to be followed when a request for the supply of a sample is made:
- (b) Prescribing the procedure to be followed for the taking of samples: 10
- (c) Prescribing the means of identification and attestation of samples and their transportation to accredited laboratories:
- (d) Prescribing the procedure for the testing of samples:
- (e) Prescribing the procedure for the notification of test results to the Agency, and by the Agency to competitors: 15
- (f) Prescribing the manner in which competitors may make submissions to the Agency:
- (g) Prescribing the form and content of the Register of Notifiable Events: 20
- (h) Prescribing the manner in which competitors may appeal to the District Court against a determination made by the Agency:
- (i) Prescribing matters relating to the conduct of appeals to the District Court: 25
- (j) Prescribing the content of notices:
- (k) Making provision in respect of the duties and responsibilities of persons appointed as drug testing officials: 30
- (l) Providing for the recognition and approval of testing procedures used by overseas organisation:
- (m) Providing for such other matters as are contemplated by or are necessary for giving full effect to this Act and for its due administration. 35
- (2) Before making any recommendation for the purposes of subsection (1) of this section, the Minister shall request the Agency to—
- (a) Do everything reasonably practicable on its part to advise all persons and organisations, who or which in its opinion may be affected by any regulations made in accordance with the recommendation, of the proposed terms of the regulations; and 40

- (b) Give such persons and organisations a reasonable opportunity to make submissions on them to the Agency; and
- 5 (b) Advise the Minister of any submissions received and any comments the Agency wishes to make on the proposed regulations.
- (3) **Subsection (2)** of this section shall not apply in respect of any regulations if the Minister considers it is desirable in the public interest that the regulations be made urgently.
- 10 (4) A failure to comply with **subsection (2)** of this section shall not affect the validity of any Order in Council made under this section.

**34. Time limits may be extended**—Where, under this Act, any time limit is provided for the making of any application, or for any other procedure, the Agency or the District Court may, in any particular case, extend that time limit as it sees fit.

15

**35. Ombudsman Act 1975 amended**—Part II of the First Schedule to the Ombudsman Act 1975 is hereby amended by inserting, after the item relating to the New Zealand Railways Corporation, the following item:

20

“The New Zealand Sports Drug Agency.”

**36. Agency to be Crown entity**—The Public Finance Act 1989 is hereby amended—

25

(a) By inserting in the Fourth Schedule (as added by section 41 of the Public Finance Amendment Act 1992), in its appropriate alphabetical order, the following item:

“New Zealand Sports Drug Agency.”:

30 (b) By inserting in the Fifth Schedule (as so added), in its appropriate alphabetical order, the following item:

“New Zealand Sports Drug Agency.”

---

## Section 4 (5)

## SCHEDULE

## PROVISIONS RELATING TO NEW ZEALAND SPORTS DRUG AGENCY

**1. Term of office of members of Board**—(1) Each member of the Board of the Agency shall be appointed for such term, not exceeding 3 years, as may be specified in that member's instrument of appointment, and may from time to time be reappointed.

(2) Unless any member sooner vacates office, the member shall continue in office until that member's successor is appointed, notwithstanding that the term for which the member was appointed may have expired.

(3) Any member of the Board of the Agency may resign at any time by notice in writing addressed to the Minister.

(4) Any member of the Board may be removed from office at any time by the Minister for inability to perform the duties of office, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Minister.

(5) Every person appointed to fill an extraordinary vacancy on the Board shall hold office for the remainder of the term for which that member's predecessor was appointed.

**2. Meetings of Board**—(1) Meetings of the Board shall be held at such times and places as the chairperson may from time to time appoint.

(2) The chairperson of the Board, or any 2 members, may at any time call a special meeting of the Board.

(3) The Board may meet in private or in public, as the Board from time to time decides.

(4) The Board may conduct meetings by telephone communication, facsimile message, or by such other means as may be appropriate.

(5) The Board shall cause such notice as it thinks fit to be given of any public meeting of the Board to persons likely to be interested in the subject matter of the meeting.

(6) At all meetings of the Board, the quorum shall be half the members, if the total membership is even, and a majority of the members, if the total membership is uneven, and shall include the chairperson or the member acting for the chairperson.

(7) The chairperson shall preside at all meetings of the Board at which the chairperson is present.

(8) In the absence of the chairperson from any meeting, the members present shall appoint 1 of their number to be the chairperson for the purposes of that meeting.

(9) All questions arising at any meeting of the Board shall be decided by a majority of the votes of the members present and voting.

(10) The chairperson shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(11) A resolution in writing signed, or assented to by letter or facsimile or telegraphic message, by all members of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted.

(12) Subject to the provisions of this Act and of any regulations in force under this Act, the Board may regulate its procedure in such manner as it thinks fit.

**3. Chairperson or designated member may act alone for competition purposes**—Should the exigencies of testing during a sporting event or activity require a determination be made urgently under

SCHEDULE—*continued*

PROVISIONS RELATING TO NEW ZEALAND SPORTS DRUG AGENCY—*continued*  
section 12 or section 15 of this Act (as the case may be), the Chairperson or a member designated by the Board for the purpose may make such a determination acting alone.

**4. Remuneration, allowances, and expenses of members, etc.—**

(1) The Board is declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There may be paid, out of money appropriated by Parliament for the purpose, to the members of the Board remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951; and the provisions of that Act shall accordingly apply.

(3) The Agency may pay to members of committees of the Board of the Agency for services rendered by them, fees and commission, or either, at such rates as the Board thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Agency.

**5. Disclosure of interests of member—**(1) Any member of the Board or member of a committee of the Board who, otherwise than as such member, is directly or indirectly interested in the exercise or performance of any power or function by the Agency, or who is directly or indirectly interested in any arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by the Agency, as soon as possible after the relevant facts have come to the member's knowledge, shall disclose the nature of the interest at a meeting of the Board.

(2) A disclosure under this clause shall be recorded in the minutes of the Board and, except as otherwise provided by resolution of the Board, the member—

- (a) Shall not take part, after the disclosure, in any deliberation or decision of the Board relating to the exercise or performance of the power or function by the Agency or relating to the arrangement, agreement, or contract; and
- (b) Shall be disregarded for the purpose of forming a quorum of the Board for any deliberation or decision.

**6. Deputies of members—**(1) The Minister may from time to time appoint deputies to members of the Board appointed under section 5 of this Act.

(2) Every such deputy to a member shall have relevant experience or qualifications of the same sort as the member for whom the deputy member will deputise.

**7. Proceedings not affected by certain irregularities—**No act or proceeding of the Board or of any person acting as a member of the Board shall be invalidated because of a vacancy in the membership of the Board at the time of the act or proceeding, or because of the subsequent discovery that there was some defect in the appointment of any person so acting, or that the person was incapable of acting as a member or had ceased to be a member.

**8. Employees of Agency—**(1) Subject to this clause, the Board may from time to time appoint a person to be the Executive Director of the



SCHEDULE—*continued*PROVISIONS RELATING TO NEW ZEALAND SPORTS DRUG AGENCY—*continued*

Agency and may appoint a temporary Executive Director during the temporary absence of the Executive Director.

(2) The Executive Director may from time to time appoint such employees (including employees on secondment from other organisations and acting, temporary, or casual employees) as the Executive Director thinks necessary for the efficient performance and exercise of the functions and powers of the Agency.

(3) The Board or the Executive Director, as the case may be, may at any time terminate or suspend the employment of the Executive Director or other employee appointed under this clause.

(4) The employees of the Agency shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Executive Director from time to time determines.

(5) Any determination under **subclause (4)** of this clause shall take effect on such date (whether the date of the determination or any earlier or later date) as may be specified in the determination, or, if no date is so specified, on the date of the determination.

**9. Personnel policy**—(1) The Board of the Agency and the Executive Director shall operate personnel policies that comply with the principle of being a good employer.

(2) For the purposes of this section, a “good employer” is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of all employees in all aspects of their employment, including provisions requiring—

- (a) Good and safe working conditions;
- (b) An equal opportunities employment programme;
- (c) The impartial selection of suitable qualified persons for appointment;
- (d) Recognition of the aims and aspirations of the Maori people;
- (e) Opportunities for the enhancement of the abilities of individual employees;
- (f) Recognition of the aims and aspirations and the cultural differences of ethnic and minority groups;
- (g) Recognition of the employment requirements of women; and
- (h) Recognition of the employment requirements of persons with disabilities.

**10. Equal employment opportunities**—(1) The Agency shall—

- (a) Develop and publish in each year an equal employment opportunities programme for the Agency;
- (b) Ensure in each year that the programme for that year is complied with.

(2) For the purposes of this clause and **clause 9** of this Schedule, an equal employment opportunities programme means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any person or group of persons.

**11. Choice of procedure**—Where the circumstances giving rise to a personal grievance by a person employed by the Agency are also such that

SCHEDULE—*continued*

PROVISIONS RELATING TO NEW ZEALAND SPORTS DRUG AGENCY—*continued*

that person would be entitled to make a complaint under the Human Rights Act 1993, that person may take one, but not both, of the following steps:

- (a) The person may invoke, in relation to those circumstances, the procedures applicable in relation to personal grievances under the Employment Contracts Act 1991 or the relevant award or agreement; or
- (b) The person may make, in relation to those circumstances, a complaint under the Human Rights Act 1993.

**12. Superannuation or retiring allowances**—(1) For the purpose of providing a superannuation fund or retiring allowances for the Executive Director and its employees, or for any of its members, the Agency may from time to time pay sums of money by way of subsidy or contribution into any superannuation scheme that is registered under the Superannuation Schemes Act 1989.

(2) Notwithstanding anything in this Act, a person who, immediately before becoming an employee of the Agency, is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 shall, for the purposes of that Act, be deemed to be employed in the Government Service so long as that person continues to be an employee of the Agency; and that Act shall apply to that person in all respects as if that person's service as an employee of the Agency is Government service.

(3) Nothing in **subclause (2)** of this clause entitles any person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with **subclause (2)** of this clause, to an employee of the Agency who is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to that employee, means the Agency.

**13. Use of experts**—(1) The Board may, as and when the need arises, appoint any person who, in its opinion, possesses expert knowledge, or is otherwise able to assist in connection with the exercise by the Agency of its functions, to make such inquiries or to conduct such research or to make such reports as may be necessary for the efficient performance by the Agency of its functions.

(2) The Agency shall pay persons appointed under this section, for services rendered by them, fees or commission, or both, at such rates as it thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Agency.

**14. Application of certain Acts to members and employees of Agency**—Subject to **clause 12(2)** of this Schedule, no person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person's appointment as a member of the Board or member of a committee of the Board, or employee of the Agency, or under **clause 13** of this Schedule.

SCHEDULE—*continued*PROVISIONS RELATING TO NEW ZEALAND SPORTS DRUG AGENCY—*continued*

**15. Protection from civil actions**—A member of the Board or employee of the Agency or a member of a committee of the Board shall not be personally 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 of any function, or in the exercise or purported exercise of any power of the Board or the Agency (as the case may be).

**16. Audit Office to be auditor of Agency**—The Audit Office shall be the auditor of the Agency.

**17. Funds of Agency**—(1) The funds of the Agency shall consist of the following:

- (a) Any money appropriated by Parliament for the purposes of the Agency and paid to the Agency for the purposes of the Agency; and
- (b) All other money lawfully received by the Agency for the purposes of the Agency; and
- (c) All accumulations of income derived from any such money.

(2) The Agency may expend its funds as provided in this Act or for any purpose reasonably necessary for or incidental to the performance of its functions.

(3) The Agency may, in any financial year, expend out of its funds for purposes not authorised by this or any other Act a sum or sums totalling not more than 0.1 percent of its total expenditure in that year or \$10,000, whichever is the lesser.

**18. Bank accounts**—(1) The Agency shall open at any bank or banks, such accounts as are necessary for the exercise of its functions and powers.

(2) All money received by the Agency or by any employee of the Agency shall, as soon as practicable after it has been received, be paid into such bank accounts of the Agency as the Agency from time to time determines.

(3) The withdrawal or payment of money from any such account shall be authorised by a prior resolution of the Board, or shall be submitted to the Board for confirmation at its first ordinary meeting after the date of payment.

(4) Any bank account of the Agency shall be operated only by cheque or other instrument signed by such person or persons as the Agency may from time to time authorise.

**19. Investment of money**—Any money that belongs to the Agency and that is not immediately required for expenditure by the Agency may be invested in the same manner in which money in a Crown Bank Account may be invested pursuant to section 23 of the Public Finance Act 1989.

**20. Borrowing powers**—(1) The Agency may, from time to time, borrow money from any bank by way of overdraft.

(2) Without prejudice to subclause (1) of this clause, the Agency may, with the prior written approval of the Minister, borrow money by way of mortgage, debentures, bonds, or otherwise, and may mortgage or charge any of its real or personal property, whether present or future, in such manner as it thinks fit.

SCHEDULE—*continued*

PROVISIONS RELATING TO NEW ZEALAND SPORTS DRUG AGENCY—*continued*

**21. Crown may provide services for Agency**—The Crown, acting through any department of State, may from time to time, at the request of the Agency, execute any work or enter into arrangements for the execution or provision, by the department, for the Agency of any work or service, or for the supply to the Agency of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

**22. Reporting by Agency**—(1) The Agency shall in each year make a report to the Minister on the exercise of its functions under this Act, and the Minister shall lay a copy of any such report before the House of Representatives within 20 sitting days after receiving it.

(2) The Agency may, from time to time, provide to the Minister information of a general nature concerning the exercise of its functions under this Act.

(3) Without limiting the generality of **subclauses** (1) and (2) of this clause, any information provided by the Agency under those subclauses may include detail of action (if any) taken by a national sporting organisation as the result of determinations made by the Agency under **sections 12 and 15** of this Act.

**23. Proceedings not to be held bad for want of form**—Proceedings of the Board and of any committee appointed by the Board shall not be held bad for want of form.