

[AS REPORTED FROM THE GOVERNMENT ADMINISTRATION
COMMITTEE]

House of Representatives, 13 July 1994.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. John Banks

NEW ZEALAND SPORTS DRUG AGENCY

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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

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PRELIMINARY

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

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“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:

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“Annual testing programme” means the programme developed under **section 6 (1) (c)** of this Act:

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“Approved anti-doping body” means a foreign anti-doping body approved by the Agency under **section 27** of this Act: 25

“Board” means the Board of the Agency:

“Competitor” means a person who is registered as an athlete with, or who participates as an athlete in any sporting event or activities of, or sanctioned by, an international sporting 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)*—

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(a) *(A)* Is a New Zealand citizen; or

(b) *(Present)* Is present in New Zealand; or

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(c) Is competing for New Zealand; or

(d) Consents to be tested at the request of the Agency:

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“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) 24c** of *(the)* this Act, where that section is applicable:

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

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“Doping infraction” means a determination made under **section 15 (1)** of this Act that a competitor has used a scheduled drug or doping method or exceeded the permitted level of any scheduled drug:

“Doping method” means any method included in the schedule of drugs and doping methods maintained by the Agency under **section 6 (1) (a)** of this Act:

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“Drugs” means banned substances, or substances that are banned if taken in excess of specified permitted levels, included in the schedule of drugs and doping methods maintained by the Agency under **section 6 (1) (a)** of this Act:

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

“Foreign anti-doping body” means—

- (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)~~ A laboratory in a foreign country; 5
- or
- (c) An international sporting federation; or

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(d) A foreign national sporting federation or foreign national sporting organisation: 10

“Foreign country” means any country other than New Zealand:

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“Foreign Government sports organisation” means—

- (a) A department of State in a foreign country; or 15
- (b) A Government agency in a foreign country that oversees sport in that country:

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“Foreign government sports organisation” means a department of State or a Government agency which oversees sport in a foreign country: 20

“Further testing” means, where the sample is urine, the testing of the sample in the B bottle as provided in regulations; and, where the sample is not urine, the testing of the sample in such container as is specified in regulations; and “second testing” and “second test” shall have a corresponding meaning: 25

“Hillary Commission” means the Hillary Commission for Sport, Fitness, and Leisure established under the Sport, Fitness, and Leisure Act 1987: 30

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“Initial testing” means, where the sample is urine, the testing of the sample in the A bottle as provided in

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regulations; and, where the sample is not urine, the testing of the sample in such container as is specified in regulations; and “initial test” has a corresponding meaning:

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“International Olympic Committee” means the 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:

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“Laboratory” means an accredited laboratory that is included in the list prepared by the Agency under section 6 (1) (b) of this Act:

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“Minister” means the Minister for Sport, Fitness, and Leisure:

“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:

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“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*:

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“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

(b) Committed a doping infraction:

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“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

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that is in force, other than a temporary entry permit within the meaning of that Act:

“Positive test result”, in relation to a competitor, means a finding duly made by *(an accredited)* a laboratory, by means of testing a sample provided by a competitor, to the effect that— 5

(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 10

(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: 15

“Register” means the *(Register of Notifiable Events)* Sports Drug Register established and maintained by the Agency under **section (22) 15A** of this Act:

“Regulations” means regulations in force under this Act:

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“Sample” means a sample of urine:

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“Sample” means any human biological fluid or tissue:

“Scheduled drug or doping method” means a drug or doping method, and any drug with a specified permitted level, included in the schedule maintained by the Agency under **section 6 (1) (a)** of this Act: 25

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“Test result” means a finding by an accredited laboratory that a sample test result is negative or positive: 30

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5 “Specified athlete” means a person whom the Agency is requested to test by a foreign anti-doping body, a foreign government sports organisation, or a foreign sports organisation under a contract testing arrangement:

“Test result” means a finding duly made by a laboratory, in accordance with its testing procedures, that a sample test result is negative or positive:

10 “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

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

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

20 **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

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

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(c) Provide education on the use of drugs and doping methods in sport.

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

(a) Encourage the practice of sport free from the use of drugs in a manner consistent with the objectives of protecting—

35 (i) The health of competitors; and

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

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

- (b) Encourage the development of programmes to educate the sporting community and the community at large about the dangers of using drugs in sport:
- (c) Provide leadership in the development of a national strategy concerning the use of drugs in sport: 5
- (d) Develop *(a centralised)* drug sampling and testing programmes that expose(s) competitors to sampling and drug testing:
- (e) Encourage national sporting organisations to *(adopt uniform drug sampling, testing, and disciplinary procedures)* participate in the development of the annual testing programme with the Agency: 10
- (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

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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 in all Courts for all purposes. 35

(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.

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. 40

(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) membership includes* a mix of knowledge and experience in matters coming before the Board, including knowledge and experience in—

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

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

- 15 (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:
- 20 (b) Preparing and maintaining a list of the laboratories *(which) accredited by* the International Olympic Committee *(recognises as accredited laboratories)* for the purpose of testing for the use of drugs in sport:

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- 25 (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—
 - 30 (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:
- 35 (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
- 40 test results from samples from competitors:

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| (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: | 5 |

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| (c) In consultation with national sporting organisations, developing an annual testing programme which, for out-of-competition testing, identifies the competitors or the number of, or classes of, competitors, liable for testing and for in-competition testing, identifies the sporting events, competitions, and activities at which testing may be carried out: | 10 |
| (d) Selecting competitors included in the annual testing programme to provide samples for testing, testing those competitors, and notifying the results: | 15 |
| (e) Selecting other competitors to provide samples for testing, testing those competitors, and notifying the results: | |
| (f) Testing specified athletes and notifying the test results following sampling requests made under contracts or arrangements entered into under section 26 of this Act: | 20 |
| (g) Establishing and maintaining a Sports Drug Register and notifying competitors and national sporting organisations of entries made in the Register: | 25 |
| (h) 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: | 30 |
| (i) Making determinations regarding requests for the provision of samples and in respect of test results from samples from competitors: | |
| (ia) Notifying competitors and national sporting organisations of determinations made by the Agency: | 35 |
| (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:
- 5 (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:
- (o) Establishing an information service that identifies—
 - 20 (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:
- 25 (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 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, 30 procedures that are appropriate and fair in the circumstances, and shall comply with the principles of natural justice.

- 7. Powers of Agency**—(1) The Agency shall have all powers that are reasonably necessary or expedient to enable it to perform its functions.
- 35 (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:

(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: 5

(f) Appoint committees, whether or not comprised (wholly or partly) of members of the Agency:

(g) Do anything incidental to any of its powers. 10

(3) *(The)* Subject to section 7A of this Act, the Agency may charge such fees, or impose such charges, as are reasonable in respect of the provision of services, information, or advice (by) requested from the Agency, other than information supplied to a competitor relating to the competitor. 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.

(5) The Agency's powers may be exercised within and outside New Zealand. 20

New

7A. Charges for testing—(1) The Agency shall not make any charge to a national sporting organisation for testing conducted under the annual testing programme. 25

(2) The Agency may, at the request of a national sporting organisation, conduct testing not provided for under the annual testing programme, and may charge the national sporting organisation fees for such testing.

(3) Where the Agency conducts testing under **subsection (2)** of this section, competitors shall be entitled to the rights to which they are entitled under this Act. 30

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— 35

- (a) Reflect the needs of competitors who are under the age of 18 years and the cultural, language, disabilities, 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

5 **9. Providing a sample**—The Agency may require a competitor to provide a sample for analysis in the manner provided for by regulations for the purpose of detecting the presence or otherwise of a scheduled drug or doping method.

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10 (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.

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New

9A. 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.

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

25 (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.

30 (3) A sample or 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.

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(4) The Agency shall require the laboratory to discard samples sent to it by the Agency following the completion of testing and notification of the results to the Agency.

Failure to Provide Sample

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11. Action following failure to provide a sample—

(1) Where it appears to the Agency that a competitor has failed to comply with a request to provide a sample in the manner provided for by regulations, the Agency shall give to the competitor a notice in the prescribed form stating—

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(a) That the competitor has failed (so to comply) to comply with such a request; and

(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) to comply with the request.

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(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.

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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.

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(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.

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(3) If the Board of the Agency has determined that the competitor did not have reasonable cause for failing to comply,

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the Agency shall also include in the notice the Board's reasons for so deciding.

New

5 (2) In making its determination, the Board shall take into consideration whether the required procedures were substantially complied with and any submissions made on behalf of the competitor.

10 (3) Where the Board makes a determination that the competitor did not have reasonable cause to fail to provide a sample, the Agency shall enter the determination on the Register in accordance with section 15A (2) of this Act.

15 (3A) Where the Board makes a determination that the competitor had reasonable cause for failing to provide a sample, the Agency shall give written notification to the competitor in the prescribed form.

(4) Subject to sections (16 to 21) 24A to 24D of this Act, a determination by the Board under this section shall be *(binding on all persons and bodies concerned)* final and conclusive.

20 *(Positive Test Result) Testing of Samples*

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25 **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.

14. Notification by Agency in regard to a test—

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30 (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.

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(1) Where a competitor returns a negative test result after the initial testing of the sample, the Agency shall, 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. 5

(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*) notification in the prescribed form stating— 10

- (a) The result of the test; and
- (b) That further testing of the sample will be conducted by (*the accredited*) a laboratory within 4 days after service of the notice; and 15
- (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 at the expense of the Agency; and 20 25
- (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; and 30

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- (f) That the competitor or the competitor's representative may advise the Agency in writing of any matters concerning the second testing which it is considered that the Board should take into account, before the making of the determination, such advice to be 35

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provided to the Agency within 2 working days after the second testing.

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5 (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
10 may or may not be in conformity with the provisions of **subsections (1) and (2)** of this section.

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
15 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.

New

20 (1A) In making its determination, the Board shall take into consideration whether the required procedures were substantially complied with, whether the second testing confirmed the initial test result, and any submissions made on
25 behalf of the competitor.

(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—
30 (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)* a 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.

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(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.

New

(3) Where the Board makes a determination that the competitor has committed a doping infraction, the Agency shall enter the determination on the Register in accordance with **section 15A (2)** of this Act.

(4) Where the Board makes a determination that the competitor has not committed a doping infraction, the Agency shall give written notification of the determination, in the prescribed form, to the competitor and the national sporting organisation or organisations concerned.

(5) Subject to **sections (16 to 21) 24A to 24D** of this Act, a determination by the Board under this section *(is binding on all persons and bodies concerned)* shall be final and conclusive.

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Sports Drug Register

15A. Agency to maintain Sports Drug Register—(1) The Agency shall establish and maintain a Sports Drug Register for the purpose of recording the name of each competitor in respect of whom—

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- (a) A determination has been made by the Board of the Agency to the effect that—
- 5 (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
- (ii) Under **section 15** of this Act, the competitor has committed a doping infraction—
- 10 and that determination has not been quashed as a result of an appeal to the District Court under **section 24A** of this Act; or
- (b) The Agency has been advised, pursuant to **section 27** or **section 28** of this Act, as the case may be, that the competitor did not have reasonable cause for failing
- 15 to comply with a request to provide a sample, or a doping infraction has been committed.
- (2) The Agency shall enter in the Register such particulars of the determination as may be prescribed, as soon as practicable after the determination has been made.
- 20 (3) Where a determination has been quashed by the District Court pursuant to **section 24c** of this Act, the Agency shall delete from the Register any entry relating to that determination.
- (4) The Agency shall keep the contents of the Register under review and shall delete entries which are outdated or which it is
- 25 otherwise appropriate to delete.
- (5) A competitor may apply to the Agency at any time for deletion of the entry concerning the competitor from the Register, and the Agency shall consider any such request and the reasons given in support of it.
- 30 (6) If the Agency deletes an entry from the Register, it shall give written notification of the deletion to the competitor and the national sporting organisation or organisations concerned. Written notification of the deletion shall also be given to the Hillary Commission, but not the competitor's name.
- 35 **15B. Notification of entry on Register**—(1) Except as otherwise provided in **subsection (7)** of this section, the Agency shall, as soon as practicable after entering a competitor's name on the Register under **section 15A** of this Act, give written notification, in the prescribed form, of the contents of the entry
- 40 to the competitor and the national sporting organisation or organisations concerned.

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(2) If it comes to the knowledge of the Agency that a competitor whose name has been entered on the Register under **section 15A** of this Act—

(a) Is (as a competitor) a member, or has (as a competitor) become a member, of; or 5

(b) Is associated as an administrator or coach with— another national sporting organisation, the Agency shall give written notification of the contents of the Register in respect of that competitor to that other national sporting organisation. 10

(3) The Agency shall advise the Chief Executive of the Hillary Commission, in respect of each entry in the Register, of the name of the sport and the fact that a determination has been made, that a competitor did not have reasonable cause for failing to provide a sample, or that a doping infraction has been committed. 15

(4) The Agency may from time to time publish or otherwise disclose statistical information regarding entries made in the Register for the purposes of this Act.

(5) The Agency shall not advise any person or organisation of entries made in the Register, except as provided in **subsections (1), (2), and (3)** of this section, nor shall it permit any person or organisation to inspect the Register. 20

(6) A competitor may at any time request the Agency to disclose, to the competitor, any entry on the Register concerning the competitor, and the Agency shall comply with any such request. 25

(7) A competitor may at any time request the Agency to correct information held on the Register concerning that competitor, and may request that a notation be made on the Register indicating the nature of a correction requested but not made. 30

(8) Where an entry is made in the Register recording a determination that a doping infraction has been committed, the Agency shall include in the notice of the entry to the competitor, and to the national sporting organisation or organisations, the Board's reasons for so determining. 35

15c. 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 15b** of this Act to advise the Agency in writing, within 1 40

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month after notification, of any action taken by the organisation in relation to the competitor, administrator, or coach concerned as a result of that notification.

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Appeals to District Court

10 **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—

15 (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—

20 (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

25 (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

30 (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.

(2) In considering the suitability of any person for inclusion on the panel, the Minister shall have regard not only to that

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person's personal attributes, but also to that person's knowledge of and experience in the matters likely to come before the Court.

(3) The name of a person shall be removed from the panel if— 5

- (a) The person dies or is, under the Insolvency Act 1967, adjudged bankrupt; or
- (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 10
- (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 15
- (d) The person requests, by writing addressed to the Minister, that his or her name be removed.

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. 20

(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 accordingly as if the assessor was a member of a statutory Board within the meaning of that Act. 25 30

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 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. 35

(2) As soon as practicable after such a notice of appeal has been filed, the Registrar shall lodge a copy of the notice with the Agency and the national sporting body concerned. 40

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

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

(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.

10 (6) The Agency shall furnish to the Registrar of the Court, before the hearing, a report on the manner in which the 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.

15 (7) The Registrar may require the competitor to provide 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
20 otherwise provided under this subsection.

(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.

25 (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.

30 (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.

(11) The appeal shall be heard in chambers.

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

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

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

(a) Quash the determination appealed against; or

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- (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. 5
- (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. 10

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: 15

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. 20

Register of Notifiable Events 25

- 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— 30
- (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 35
- (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 40

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5 (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 details and particulars as may be prescribed.

10 (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.

(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.

15 **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 of the contents of the entry to—

- 20 (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
25 (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 under **section 22** of this Act—

- 30 (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.

35 (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.

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

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any action taken by the organisation in relation to the competitor, administrator, or coach concerned as a result of that notification.

New

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Appeals to District Court

24A. 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. 10

(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: 15

(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 20

(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 a laboratory; or 25

(iv) The sample was tampered with by someone other than the competitor or a person authorised 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. 30

24B. 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 or his or her representative in the District 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. 35

New

- 5 (2) As soon as practicable after such a notice of appeal has been filed, the Registrar shall lodge a copy of the notice with the Agency and the national sporting organisation or organisations 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.
- 10 (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 organisation or organisations concerned.
- (6) The Agency shall furnish to the Registrar of the Court, before the hearing, a report on the manner in which the proceedings were conducted and the reasons for the making of the determination, and shall supply to the Court such information or assistance as may be required of it by the Court, and shall be represented at the hearing.
- 15 (7) The Registrar may require the competitor to provide a notice of the points of appeal in support of the appeal and, if such a notice is requested, shall require the competitor to provide the Agency and the national sporting organisation or organisations concerned with a copy of the documents accompanying the notice of appeal or otherwise provided under this subsection.
- 20 (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.
- 30 (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 cannot complete the hearing and determination of appeal, another Judge may be appointed to complete it.
- 35 (11) The appeal shall be heard in chambers.
- (12) Except in relation to the payment of fees for the filing and hearing of an appeal and to enforcement of the payment of costs, the District Court Rules shall have no application in respect of the appeal.
- 40

New

(13) Fees for the hearing of an appeal shall be payable only in respect of the first half day of the hearing.

(14) The procedure at the hearing shall be as the Judge determines, subject to this Act and to any regulations. 5

24c. Decision of District Court—(1) On the completion of the hearing of the appeal, the District Court may—

- (a) Quash the determination appealed against; or
- (b) Confirm the determination.

(2) The decision of the District Court shall include the reasons for the decision. 10

(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 or organisations concerned. 15

(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.

(5) If the District Court quashes a determination, the Agency shall give written notification of the Court’s decision to the Hillary Commission, but not the appellant’s name. 20

24d. 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 24A of this Act, and the appeal has been undertaken and a decision made under section 24c of this Act: 25

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. 30

Appeal to High Court

35

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) 24A 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.

5 (2) Where a District Court makes a decision pursuant to section (20) 24c 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.

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

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

PART IV

TESTING FOR AND BY (*OTHER*) FOREIGN ORGANISATIONS

15 *Struck Out*

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—

20 *New*

26. Contract testing—(1) The Agency may enter into a contract or arrangement with a foreign anti-doping body, an international sporting federation, a foreign government sports organisation, or a foreign sports organisation under which the Agency may—

- 25
- (a) Collect samples from specified (*persons*) athletes for the purpose of testing whether any scheduled drug or doping method is present in the samples; and
 - 30 (b) Arrange for the testing of the samples by (*an accredited*) a laboratory; and
 - (c) Arrange for the secure transport of the samples to (*an accredited*) a laboratory; and
 - 35 (d) Give notice of the results of the testing to such persons and organisations as may be specified in the contract or arrangement.

New

(1A) A contract or arrangement shall be entered into by the Agency under **subsection (1)** of this section only for the purposes of—

- (a) Testing a foreign athlete who is in New Zealand; or 5
- (b) Conducting testing at a sporting event held in New Zealand by the international sporting federation making the request; or
- (c) Conducting testing in a foreign country.

(2) The Agency may do anything lawfully required or lawfully necessary to be done to give effect to the contract or arrangement. 10

New

(3) The procedure for testing under a contract or arrangement entered into under **subsection (1)** of this section shall be as specified in the contract or arrangement. 15

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27. Agency may approve foreign anti-doping bodies—
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— 20

- (a) The manner in which the sample is requested; and
- (b) The collection of samples; and 25
- (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 30
- (f) The competitor's rights in relation to the testing of the sample.

28. Approved anti-doping body may take sample for Agency—(1) The Agency may only request an approved anti-doping body to take a sample from a competitor who is a New 35

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Zealand citizen and who is in a foreign country if it has entered into a contract or arrangement with that approved anti-doping body.

5 (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—

(a) Refused to provide a sample to that body without reasonable cause; or

10 (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.

15 **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

20 (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—

25 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

New

27. Foreign anti-doping body may take sample for Agency—(1) The Agency may request a foreign anti-doping body to take a sample for it from a competitor who is in a foreign country.

35 (2) If a foreign anti-doping body advises the Agency, following a request to provide a sample, that a competitor has—

New

- (a) Failed to provide a sample to that body without reasonable cause; or
- (b) Provided a sample which has produced a positive test result— 5
- the Agency shall determine, in each case, whether the procedures carried out by that body were substantially in accordance with the procedures set out in this Act and the regulations in respect of—
- (a) The manner in which the sample is requested; and 10
- (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 a laboratory; and
- (e) The analysis of samples at a laboratory; and 15
- (f) The competitor's rights in relation to the testing of the sample.
- (3) If the Agency is satisfied that the procedures were carried out substantially in accordance with the procedures set out in this Act and the regulations, the Agency shall give notice of the advice from the body to the competitor in terms of **section 11** or **section 14** of this Act, as the case may be, and shall make a determination under **section 12** or **section 15** of this Act, as the case may be. 20
- 28. Decisions notified by foreign anti-doping body—** 25
- (1) If a foreign anti-doping body informs the Agency that a competitor who has been selected by that body to provide a sample has—
- (a) Failed to provide a sample to that body without reasonable cause; or 30
- (b) Committed a doping infraction in relation to a sample provided to that body—
- the Agency shall determine, in each case, whether the procedures carried out by that body were substantially in accordance with the procedures set out in this Act and the regulations in respect of the matters set out in **paragraphs (a) to (f)** of **section 27 (2)** of this Act. 35
- (2) If the Agency is satisfied that the procedures were carried out substantially in accordance with the procedures set out in this Act and the regulations, the Agency shall enter the information on the Register, and the entry shall be deemed to 40

New

be a determination of the Board under **section 12** or **section 15** of this Act, as the case may require.

5 (3) The Agency shall give written notice of the entry to the competitor and to the national sporting organisation or organisations concerned as soon as practicable after the entry is made.

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10 **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—

- 15 (a) The competitor; and
(b) The New Zealand national sporting organisation concerned; and
(c) Each overseas sporting organisation known to the Agency—
20 (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
25 (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.

New

30 **30. Notification where competitor not a New Zealand competitor**—Where, 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, the Agency, in addition to notifying the competitor and the national

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sporting organisation or organisations concerned, may notify each overseas sporting organisation known to the Agency—

- (a) Of which the competitor is, as a competitor, a member; or
- (b) With which the competitor is associated as an administrator or coach.

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.

(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.

(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.

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

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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:

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- (a) The notice shall be—
- (i) Given by hand to the competitor or otherwise proffered to the competitor for acceptance; and
 - (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—
- (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
 - (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.
- (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.

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- 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:
- (a) Personally; or
 - (b) By leaving it at that competitor's usual or last known place of residence or business or at the address specified by the competitor in any document received from that competitor; or

New

- (c) By posting it in a letter addressed to the competitor at that place of residence or business or at that address.
- (2) If any such notice is sent to any competitor by post, then, in the absence of proof to the contrary, the notice shall be deemed to have been delivered to the competitor on the fourth day after the date on which it was posted, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted. 5
- (3) If the competitor's address is in a foreign country, the Agency shall use all reasonable endeavours (including, but not limited to, the use of courier services) to supply the competitor with the notice within 4 days after the date of despatch by the Agency. 10
- (4) If any notice is sent pursuant to **subsection (3)** of this section, then, in the absence of proof to the contrary, the notice shall be deemed to have been delivered to the competitor— 15
- (a) On the day on which written confirmation of delivery is received by the Agency from the agency which effected delivery; or 20
- (b) If posted in the foreign country, on the fourth day after the date on which written confirmation is received by the Agency that the notice has been posted to the competitor and that it was properly addressed and posted. 25
- (5) In proving a delivery effected pursuant to **subsection (3)** of this section by post in a foreign country, it shall be sufficient to prove that the letter was properly addressed and posted.

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: 30

- (a) Prescribing the procedure to be followed when a request for the supply of a sample is made:

New

- (aa) Prescribing human biological fluid or tissue which may be tested: 35
- (b) Prescribing the procedure to be followed for the taking of samples:

- (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:
- 5 (e) Prescribing the procedure for the notification of test results to the Agency, and by the Agency to competitors and national sporting organisations:
- (f) Prescribing the manner in which competitors may make submissions to the Agency:
- 10 (g) Prescribing the form and content of the *(Register of Notifiable Events)* Sports Drug Register:
- (h) Prescribing the manner in which competitors may appeal to the District Court against a determination made by the Agency:
- 15 (i) Prescribing matters relating to the conduct of appeals to the District Court:
- (j) Prescribing the content of notices:
- (k) Making provision in respect of the duties and responsibilities of persons appointed as drug testing officials:
- 20

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(l) Providing for the recognition and approval of testing procedures used by overseas organisation:

- 25 (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.
- (2) Before making any recommendation for the purposes of subsection (1) of this section, the Minister shall request the Agency to—
- 30 (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
- 35 (b) Give such persons and organisations a reasonable opportunity to make submissions on them to the Agency; and
- (c) Advise the Minister of any submissions received and any comments the Agency wishes to make on the proposed regulations.
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(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.

(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. 5

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. 10

New

34A. Interpretation: transitional provisions—In sections 34B to 34E of this Act, unless the context otherwise requires,— 15

“Interim Agency” means the sports drug testing agency established and operated by the Hillary Commission before the commencement of this Act:

“Undertaking” means all contracts, engagements, rights, authorities, and liabilities of the Interim Agency, including any grants, subsidies, donations, and gifts. 20

34B. Transitional provisions relating to staff—Every person employed by the Interim Agency immediately before the commencement of this Act shall, on the commencement of this Act, be deemed to have been appointed as an employee of the Agency on the same terms and conditions of employment (including those relating to salaries and allowances) as applied in respect of that person immediately before such commencement. 25

34C. Transitional provisions relating to records—All records held by the Interim Agency before the commencement of this Act shall be transferred to the Agency on the commencement of this Act. 30

34D. Undertaking of Interim Agency—(1) On the commencement of this Act, the undertaking of the Interim Agency shall vest in the Agency. 35

(2) Every agreement, contract, deed, instrument, undertaking, or notice entered into, executed, or given by the

New

5 Interim Agency, and every action taken by the Interim Agency, before the commencement of this Act, to the extent that it would have been valid if entered into, executed, given, or taken by the Agency after the commencement of this Act, is hereby validated and declared to have been lawfully entered into, executed, given, or taken.

10 **34E. Savings**—Where the Interim Agency has requested a competitor to provide a sample and the procedures relating to that request remain uncompleted at the commencement of this Act, the Interim Agency shall complete those matters in terms of its existing rules.

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

“The New Zealand Sports Drug Agency.”

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

(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.”:

25 (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)* to 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.

New

(1A) The Executive Director and any temporary Executive Director shall be employed on such terms and conditions of employment and shall be paid such salary and allowances as the Board from time to time determines.

(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.

SCHEDULE—*continued*

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

(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.

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

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

(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)~~ to 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.

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.

SCHEDULE—*continued*

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

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.

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.