

Sports Anti-Doping Bill

Government Bill

Explanatory note

General policy statement

Purpose of Bill

The Sports Anti-Doping Bill will provide the legislative framework under which New Zealand can implement the World Anti-Doping Code (the **Code**) and do its part to address the global problem of doping in sport.

The Bill will continue the New Zealand Sports Drug Agency (the **Agency**) (established under the New Zealand Sports Drug Agency Act 1994) as the national anti-doping organisation responsible for ensuring New Zealand complies with the Code. The Bill will require the Agency to make rules to implement the Code. National sporting organisations will be able to adopt the rules through their anti-doping policies or in other ways that bind their national and international-level athletes and officials.

The Code

Doping is fundamentally contrary to the spirit of sport, putting at risk the ethical principles and educational values embodied in the International Charter of Physical Education and Sport of UNESCO. Anti-doping programmes therefore seek to preserve what is intrinsically valuable about sport, characterised by values such as honesty, ethics, fairness, health, respect, courage, commitment, and solidarity.

The Code, which seeks to harmonise international efforts to address doping in sport, was finalised at the World Anti-Doping Conference

in Copenhagen during 3 to 5 March 2003. At this meeting governments and international sporting organisations were asked to formally endorse and start to implement the Code. The Copenhagen Declaration on Anti-Doping in Sport, to which New Zealand is a signatory, provided the vehicle for states to support the Code. It is expected that signatories to the Copenhagen Declaration will be fully compliant with the Code by the 2006 Turin Winter Olympics.

New Zealand Sports Drug Agency

The Bill will continue the Agency. The Agency's functions will include—

- ensuring that New Zealand complies with and implements the Code (including testing athletes for doping violations); and
- co-operating with international anti-doping agencies; and
- conducting education and research activities; and
- advising the Government on anti-doping matters.

The Agency will also be responsible for making rules that implement the Code in New Zealand, including setting out testing requirements and standards, procedures for the analysis of samples, and penalties for doping violations. The rules will also set out the list of substances that are prohibited under the Code, and implement highly technical testing policies and standards that will need to be updated regularly to keep up with rapid developments in doping and anti-doping technology.

Sports Tribunal of New Zealand

The Bill will continue the Sports Tribunal of New Zealand (the **Tribunal**) as the tribunal charged with hearing sports-doping matters referred to it under the rules, and other sporting matters that have been referred to the Tribunal by agreement between the parties and the Tribunal. The Tribunal is currently known as the Sports Disputes Tribunal of New Zealand and is an independent tribunal established by the board of Sport and Recreation New Zealand. The Bill will give the Tribunal statutory powers, including greater powers to obtain evidence, and an expanded role in the hearing of doping matters.

The Tribunal will continue to be a quasi-judicial body, chaired by a retired judicial officer or senior barrister or solicitor, that has jurisdiction over sports-doping matters except where a national sporting

organisation chooses to use another hearing body (instead of the Tribunal) that meets the requirements of the rules.

Limited effect of rules

The rules will not affect the rights or obligations of members of the general public. They will only apply to participants who are required by their sport's anti-doping policy to comply with the rules. While all members of a national sporting organisation will be expected to abide by the anti-doping rules generally, only those involved in high-level competition are likely to be subject to the testing processes provided for in the rules.

Athletes and support personnel have the choice whether to participate in sport at the elite level. In order to compete at national or international level, athletes will be required by their sport's anti-doping policy to observe the conditions of competition set out in the rules. In so doing, they agree to be subject to the rules' anti-doping regime, to be tested for performance-enhancing drugs, and to forgo certain rights (other than rights to natural justice) as a condition of competition.

The anti-doping violations in the rules are civil, rather than criminal, matters. The penalties relating to anti-doping violations are largely limited to the athlete's or support person's involvement in sport, such as suspension.

Because the effect of the rules is restricted to those who have agreed to be bound by the rules, the technical nature of the rules, and the requirement to update the rules frequently, the rules will not be published in the series of Statutory Regulations issued under the Acts and Regulations Publication Act 1989. However, the rules are regulations for the purposes of the Regulations (Disallowance) Act 1989.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. This Bill comes into force on the 28th day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 states the purposes of this Bill.

Clause 4 is an interpretation clause.

Clause 5 provides that the Bill binds the Crown.

Part 2

New Zealand Sports Drug Agency

Subpart 1—Continuation and membership of New Zealand Sports Drug Agency

Clause 6 continues the New Zealand Sports Drug Agency established under the New Zealand Sports Drug Agency Act 1994.

Clause 7 specifies that the Agency is a Crown entity and, accordingly, the Crown Entities Act 2004 applies to the Agency except to the extent that this Act, when enacted, provides otherwise.

Clause 8 requires the Agency to act independently in performing its statutory functions and duties and in exercising its statutory powers.

Under *clause 9*, the Agency is to consist of no more than 5 members. These members are the board of the Agency for the purposes of the Crown Entities Act 2004.

Clause 10 requires the Minister to have regard to the need to ensure that the membership of the Agency includes a mix of knowledge and experience in matters relevant to the functions of the Agency when considering whether to recommend a person for appointment as a member of the Agency. Relevant knowledge and experience includes knowledge and experience in law, sports medicine, or sports participation and administration.

Clause 11 concerns the ability of the Agency to provide a superannuation fund or retiring allowance for its members and employees under the Superannuation Schemes Act 1989 and the Government Superannuation Fund Act 1956.

Subpart 2—Functions and powers of Agency

Clause 12 sets out the Agency's functions under this Bill. Amongst other things, the Agency's functions are to—

- make rules in accordance with *clauses 16 to 23*; and
- do all things necessary to comply with and implement the rules; and

- do all things necessary to comply with and implement any Article of the Code that is not required to be reflected in the rules, but requires the Agency to do something.

Several of its other functions concern providing assistance and information in relation to doping in sport.

Clause 13 sets out the powers of the Agency, which include a power to charge fees or impose charges for the provision of services, information, or advice. However, the Agency cannot charge for providing information to an athlete that relates to that athlete or (as specified in *clause 14*) charge a national sporting organisation for testing conducted under a testing programme established under the rules.

Clause 15 permits the Agency to perform its functions and exercise its powers both within and outside New Zealand, and it may perform any of its functions in co-operation with any person, body, association, or organisation. It also sets requirements as to how the Agency may perform its functions and exercise its powers.

Subpart 3—Rules

Clause 16 is one of the most important provisions in this Bill, as it requires the board of the Agency to make and, from the 90th day after the commencement of this Bill, always have rules. It is mainly through the rules that the Code will be adopted, implemented, and enforced in New Zealand. However, the rules will not apply to the public in general. Athletes and sporting administrators will be bound by the rules through their contractual arrangements with national sporting organisations and therefore the rules are, to the extent that a person chooses whether to be subject to them, voluntary.

Clause 16(2) specifies that the rules must implement the Code. This means that to the extent that the Code requires specified Articles of the Code (Articles 1, 2, 3, 9, 10, 11, 13 (except Article 13.2.2), and 17 and the definitions) to be incorporated into the rules, the Agency must incorporate those Articles into the rules without any substantive changes. Further, the rules must give effect to any other Articles of the Code that require the Agency to make rules in order to comply with them. For example, some Articles of the Code require the Agency to establish certain procedures. In some instances, this will mean that the Agency will need to make rules setting out the required procedures in order to comply with *clause 16(2)* and the Code.

The board may also make any other rules that are necessary or desirable to govern the practice and procedure of the board's functions under *clause 12(c) to (i)*. But before making such a rule, the board must allow the Privacy Commissioner to comment on the proposed rule.

Clauses 17 to 20 allow International Standards, Models of Best Practice, and other standards, requirements, or recommended practices of the World Anti-Doping Agency to be incorporated by reference in the rules.

In order to make rules, *clause 21* specifies that the chief executive of the Agency must publish a notice in the *Gazette* setting out certain specified information, including how people can access the rules. A rule comes into force 28 days after the date on which it is notified in the *Gazette*, or on any later date stated in the notice.

Clause 22 specifies the various manners in which the rules must be made available to the public.

Clause 23 requires the board of the Agency to review the rules from time to time and sets out how new rules can be made and existing rules amended or revised.

Clauses 24 and 25 specify that the rules are not regulations for the purposes of the Acts and Regulations Publication Act 1989, but they are regulations for the purposes of the Regulations (Disallowance) Act 1989.

Clause 26 makes it clear that *clauses 16 to 25* do not affect the application of sections 22 to 25 of the Standards Act 1988.

Subpart 4—Miscellaneous matters concerning Agency

Clause 27 requires the Agency to develop appropriate procedures to—

- reflect the needs of athletes who are under 18 years of age; and
- reflect the culture, language, disabilities, and other special concerns of athletes; and
- protect athletes' right to privacy.

This requirement applies to the extent that there is no inconsistency with the rules.

Clause 28 allows a member of the police, a customs officer, or any other person to provide evidence or information to the Agency in

order to assist the Agency in complying with or implementing the rules.

Part 3

Sports Tribunal of New Zealand

Subpart 1—Continuation and membership of Sports Tribunal of New Zealand

The Sports Disputes Tribunal of New Zealand established by the board of Sport and Recreation New Zealand under section 8(i) of the Sport and Recreation New Zealand Act 2002 is continued under *clause 29*, but with the new name, the Sports Tribunal of New Zealand.

Clause 30 specifies the minimum and maximum number of members that can be appointed to the Tribunal, and how they are to be appointed.

Clause 31 goes on to specify the qualifications that 2 members of the Tribunal must have in order to be appointed to the Tribunal and the matters the Minister must have regard to in recommending any person for appointment to the Tribunal.

Clause 32 concerns the appointment of 1 of the members of the Tribunal as the chairperson, and the qualifications that the chairperson must have.

Clauses 33 and 34 concern the term of office, vacation of office, and termination of appointment of members of the Tribunal.

Under *clause 35*, members of the Tribunal are entitled to receive remuneration and to be reimbursed for travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951.

Clause 36 specifies that members of the Tribunal are not personally liable for any act done or omitted to be done in good faith in pursuance of the functions, duties, powers, or authorities of the Tribunal.

Subpart 2—Jurisdiction and procedure

Clause 37 sets out the functions of the Tribunal, which include—

- doing all things necessary to comply with and implement the rules; and

- determining sports-related disputes that parties agree to send to the Tribunal if the Tribunal agrees to determine that dispute and is not prevented by any other enactment from hearing that dispute.

Clause 38 authorises the Tribunal to determine its own procedures provided that it complies with and implements the rules.

Clauses 39 to 46 provide the Tribunal with certain powers in order to allow it to carry out its functions properly.

Clause 39 concerns evidence that the Tribunal may receive and how it may receive that evidence.

Clauses 40 to 44 concern witnesses and allow the Tribunal to issue a witness summons to any person requiring that person to attend before the Tribunal to give evidence. Every witness who attends before the Tribunal to give evidence pursuant to a summons is entitled to be paid witnesses' fees and the witness has the same privileges and immunities as witnesses have in proceedings in a District Court. A person who fails or refuses to comply with a summons commits an offence and is liable to a fine not exceeding \$1,500.

Clause 45 specifies the circumstances in which a person may be held to be in contempt of the Tribunal and, in so doing, to have committed an offence and to be liable to a fine of \$1,000.

Under *clause 46*, the Tribunal may make any order as to costs it thinks fit.

Part 4

Transitional provisions, repeal, and revocations

Transitional provisions for Agency

Clauses 47 and 48 contain transitional provisions for the Agency. In particular, *clause 48* validates certain actions of the Agency in relation to the preparation of the rules before the commencement of this Bill.

Transitional provisions for Tribunal

Clauses 49 to 51 contain transitional provisions for the Tribunal.

Repeal and revocations

Clause 52 repeals the New Zealand Sports Drug Agency Act 1994.

Clause 53 specifies that the regulations listed in the *Schedule* to this Bill are revoked.

Hon Trevor Mallard

Sports Anti-Doping Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Sports Anti-Doping Act **2005**.

2 Commencement

This Act comes into force on the 28th day after the date on which it receives the Royal assent.

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Part 1
Preliminary provisions

3 Purposes of this Act

The purposes of this Act are to—

- (a) give effect to the Code in New Zealand in order to achieve the Code's purposes of— 10
- (i) protecting athletes' fundamental right to participate in doping-free sport and in this way promote health, fairness, and equality for athletes worldwide; and 15
- (ii) ensuring harmonised, co-ordinated, and effective anti-doping programmes at an international and national level with regard to detection, deterrence, and prevention of doping; and
- (b) continue the Agency and the Tribunal as the independent bodies charged with implementing the Code in New Zealand. 20

4 Interpretation

In this Act, unless the context otherwise requires,—

Agency means the New Zealand Sports Drug Agency continued under **section 6**

board means the board of the Agency 5

Code means the World Anti-Doping Code 2003 adopted by the World Anti-Doping Agency on 5 March 2003 at Copenhagen; and includes any amendments to the Code adopted by the World Anti-Doping Agency from time to time

Minister means the Minister who, under the authority of a warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 10

national sporting organisation means a body that represents members involved in a particular type of sporting event or activity in New Zealand and, if a national organisation does not exist for a sport, includes a local, regional, or other sporting organisation 15

rules means the rules made under **section 16**

Tribunal means the Sports Tribunal of New Zealand continued under **section 29** 20

World Anti-Doping Agency means the body founded by the International Olympic Committee and constituted as a foundation in Lausanne by an instrument of foundation signed on 10 November 1999, and named in that instrument as the Agence Mondiale Antidopage, World Anti-Doping Agency. 25

5 Act binds the Crown

This Act binds the Crown.

Part 2**New Zealand Sports Drug Agency**

Subpart 1—Continuation and membership of New Zealand Sports Drug Agency 30

6 New Zealand Sports Drug Agency continued

- (1) There continues to be an Agency known as the New Zealand Sports Drug Agency.

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- (2) The Agency is the same body as the New Zealand Sports Drug Agency established under the New Zealand Sports Drug Agency Act 1994.
- 7 Agency is Crown entity**
- (1) The Agency is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004. 5
- (2) The Crown Entities Act 2004 applies to the Agency except to the extent that this Act expressly provides otherwise.
- 8 Agency must act independently**
- Except as expressly provided otherwise in this or any other Act, the Agency must act independently in performing its statutory functions and duties and in exercising its statutory powers under— 10
- (a) this Act; and
- (b) any other Act that expressly provides for the functions, powers, or duties of the Agency (other than the Crown Entities Act 2004). 15
- 9 Membership of Agency**
- (1) The Agency consists of no more than 5 members.
- (2) The members of the Agency are the board for the purposes of the Crown Entities Act 2004. 20
- 10 Eligibility for appointment as member of Agency**
- (1) When considering whether to recommend a person for appointment as a member of the Agency, the Minister must have regard to the need to ensure that the membership includes a mix of knowledge and experience in matters relevant to the functions of the Agency, including knowledge of and experience in 1 or more of the following: 25
- (a) law;
- (b) sports medicine: 30
- (c) sports participation and administration.
- (2) This section does not limit section 29 of the Crown Entities Act 2004.

11 Superannuation fund or retiring allowances

- (1) For the purpose of providing a superannuation fund or retiring allowances for any of its members, the Agency may pay sums of money by way of a subsidy or a contribution into any superannuation scheme that is registered under the Superannuation Schemes Act 1989. 5
- (2) Any person who, immediately before becoming an employee of the Agency, is a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 is deemed, for the purposes of that Act, to be employed in the Government service so long as he or she continues to be an employee of the Agency. 10
- (3) The Government Superannuation Fund Act 1956 applies to the person in all respects as if that person's service as an employee of the Agency is Government service. 15
- (4) **Subsection (2)** does not entitle a person to become a contributor to the Government Superannuation Fund if that person has ceased to be a contributor.
- (5) For the purpose of applying the Government Superannuation Fund Act 1956, the Agency is the controlling authority. 20

Subpart 2—Functions and powers of Agency

12 Functions of Agency

The functions of the Agency are to—

- (a) make rules in accordance with **sections 16 to 23**; and
- (b) do all things necessary to comply with and implement the rules; and 25
- (c) do all things necessary to comply with and implement any Article of the Code that—
- (i) is not required to be reflected in the rules; but
- (ii) requires the Agency to do something; and 30
- (d) ensure New Zealand complies with all international agreements and arrangements concerning doping in sport to which New Zealand is a party; and
- (e) test athletes who are not citizens or residents of New Zealand, and notify the test results, in accordance with bilateral or multilateral agreements entered into with foreign governments, foreign anti-doping organisations, or other signatories to the Code, and enter into 35

- reciprocal testing agreements in relation to athletes who are citizens or residents of New Zealand; and
- (f) consult with, advise, and assist—
 - (i) government departments, local authorities, the New Zealand Olympic Committee Incorporated, national sporting organisations, and other bodies or persons on any matters concerned with doping in sport, and related matters; and 5
 - (ii) government and non-government organisations and other persons overseas, for the purpose of promoting the adoption of uniform international testing procedures for doping in sport; and 10
 - (g) advise the Minister on any matters related to doping in sport, and related matters; and
 - (h) generally take all steps necessary or desirable to achieve the purposes of this Act; and 15
 - (i) perform any other functions that—
 - (i) are conferred on the Agency by this or any other enactment; or
 - (ii) the Minister may direct in accordance with section 112 of the Crown Entities Act 2004. 20

13 Powers of Agency

- (1) Without limiting the Agency's powers under sections 16 and 17 of the Crown Entities Act 2004, it may—
 - (a) take all steps necessary to comply with and implement the rules; and 25
 - (b) take all steps necessary to comply with and implement the Code in accordance with this Act; and
 - (c) subject to **section 14**, charge any fees, or impose any charges, that are reasonable in respect of the provision of services, information, or advice requested from the Agency, other than information supplied to an athlete relating to the athlete. 30
- (2) 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. 35

14 Charges for testing

- (1) The Agency must not make any charge to a national sporting organisation for testing conducted under a testing programme established under the rules.
- (2) The Agency may, at the request of a national sporting organisation, conduct testing not provided for under a testing programme established under the rules, and may charge the national sporting organisation fees for that testing. 5
- (3) If the Agency conducts testing under **subsection (2)**, athletes are entitled to the same rights to which athletes are entitled under a testing programme established under the rules. 10

15 Performing Agency's functions and exercising Agency's powers

- (1) The Agency's functions may be performed, and its powers may be exercised, within and outside New Zealand. 15
- (2) The Agency may perform any of its functions in co-operation with any person, body, association, or organisation.
- (3) In the performance of its functions and the exercise of its powers, the Agency must establish for its use, and for the use of its committees, procedures that— 20
 - (a) are appropriate and fair in the circumstances; and
 - (b) comply with the rules.

Subpart 3—Rules

16 Board must make rules

- (1) The board must make, and from the 90th day after the commencement of this Act always have, rules. 25
- (2) The rules must implement the Code and, in particular, to the extent that the Code requires specified Articles of the Code to be incorporated into the rules without substantive changes (allowing for necessary non-substantive editing changes in order to refer to things like sports, section numbers, and the Agency's name), must incorporate those Articles in that manner. 30
- (3) In addition, the board may also make any other rules that are necessary or desirable to govern the practice and procedure of the board's functions under **section 12(c) to (i)**. 35

- (4) Before making a rule under **subsection (3)**, the board must give the Privacy Commissioner a reasonable opportunity to comment on the proposed rule.
- (5) Rules made under this section may authorise specified procedures or matters of detail to be determined by the Agency, and may not be challenged on the ground that they leave such matters to the discretion of the Agency. 5
- 17 Incorporation of material by reference in rules**
- (1) The following written material may be incorporated by reference in the rules: 10
- (a) standards, requirements, or recommended practices of the World Anti-Doping Agency;
 - (b) the World Anti-Doping Agency's International Standards;
 - (c) the World Anti-Doping Agency's Models of Best Practice. 15
- (2) Material may be incorporated by reference in the rules—
- (a) in whole or in part; and
 - (b) with modifications, additions, or variations specified in the rules. 20
- (3) Material incorporated by reference in the rules has effect as part of the rules.
- 18 Effect of amendments to, or replacement of, material incorporated by reference in rules** 25
- An amendment to, or replacement of, material incorporated by reference in the rules (the **principal rules**) has effect as part of the principal rules only if rules made after the making of the principal rules state that the particular amendment or replacement has that effect.
- 19 Proof of material incorporated by reference** 30
- (1) A copy of material incorporated by reference in the rules, including any amendment to, or replacement of, the material (**material**) must be—
- (a) certified as a correct copy of the material by the chief executive of the Agency; and 35
 - (b) retained by the chief executive of the Agency.

- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation of the material in the rules.
- 20 Effect of expiry of material incorporated by reference** 5
Material incorporated by reference in the rules that expires or is revoked or ceases to have effect, ceases to have legal effect as part of the rules only if rules made under **section 16** state that the material ceases to have legal effect.
- 21 Method of making rules**
- (1) Rules may be made under **section 16** by the chief executive of the Agency publishing a notice in the *Gazette* that states the following: 10
- (a) that the Agency has made rules under **section 16**; and
 - (b) if there is material incorporated by reference in the rules, a description of that material; and 15
 - (c) that the rules and the material are available for inspection during working hours, free of charge, and the location of the place or places at which they can be inspected; and
 - (d) that copies of the rules and the material can be purchased, and the location of the place or places at which they can be purchased; and 20
 - (e) if copies of the rules and the material are made available under **section 22(1)(c)**, that the rules and the material are available in other ways, and details of where or how they can be accessed or obtained. 25
- (2) The notice in the *Gazette* need not contain the rules or the material.
- (3) A rule comes into force 28 days after the date on which it is notified in the *Gazette* or on any later date stated in the notice. 30
- (4) In this section and **section 22**, **material** means—
- (a) material incorporated by reference in the rules;
 - (b) any amendment to, or replacement of, that material that is incorporated in the rules or the material referred to in **paragraph (a)** with the amendments or replacement material incorporated: 35
 - (c) if the material referred to in **paragraph (a) or (b)** is not in an official New Zealand language, as well as the material

itself, an accurate translation of the material in an official New Zealand language.

22 Public access to rules and material incorporated by reference

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|-----|---|----|
| (1) | The chief executive of the Agency— | 5 |
| | (a) must make the rules and the material available for inspection during working hours, free of charge, at the head office of the Agency and at any other places that the chief executive determines are appropriate; and | |
| | (b) must make copies of the rules and the material available for purchase at a reasonable price; and | 10 |
| | (c) may make copies of the rules and the material available in any other way that the chief executive considers appropriate in the circumstances (for example, on an internet website). | 15 |
| (2) | A failure to comply with this section does not invalidate the rules or the incorporation by reference of material in the rules. | |

23 Review of rules

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| (1) | The board must review the rules from time to time for the purpose of ensuring that they comply with this Act. | 20 |
| (2) | Sections 16 to 22 apply, with the necessary modifications, to the making of a new, amended, or revised rule. | |

24 Acts and Regulations Publication Act 1989 not applicable

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| (1) | The rules are not regulations for the purposes of the Acts and Regulations Publication Act 1989. | 25 |
| (2) | The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in the rules or to an amendment to, or replacement of, that material. | |

25 Application of Regulations (Disallowance) Act 1989

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| (1) | The rules are regulations for the purposes of the Regulations (Disallowance) Act 1989. | 30 |
| (2) | Despite subsection (1) , nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is incorporated by reference in the rules to be laid before the House of Representatives. | 35 |

- 26 Application of Standards Act 1988 not affected**
Sections 16 to 25 do not affect the application of sections 22 to 25 of the Standards Act 1988.

Subpart 4—Miscellaneous matters concerning Agency

- 27 Recognising needs and privacy of athletes** 5
 In the performance of its functions and the exercise of its powers, the Agency must, to the extent that there is not an inconsistency with the rules, develop appropriate procedures to—
- (a) reflect the needs of athletes who are under the age of 18 years; and 10
 - (b) reflect the culture, language, disabilities, and other special concerns of athletes; and
 - (c) protect athletes' right to privacy.
- 28 Sharing of evidence and information by customs, police, and others** 15
 A member of the police, a customs officer, or any other person may provide evidence or information to the Agency if that person believes that that evidence or information may assist the Agency in complying with or implementing the rules. 20

Part 3
Sports Tribunal of New Zealand

Subpart 1—Continuation and membership of Sports Tribunal of New Zealand

- 29 Sports Tribunal of New Zealand continued** 25
- (1) There continues to be a Tribunal known as the Sports Tribunal of New Zealand.
 - (2) The Tribunal is the same body as the Sports Disputes Tribunal of New Zealand established by the board of Sport and Recreation New Zealand under section 8(i) of the Sport and Recreation New Zealand Act 2002. 30
- 30 Membership of Tribunal**
- (1) The Tribunal consists of at least 5, but no more than 9, members.

- (2) Each member must be appointed by the Governor-General on the recommendation of the Minister made after consultation with the board of Sport and Recreation New Zealand.
- (3) A member is not employed in the State services for the purposes of the State Sector Act 1988 or the Government service for the purposes of the Government Superannuation Fund Act 1956 only because the person is a member of the Tribunal. 5
- 31 Eligibility for appointment as member of Tribunal**
- (1) Other than the chairperson, 2 members of the Tribunal must— 10
- (a) be barristers or solicitors of the High Court of New Zealand with not less than 7 years' practice; and
- (b) have substantial experience in legal issues affecting sport, or substantial involvement in sport in some capacity.
- (2) In recommending a person for appointment as a member of the Tribunal, the Minister must have regard to— 15
- (a) the person's personal attributes, qualifications, and skills; and
- (b) the need for persons included on the Tribunal to have between them knowledge of, or experience in, the different aspects of matters likely to come before the Tribunal. 20
- 32 Chairperson of Tribunal**
- (1) The Governor-General, on the recommendation of the Minister made after consultation with the board of Sport and Recreation New Zealand, must appoint one of the members as the chairperson of the Tribunal. 25
- (2) The chairperson must have significant understanding, interest, or experience in sport and must be—
- (a) a retired judicial officer who has held office in a New Zealand court or statutory tribunal; or 30
- (b) a senior barrister or solicitor of the High Court of New Zealand with not less than 7 years' practice and who is of standing and repute within the legal profession.
- 33 Term of office of members of Tribunal** 35
- (1) Except as provided in **section 34**, a member of the Tribunal holds office for a term not exceeding 5 years.

- (2) A member of the Tribunal may—
- (a) hold that office concurrently with any other office held by him or her; and
 - (b) be reappointed.
- (3) If the term for which a member was appointed expires, that member, unless sooner vacating or removed from office under **section 34**, may continue to hold office, by virtue of the appointment for the term that has expired, until—
- (a) that member is reappointed; or
 - (b) a successor to that member is appointed.
- 34 Termination of appointment of member of Tribunal**
- (1) A member of the Tribunal may, at any time, resign his or her office by giving notice in writing to that effect to the Minister.
- (2) A member of the Tribunal is taken to have vacated his or her office if he or she dies or is adjudged bankrupt under the Insolvency Act 1967.
- (3) A member of the Tribunal may, at any time, be removed from office by the Governor-General on the recommendation of the Minister made after consultation with the board of Sport and Recreation New Zealand for inability to perform the duties of office, neglect of duty, or misconduct proved to the satisfaction of the Governor-General.
- (4) The powers of the Tribunal are not affected by any vacancy in its membership.
- 35 Remuneration and allowances of members**
- (1) The Tribunal is declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.
- (2) There must be paid to members of the Tribunal, out of money appropriated by Parliament for the purpose, 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 apply accordingly.
- 36 Members of Tribunal not personally liable**
- No member of the Tribunal is personally liable for any act done or omitted to be done by the Tribunal or any member of

the Tribunal in good faith in pursuance or intended pursuance of the functions, duties, powers, or authorities of the Tribunal.

Subpart 2—Jurisdiction and procedure

37 Functions of Tribunal

- The functions of the Tribunal are to— 5
- (a) do all things necessary to comply with and implement the rules; and
 - (b) subject to any other enactment, determine sports-related disputes if—
 - (i) all parties to the dispute agree in writing to refer the dispute to the Tribunal; and 10
 - (ii) the Tribunal agrees, at its sole discretion, to hear and determine the dispute; and
 - (c) subject to any other enactment, hear an appeal against a decision of a national sporting organisation or the New Zealand Olympic Committee Incorporated if the constitution, rules, or regulations of that body specifically provides for an appeal to the Tribunal in relation to that matter; and 15
 - (d) generally take all steps necessary or desirable to achieve the purposes of this Act; and 20
 - (e) exercise and perform any other functions, powers, and duties that—
 - (i) are conferred or imposed on the Tribunal by this or any other enactment; or 25
 - (ii) are conferred or imposed on the Tribunal by the Minister.

38 Procedure of Tribunal

- (1) Except as provided in this Act, the Tribunal may determine its own procedure. 30
- (2) In determining its own procedure, the Tribunal must ensure that it complies with and implements the rules.

39 Evidence in proceedings before Tribunal

- (1) The Tribunal may receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matters before it, whether or not the same would be admissible in a court of law. 35

- (2) The Tribunal may take evidence on oath, and for that purpose any member or officer of the Tribunal may administer an oath.
- (3) The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Tribunal thinks fit, verifying it by oath. 5
- (4) Subject to **subsections (1) to (3)**, the Evidence Act 1908 applies to the Tribunal in the same manner as if the Tribunal were a court within the meaning of that Act.
- 40 Witness summons**
- (1) The Tribunal may of its own motion, or on the application of any party to the proceedings, issue a witness summons to any person requiring that person to attend before the Tribunal to give evidence at the hearing of the proceedings. 10
- (2) The witness summons must state—
- (a) the place where the person is to attend; and 15
 - (b) the date and time when the person is to attend; and
 - (c) the papers, documents, records, or things that that person is required to bring and produce to the Tribunal; and
 - (d) the entitlement to be tendered or paid a sum in respect of allowances and travelling expenses; and 20
 - (e) the penalty for failing to attend.
- (3) The power to issue a witness summons may be exercised by the Tribunal or the chairperson, or by any officer of the Tribunal purporting to act by the direction or with the authority of the Tribunal or the chairperson. 25
- 41 Service of summons**
- (1) A witness summons may be served—
- (a) by delivering it personally to the person summoned; or
 - (b) by posting it by registered post addressed to the person summoned at that person's usual place of residence. 30
- (2) The summons must,—
- (a) if it is served under **subsection (1)(a)**, be served at least 24 hours before the attendance of the witness is required; or
 - (b) if it is served under **subsection (1)(b)**, be served at least 10 days before the date on which the attendance of the witness is required. 35

- (3) If the summons is posted by registered post, it is deemed for the purposes of **subsection (2)(b)** to have been served at the time when the letter would be delivered in the ordinary course of post.
- 42 Witnesses' allowances** 5
- (1) Every witness attending before the Tribunal to give evidence pursuant to a summons is entitled to be paid witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Summary Proceedings Act 1957, and those regulations apply accordingly. 10
- (2) On each occasion on which the Tribunal issues a summons under **section 40**, the Tribunal, or the person exercising the power of the Tribunal under **subsection (3)** of that section, must fix an amount that, on the service of the summons, or at some other reasonable time before the date on which the witness is required to attend, must be paid or tendered to the witness. 15
- (3) The amount fixed under **subsection (2)** of this section must be the estimated amount of the allowances and travelling expenses to which, in the opinion of the Tribunal or person, the witness will be entitled according to the prescribed scales if the witness attends at the time and place specified in the summons. 20
- (4) If a party to the proceedings has requested the issue of the witness summons, then the fees, allowances, and travelling expenses payable to the witness must be paid by that party. 25
- (5) If the Tribunal has of its own motion issued the witness summons, the Tribunal may direct that the amount of those fees, allowances, and travelling expenses— 30
- (a) form part of the costs of the proceedings; or
- (b) be paid from money appropriated by Parliament for the purpose.
- 43 Privileges and immunities**
- (1) Witnesses appearing before the Tribunal have the same privileges and immunities as witnesses have in proceedings in a District Court. 35

- (2) Every counsel, agent, or other person appearing before the Tribunal has the same privileges and immunities as counsel have in proceedings in a District Court.

44 Non-attendance or refusal to co-operate

- (1) Every person commits an offence who, after being summoned to attend to give evidence before the Tribunal or to produce to the Tribunal any papers, documents, records, or things, without sufficient cause,—
- (a) fails to attend in accordance with the summons; or
 - (b) refuses to be sworn or to give evidence, or, having been sworn, refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer concerning the proceedings; or
 - (c) fails to produce that paper, document, record, or thing.
- (2) Every person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$1,500. 10
- (3) No person summoned to attend before the Tribunal may be convicted of an offence against **subsection (1)** unless travelling expenses were tendered or paid to that person in accordance with **section 42**. 20

45 Contempt of Tribunal

- (1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who—
- (a) threatens, intimidates, or intentionally insults the Tribunal or any member of it or any special adviser to or officer of the Tribunal, during a sitting of the Tribunal, or in going to, or returning from, any sitting; or
 - (b) intentionally interrupts the proceedings of the Tribunal or otherwise misbehaves while the Tribunal is sitting; or
 - (c) intentionally and without lawful excuse disobeys an order or direction of a member of the Tribunal in the course of any proceedings before the Tribunal.
- (2) A member of the Tribunal may order the exclusion from a sitting of the Tribunal of any person whose behaviour, in that member's opinion, constitutes an offence against **subsection (1)**, whether or not that person is charged with the offence; and any member of the police may take the steps reasonably necessary to enforce that exclusion. 35

46 Costs

- (1) The Tribunal, in any proceedings before it under this Act, may make orders as to costs as it thinks fit.
- (2) An order as to costs may be filed in a District Court and may be enforced as a judgment of that Court.

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Part 4**Transitional provisions, repeal, and revocations***Transitional provisions for Agency***47 Proceedings or matters before Agency**

Any test, proceeding, or matter before or with the Agency before the commencement of this Act must be dealt with by the Agency under the New Zealand Sports Drug Agency Act 1994, whether or not any action was taken in relation to the test, proceeding, or matter before the commencement of this Act, as if this Act had not been enacted.

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48 Preparation of rules before commencement of this Act

Anything done by the Agency before the commencement of this Act in relation to the preparation of the rules that, if it had been done after the commencement of this Act would have been done in accordance with **sections 16 to 23**, is to be treated as being as valid and effective as it would have been had it been done on or after the commencement of this Act.

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*Transitional provisions for Tribunal***49 Meaning of Sports Disputes Tribunal**

In this Part, **Sports Disputes Tribunal** means the tribunal established by the board of Sport and Recreation New Zealand under section 8(i) of the Sport and Recreation New Zealand Act 2002 and known as the Sports Disputes Tribunal of New Zealand.

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50 Proceedings or matters before Sports Disputes Tribunal

Any proceeding or matter before, or registered with, the Sports Disputes Tribunal before the commencement of this Act must be dealt with by the Tribunal, whether or not any action was taken in relation to the proceeding or matter before the commencement of this Act, as if this Act had not been enacted.

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- 51 References to Sports Disputes Tribunal**
On the commencement of this Act, unless the context otherwise requires, every reference to the Sports Disputes Tribunal in any contract or other instrument, document, or notice must be read as a reference to the Tribunal. 5
- Repeal and revocations*
- 52 New Zealand Sports Drug Agency Act 1994 repealed**
The New Zealand Sports Drug Agency Act 1994 is repealed.
- 53 Regulations revoked**
The regulations specified in the Schedule are revoked. 10
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**Schedule
Regulations revoked**

**New Zealand Sports Drug Agency Act Commencement Order
1994** (SR 1994/285)

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**New Zealand Sports Drug Agency Amendment Act
Commencement Order 2001** (SR 2001/27)

Sports Drug (Urine Testing) Regulations 1994 (SR 1994/286)

