

Sports Anti-Doping Bill

Government Bill

As reported from the Government Administration
Committee

Commentary

Recommendation

The Government Administration Committee has examined the Sports Anti-Doping Bill and recommends that it be passed with the amendments shown.

Introduction

The bill will provide the legislative framework to facilitate New Zealand's compliance with the World Anti-Doping Code. The bill retains the former New Zealand Sports Drug Agency, renamed Drug Free Sport New Zealand, as the national anti-doping organisation responsible for making and implementing rules that reflect the code in New Zealand. 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 athletes and officials.

The majority of the amendments to the bill are minor and technical in nature. Our commentary covers the substantive issues raised during our examination.

Employment law implications

It was suggested the bill should be analysed from an employment law perspective; according to professional athletes the same rights and benefits that other employees enjoy under New Zealand law. We are advised that the employment relationship between national

sporting organisations and professional athletes will not be affected by the bill. That relationship is set out in the employment agreements between professional athletes and national sporting organisations. Their employment agreements may or may not require the athletes to comply with the code depending on the national sporting organisation's commitment to the code. We are advised that the bill will affect neither those obligations nor athletes' obligations under their employment agreements, as the bill will not make compliance with the code mandatory.

Privacy

Concerns were raised about the privacy of athletes under the bill and, in particular, the provision that anti-doping organisations may publicly disclose the identities of athletes who have tested positive for a prohibited substance before the hearing process has been concluded.

We note that these concerns relate to the requirements of the code, rather than the bill, which contains protections for the privacy of athletes. Under clause 27, the Sports Drug Agency is required to develop appropriate procedures to protect any athlete's right to privacy to the extent consistent with the rules. This clause constrains the Agency's freedom to disclose the names of athletes, except where the code requires. As the code does not require any such disclosure, it is highly unlikely that the name of an athlete would be disclosed by the Agency before the hearing process is concluded.

Information sharing

We considered whether the bill should be amended to require the Sports Drug Agency to share drug testing results which had detected illegal substances, with the Police and, if such reporting were to be mandatory, the impact it may have on the Agency's operations and the anti-doping regime.

The majority of the committee are satisfied that it would be undesirable for the bill to be amended to require the Agency to share information with the Police about the results of blood or urine tests. Release of the drug test results prior to administrative review by the Agency would conflict with confidentiality requirements under the World Anti-Doping Code. It is also not possible to be certain that a positive drug test is valid until the New Zealand Sports Tribunal reaches its decision at the end of the disciplinary process, at which point it makes its findings public. A requirement to share drug test

results with the Police would also be fundamentally contradictory to the basic principles of the sports anti-doping regime and could threaten the agreements between athletes and national sporting organisations which underpin the whole anti-doping process.

Evidence of a prohibited drug in an athlete's blood may be sufficient to affect the athlete's rights under a sporting code, but is unlikely to be sufficient evidence for Police purposes.

We note that under the bill and the Privacy Act 1993, the Agency will have power to disclose personal information to the Police, New Zealand Customs, or other public sector organisations in order to avoid a "prejudice to the maintenance of the law ... including the prevention, detection, investigation, prosecution, and punishment of offences".

Consultation with athletes

One of the Sports Drug Agency's functions under clause 12(f)(i) will be to consult with, advise, and assist government departments, local authorities, the New Zealand Olympic Committee, national sporting organisations, and other bodies or persons on any matters concerned with doping in sport. Because athletes will be directly affected by the code, we consider that the bill could benefit from making it explicit that one of the Agency's functions is to consult with, advise, and assist athletes. We therefore recommend that clause 12(f)(i) be amended to state that one of the functions of the Agency is to consult with, advise, and assist athletes on any matters concerned with doping in sport and related matters.

Consultation on the rules

We also recommend that clause 16(4) be amended to state that the Sports Drug Agency must give national sporting organisations and athletes a reasonable opportunity to comment on any proposed rules. Currently clause 16 requires that when the Sports Drug Agency makes rules, it must give the Privacy Commissioner "a reasonable opportunity to comment" on those proposed rules. Although the Agency would not be prevented from consulting athletes, national sporting organisations, or other affected parties, we recommend including an explicit requirement to give athletes and national sporting organisations a reasonable opportunity to comment on the proposed rules.

Constitutional issues

Under the bill, any amendment to the code would be incorporated into the rules by making a new rule and notifying it in the *Gazette*. It was submitted that this process is unusual as a matter of constitutional law, and that an Order-in-Council should be adopted when amending the rules. However, we note that the rules will not have general application, but will apply only where a national sporting organisation requires its athletes and officials to comply with them. We also note that amendments to the code will not be automatically incorporated into New Zealand law, and will apply only once a new rule has been made and notified in accordance with the process set out in the bill.

Sports Tribunal of New Zealand

The bill will continue the Sports Disputes Tribunal of New Zealand, renaming it the Sports Tribunal of New Zealand. The Tribunal will carry out functions under the code as well as continuing to function as a tribunal for the sport sector.

Membership of the Tribunal

We recommend that the bill be amended to require the Governor-General to appoint one or more deputy chairpersons from the persons who have the legal qualifications set out in clause 32B(1). This will enable deputy chairpersons to run proceedings in the absence of the chairperson, and will ensure that deputy chairpersons have a sound working knowledge of legal procedures.

We also recommend that the requirement in clause 32B(1) for two members of the Tribunal to have legal experience be amended to clarify that at least two members of the Tribunal must have such qualifications.

We also recommend that clause 32B(2) be amended to require that all ordinary members of the Tribunal have substantial experience in sport in any capacity over a period of at least ten years, thereby ensuring a high level of sporting knowledge amongst Tribunal members.

New Zealand Sports Drug Agency

We recommend that the New Zealand Sports Drug Agency's name be changed, wherever it appears in the bill, to Drug Free Sport New Zealand in order to reflect the Agency's current trading name. This

name change will also result in consequential amendments to three other statutes, which are set out in Schedule 2 of the bill.

Appendix

Committee process

The Sports Anti-Doping Bill was referred to the committee on 13 December 2005. The closing date for submissions was 29 March 2006. We received, considered, and heard 2 submissions from interested groups and individuals. We also received advice from Sport and Recreation New Zealand.

Committee membership

Shane Ardern (Chairperson)

HV Ross Robertson (Deputy Chairperson)

Brian Connell

Russell Fairbrother

Sandra Goudie

Hon Dover Samuels

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,	Text struck out unanimously
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New (unanimous)

Subject to this Act,	Text inserted unanimously
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(Subject to this Act,) Words struck out unanimously

Subject to this Act, Words inserted unanimously

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) 40th 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—
- (i) protecting athletes' fundamental right to participate in doping-free sport and in this way promote health, fairness, and equality for athletes worldwide; and
- (ii) ensuring harmonised, co-ordinated, and effective anti-doping programmes at an international and

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- national level with regard to detection, deterrence, and prevention of doping; and
- (b) continue *(the Agency)* Drug Free Sport NZ and the Tribunal as the independent bodies charged with implementing the Code in New Zealand.

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4 Interpretation

In this Act, unless the context otherwise requires,—

Struck out (unanimous)

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

board means the board of *(the Agency)* Drug Free Sport NZ

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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

New (unanimous)

Drug Free Sport NZ means Drug Free Sport New Zealand, a Crown entity continued by **section 6** and previously known as the New Zealand Sports Drug Agency

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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

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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

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

Tribunal means the Sports Tribunal of New Zealand continued *(under)* by section 29 and previously known as the Sports Disputes Tribunal of New Zealand

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

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10 November 1999, and named in that instrument as the Agence Mondiale Antidopage, World Anti-Doping Agency.

- 5 Act binds the Crown**
This Act binds the Crown.

Part 2 5
Drug Free Sport New Zealand (*Sports Drug Agency*)

Subpart 1—Continuation and membership of (*New Zealand Sports Drug Agency*) Drug Free Sport NZ

- 6 (*New Zealand Sports Drug Agency*) Drug Free Sport New Zealand continued** 10
- (1) There continues to be an (*Agency known as the New Zealand Sports Drug Agency*) organisation to be called Drug Free Sport New Zealand.
- (2) (*The Agency*) Drug Free Sport NZ is the same body as the New Zealand Sports Drug Agency established under the New Zealand Sports Drug Agency Act 1994. 15

New (unanimous)

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|-----|--|----|
| (3) | Drug Free Sport NZ continues under this Act with the additional functions, powers, and duties specified in this Act, but otherwise without any change in its continuity, assets, rights, liabilities, contracts, or members. | 20 |
| (4) | Section 47A overrides subsection (3) . | |

- 7 (*Agency*) Drug Free Sport NZ is Crown entity**
- (1) (*The Agency*) Drug Free Sport NZ is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) The Crown Entities Act 2004 applies to (*the Agency*) Drug Free Sport NZ except to the extent that this Act expressly provides otherwise. 25
- 8 (*Agency*) Drug Free Sport NZ must act independently**
Except as expressly provided otherwise in this or any other Act, (*the Agency*) Drug Free Sport NZ must act independently 30

in performing its statutory functions and duties and in exercising its statutory powers under—

- (a) this Act; and
- (b) any other Act that expressly provides for the functions, powers, or duties of *(the Agency) Drug Free Sport NZ* (other than the Crown Entities Act 2004). 5

9 Membership of *(Agency) Drug Free Sport NZ*

- (1) *(The Agency) Drug Free Sport NZ* consists of no more than 5 members.
- (2) The members of *(the Agency) Drug Free Sport NZ* are the board for the purposes of the Crown Entities Act 2004. 10

10 Eligibility for appointment as member of *(Agency) Drug Free Sport NZ*

- (1) When considering whether to recommend a person for appointment as a member of *(the Agency) Drug Free Sport NZ*, 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) Drug Free Sport NZ*, including knowledge of and experience in 1 or more of the following: 15
 - (a) law;
 - (b) sports medicine;
 - (c) sports participation and administration. 20
- (2) This section does not limit section 29 of the Crown Entities Act 2004. 25

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) Drug Free Sport NZ* 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. 30
- (2) Any person who, immediately before becoming an employee of *(the Agency) Drug Free Sport NZ*, 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) Drug Free Sport NZ*. 35

- (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) Drug Free Sport NZ* is Government service.
- (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
- (5) For the purpose of applying the Government Superannuation Fund Act 1956, *(the Agency) Drug Free Sport NZ* is the controlling authority. 10

Subpart 2—Functions and powers of *(Agency) Drug Free Sport NZ*

12 Functions of *(Agency) Drug Free Sport NZ*

The functions of *(the Agency) Drug Free Sport NZ* are to—

- (a) make rules in accordance with **sections 16 to 23**; and 15
- (b) do all things necessary to comply with and implement the rules; and
- (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 20
- (ii) requires *(the Agency) Drug Free Sport NZ* to do something; and
- (d) ensure New Zealand complies with all international agreements and arrangements concerning doping in sport to which New Zealand is a party; and 25
- (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 reciprocal testing agreements in relation to athletes who are citizens or residents of New Zealand; and 30
- (f) consult with, advise, and assist—
- (i) government departments, local authorities, Sport and Recreation New Zealand, the New Zealand Olympic Committee Incorporated, national sporting organisations, athletes, and other bodies or persons on any matters concerned with doping in sport, and related matters; and 35

- (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
 - (g) advise the Minister on any matters related to doping in sport, and related matters; and 5
 - (h) generally take all steps necessary or desirable to achieve the purposes of this Act; and
 - (i) perform any other functions that—
 - (i) are conferred on *(the Agency) Drug Free Sport NZ* by this or any other enactment; or 10
 - (ii) the Minister may direct in accordance with section 112 of the Crown Entities Act 2004.
- 13 Powers of *(Agency) Drug Free Sport NZ***
- (1) Without limiting *(the Agency's) Drug Free Sport NZ's* powers under sections 16 and 17 of the Crown Entities Act 2004, it may— 15
 - (a) take all steps necessary to comply with and implement the rules; and
 - (b) take all steps necessary to comply with and implement the Code in accordance with this Act; and 20
 - (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) Drug Free Sport NZ*, other than information supplied to an athlete relating to the athlete. 25
 - (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. 30
- 14 Charges for testing**
- (1) *(The Agency) Drug Free Sport NZ* must not make any charge to a national sporting organisation for testing conducted under a testing programme established under the rules.
 - (2) *(The Agency) Drug Free Sport NZ* 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. 35

- (3) If *(the Agency)* Drug Free Sport NZ 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.
- 15 Performing (Agency's) Drug Free Sport NZ's functions and exercising (Agency's) Drug Free Sport NZ's powers** 5
- (1) *(The Agency's)* Drug Free Sport NZ's functions may be performed, and its powers may be exercised, within and outside New Zealand.
- (2) *(The Agency)* Drug Free Sport NZ may perform any of its functions in co-operation with any person, body, association, or organisation. 10
- (3) In the performance of its functions and the exercise of its powers, *(the Agency)* Drug Free Sport NZ must establish for its use, and for the use of its committees, procedures that— 15
- (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. 20
- (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)* Drug Free Sport NZ's name), must incorporate those Articles in that manner. 25
- (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)**. 30
- (4) Before making a rule under **(subsection (3))** this section, the board must give national sporting organisations, athletes, and the Privacy Commissioner a reasonable opportunity to comment on the proposed rule. 35
- (5) Rules made under this section may authorise specified procedures or matters of detail to be determined by *(the Agency)* Drug Free Sport NZ, and may not be challenged on the ground

that they leave such matters to the discretion of *(the Agency)* Drug Free Sport NZ.

17 Incorporation of material by reference in rules

- (1) The following written material may be incorporated by reference in the rules: 5
- (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. 10
- (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. 15
- (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

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. 20

19 Proof of material incorporated by reference

- (1) A copy of material incorporated by reference in the rules, including any amendment to, or replacement of, the material (**material**) must be— 25
- (a) certified as a correct copy of the material by the chief executive of *(the Agency)* Drug Free Sport NZ; and 30
 - (b) retained by the chief executive of *(the Agency)* Drug Free Sport NZ.
- (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. 35

- 20 Effect of expiry of material incorporated by reference**
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. 5
- 21 Method of making rules**
- (1) Rules may be made under **section 16** by the chief executive of *(the Agency) Drug Free Sport NZ* publishing a notice in the *Gazette* that states the following:
- (a) that *(the Agency) Drug Free Sport NZ* has made rules under **section 16**; and 10
- (b) if there is material incorporated by reference in the rules, a description of that material; and
- (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 15
- (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.
- (2) The notice in the *Gazette* need not contain the rules or the material. 25
- (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.
- (4) In this section and **section 22**, **material** means—
- (a) material incorporated by reference in the rules: 30
- (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:
- (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. 35

- 22 Public access to rules and material incorporated by reference**
- (1) The chief executive of (*the Agency*) Drug Free Sport NZ—
- (a) must make the rules and the material available for inspection during working hours, free of charge, at the head office of (*the Agency*) Drug Free Sport NZ and at any other places that the chief executive determines are appropriate; and 5
 - (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).
- (2) A failure to comply with this section does not invalidate the rules or the incorporation by reference of material in the rules. 15
- 23 Review of rules**
- (1) The board must review the rules from time to time for the purpose of ensuring that they comply with this Act.
- (2) **Sections 16 to 22** apply, with the necessary modifications, to the making of a new, amended, or revised rule. 20
- 24 Acts and Regulations Publication Act 1989 not applicable**
- (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**
- (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) Drug Free Sport NZ* 5
- 27 Recognising needs and privacy of athletes**
 In the performance of its functions and the exercise of its powers, *(the Agency) Drug Free Sport NZ* must, to the extent that there is not an inconsistency with the rules, develop appropriate procedures to— 10
- (a) reflect the needs of athletes who are under the age of 18 years; and
 - (b) reflect the culture, language, disabilities, and other special concerns of athletes; and
 - (c) protect athletes' right to privacy. 15
- 28 Sharing of evidence and information by customs, police, and others**
 A member of the police, a customs officer, or any other person may provide evidence or information to *(the Agency) Drug Free Sport NZ* if that person believes that that evidence or information may assist *(the Agency) Drug Free Sport NZ* 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)* 25
- 29 Sports Tribunal of New Zealand continued**
- (1) There continues to be a *(Tribunal known as) tribunal to be called* 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

New (unanimous)

- (3) The Tribunal continues under this Act with the additional functions, powers, and duties specified in this Act, but otherwise without any change in its continuity, assets, rights, liabilities, contracts, or members.
- (4) **Sections 51 and 51A** override **subsection (3)**.

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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.

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New (unanimous)

- (2A) In recommending a person for appointment as a member of the Tribunal, the Minister must have regard to the person's personal attributes, qualifications, and skills.
- (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.

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Struck out (unanimous)**31 Eligibility for appointment as member of Tribunal**

- (1) Other than the chairperson, 2 members of the Tribunal must—
- (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—
- (a) the person's personal attributes, qualifications, and skills; and

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Struck out (unanimous)

- (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.

- 32 Chairperson of Tribunal** 5
- (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.
- (2) The chairperson must have significant understanding, interest, or experience in sport and must be— 10
- (a) a retired judicial officer who has held office in a New Zealand court or statutory tribunal; or
- (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. 15

New (unanimous)

- 32A Deputy 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 or more of the members as a deputy chairperson of the Tribunal. 20
- (2) A deputy chairperson must have the qualifications listed in **section 32B(1)**.
- 32B Eligibility for appointment as member of Tribunal**
- (1) Other than the chairperson, at least 2 members of the Tribunal must— 25
- (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. 30

New (unanimous)

- (2) Other than the chairperson and members who have the qualifications listed in **subsection (1)**, a member of the Tribunal must have substantial experience in sport, in any capacity, over a minimum of a 10-year aggregate period.

33 Term of office of members of Tribunal

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- (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.

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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.

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Struck out (unanimous)**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.

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New (unanimous)**35 Remuneration, allowances, and expenses of members**

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- (1) A member of the Tribunal is entitled to receive remuneration for services as a member at a rate and of a kind determined by the Remuneration Authority in accordance with the Remuneration Authority Act 1977.
- (2) There may be paid out of public money to the members of the Tribunal travelling allowances and travelling expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply accordingly.
- (3) The Tribunal is a statutory board for the purposes of the Fees and Travelling Allowances Act 1951.
- (4) Remuneration determined under **subsection (1)** must not include remuneration of the kind paid under **subsection (2)**.

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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.

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Subpart 2—Jurisdiction and procedure

37 Functions of Tribunal

The functions of the Tribunal are to—

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- (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
 - (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

New (unanimous)

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| <ul style="list-style-type: none"> (ca) consider any matter referred to it by the board of Sport and Recreation New Zealand; and |
|---|

- (d) generally take all steps necessary or desirable to achieve the purposes of this Act; and
- (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
 - (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.
- (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.
- (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.
- (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. 5
- 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
 - (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 15
 - (d) the entitlement to be tendered or paid a sum in respect of allowances and travelling expenses; and
 - (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. 20
- 41 Service of summons**
- (1) A witness summons may be served— 25
- (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.
- (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; 30
 - 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

- (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. 5
- (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. 10 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.
- (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— 25
 - (a) form part of the costs of the proceedings; or
 - (b) be paid from money appropriated by Parliament for the purpose. 30

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.
- (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. 35

- 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,— 5
- (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 10
- (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.
- (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**. 15
- 45 Contempt of Tribunal**
- (1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who— 20
- (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; 25
- 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. 30
- (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 35
- necessary to enforce that exclusion.
- 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.

Part 4
**Transitional provisions, repeal, *(and)* revocations,
and consequential amendments**

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New (unanimous)

General transitional provision

46A Matters commenced under New Zealand Sports Drug Agency Act 1994

All matters to which the New Zealand Sports Drug Agency Act 1994 applied that have been commenced before the commencement of this Act, and not been completed before the commencement of this Act, are to be continued and completed as if this Act had not been enacted.

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Transitional provisions for (Agency) Drug Free Sport NZ

New (unanimous)

46B Meaning of Agency

In this Part, **Agency** means the New Zealand Sports Drug Agency established under the New Zealand Sports Drug Agency Act 1994.

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47 *(Proceedings or) Tests, proceedings, matters, issues, or things before Agency*

Any test, proceeding, *(or)* matter, issue, or thing before or with, or being considered or dealt with by, the Agency before the commencement of this Act must be dealt with by *(the Agency) Drug Free Sport NZ* under the New Zealand Sports Drug Agency Act 1994, whether or not any action was taken in relation to the test, proceeding, *(or)* matter, issue, or thing before the commencement of this Act, as if this Act had not been enacted.

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New (unanimous)**47A References to Agency**

On the commencement of this Act, unless the context otherwise requires, every reference to the Agency in any contract or other instrument, document, or notice must be read as a reference to Drug Free Sport NZ.

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48 Preparation of rules before commencement of this Act

- (1) 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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New (unanimous)

- (2) **Subsection (1)** only applies if, in preparing the rules in accordance with that subsection, the Agency complied with **section 16(4)** as if that section was in force.

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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) Issues, proceedings, matters, or things before Sports Disputes Tribunal

Any issue, proceeding, (or) matter, or thing before(,) or registered with, or being considered or dealt with by, 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 issue, proceeding, (or) matter, or thing 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.

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New (unanimous)**51A Transitional remuneration of members of Tribunal**

A person who, at the commencement of this Act, is a member of the Sports Disputes Tribunal—

- (a) continues as a member of the Tribunal in accordance with that person's contract of employment or notice of appointment; and
- (b) until a determination made in accordance with **section 35(1)** is given effect, continues to be remunerated in accordance with that contract or notice.

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Repeal (and), revocations, and consequential amendments

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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)* **Schedule 1** are revoked.

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New (unanimous)**54 Consequential amendments to other Acts**

The Acts specified in **Schedule 2** are amended in the manner indicated in that schedule.

Schedule 1
Regulations revoked

s 53

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

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

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

New (unanimous)

s 54

Schedule 2

Consequential amendments to other Acts

Crown Entities Act 2004 (2004 No 115)

Part 3 of Schedule 1: omit “New Zealand Sports Drug Agency”.

Part 3 of Schedule 1: insert “Drug Free Sport New Zealand” after
“Commerce Commission”. 5**Ombudsmen Act 1975 (1975 No 9)**Part 2 of Schedule 1: omit “The New Zealand Sports Drug
Agency”.Part 2 of Schedule 1: insert “Drug Free Sport New Zealand” after
“District health boards”. 10**Remuneration Authority Act 1977 (1977 No 110)**Schedule 4: omit “The members of the New Zealand Sports Drug
Agency”.Schedule 4: insert “The members of Drug Free Sport New Zealand”
after “The Chief Community Magistrate”. 15Schedule 4: insert “The members of the Sports Tribunal of New
Zealand” after “The Retirement Commissioner”.

Legislative history

1 August 2005

Introduction (Bill 285–1)

13 December 2005

First reading and referral to Government
Administration Committee