

Amendments as introduced by the Portfolio Committee

Amendment of section 1 of Act 14 of 1997

1. Section 1 of the South African Institute for Drug-Free Sport Act, 1997
(hereinafter referred to as the principal Act) is hereby amended—

(a) by the insertion of the following definitions before the definition of "Appeal Board":

"adverse analytical finding" means a report from a WADA-accredited laboratory that identifies in a sample, the presence of a prohibited substance or its metabolites or markers (including elevated quantities of endogenous substances) or evidence of the use of a prohibited method;

"anti-doping rule violation" means any one of the following:

- (i) the presence of a prohibited substance or its metabolites or markers in an athlete's bodily specimen;
- (ii) the use or attempted use of a prohibited substance or method;
- (iii) the refusal or failure, without compelling justification, to submit to sample collection after notification as authorised in terms of applicable anti-doping rules or otherwise evading sample collection;
- (iv) the violation of applicable requirements regarding athlete availability for out of competition testing, including failure to provide required whereabouts information and missed tests which are declared based on reasonable rules;

- (v) the tampering, or attempting to tamper, with any part of doping control;
- (vi) the possession of prohibited substances and methods;
- (vii) the trafficking in any prohibited substance or method; and
- (viii) the administration or attempted administration of a prohibited substance or method to any athlete, or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any attempted violation;

(b) by the insertion of the following definitions after the definition of "anti-doping rule violation":

"athlete" means for purposes of doping control, any person who participates in sport at the international level (as defined by each International Sports Federation) or national level (as defined by the Institute) and any other person who participates in sport at a lower level if designated by the Institute;

"Code" means the World Anti-Doping Code adopted by the foundation Board of WADA on 5 March 2003 at Copenhagen, Denmark;¹

(c) by the substitution for the definition of "doping": of the following definition:

"doping" means the occurrence of one or more of the anti-doping rule violations as set out in this Act;

(d) by the insertion after the definition of "doping" of the following definitions:

"doping control" means the process, including test distribution planning, sample collection and handling, laboratory analysis, results management, hearings and appeals; and

¹ In 2006, the text of the World Anti-Doping Code was accessible on the Internet through the website of the World Anti-Doping Agency (www.wada-ama.org)

"doping control programme" means the programme described in section 11A;

- (e) by the insertion after the definition of "doping control programme" of the following definition:

"doping register" means a database of information recording relevant details of athletes or other persons found guilty of having committed anti-doping rule violations in terms of this Act; and

- (f) by the insertion after the definition of "international sports federation" of the following definition:

"International Standard" means a standard adopted by WADA in support of the Code. Compliance with an International Standard (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the International Standard were performed properly;

"International Standard for laboratories" is a mandatory International Standard developed by WADA;

"International Standard for Testing" is a mandatory International Standard developed by WADA;

"International Standard for Therapeutic Use Exemptions" is a mandatory International Standard developed by WADA;

- (g) by the insertion after the definition of "Minister" of the following definition:

"National Anti-Doping Organisation (NADO)" means the entity designated by each country as possessing the primary authority and responsibility to—

- (a) adopt and implement anti-doping rules;

(b) direct the collection of samples;

(c) manage test results; and

(d) conduct hearings;

all at the national level; and

"negative analytical finding" means the finding, on analysis of a sample by a WADA-accredited laboratory, that does not indicate the presence of a prohibited substance or the use of a prohibited method;

- (h) by the substitution for the definition of "notifiable event" for the following definition:

"notifiable event" means any sports competition or event under the auspices of the South African Sports Confederation and Olympic Committee (SASCOC) or any national sports federation anywhere within or outside the Republic, with reference to which doping control is to be carried out, as determined by the Institute;

- (i) by the insertion of the following definitions after the definition of "notifiable event":

"person" means a natural person or an organisation or other entity;

"possession" means the actual, physical possession, or the constructive possession (which shall be found only if the person has exclusive control over the prohibited substance or method or the premises or property in which a prohibited substance or method exists): Provided that, if a person does not have exclusive control over the prohibited substance or method or the premises in which a prohibited substance or method exists, constructive possession shall only be found if such a person knew about the presence of the

prohibited substance or method and intended to exercise control over it: Provided further that there shall be no anti-doping rule violation based solely on possession if, prior to receiving notification of any kind that such a person has committed an anti-doping rule violation, the person has taken concrete action demonstrating that the person no longer intends to have possession and has renounced the person's previous possession.

"Prohibited List" means the list identifying the prohibited substances and prohibited methods, published at least annually by WADA as a mandatory International Standard;

"prohibited method" means any method so described on the Prohibited List;

"prohibited substance" means any substance so described on the Prohibited List;

"Promotion of Access to Information Act" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

- (j) by the deletion of the definition of "NSC" and "NOCSA";
- (k) by the insertion after the definition of **"Public Finance Management Act"** of the following definitions:

"Register of Notifiable Events" means a register of sporting competitions or events at which the Institute may perform doping control;

"registered testing pool" means the pool of top level athletes, established by the Institute, who are subject to both in competition and out of competition testing as part of the Institute's test distribution plan;

"sample" means a specimen of any biological material collected for the purposes of doping control;

"SASCOC" means the South African Sports Confederation and Olympic Committee, a non-governmental sports body consisting of the following founding constituent components—

- (a) the Olympic national federations;
- (b) the Commonwealth national federations;
- (c) School sport;
- (d) Tertiary institutions sport;
- (e) the national federations catering for athletes with disability;
- (f) the All Africa Games national federations; and
- (g) other national federations.

"sports administration body" means—

- (a) a multi-coded international sports governing body (e.g. the International Olympic Committee (IOC));
- (b) an international sports federation;
- (c) a national sports federation;
- (d) a sports federation;
- (e) a tribunal, committee or other investigative body that is associated with a body referred to in paragraphs (a), (b), (c) or (d);
- (f) the SASCOC;

- (g) the WADA; or
- (h) a National Anti-Doping Organisation;
- (l) by the deletion of the definition of "SISA";
- (m) by the insertion after the definition of "sports administration body" of the following definition:

"SRSA" means Sport and Recreation South Africa which is the National Department responsible for Sport and Recreation;

"tampering" means altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly to alter results or prevent normal procedures from occurring;

"testing" means the parts of the doping control process involving test distribution planning, sample collection, sample handling and sample transport to the laboratory;

"trafficking" means to sell, give, administer, transport, send, deliver or distribute a prohibited substance or prohibited method to an athlete either directly or through one or more third parties, but excluding the sale or distribution (by medical personnel or by persons other than an Athlete's Support Personnel as contemplated in the Code) of a prohibited substance for genuine and legal therapeutic purposes;

"UNESCO Convention" means the UNESCO (United Nations Educational, Scientific and Cultural Organisation) International Convention against doping in sport, adopted in Paris on 19 October 2005

"WADA" means the World Anti-Doping Agency."

"WADA - accredited laboratory" means a laboratory accredited by WADA according to the International Standard for laboratories.

Amendment of section 3 of Act 14 of 1997

2. Section 3 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Institute shall consist of a chairperson and as many other members, **possessing special knowledge relevant to doping**, as may be **[agreed upon]** **determined** by the Minister **[in consultation with NSC and NOCSA]**, all of whom shall be appointed by the Minister in terms of subsection (4).";

(b) by the substitution for subsection (2) of the following section:

"(2) In addition to the members referred to in subsection (1) the Chief Executive Officer of the Institute shall be a member of the Institute by virtue of his or her office, **who will have no voting rights contemplated in section 5.**";

(c) by the substitution of subsection (3) of the following subsection:

(3) **"Subject to section 13A?? of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998) [T]the Minister shall, with a view to the appointment of the members referred to in subsection (1), invite interested parties through the media and by notice in the Gazette to propose candidates, within a period of 30 days of the publication of the said notice, for appointment of such members. Provided that the Minister shall after receipt of the applications, furnish**

the Institute and SASCOC with the said applications as soon as possible. Provided further that the Institute and SASCOC must furnish the Minister with their recommendations with regard to the most suitable candidates for appointment as members, within 30 days after receiving it.

(d) by the addition of the following subsection:

(11) If upon the expiration of the term of office of the members of the Institute, the Minister has not yet appointed new members to take their place, the existing members shall continue in office until new members have been appointed to replace them.

Amendment of section 6 of Act 14 of 1997

3. The following section is hereby substituted for section 6 of the principal Act:

"Staff of Institute

6. (1) The Institute shall, in consultation with the Minister and [the Public Service Commission] subject to the Minister obtaining the concurrence of the Minister of Finance in this regard, appoint a suitably qualified and experienced person as Chief Executive Officer of the Institute.

(2) The [Institute] Chief Executive Officer may [at its request and in consultation with the Public Service Commission, be assisted by officers of the public service seconded to the service of the

Institute in terms of the law regulating such secondment] appoint staff based on the organisational structure required in terms of its strategic plan and within its budget: Provided that the remuneration level of such staff must be determined by a suitable job evaluation system as prescribed by the Minister for the Public Service and Administration from time to time, in consultation with the Minister.

(3) The persons contemplated in subsections (1) and (2) shall receive such remuneration, allowances and other employment benefits and shall be appointed **[or seconded]** on such terms and conditions and for such periods as the Institute may determine **[in consultation with the Public Service Commission, the Minister and the Minister of Finance]** in terms of subsection (5).

[(4) The Institute may, in consultation with the Minister and the Public Service Commission, for specific projects enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the functions of the Institute, and may, with the concurrence of the Minister of Finance, determine the remuneration, including reimbursement for travelling, subsistence and other expenses of such persons.]

(5) In order to regulate the staff matters as contemplated in this section, the Institute must establish personnel regulations in consultation with the Minister for the Public Service and Administration directing human resource matters to comply with all relevant legislation applicable to the appointment of staff."