

REPUBLIC OF SOUTH AFRICA

**SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT AMENDMENT BILL,
2023**

(As introduced in the National Assembly (proposed section 75) explanatory summary of Bill published in Government Gazette No.... of ...2023) (English text is the official text of the Bill)

(MINISTER OF SPORT, ARTS AND CULTURE)

GENERAL EXPLANATORY NOTES:

[] Words in bold type in square brackets indicate omissions from
the existing enactment.
_____ Words underlined with a solid line indicate insertions in existing
enactment.

BILL

To amend the South African Institute for Drug-Free Sport Act 14 of 1997, so as to delete, amend and insert certain definitions; to provide for consequential amendments in certain provisions and to provide for matters connected therewith.

BE IT ENACTED by Parliament of the Republic of South Africa, as follows:—

Substitution of section 1 of Act 14 of 1997

1. The following section is hereby substituted for section 1 of the South African Institute for Drug-Free Sport Act, 1997 (hereinafter referred to as the “principal Act”):

“Definitions

1. In this Act, unless the context indicates otherwise—

['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:

- (a) the presence of a prohibited substance or its metabolites or markers in an athlete's bodily specimen;**
- (b) the use or attempted use of a prohibited substance or method;**
- (c) 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;**
- (d) 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;**
- (e) the tampering, or attempting to tamper, with any part of doping control;**

- (f) the possession of prohibited substances and methods;
- (g) the trafficking in any prohibited substance or method; or
- (h) 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;]

'Appeal Board' means the **[board]**Anti-Doping Appeal Board established by section 17;

'Appendix 1' means Appendix 1 to the Code;

'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]**an athlete as defined in Appendix 1 to the Code;

'Code' means the World Anti-Doping Code adopted by the Foundation Board of WADA on 5 March 2003 at Copenhagen, Denmark as amended from time to time;

'Department' means the national department responsible for Sport;

'doping' means **[the occurrence of one or more of the anti-doping rule violations as set out in this Act]**doping as defined in Article 1 of the Code;

'doping control' means **[the process, including test distribution planning, sample collection and handling, laboratory analysis, results management, hearings and appeals]**doping control as defined in Appendix 1 to the Code;

['doping control programme' means the programme described in section 11A;]

['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;]

'Institute' means the South African Institute for Drug-Free Sport, established by section 2;

'International-Level Athlete' means an International-Level Athlete as defined in Appendix 1 to the Code;

'International Olympic Committee' means the organisation of that name with its headquarters in Lausanne, Switzerland, under the auspices of which the Olympic Games are conducted;

'international sports federation' means any group of national sports bodies involved in the overseeing and co-operation of the playing and administration of any particular sport at international level;

'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 as defined in Appendix 1 to the Code;

['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;]

'Minister' means the Minister **[of Sport and Recreation]**responsible for sport;

'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;**

at the national level] National Anti-Doping Organisation as defined in Appendix 1 to the Code;

'national sports federation' means any number of people involved in the overseeing and co-ordination of the playing and administration of any particular sport in any particular country;

['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;]

['NOCSA']

['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;]

['NSC']

'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]a Prohibited List as defined in Appendix 1 to the Code;
['prohibited method' means any method so described on the Prohibited List;]
'prohibited substance' means [any substance so described on the Prohibited List]a Prohibited Substance as defined in Appendix 1 to the Code;

['Promotion of Access to Information Act' means the Promotion of Access to Information Act, 2000 (Act 2 of 2000);]

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

['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;]

'Result Management' means Result Management as defined in Appendix 1 to the Code;

['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 insofar as it is represented on SASCOC's Board in accordance with its articles of association;
- (d) tertiary institutions sport (including Further Education and Training);
- (e) the national federations catering for athletes with disability;
- (f) the All Africa Games national federations; and
- (g) other national federations;

['SISA']

['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) **SASCOC;**

(g) WADA; or

(h) a National Anti-Doping Organisation;]

['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 or 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]testing as defined in Appendix 1 to the Code;

'Therapeutic Use Exemption (Tue)' means Therapeutic Use Exemption as defined in Appendix 1 to the Code;

['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]as defined in Appendix 1 to the Code;

'WADA' means the World Anti-Doping Agency;

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

Substitution of section 2 of Act 14 of 1997

2. The following section is hereby substituted for section 2 of the principal Act:

“Establishment of South African Institute for Drug-Free Sport

2. (1) There is hereby established a **[corporate body]**public entity to be known as the South African Institute for Drug-Free Sport.

(2) The Institute is the National Anti-Doping Organisation in the Republic.”

Amendment of section 10 of Act 14 of 1997

3. Section 10 of the principal Act is hereby amended by—

(a) the substitution for paragraph (d) of subsection (1) of the following paragraph:

"(d) to promote and ensure the adoption of **[a centralised]** doping control **[programme]**, which may subject any athlete to testing, with or without advance notice, both in- and out-of-competition;"

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

“(2) The Institute shall operate independently, but may co-operate with SASCOC and the Department from time to time as the need arises in order to achieve the objects of the Institute as contemplated in this Act.”

Amendment of section 11 of Act 14 of 1997

4. Section 11 of the Principal Act is hereby amended by-
- (a) the substitution for subsection (2) of the following subsection:
- “(2) The Institute shall—
- (a) adopt and implement anti-doping rules and policies which conform with the Code including the WADA Prohibited List;
- [(b) establish and maintain a Register of Notifiable Events;]**
- [(c) notify relevant persons and organisations of entries into the Register of Notifiable Events;]**
- (d) disseminate information relating to the sanctions likely to be imposed if athletes violate anti-doping rules;
- (e) select athletes for doping control according to a test distribution plan;
- (f) collect samples from athletes and secure the safe and tamper-free transit of samples to WADA-accredited laboratories in accordance with the Code[**'s International Standard for Testing**];
- (g) develop and implement educational programmes to discourage the practice of doping in sport;
- (h) consult with, assist, co-operate with and provide relevant information to governmental and non-governmental anti-doping organisations and other persons within South Africa and internationally, where appropriate;
- (i) take steps aimed at ensuring that South Africa complies with the Code, the UNESCO Convention and any other anti-doping agreements or arrangements to which South Africa is a party;

- (j) undertake research, or co-ordinate and arrange for research to be undertaken in the field of performance-enhancing substances and methods;
- (k) encourage the pursuit of optimal sports performance in an environment free from doping;
- (l) establish and maintain a **[Registered Testing Pool]**testing pool of top level athletes who shall be subject to both in competition and out of competition testing;
- (m) require that athletes who have been included in the testing pool provide accurate information on their current whereabouts which shall be made available to WADA and to other Anti-Doping Organisations having authority to test the athletes; and
- (n) ensure that there is a process for all athletes with documented medical conditions requiring the use of a prohibited substance or method **[may]**to request a **[therapeutic use exemption: Provided that such requests shall be evaluated by a therapeutic use exemption committee in accordance with the International Standard for Therapeutic Use: Provided further that the Institute shall promptly report in writing to the WADA such granting of therapeutic use exemptions.]**Therapeutic Use Exemption (Tue).";

(b) the insertion after subsection (2) of the following subsection:

"(2A) (a) A request contemplated in subsection (2)(n) shall be evaluated by a therapeutic use exemption committee in accordance with the International Standard for Therapeutic Use Exemption referred to in the Code.

(b) The institute shall promptly report in writing to the WADA any Therapeutic Use Exemption (Tue) granted in respect of a request contemplated in subsection (2)(n).”.

Repeal of sections 11A to 11C of Act 14 of 1997

5. Sections 11A to 11C of the principal Act are hereby repealed.

Substitution of section 17 of Act 14 of 1997

6. The following section is hereby substituted for section 17 of the principal Act:

“Appeals

17. (1) (a) There is hereby established an independent board which shall be known as the Anti-Doping Appeal Board.

(b) The **[Anti-Doping]**Appeal Board shall consist of **[a panel of]**nine **[persons]**members, appointed by the Minister, possessing special knowledge and expertise relevant to doping.

(2) (a) The Minister shall on the recommendation of the Institute and SASCOC appoint at least three **[members]**persons from the **[persons]**members referred to in subsection 1 (b) to **[constitute an appeal tribunal to]**hear and decide upon appeals against decisions made in terms of Article 13 of the Code where appropriate.

(b) The number of **[members of an appeal tribunal]**persons appointed by the Minister to hear and decide upon an appeal shall consist of an uneven number.

(c) At least two **[members so appointed by the Minister]**of the persons referred to in paragraph (a) shall be admitted and practicing attorneys or advocates with at least **[three]**10 years experience in their relevant fields of expertise.

(3) (a) Before an appeal may be lodged, an amount to be determined by the Minister by notice in the *Gazette*, shall be deposited by the appellant with the **[Anti-Doping]**Appeal Board, which amount shall be refundable in full only after the **[said]**Appeal Board has reached a verdict in favour of the appellant[: **Provided that the said deposit shall be forfeited by the appellant in the event of the appeal being unsuccessful**].

(b) The **[Anti-Doping]**Appeal Board may with a view to the personal circumstances of a prospective appellant modify or waive the requirement of a deposit referred to in paragraph (a).

(c) If the appellant's appeal is unsuccessful, the deposit referred to in paragraph (a) shall be forfeited.

(4) (a) The **[Anti-Doping]**Appeal Board may hear appeals involving national level athletes arising from the Result Management decisions regarding—

(i) sanctions imposed against an athlete for **[anti-doping rule violations]**doping, including disqualification, provisional suspension or period of ineligibility;

(ii) the granting or **[denying]**denial of a Therapeutic Use Exemption (TUE); or

(iii) any other dispute relating to doping **[in sport:**

Provided that appeals involving international level athletes shall be heard by the Court of Arbitration for Sport (CAS).];

(b) The **[Anti-Doping]**Appeal Board may confirm or set aside any sanction imposed by **[a sports administration body]**—

(i) a national sports federation;

(ii) a sports federation;

(iii) a tribunal or committee or other investigative body established to conduct a Result Management process;

(iv) SASCOC; or

(v) a National Anti-Doping Organisation,

in respect of doping, and may in the place of any sanction so set aside, impose any other sanction which accords with the Result Management which in its opinion is appropriate.

(c) Appeals involving international level athletes shall be heard by the Court of Arbitration for Sport (CAS) in accordance with the Code.

(5) A member of the **[Anti-Doping]**Appeal Board shall, subject to such member's right to resign on one month's written notice, remain a member for such period as the Minister may determine at the time of the member's appointment.

(6) A member of the **[Anti-Doping]**Appeal Board shall be appointed for a period of five years, but shall be eligible for reappointment.

(7) (a) The procedure to be followed in connection with appeals to the **[Anti-Doping]**Appeal Board shall be determined by the **[said Board]**Institute in consultation with the Minister**[, and every party to an appeal shall be entitled to be represented by a person of his or her own choice: Provided that a member of the Institute shall also be entitled to attend any hearing of an appeal as an observer].**

(b) A party to an appeal shall be entitled to be represented by a person of his or her own choice.

(c) A member of the Institute shall be entitled to attend any hearing of an appeal as an observer.

(8) The sanctions which may be imposed on persons guilty of **[anti-doping rule violations]**doping shall be in accordance with the sanctions laid down in the anti-doping rules and regulations of the respective sports federations which shall conform with the Code.”.

Substitution of section 17A of Act 14 of 1997

7. The following section is hereby substituted for section 17A of the principal Act:

“Punitive measures

17A. (1) **[SRSA]**The Department, on the written recommendations of SASCOC, may cause an investigation to be conducted as it deems fit to ascertain whether all national sports federations have complied with the provisions contained in this Act.

(2) **[SRSA]**The Department must, after consultation with the Institute and SASCOC, identify any non-compliant national sports federations whereafter it may, amongst others—

- (a) withdraw or reduce its or the Government's funding of any such federation;
- (b) bar any such federation from administering its sport in the Republic; or
- (c) recommend that SASCOC refuse to award national colours to the members of any such federation.

(3) **[SRSA]**The Department may only act against a federation in terms of subsection (2) after it has given that federation an opportunity to make oral or written representations with regard to any proposed action.”.

Substitution of long title of Act 14 of 1997

8. The following long title is hereby substituted for the long title of the principal Act:

“To promote the participation in sport free from the use of prohibited substances or methods intended to artificially enhance performance, thereby rendering impermissible doping practices which are contrary to the principles of fair play and medical ethics, in the interest of the health and well-being of sportspersons; to provide for the establishment of the South African Institute for Drug-Free Sport; to provide for the composition of the Institute; to provide for its meetings and staff; to provide for the remuneration and allowances of members of the Institute; to provide for its expenditure, finances and

accountability; to provide for the objects, powers and duties of the Institute; to provide for appeals; to provide for punitive measures and to provide for matters connected therewith.”.

Short title and commencement

9. This Act is called the South African Institute for Drug-Free Sport Amendment Act, 2023.