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THE PRESIDENCY

No. 349

17 April 2007

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 25 of 2006: South African Institute for Drug-Free Sport Amendment Act, 2006



AIDS HELPLINE: 0800-123-22 Prevention is the cure

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GENERAL EXPLANATORY NOTE:

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

(English text signed by the President.)
(Assented to 11 April 2007.)

ACT

To amend the South African Institute for Drug-Free Sport Act, 1997, so as to delete certain definitions and to insert, amend or substitute other; to provide for the appointment of the staff of the Institute; to align the Act with the Public Finance Management Act; to provide for the amendment of the powers of the Institute; to provide for the adoption of matters contained in the World Anti-Doping Code; to establish a doping control programme in compliance with the World Anti-Doping Code; to provide for the testing of athletes for doping by sports administration bodies; to provide for punitive measures against national sports federations not complying with the regulations contained in this Act; and to provide for matters connected therewith.

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

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” of the following definitions:

“**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; 10

‘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; 15
- (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;

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- (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; 5
- (vi) the possession of prohibited substances and methods;
- (vii) the trafficking in any prohibited substance or method; or
- (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"; 10
- (b) by the insertion after the definition of "Appeal Board" of the following definitions: 15
- "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; 20
- "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: 25
- "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: 30
- "doping control"** means the process, including test distribution planning, sample collection and handling, laboratory analysis, results management, hearings and appeals;
- "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;";
- (e) by the insertion after the definition of "international sports federation" of the following definitions: 35
- "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; 40
- "International Standard for Laboratories"** is a mandatory International Standard developed by WADA;
- "International Standard for Testing"** is a mandatory International Standard developed by WADA; 45
- "International Standard for Therapeutic Use Exemptions"** is a mandatory International Standard developed by WADA;";

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)

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- (f) by the insertion after the definition of "Minister" of the following definitions:
"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;";
- (g) by the insertion after the definition of "national sports federation" of the following definition:
"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 deletion of the definition of "NOCSA";
- (i) by the substitution for the definition of "notifiable event" of 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;";
- (j) by the deletion of the definition of "NSC";
- (k) by the insertion after the definition of "notifiable event" of the following definitions:
- "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);
"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;

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'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.”;

(l) by the deletion of the definition of “SISA”;

(m) by the insertion at the end of the section of the following definitions:

“**'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;

'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.”.

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AMENDMENT ACT, 2006**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]** nine members, possessing special knowledge and expertise 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 as contemplated in section 5.”;

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

“(3) (a) 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 30 days of the publication of the said notice, for appointment as 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.

(b) When making an appointment in terms of subsection (1), the Minister shall take into account guidelines or policies to promote equity, representivity and the redress in sport and recreation.”.

(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, but for a period not exceeding 30 days after the expiry of the previous term.”.

Amendment of section 6 of Act 14 of 1997

3. The following section is hereby substituted for section 6 of the principal Act: 35

“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. 40

(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. 45

(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). 55

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[(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

(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. 10

Amendment of section 8 of Act 14 of 1997

4. Section 8 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 15

“(b) [is , subject to the Exchequer Act, 1975 (Act No. 66 of 1975)—

(i) **charged with the responsibility of accounting for money received from whatever source, or paid out by or on account of the Institute;** 20

(ii) **charged with the duty to cause the necessary accounting and other related records to be kept; and]**

shall ensure that all functions of the Institute are performed in accordance with the provisions of the Public Finance Management Act and any other applicable legislation; and”; and 25

(b) by the deletion of subsection (3).

Amendment of section 10 of Act 14 of 1997

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

(a) the substitution in subsection (1) for paragraph (d) of the following paragraph: 30

“(d) to **[bring about the introduction of] promote and ensure the adoption of a centralised [independent sample collection and testing] doping control** programme, which may subject any [sportsperson] athlete to [dope] testing [at short notice], with or without advance notice, both in and out of competition”; 35

(b) the substitution in subsection (1) for paragraphs (e) and (f) of the following paragraphs: 35

“(e) to **[encourage] ensure that [the South African] national sports federations and other sports organisations [to] adopt [uniform independent internationally acceptable sample collection and testing procedures]** and implement anti-doping policies and rules which conform with the Code and with the requirements set out in the anti-doping policy and rules of the Institute; and 40

(f) to **[encourage] ensure, as far as reasonably possible, the [development] establishment and maintenance of a [sport drug testing laboratory or laboratories accredited by the International Olympic Committee; and] WADA-accredited laboratory in the Republic.**”; 45

(c) the deletion of subsection (1)(g); and

(d) the substitution for subsection (2) of the following subsection: 50

“(2) The Institute shall operate independently, but [in close conjunction] may co-operate with [SISA] SASCOC and SRSA from time to time as the need arises in order to achieve the objects of the Institute as contemplated in this Act.” 50

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Amendment of section 11 of Act 14 of 1997

6. Section 11 of the principal Act is hereby amended by—

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

“(1)The Institute must comply with the provisions of the Public Finance Management Act.”;

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

(2) The Institute shall—

(a) [draw up and maintain a list of prohibited substances and practices complementing the “List of Doping Classes and Methods”, published annually by the International Olympic Committee and other relevant Sporting Federations] adopt and implement anti-doping rules and policies which conform with the Code including the WADA Prohibited List;

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(b) establish and maintain a Register of Notifiable Events;

(c) notify relevant persons and organisations of entries into the Register of Notifiable Events;

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(d) disseminate information relating to the [penalties] sanctions likely to be imposed if [sportspersons test positive for doping, or if they fail to comply with requests to provide samples for testing] athletes violate anti-doping rules;

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(e) select [sportspersons who are to be requested to provide samples for testing] athletes for doping control according to a test distribution plan;

(f) collect samples from [sportspersons in accordance with approved guidelines, and secure the safe and tamper-free transit of samples to IOC-accredited laboratories for testing] 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;

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(g) develop and implement educational programmes to discourage the practice of doping in sport;

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(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;

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(i) take steps aimed at ensuring that South Africa complies with [international agreements] the Code, the UNESCO Convention and any other anti-doping agreements or arrangements [concerning the use of drugs and doping in sport] to which South Africa is a party;

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(j) undertake research, or co-ordinate and arrange for research to be undertaken in the field of performance-enhancing [drugs and doping practices in sport; and] substances and methods;

(k) encourage the pursuit of optimal sports performance in an environment free from [the use of drugs] doping;

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(l) establish and maintain a Registered 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

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- (n) ensure that a process for all athletes with documented medical conditions requiring the use of a prohibited substance or method may 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.”; 5
- (c) the substitution of subsection (3) for the following subsection: 10
 (3) Any failure of any [**Federation**] national sports federation and sports organisation to co-operate with the Institute shall be reported to the Minister, who [**will**] may—
 (a) address the issue with [**the relevant macro sporting organisations**] SASCOC or any other relevant sports body and organisation as he or she deems fit; or 15
 (b) intervene in this regard if the said failure is a result of any;
 (i) dispute;
 (ii) alleged mismanagement; or
 (iii) any other related matter,
 which is likely to bring any sport or recreational activity in disrepute.”. 20
- (d) to add the following subsection after subsection (3):
 “(4) In intervening the Minister may—
 (a) refer the matter for mediation; or
 (b) issue a directive to resolve the dispute.”. 25

Insertion of sections 11A to 11C in Act 14 of 1997

7. The following sections are hereby inserted after section 11 of principal Act:

“Doping control programme

- 11A.** A doping control programme is a programme that— 30
 (a) applies to all athletes;
 (b) adopts and implements the applicable mandatory International Standards, including the Prohibited List, the Therapeutic Use Exemptions Standard and the International Standard for Testing in compliance with the Code;
 (c) authorises the Institute to request an athlete to provide a sample for the purpose of doping control; 35
 (d) requires the Institute to establish and maintain a doping register for the programme;
 (e) requires the Institute to enter the name of an athlete or other person in the doping register when the athlete or other person is found guilty of violating an anti-doping rule as defined in section 1; 40
 (f) requires the Institute to give written notice of the making and particulars of an entry in the doping register to—
 (i) each relevant sports federation in relation to the athlete concerned; and 45
 (ii) each relevant sports federation in relation to any athlete whose interests may have been affected by the anti-doping rule violation referred to in paragraph (e):

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- Provided that such notice of information of an entry in the doping register shall be subject to the provisions of the Promotion of Access to Information Act and may include any or all of the following:
- (aa) Failure by an athlete to provide a sample;
 - (bb) failure by an athlete to complete or sign any form or to perform any action during sample collection as required by the doping control programme;
 - (cc) any attempt, whether successful or not, by an athlete or any other person to tamper with the doping control process;
 - (dd) any other interference with the doping control process;
 - (ee) the results of laboratory analysis;
 - (ff) any failure by an athlete to provide information on his or her whereabouts for out of competition testing; and
 - (gg) any information relating to an athlete's adverse analytical finding or the failure by an athlete to comply with a request by the Institute to provide a sample;
- (g) authorises the Institute, subject to the Promotion of Access to Information Act, to disclose information—
- (i) to the South African Police Service and the South African Customs Service on any of the following:
 - (aa) the use by a person of a prohibited substance or method;
 - (bb) the possession by a person of a prohibited substance or method;
 - (cc) trafficking by a person in a prohibited substance or method;
 - (dd) the administration by a person of a prohibited substance or method;
 - (ee) a person attempting to engage in any conduct referred to in paragraphs (aa) to (cc); and
 - (ff) a person aiding, abetting, covering up or being involved in any other type of complicity relating to any conduct referred to in paragraphs (aa) to (dd);
 - (ii) relating to the return by an athlete of an adverse or negative analytical finding, or to an anti-doping rule violation by an athlete or any other person, to the public;
- (h) requires the South African Police Service and the South African Customs Service to co-operate with the Institute—
- (i) with any investigation pertaining to information disclosed in terms of paragraph (g);
 - (ii) with regard to any illegal activities resulting from anti-doping rule violations; or
 - (iii) in any other manner as may be required; or
- (i) may make provision for the application, adoption or incorporation, with or without modification, of any other instrument made by a sports administration body.

Failure to comply with a request to provide a sample

11B. For the purposes of this Act, an athlete fails to comply with a request by the Institute to provide a sample if—

- (a) he or she refuses or fails to submit to sample collection as required by the doping control programme;

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- (b) he or she fails to complete or sign any form required by the doping control programme to be completed or signed by the athlete; or
(c) after providing the sample, he or she fails to comply with the required additional sample collection requirements.

Testing by other sports administration bodies

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11C. The Institute may request a sports administration body in writing to arrange for—

- (a) an athlete to undergo doping control in order to determine whether he or she has been using prohibited substances or methods;
(b) the laboratory analysis of the sample for that purpose; and
(c) the Institute to be given information arising out of the making of such a request, including information relating to:
- (i) An evasion, or an attempted evasion, by a person of a request to provide a sample;
 - (ii) the aiding, abetting, counselling or procuring of such an evasion, or attempted evasion, by the person;
 - (iii) any failure by the person to provide such a sample;
 - (iv) any interference with the provision, collection or testing of the sample; or
 - (v) the results of the testing.”

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Substitution of section 12 of Act 14 of 1997

8. The following section is hereby substituted for section 12 of the principal Act:

“Preparation and approval of strategic plans and budget

12. Strategic plans and budgets of the Institute must be prepared and approved in accordance with the Public Finance Management Act and the Treasury Regulations.”

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Repeal of sections 13, 14 and 15 of Act 14 of 1997

9. Sections 13, 14 and 15 of the principal Act are hereby repealed.

Amendment of section 17 of Act 14 of 1997

10. Section 17 of the principal Act is hereby amended by the substitution for the said section of the following section: 30

“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, appointed by the Minister, possessing special knowledge and expertise relevant to doping. 35

(2) (a) The Minister shall on the recommendation of the Institute and SASCO appoint at least three members from the persons 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. 40

(b) The number of members of an appeal tribunal appointed by the Minister shall consist of an uneven number.

(c) At least two members so appointed by the Minister shall be admitted and practicing attorneys or advocates with at least three years experience in their relevant fields of expertise. 45

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(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. 5

(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).

(4) (a) The Anti-Doping Appeal Board may hear appeals involving national level athletes arising from decisions regarding: 10

(i) sanctions for anti-doping rule violations, including disqualification, provisional suspension or period of ineligibility;

(ii) the granting or denying a Therapeutic Use Exemption (TUE); or

(iii) any other dispute relating to doping in sport: 15

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 in respect of doping, and may in the place of any sanction so set aside, impose any sanction which in its opinion is appropriate. 20

(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. 25

(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) The procedure to be followed in connection with appeals to the Anti-Doping Appeal Board shall be determined by the said Board 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. 30

(8) The sanctions which may be imposed on persons guilty of anti-doping rule violations shall be in accordance with the sanctions laid down in the anti-doping rules and regulations of the respective sports federations." 35

Insertion of section 17A of Act 14 of 1997

11. The principal Act is hereby amended by the insertion of the following section after section 17: 40

"Punitive measures

17A. (1) SRSA, 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. 45

(2) SRSA 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; 50

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(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 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.” 5

Short title

12. This Act is called the South African Institute for Drug-Free Sport Amendment Act, 2006.