

TREASURY COMMENTS ON THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT AMENDMENT BILL, 2023

1. Drafting comments:

Ad clause 1

1. We propose the redraft of clause 1 amending section 1 of the principal Act as follows:

“Substitution 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 deletion of the definitions of “adverse analytical finding” and “anti-doping rule violation”;
- (b) by the substitution for the definition of “Appeal Board” of the following definition:

“**Appeal Board**” means the **[board] Anti-Doping Appeal Board** established by section 17;”
- (c) by the insertion after the definition of “Appeal Board” of the following definition:

“**Appendix 1**” means Appendix 1 to the Code;”
- (d) by the substitution for the definition of “athlete” of the following definition:

“**athlete**” means an athlete as defined in Appendix 1 to the Code;”
- (e) by the substitution for the definition of “Code” of the following definition:

“**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;
- (f) by the insertion after the definition of “Code” of the following definition:

“**Department**’ means the national department responsible for sport;”
- (g) by the substitution for the definition of “doping” of the following definition:

“**doping**” means doping control as defined in Appendix 1 to the Code;”
- (h) by the deletion of the definitions of “doping control programme” and “doping register”;
- (i) by the insertion after the definition of “Institute” of the following definition:

“**International-Level Athlete**” means an International-Level Athlete as defined in Appendix 1 to the Code;”
- (j) by the substitution for the definition of “International Standard” of the following definition:

“**International Standard**” means the International Standard as defined in Appendix 1 to the Code;”

(k) by the deletion of the definitions of “International Standard for Laboratories”, “International Standard for Testing” and “International Standard for Therapeutic Use Exemptions”;

(l) by the substitution for the definition of “Minister” of the following definition:

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

(m) by the substitution for the definition of “National Anti-Doping Organisation (NADO)” of the following definition:

“**National Anti-Doping Organisation (NADO)**” means the National Anti-Doping Organisation as defined in Appendix 1 to the Code;”

(n) by the deletion of the definitions of “negative analytical finding”, “notifiable event” and “possession”;

(o) by the substitution for the definition of “Prohibited List” of the following definition:

“**Prohibited List**” means a Prohibited List as defined in Appendix 1 to the Code;”

(p) by the deletion of the definition of “prohibited method”;

(q) by the substitution for the definition of “prohibited substance” of the following definition:

“**prohibited substance**” means a Prohibited substance as defined in Appendix 1 to the Code;”

(r) by the deletion of the definitions of “Promotion of Access to Information Act”, “Register of Notifiable Events” and “registered testing pool”;

(s) by the insertion after the definition of “Public Finance Management Act” of the following definition:

“**Result Management**” means Result Management as defined in Appendix 1 to the Code;”

(t) by the deletion of the definitions of “sample”, “sports administration body”, “SRSA”, and “tampering”;

(u) by the substitution for the definition of “testing” of the following definition:

“**testing**” means testing as defined in Appendix 1 to the Code;”

(v) by the insertion after the definition of “testing” of the following definition:

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

(w) by the deletion of the definition of “trafficking”; and

(x) by the substitution for the definition of “UNESCO Convention” of the following definition:

“**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;”.

Ad clause 2

2. Clause 2 proposes an amendment to section 2 of the principal Act to establish the Institute as a public entity. The Institute is currently listed in Part A of Schedule 3 to the Public Finance Management Act, 1999. We therefore note the proposed amendment.

Ad clause 3

3. We propose the redraft of clause 4 amending section 11 of the principal Act as follows:

“Substitution of section 11 of Act 14 of 1997

4. Section 11 of the principal Act is hereby amended—
 - (a) by the deletion of paragraph (b) and (c) of subsection (2);
 - (b) by the substitution for paragraph (f) of subsection (2) of the following paragraph:
 - (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**];
 - (c) by the substitution for paragraph (l) of subsection (2) of the following paragraph:
 - (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;
 - (c) by the substitution for paragraph (n) of subsection (2) of the following paragraph:
 - (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).”;

General comment:

The Bill should be redrafted in line with conventional drafting principles and techniques.

2. General Comments:

- **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.

Should insert "in terms of the Public Finance Management Act of 1999" after the words "public entity".

- **Section 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 SASCO 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.

This amendment stipulates the number of members of the Anti-doping Appeals Board which should align to the available budget of SAIDS.