

REPUBLIC OF SOUTH AFRICA

**SOUTH AFRICAN INSTITUTE FOR
DRUG-FREE SPORT BILL**

(As amended by the Portfolio Committee on Sport and Recreation (National Assembly))

(MINISTER OF SPORT AND RECREATION)

[B 94B—96]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE SUID-
AFRIKAANSE INSTITUUT VIR
DWELMVRYE SPORT**

(Soos gewysig deur die Portefeuljekomitee oor Sport en Ontspanning (Nasionale Vergadering))

(MINISTER VAN SPORT EN ONTSPANNING)

[W 94B—96]

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BILL

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; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise—
 - (i) “Appeal Board” means the board established by section 17; (iii) 5
 - (ii) “doping”, in relation to the practice of sport, means the administration of substances belonging to prohibited classes of pharmacological agents or the application of any method intended to enhance performance artificially; (i)
 - (iii) “Institute” means the South African Institute for Drug-Free Sport, established by section 2; (iv) 10
 - (iv) “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; (v)
 - (v) “international sports federation” means any group of national sports bodies involved in the overseeing and co-ordination of the playing and administration of any particular sport at international level; (vi) 15
 - (vi) “Minister” means the Minister of Sport and Recreation; (vii)
 - (vii) “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; (viii) 20
 - (viii) “NOCSA” means the National Olympic Committee of South Africa; (ix)
 - (ix) “notifiable event” means any sports event which is intended to take place anywhere within or outside the Republic, with reference to which drug tests or sampling is to be carried out, as determined by the Institute; (ii)
 - (x) “NSC” means the National Sports Council; (x) 25
 - (xi) “SISA” means the Sports Information and Science Agency. (xi)

Establishment of South African Institute for Drug-free Sport

2. There is hereby established a corporate body to be known as the South African Institute for Drug-Free Sport.

Composition of Institute 30

3. (1) The Institute shall consist of a chairperson and as many other members as may be agreed upon by the Minister in consultation with NSC and NOCSA, all of whom shall be appointed by the Minister in terms of subsection (4).

(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.

(3) 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.

(4) The Minister shall when it becomes necessary appoint as a member of the Institute a person proposed by the interested parties as contemplated in subsection (3).

(5) The members appointed in terms of subsection (1) shall hold office for such period, not exceeding five years, as the Minister may determine at the time of appointment.

(6) The Minister may remove any member from his or her office if—

(a) that member contravenes or fails to comply with any provision of this Act;

(b) the estate of that member is sequestrated;

(c) that member is unable to perform his or her functions as a member due to physical or mental illness;

(d) that member is convicted of an offence and sentenced to imprisonment, without the option of a fine;

(e) that member without lawful cause is absent from three consecutive meetings of the Institute; or

(f) the Institute recommends that such member shall vacate his or her office.

(7) Members of the Institute whose terms of office expire are eligible for reappointment.

concerning any matter, the member presiding at the meeting shall have a casting vote in addition to such member's deliberative vote.

(5) The Institute shall determine the procedure for its meetings and shall ensure that the principles of transparency, openness and public participation are observed at such meetings. 5

(6) The Institute shall cause minutes to be kept of its proceedings.

Staff of Institute

6. (1) The Institute shall, in consultation with the Minister and the Public Service Commission, appoint a suitably qualified and experienced person as Chief Executive Officer of the Institute. 10

(2) The Institute 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.

(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. 15

(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. 20

Remuneration and allowances of members of Institute 25

7. The remuneration, allowances and other terms and conditions of office and service benefits of the members of the Institute shall be determined by the Minister in consultation with the Minister of Finance.

Expenditure, finances and accountability

8. (1) Expenditure incidental to the performance of the functions of the Institute shall be defrayed from money received by the Institute from any source or appropriated for the purposes of the Institute by Parliament, in the same manner, but with the necessary adaptations, and subject to the same laws as in the case of the expenditure of a department of the National Government. 30

(2) The Chief Executive Officer of the Institute— 35

(a) shall be responsible for the management of and administrative control over the staff contemplated in section 6(2), and shall for those purposes be accountable to the Institute;

(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; 40

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

(c) shall perform the functions assigned to him or her by the Institute from time to time, and shall in respect thereof be accountable to the Institute. 45

(3) The records referred to in subsection (2)(b)(ii) shall be audited by the Auditor-General.

Outside employment and disclosure of interests by members

9. (1) A member appointed on a full-time basis shall not, except with the written approval of the Minister, engage in any paid employment outside the duties of the office of the member. 50

(2) No member of the Institute shall engage in any employment which conflicts with the proper performance of the functions of such member.

(3) A member who, directly or indirectly, through his or her spouse, partner or business associate, has any financial interest in a matter being considered by the Institute 55

shall as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Institute and shall not be present during any deliberations of the Institute with regard to the matter and shall not take part in any decision of the Institute thereon.

Objects of Institute 5

- 10.** (1) The objectives of the Institute are—
- (a) to promote 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 a manner consistent with protecting the health and well-being of competitors, and the rights of all persons who take part in sport; 10
 - (b) to encourage the development of programmes for the education of the community in general, and the sporting community in particular, in respect of the dangers of doping in sport;
 - (c) to provide leadership in the development of a national strategy concerning doping in sport; 15
 - (d) to bring about the introduction of a centralised independent sample collection and testing programme, which may subject any sportsperson to dope testing at short notice, or without notice, both in and out of competition;
 - (e) to encourage the South African national sports federations and other sports organisations to adopt uniform independent internationally acceptable sample collection and testing procedures; 20
 - (f) to encourage the development and maintenance of a sport drug testing laboratory or laboratories accredited by the International Olympic Committee; and 25
 - (g) to promote and encourage the adoption of uniform sample collection and testing procedures, and education programmes relating to doping in sport internationally.
- (2) The Institute shall operate in close conjunction with SISA.

Powers and duties of Institute 30

- 11.** (1) The Institute may—
- (a) enter into contracts for or in connection with the performance of its functions and the attainment of its objects;
 - (b) acquire, hold and dispose of movable and immovable property;
 - (c) occupy, use and control any land or building owned or held under lease by the Government and made available to the Institute for its purposes; 35
 - (d) appoint agents and attorneys;
 - (e) appoint persons to perform services for the Institute;
 - (f) accept gifts, grants and bequests given or made to the Institute, and act as trustee in respect of money or other property vested in the Institute in trust; 40
 - (g) develop, maintain, distribute and publish information on procedures for, and developments concerning, the collection and testing of samples; and
 - (h) do anything else which is necessary for the attainment of the objects of the Institute.
- (2) The Institute shall— 45
- (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;
 - (b) establish and maintain a Register of Notifiable Events; 50
 - (c) notify relevant persons and organisations of entries into the Register of Notifiable Events;
 - (d) disseminate information relating to the penalties likely to be imposed if sportspersons test positive for doping, or if they fail to comply with requests to provide samples for testing; 55

- (e) select sportspersons who are to be requested to provide samples for testing;
 - (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;
 - (g) develop and implement educational programmes to discourage the practice of doping in sport; 5
 - (h) consult with, assist, co-operate with and provide information to governmental and non-governmental organisations and other persons within South Africa and internationally;
 - (i) take steps aimed at ensuring that South Africa complies with international agreements and other arrangements concerning the use of drugs and doping in sport, to which South Africa is a party; 10
 - (j) undertake research, co-ordinate and arrange for research to be undertaken in the field of performance-enhancing drugs and doping practices in sport; and
 - (k) encourage the pursuit of optimal sports performances in an environment free from the use of drugs. 15
- (3) Any failure of any Federation to co-operate with the Institute shall be reported to the Minister who will address the issue with the relevant macro sporting organisations.

Preparation of strategic plans

12. (1) The Institute shall prepare in writing for each successive period determined in accordance with subsection (2), a strategic plan setting out the manner in which the functions of the Institute are intended to be performed during that period, and shall implement such plan. 20

(2) The first strategic plan shall encompass the plan as approved by the Institute immediately after the commencement of this Act, and shall be developed so as to relate to a period of four years commencing on a date falling within the period twelve months commencing immediately after the promulgation of this Act, and each subsequent strategic plan shall be determined to relate to the period of four years commencing immediately after the end of the period to which the immediately preceding strategic plan related. 25 30

Approval and commencement of strategic plans

13. A strategic plan prepared in accordance with section 12 shall be submitted to the Minister for approval not less than three months, or such lesser period as the Minister, in special circumstances, may allow, before the commencement of the period to which the plan relates, and shall come into force— 35

- (a) on the day on which it is approved by the Minister; or
 - (b) at the commencement of the period to which it relates,
- whichever is the later.

Variation of strategic plans

14. (1) The Institute shall from time to time during the period in respect of which a strategic plan prepared in accordance with section 12 is in force, consider whether or not a variation of the strategic plan is necessary. 40

(2) If the Institute considers that a variation of a strategic plan is necessary, the Institute may, with the approval of the Minister, vary the strategic plan.

(3) If a variation of a strategic plan is approved by the Minister, the plan as so varied shall continue in force on and after the date on which the variation was so approved as if the plan had originally been approved by the Minister as so varied. 45

Annual operational plans

15. (1) The Institute shall develop and prepare in writing in respect of each financial

- year which ends after the commencement of this Act, operational plans setting out—
- (a) the programmes which the Institute proposes to follow; and
 - (b) the resources which the Institute proposes to allocate to each such programme, during that year in order to give effect to the strategic plan which then applies.
- (2) If the Minister is of the opinion that an operational plan in respect of a financial year is inconsistent with the applicable strategic plan, the Minister may, in writing, request the Institute to revise the operational plan. 5
- (3) The Institute shall revise an operational plan if the Minister so requests.
- (4) An operational plan, or a revised operational plan—
- (a) shall be submitted to the Minister as soon as is practicable; and 10
 - (b) shall come into force when it is approved in writing by the Minister.

Institute to comply with plans

16. The Institute shall perform its functions and exercise its powers in a manner which is consistent with and is designed to give effect to any strategic plan and operational plan in force at that time. 15

Appeals to Appeal Board and resolution of disputes

17. (1) (a) There is hereby established a board which shall be known as the Institute Appeal Board, and which shall consist of a panel of not fewer than 10 persons possessing special knowledge and expertise of the subject matter, from which at least three members shall be appointed by the Minister on the recommendation of the Institute to constitute a hearing to hear and decide upon a dispute: Provided that at least one member so appointed by the Minister shall have a legal background. 20

(b) Before an appeal may be lodged, an amount of one thousand rand shall be deposited by the appellant with the Appeal Board, which amount shall be refundable in full only after the 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. 25

(c) The Appeal Board may with a view to the personal circumstances of a prospective appellant waive the requirement of a deposit referred to in paragraph (b).

(2) (a) The Appeal Board may hear and decide on any dispute relating to drug-taking or doping in sport. 30

(b) The Appeal Board may confirm or set aside any sanction imposed by a sporting body in respect of drug taking or doping, and may in the place of any sanction so set aside, impose any sanction which in its opinion should and could lawfully have been imposed. 35

(3) A member of the 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.

(4) A member of the Appeal Board shall be eligible for reappointment.

(5) The procedure to be followed in connection with appeals to the Appeal Board shall be determined by the Board in consultation with the Minister, and every party to an appeal, including the Institute, shall be entitled to be represented by a person of his or her own choice. 40

(6) The sanctions which may be imposed on persons guilty of taking drugs shall be in accordance with the penalties laid down in the constitutions of the respective sports federations. 45

Short title

18. This Act shall be called the South African Institute for Drug-Free Sport Act, 1997.

**MEMORANDUM OF OBJECTS OF THE SOUTH AFRICAN
INSTITUTE FOR DRUG-FREE SPORT BILL, 1997**

The object of the Bill is to encourage the practice of sport, free from the use of drugs, in a manner which is consistent with protecting the health of the competitors and the values of fair play and competition; in conjunction therewith to encourage the institution and development of drug educational programmes, in collaboration with other stakeholders in the governmental and other sectors, and to provide leadership in the formulation of a national policy, encompassing drug abuse and the effects of performance-enhancing drugs. (Clause 10) In order to achieve the goals as stated in the Bill, provision is made for the establishment of a body, clothed with corporate personality, having powers and functions which are necessary for the purpose. (Clause 2) The said body will be known as the South African Institute for Drug-Free Sport (the "Institute"), and its membership will in terms of the Bill be determined by the Minister of Sport and Recreation (the "Minister"). (Clause 3) When appointing the members of the Institute, the Minister will act with the concurrence of the "Sports Information and Science Agency" (SISA), and the Institute will in the exercise of its powers and the performance of its functions act in close co-operation with SISA. (Clauses 3 and 10) The functions of the Institute could in broad outline be stated to be of an educational and regulatory nature. The educational functions have already been indicated above, while the regulatory function will include the initiation and streamlining of an efficient, centralised drug-testing programme, in which all competitors in sport at provincial, national and international level will be required to undergo tests for the use of drugs. (Clause 10(1)(d)) Such competitors will be selected at random and will be required to undergo such tests at short notice. In order to establish efficient drug-testing methods, South African national sports federations and organisations will be encouraged and assisted by the Institute to institute procedures which conform to those applied internationally. (Clause 10(1)(g)) The Institute will in terms of the proposed Act be required to prepare and develop for each successive period of four years, the first commencing within a year of the promulgation of the proposed Act, a strategic plan in which the manner in which the Institute intends to perform its functions during the relevant period, is set out. (Clause 12) The Institute will be required to submit a strategic plan to the Minister for his or her approval. (Clause 13) The Institute will also be required to evaluate a strategic plan on an ongoing basis in order to determine whether variations of the plan have become necessary, and it will be empowered, with the approval of the Minister, to vary such a plan accordingly. (Clause 14) The Institute will furthermore be required to prepare, develop and implement in respect of each financial year of the Institute an operational plan in which the programmes which the Institute intends executing during that year, as well as the resources which the Institute intends utilising in order to give effect to the current strategic plan, are set out. (Clause 15) The Minister will be empowered to request a revision of any operational plan if he or she is of the opinion that such plan is inconsistent with the strategic plan, and the Institute will be obliged to comply with such a request.

The Institute will be assisted in the performance of its functions by staff appointed by it, or who are seconded to its service by the Public Service Commission. (Clause 6) The Institute will be empowered to obtain the advice and other services of experts, agents and representatives, be authorised to acquire, lease and hold immovable and movable property (including buildings), and be empowered to enter into agreements in connection with the performance of its functions and for the attainment of its objectives, and to accept gifts, grants, bequests and trusteeships. (Clause 11) An important power of the Institute will be the development, maintenance and distribution of information relating to matters connected with its objects. The Institute will be required to publish a list of banned substances and practices which complement the publication known as the "List of Doping Classes and Methods", published by the International Olympic Committee, and to establish and publish a six-month register of provincial, national and international sporting events in respect of which mandatory drug tests will be carried out in respect of competitors; to secure the safe and tamper-free transit of samples taken; and to preserve and maintain confidentiality in respect of competitors tested for the use of drugs. (Clause 11) The Institute will be authorised and obliged to work in close co-operation with other relevant institutions, such as SISA and the Drug Advisory Board. (Clause 10)

The funds of the Institute will consist of money donated or bequeathed to it, as well as of money appropriated for its purposes by Parliament. (Clause 8)

The Bill also provides for the establishment of an Appeal Board consisting of such number of members as may be determined by the Minister. (Clause 17) The persons who are to be appointed as members will be required to possess specialised knowledge of all matters relating to the use and administration of drugs in sport. The Appeal Board will be authorised to hear any dispute relating to drug-taking and drug administration in sport, and to confirm or set aside any sanction imposed on competitors in sport who appeal to it, except any sanction which has been imposed or confirmed by a court of law. The procedure to be followed in connection with any such appeal shall be determined by the Appeal Board in consultation with the Minister, and the sanctions which may be imposed shall be in accordance with the sanctions as determined by the relevant national and international sports federations. (Clause 17)

The proposed Act will come into operation on promulgation in the *Government Gazette*. (Clause 18)