

MEDIA RELEASE 4 April 2019

Sports Tribunal delivers decision on sanction in XYZ case

On 4 March 2019, the Sports Tribunal delivered a decision on the liability of XYZ, a member of local surf lifesaving and golf clubs. XYZ had been identified as purchasing clenbuterol and dianabol (both anabolic steroids) from the *NZ Clenbuterol* website between November 2014 and January 2015. XYZ's evidence to the Tribunal, which it accepted, was that XYZ had made the purchases in an attempt to lose weight and not for sports performance enhancing purposes. The Tribunal accepted the submission of DFSNZ that XYZ was subject to the Sports Anti-Doping Rules (SADR) because of his membership of the local surf life saving and golf clubs, who were affiliated with National Sports Organisations that had adopted SADR. It also found that XYZ had competed in club swimming and golf events and in doing so had breached the SADR provisions alleged. The Tribunal then invited submissions on sanction.

The Tribunal considered whether XYZ had established the defence of no significant fault or negligence. It acknowledged that DFSNZ had the discretion to extend the definition of athlete to include those involved in amateur sport (known overseas as "recreational or low level athletes"), but questioned the utility and fairness in prosecuting recreational athletes who do not receive the educational attention on anti-doping that elite athletes do. The Tribunal observed that the decision to apply SADR to recreational athletes was not made by expressly amending the rules but by an unannounced executive decision. It found DFSNZ's claims that it had no prosecutorial discretion and that the Tribunal also had no discretion to absolve a respondent who lacked genuine culpability, did not accord with the fundamental principles of New Zealand jurisprudence.

The Tribunal determined that the respondent should receive 6 months credit for the delay in bringing the proceedings, and a further 6 months for timely admission. It found that XYZ should not be prevented from credit for timely admission in circumstances where the Tribunal had directed full legal presentation on the issue of whether recreational athletes were subject to SADR (and that it would be unconscionable in all the circumstances to prevent such credit being given).

The Tribunal imposed a 2 year period of ineligibility beginning on 3 October 2018. Accounting for the credits it had awarded, XYZ will be ineligible to participate in any sport until 3 October 2019.

The Tribunal also determined that the unusual nature of the case (being a test case on the issue of recreational athletes being bound by SADR) meant that continued name suppression was appropriate.

The decision in this case is available for download from the website of the Sports Tribunal (www.sportstribunal.org.nz). See *Drug Free Sport New Zealand v XYZ* (ST 12/18). Copies can also be obtained directly from the Registrar, Sports Tribunal of New Zealand (telephone: 0800 55 66 80; e-mail: info@sportstribunal.org.nz).