

# SPORTS TRIBUNAL of New Zealand

## ANNUAL REPORT 2018/19





## MISSION OF THE SPORTS TRIBUNAL OF NEW ZEALAND

The mission of the Sports Tribunal is to ensure that national sport organisations, athletes and other parties to a sports dispute have access to a fair, objective and just means of resolving sports disputes within the Tribunal's jurisdiction that is also affordable, timely and efficient.

## PERIOD COVERED BY THIS ANNUAL REPORT

The 2018/19 Annual Report of the Sports Tribunal reports on activities and cases decided during the time period 1 July 2018 to 30 June 2019. Cases filed during this time but not decided as at 30 June 2019 will be reported on in the Annual Report for the following year.



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## CHAIRMAN'S FOREWORD

The Tribunal has been kept comfortably busy with a diverse range of cases. We see our role as providing an accessible, timely and objective means for dealing with disputes within the sporting environment. Sadly, there are recurring themes which emerge which get in the way of us being able to meet the intent of the legislation and the participation of athletes in New Zealand.

We have spent a deal of time in the past year trying to ensure that there is a comprehensive appreciation of what we can and cannot do in the anti-doping field. The approach of the WADA Code and general adjudication in all other areas of New Zealand life is quite inconsistent.

Courts and other bodies which make determinations in New Zealand operate after prosecuting authorities have determined that action for breach is necessary and in the public interest. This prosecutorial discretion ensures that time, energy and resources are not needlessly dissipated for little or no benefit. DFSNZ has continued to assert that it has no prosecutorial discretion so matters of potential breach are brought before the Tribunal whatever the circumstances. While the Tribunal understands the reasoning which motivates the WADA Code approach to the core process of deterring drug cheats, it is not easy to see why especially at the recreational level that fundamental objective cannot take account of circumstances far removed from that purpose.

Consequently in too many instances the Tribunal is not an adjudicator in a meaningful sense and too often is prevented from exercising judgment by balancing relevance, fault and consequence. This happens because DFSNZ's application of the Code is without any recognition of different levels of participation. The Code is applied equally to anyone associated with a sport in New Zealand through membership of an affiliated club or association. It may be appropriate at elite international and national levels but it is difficult to justify with recreational participants who are unknowing of Code obligations. Infringements of the Code can

arise through appropriate medical treatment or carelessness by ordinary sport participants who in reality know little or nothing of the strictures of the Code or in circumstances which have nothing to do with their sports interest or participation. These tensions risk deflecting resources and attention away from detecting and preventing real drug cheats and undermining acceptance of the endeavours of DFSNZ in pursuing its fundamental purpose.

In the other substantial area of our work in non-selection appeals and disputes within sporting bodies, so much of what comes before us is infected by personality issues. Sadly we are led into matters unrelated to the athletes and their needs, perceptions and aspirations. Other people take the opportunity to rehearse and relitigate ancient quarrels, personality clashes and agendas with no relevance to the core dispute.

The vision for and the mission of the Sports Tribunal are undoubtedly worth embracing. However, modification is needed if this is to prevail in a meaningful way for all the hundreds of thousands of kiwis who love sport and want to participate or be associated with it.

For most of the year our Registrar has been Mike Selwyn who has carefully carried out his demanding task as the administrative hub of our work and as the bridge with the sporting world.

There have been no changes in the membership of the Tribunal. They are a dedicated team of exceptionally well qualified women and men carrying out a potentially very important task. Because of the time constraints which nearly always are a critical factor with our work, they must be available at short notice to participate. They do so willingly and always with distinction.

Hon Sir Bruce Robertson KNZM, VGSM  
Chairman

# ABOUT THE SPORTS TRIBUNAL

The Sports Tribunal is an independent statutory body that determines certain types of disputes for the sports sector. It was established in 2003 by Sport and Recreation New Zealand (now known as Sport New Zealand) in response to recommendations of a 2001 Taskforce which identified a need to help National Sporting Organisations (NSOs) avoid lengthy and costly legal battles, and to provide athletes with an affordable forum where they could access high quality and consistent decision-making to resolve disputes.

The Tribunal was continued under the name of the Sports Tribunal of New Zealand by the Sports Anti-Doping Act 2006 (the Act).

The Tribunal can hear and decide the matters set out in section 38 of the Act. These are:

- Anti-doping violations, including determining whether an anti-doping violation has been committed and imposing sanctions
- Appeals against decisions made by a NSO or the New Zealand Olympic Committee (NZOC) if the rules of the NSO or NZOC allow for an appeal to the Tribunal. Such appeals include:
  - appeals against not being selected or nominated for a New Zealand team or squad
  - appeals against disciplinary decisions
- Other “sports-related” disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear
- Matters referred by the Board of Sport New Zealand.

The Act sets out the requirements for the appointment of Tribunal members including the Chairperson and Deputy Chairperson(s). These include both legal experience and substantial involvement in sport. Information about the current Tribunal membership is provided at the end of this report.

Further information about the Tribunal's procedures and decisions can be found on its website: [www.sportstribunal.org.nz](http://www.sportstribunal.org.nz).



# CASES DEALT WITH BY THE TRIBUNAL 2018/2019

A total of 18 cases were filed with the Tribunal during the year and the Tribunal issued 18 decisions. These are classified by proceeding type below.

	NUMBER OF PROCEEDINGS FILED	NUMBER OF DECISIONS ISSUED
Anti-Doping (Provisional Suspension)	7	7
Anti-Doping (Substantive)	8	10
Appeals against decisions of NSOs or NZOC	2	1
Sports-related disputes by agreement	1	0
Total	18	18

## OVERVIEW

18 proceedings were filed with the Tribunal this year compared to 41 last year.

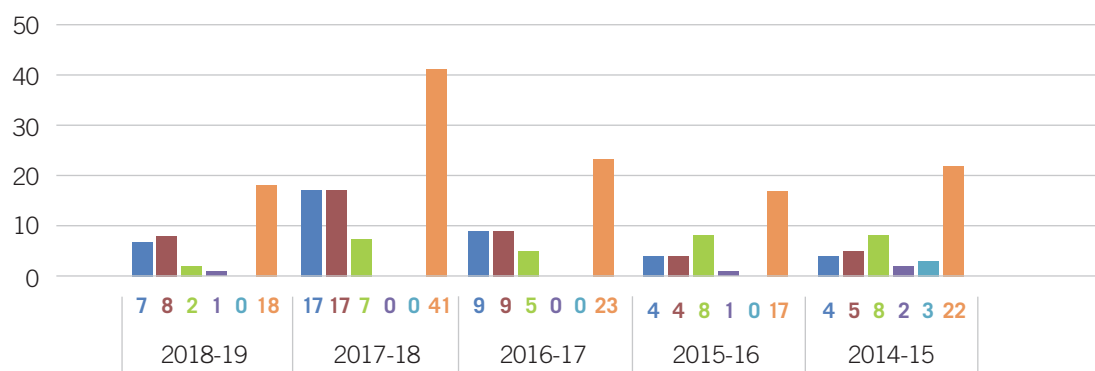
The number of appeals filed against decisions of NSOs and the NZOC was two in 2018/19 as opposed to seven in 2017/18.

The discrepancy can be attributed in part to the number of anti-doping cases generated by the “Medsafe” investigation, most of which were decided in the 2017/18 year. The fewer non-selection appeals could be attributed to the fact that selection for the 2018 Winter Olympics and the 2018 Commonwealth Games took place in the 2017/18 year.

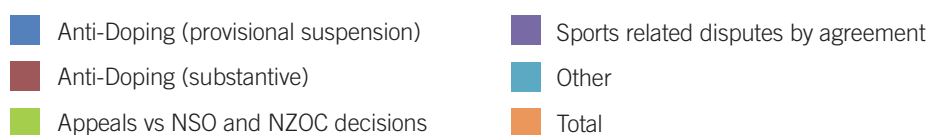
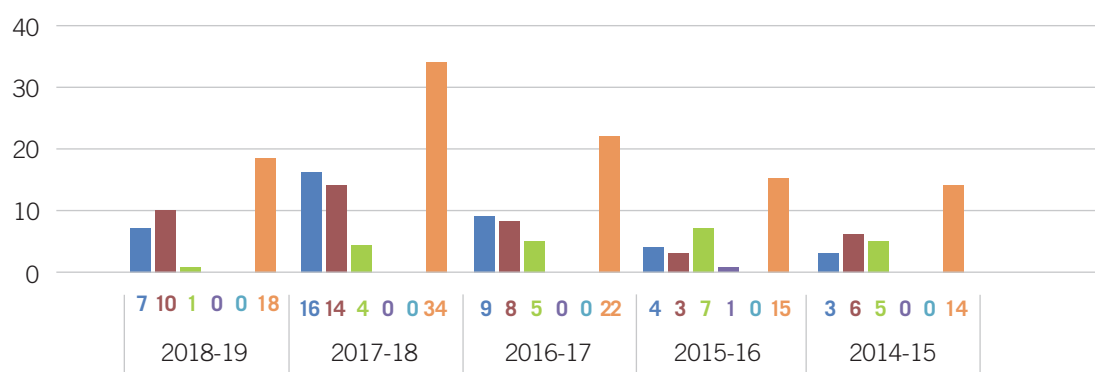
## COMPARISON WITH PREVIOUS FIVE YEARS

The following tables show the number of proceedings filed with the Tribunal and decisions issued (classified by proceeding type) in 2018/19 compared to each of the previous five years.

Number and type of proceedings filed - yearly comparison



Number of decisions issued - yearly comparison



The charts below reflect the types of anti-doping cases and the sports involved for the previous five years.

Anti-Doping Tribunal decisions 2014/15 to 2018/19 by Anti-Doping Rule Violation type



Anti-Doping cases heard by the Tribunal: sports involved 2014/15 to 2018/19



## ANTI-DOPING CASES

The Tribunal hears provisional suspension applications and substantive proceedings for anti-doping rule violations filed by Drug Free Sport New Zealand (DFSNZ), New Zealand's National Anti-Doping Organisation (NADO). The Tribunal is empowered to determine whether a violation has occurred and impose the appropriate sanction under the Sports Anti-Doping Rules (SADR) promulgated by DFSNZ. The SADR mirror the World Anti-Doping Authority's (WADA) Code, the latest version of which came into effect on 1 January 2015. Most NSOs have adopted the SADR as their anti-doping policy.

In November 2017 WADA initiated a two-year Code Review process. The revised Code will take effect on 1 January 2021.



## 2018/2019

This year 10 substantive anti-doping proceedings were heard and decided by the Tribunal. These decisions are summarised in the table below.

Proceedings can either arise from athletes testing positive to prohibited substances or intelligence led investigations alleging violations of the Code, such as the NZ Clenbuterol Medsafe cases (attempted use and possession by online purchase).

In October 2017 DFSNZ commenced its first batch of proceedings against athletes identified in the NZ Clenbuterol Medsafe investigation. At that time, it had identified 107 persons of interest. Proceedings were brought against a lesser number of individuals for various reasons, including that some of those individuals were not members of a New Zealand sports organisation at the time. These proceedings have now ended, with a total of 11 proceedings having been lodged and determined by the Sports Tribunal. A larger number of proceedings were filed with New Zealand Rugby's Judicial Committee.

The Tribunal has continued to encourage parties to discuss an agreed position based on other cases determined by the Tribunal and where the parties can agree on the facts and the issues arising from them. This efficient administration is consistent with the Tribunal's mission which minimises the length of time to manage the proceedings and eliminates the need for a hearing.

ANTI-DOPING VIOLATION	PENALTY	SPORT
Attempted use/possession of prohibited substance – Clenbuterol, Nandrolone and Dianabol (Medsafe)	2 years' ineligibility	Hockey
Attempted use/possession of prohibited substance – Clenbuterol (Medsafe)	2 years' ineligibility	Cricket
Attempted use/possession of prohibited substance – Clenbuterol (Medsafe)	2 years' ineligibility	Rugby League
Attempted use/possession of prohibited substances – Testosterone Propionate, Trenbolone Acetate and Tamoxifen (Medsafe)	2 years' ineligibility	Martial Artist
Attempted use/possession of prohibited substance – Clenbuterol (Medsafe)	2 years' ineligibility	Rugby League
Attempted use/possession of prohibited substance – Clenbuterol and Dianabol (Medsafe)	2 years' ineligibility	Surf life saving; Golf
Presence of prohibited substance – GW 1516	4 years' ineligibility	Powerlifting
Attempted use/possession of prohibited substance – Erythropoietin	4 years' ineligibility	Athletics
Presence of prohibited substances – Androsterone, Etiocholanone, Testosterone and 5 $\beta$ Adiol and Anastrozole	4 years' ineligibility	Cycling
Presence of prohibited substances – 11-nor-delta-9-tetrahydrocannabinol-9-carboxylic acid (a metabolite of THC)	7 months' ineligibility	Rugby League

The 10 cases are summarised below.

## MEDSAFE CASES – CLENBUTEROL AND OTHER SUBSTANCES

The following cases arise from Medsafe's *NZ Clenbuterol* investigation which passed information from the website's database to DFSNZ to investigate who were members of New Zealand sports organisations. DFSNZ confirmed a list of customers who were bound by SADR and details of their internet purchases of clenbuterol and other anabolic steroids in 2014 and 2015.

DFSNZ filed a total of 11 cases with the Tribunal relating to *NZ Clenbuterol* purchases. One case was heard in 2016/17 and during 2017/18 six cases were filed with the Tribunal. In the current period four cases were filed and six were heard.

The Tribunal has been concerned about the time which had elapsed between the matter initially coming to the attention of DFSNZ in 2015 and the subsequent lengthy investigation period before

proceedings were filed against the athletes in late 2017 and 2018. The Tribunal considered these athletes were entitled to allowance for the delays, and the commencement dates of ineligibility suspension periods have been backdated significantly to take account of the delays as well as timely admissions. The initial batch of cases dealt with by the Tribunal resulted in sanctions of two years backdated by 10 months.

At the Tribunal's AGM in 2018 it reconsidered the appropriate period of backdating for delay given the time that had elapsed since that sanction had been set in December 2017. It considered the period should be increased to 12 months, the maximum allowable period allowed by the Code.

Similar cases have also come before the New Zealand Rugby Union Judicial Committee which hears anti-doping cases relating to rugby players only.

## ATTEMPTED USE/POSSESSION OF PROHIBITED SUBSTANCE – CLENBUTEROL, NANDROLONE AND DIANABOL

### Drug Free Sport New Zealand v Richard Brougham

Richard Brougham is a hockey player who was suspended for a period of two years for purchasing clenbuterol and the attempted use of nandrolone and dianabol from *NZ Clenbuterol* in 2014. The sanction was backdated by 10 months for delays in the investigation and for Mr Brougham's timely admission.

DFSNZ filed proceedings against Mr Brougham on 8 June 2018. Mr Brougham opposed the provisional suspension application and the Tribunal Chairman did not consider a provisional suspension appropriate in the circumstances and directed an expedited substantive hearing.

On 6 July Mr Brougham admitted possession of clenbuterol and the attempted use of dianabol and nandrolone, anabolic agents prohibited at all times. Mr Brougham said he did not use the clenbuterol and although he did not purchase dianabol and nandrolone, he accepted his conduct was an attempt to use the substances under the Sports Anti-Doping Rules.

The parties filed a joint memorandum proposing a sanction based on relevant factors including the previous cases determined by the Tribunal. The applicable period of ineligibility was two years and it was accepted no further reduction was available.

The Tribunal considered all available material and made an order as sought without the need for a hearing.

## ATTEMPTED USE/POSSESSION OF PROHIBITED SUBSTANCE – CLENBUTEROL

### Drug Free Sport New Zealand v Harrisyn Jones

Harrisyn Jones is a member of the Carisbrook Dunedin Cricket Club and was suspended for a period of two years for his online purchase from the *NZ Clenbuterol* website in February 2015.

Mr Jones admitted the purchase of clenbuterol and it was accepted on the evidence that his violation was not intentional. Mr Jones said he was recovering from an injury and purchased the product to help him lose weight, not to enhance his sports performance. He was unaware clenbuterol was a banned substance and did not use it after he researched the product further.

The parties filed a joint memorandum proposing a sanction consistent with previous Medsafe cases. The Tribunal advised that it wished to reconsider the length of time backdated for delay as the standard was set in December 2017 when the first batch of Medsafe cases were decided.

At its 2018 AGM the Tribunal considered the further passage of time should be reflected in any sanction and suggested that the total period of backdating for delay and co-operation should be increased to 12 months. The parties were offered the opportunity to have a hearing on the issue if required. The Tribunal noted that 12 months was the maximum period that could occur under the rules which state that the athlete must serve at least one-half of the period of ineligibility going forward.

The parties filed a second joint memorandum proposing an amended sanction which the Tribunal accepted and ordered accordingly.

## ATTEMPTED USE/POSSESSION OF PROHIBITED SUBSTANCE – CLENBUTEROL

### Drug Free Sport New Zealand v Kael McEnteer

Kael McEnteer, a rugby league player for the Victoria Hunters, was suspended for a period of two years for his online purchase of clenbuterol from the online website in November 2014. The sanction was backdated by 12 months for investigation delays and Mr McEnteer's timely admission.

Mr McEnteer was provisionally suspended without opposition on 14 September 2018. He admitted the violation, but said he purchased the product in the off-season to lose weight, not to enhance his sports performance. Mr McEnteer said he thought clenbuterol was a supplement product and was not aware it was a prohibited substance under the Sports Anti-Doping Rules.

On 10 October 2018 the parties filed a joint memorandum proposing an appropriate sanction based on relevant factors including the previous cases determined by the Tribunal. The presumptive two- year period of ineligibility applied, and Mr McEnteer did not seek to further reduce the period of ineligibility. As with previous cases, it was proposed the period of commencement should be backdated, given his timely admission and some allowance for the investigation delays.



## ATTEMPTED USE/POSSESSION OF PROHIBITED SUBSTANCE – TESTOSTERONE PROPIONATE, TRENBOLONE ACETATE AND TAMOXIFEN

### **Drug Free Sport New Zealand v Zane Hopman**

Zane Hopman, a martial artist, was suspended for a period of two years for his online purchase of testosterone propionate, trenbolone acetate and tamoxifen from the online website in November 2014.

Mr Hopman was provisionally suspended without opposition on 25 September 2018. He admitted the violation, but said he never used the products and was not aware he was subject to Sports Anti-Doping Rules or that his online purchases breached those rules.

On 12 October the parties filed a joint memorandum proposing an appropriate sanction based on relevant factors including the previous cases determined by the Tribunal. The presumptive two-year period of ineligibility applied, and Mr Hopman did not seek to further reduce the period of ineligibility. As with previous cases, it was proposed the period of commencement should be backdated, given his timely admission and some allowance for the investigation delays.

The Tribunal backdated the two year sanction by 12 months to commence from 25 September 2017.

## ATTEMPTED USE/POSSESSION OF PROHIBITED SUBSTANCE – CLENBUTEROL

### **Drug Free Sport New Zealand v Hayden Blackley**

Hayden Blackley, an amateur rugby league player, was suspended for a period of two years for his online purchase of clenbuterol from the online website in February 2015.

Mr Blackley was provisionally suspended without opposition on 15 October 2018. He promptly admitted the violation and said he purchased the product to aid weight loss but did not use it on the advice of his friends. Mr Blackley said he did not know what clenbuterol was nor was he aware that it was a prohibited substance under the Sports Anti-Doping Rules. It was accepted on the evidence that Mr Blackley's violation was not intentional.

On 26 October the parties filed a joint memorandum proposing a sanction consistent with previous cases, that is a period of two years ineligibility backdated for Mr Blackley's timely admission and for DFSNZ's investigation delays.

The Tribunal backdated the sanction by 12 months to commence from 15 October 2017.

## ATTEMPTED USE/POSSESSION OF PROHIBITED SUBSTANCE – CLENBUTEROL AND DIANABOL

### **Drug Free Sport New Zealand v XYZ**

XYZ, a member of local surf lifesaving and golf clubs, was suspended for a period of two years for his online purchase of clenbuterol and dianabol from the NZ Clenbuterol website between November 2014 and January 2015.

XYZ was provisionally suspended without opposition on 28 August 2018. XYZ subsequently admitted the violation, and said that the purchases had been made in an attempt to lose weight and not to enhance sport performance. XYZ asked to be heard on sanction.

At a subsequent teleconference, DFSNZ was asked to submit information on the consequences of mere membership of a sports organisation that was a signatory to SADR (as opposed to an athlete in competition). DFSNZ submitted that it had exercised its discretion to expand the application of SADR to include recreational level athletes, and they further submitted that there was to be no difference in the sanction to be applied for recreational, as opposed to elite, athletes.

At the liability hearing on 4 March 2019, the Tribunal expressed concern that a potentially vast number of people could be caught in the anti-doping regime if the application of SADR could be activated by mere membership of a local sports club (if only for its social and dining activities). The Tribunal found that this concern was compounded by the limitations on its ability to distinguish between cases that merit a strict approach to ensure fairness and a level playing field in competitive sport, and those cases where the facts and circumstances should dictate a more merit-based approach.

In its decision on sanction on 3 April 2019, the Tribunal 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.

XYZ was suspended for a period of two years beginning on 3 October 2018, being the day after XYZ competed in a golfing event (contrary to a provisional suspension). XYZ was given six months credit for the delay in bringing the proceedings, and a further six months for timely admission. This means 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.

## OTHER ANTI-DOPING CASES

### ATTEMPTED USE/POSSESSION OF PROHIBITED SUBSTANCE – GW1516

#### **Drug Free Sport New Zealand v Dylan Turner**

The Sports Tribunal has suspended Dylan Turner, a powerlifter, for four years following a positive test taken at the Waikato Bay of Plenty Powerlifting Championships in April 2018. The positive test for GW 1516, a substance prohibited at all times, is also known as Cardarine, Endurobol or GW501516. It was a developmental drug that was withdrawn from research and which doping organisations issued a warning to athletes due to health risk concerns.

Mr Turner was provisionally suspended without opposition on 31 May 2018. Following DFSNZ's substantive proceedings being filed, Mr Turner admitted the anti-doping rule violation and advised he did not wish to participate in a hearing.

Mr Turner was given every opportunity to consider his position and take action. Despite numerous attempts to facilitate support, provide information and to engage Mr Turner with this matter, he could not be convinced to participate and remained indifferent to the proceedings or the outcome.

Despite Mr Turner being advised he was subject to a mandatory four year sanction, he did not provide any information in support of his case which may have justified a reduction of the period of ineligibility. Consequently, in the absence of any explanation from him, the Tribunal had no alternative but to impose on Mr Turner the mandatory penalty as required by SADR.

Mr Turner's suspension for a period of four years was backdated to commence on 21 April 2018 allowing credit for the period of provisional suspension served and for his timely admission.



## ATTEMPTED USE/POSSESSION OF PROHIBITED SUBSTANCE – ERYTHROPOIETIN

### **Drug Free Sport New Zealand v Brendon Keenan**

Brendon Keenan, a masters distance runner, was suspended by the Tribunal for a period of four years for possession and attempted use of erythropoietin (EPO), a non-specified substance prohibited at all times.

This case arose from an investigation by Medsafe into Mr Keenan's online purchase of EPO from a website trading as DRS Labs on 7 September 2017. The parcel was intercepted by NZ Customs and referred to Medsafe which, following its investigation, passed the information to Drug Free Sport New Zealand (DFSNZ) to investigate Mr Keenan's transactions with the online website. The product was destroyed by Medsafe, and although Mr Keenan, a member of the Lakes City Athletic Club, did not receive or use the substance under the provisions of the Code, he committed a violation by placing an online order for EPO.

DFSNZ filed proceedings against Mr Keenan on 18 May 2018; its material in support included information from Medsafe's investigation. Mr Keenan was provisionally suspended without opposition on 24 May, and on 21 June he admitted the violation and asked to be heard as to the appropriate sanction. Mr Keenan said he had purchased the EPO to address a medical condition and provided his medical history in support. He sought to establish he had no intention to enhance his performance and his fault was not significant. DFSNZ provided EPO internet search results and medical information in response to Mr Keenan's medical information and blood test results to indicate intentional use.

On 19 July 2018 a joint memorandum was filed by the parties. Mr Keenan accepted his conduct was in breach of the Code and that he was subject to a four-year period of ineligibility. It was proposed the period of commencement should be backdated given his prompt admission and cooperation with authorities.

Having considered all available material, the Tribunal imposed a four-year sanction backdated to commence from 7 September 2017, the date of the online purchase. The Tribunal further ordered that Mr Keenan's results at the 2018 NZ Masters Track Championships and the 2018 NZ Marathon Championships, including any medals or prizes, were disqualified.



## PRESENCE OF PROHIBITED SUBSTANCES – ANDROSTERONE, ETIOCHOLANONE, TESTOSTERONE AND 5 $\beta$ ADIOL AND ANASTROZOLE

### **Drug Free Sport New Zealand v Nick Byrne**

Nicholas Byrne, a cyclist, was suspended for a period of four years when he tested positive for testosterone, anastrozole and their metabolites, in a sample taken from him at the New Zealand Age Group Cycling Championships in April 2018.

Mr Byrne was provisionally suspended without opposition on 29 June 2018 and requested an analysis of his B sample which was tested on 11 July. Following the results confirming the A sample, DFSNZ filed substantive anti-doping rule violation proceedings on 24 July.

On 7 August Mr Byrne admitted the violation and asked to be heard as to the appropriate sanction to be imposed. A hearing was set down for 27 August when Mr Byrne intended to establish that the violation was not intentional and seek to reduce the applicable four-year sanction. DFSNZ filed material in response.

On 24 August a joint memorandum was provided to the Tribunal on behalf of DFSNZ and Mr Byrne. In the memorandum Mr Byrne accepted his conduct was in breach of the Code and that he was subject to a four-year period of ineligibility. It was proposed the period of commencement should be backdated given his prompt admission of the violation.

Having considered all available material, the Tribunal imposed a four-year sanction backdated to commence from 20 April 2018 for Mr Byrne's timely admission and cooperation.

The Tribunal further ordered that Mr Byrne's results in the Senior Men's 25 kilometre Time Trial at the 2018 National Age Group Cycling Championships be disqualified.



## APPEALS AGAINST DECISIONS OF NSOs OR NZOC

Two appeal proceedings were filed with the Tribunal. The Tribunal heard and decided one appeal against a decision of a NSO this year.

The appeal decision issued by the Tribunal is summarised below.

### NOMINATION / SELECTION APPEALS

#### **Andi Liu v Fencing New Zealand**

The Sports Tribunal dismissed an appeal by Andi Liu against a decision of Fencing New Zealand (FeNZ) not to select him to compete in the 2018 Commonwealth Senior Fencing Championships in Australia. Mr Liu sought to replace a member selected for the New Zealand Men's Epee team. The challenged fencers were all notified as interested parties in this appeal and all submitted statements in support of their position in lieu of attendance at the hearing.

Mr Liu appealed on the basis that FeNZ had failed to properly apply the selection criteria. On 13 August FeNZ requested nominations from athletes based on its 2017 Selection Criteria. The selectors concluded that only two fencers fulfilled the criteria. Mr Liu stated, based on his results and his attendance at various competitions, he had met the compulsory criteria and should have been selected.

Mr Liu also challenged the second phase of selection that took place, when FeNZ sought to open the field to the best fencers available. As only two fencers fulfilled the published criteria, FeNZ determined, because the event was in Australia where it was easier and less expensive than other overseas countries, the original policy should be relaxed to increase the eligible candidates to field a team of five fencers in respect of the Epee event. On 3 September FeNZ reopened nominations to look at overall results from all qualifying fencers, but Mr Liu was not selected as one of the additional three.

The Tribunal found no error in the selectors' initial decision based on the original published criteria. As to the second phase of selection, the Tribunal noted Mr Liu's points were substantially less than the fencers who were selected. It found no error in the selectors' application of ranking points in their assessment of Mr Liu's performance across all relevant competitions. Accordingly, the appeal was dismissed.

### MEDIATION ASSISTANCE AND OTHER SUPPORT

In appropriate cases, the Tribunal can offer mediation assistance to parties to help settle their disputes by agreement without the Tribunal needing to adjudicate. The Tribunal can conduct mediation at the request of the parties or, in appropriate cases, it can order parties to undertake mediation.

The Tribunal provided formal mediation services in one case involving the exclusion of a rider from racecourses by Motorcycling New Zealand. The Tribunal also fielded a number of enquiries relating to a wide range of issues from selection, governance and coaching concerns.



# OTHER MATTERS INVOLVING THE TRIBUNAL IN 2017/2018

## CONFERENCES

The Tribunal Chairman attended both the 2018 Australia and New Zealand Sports Law Association Conference on the Gold Coast, Australia and the New Zealand Symposium held in Christchurch.

## LEGAL ASSISTANCE PANEL

The Tribunal offers a list of contact details of skilled and experienced sports lawyers who are willing to assist in cases before the Tribunal. The Legal Assistance Panel scheme has to date been successful and assisted many athletes and sports organisations. Following its AGM last year, the Tribunal considered it appropriate to review the scheme to ensure that lawyers listed still wished to be involved and to improve transparency for the parties and the Tribunal.

The Panel continues to be listed on the Tribunal's website; it includes a short statement of the lawyer's experience in the area, their association with any sporting or related entity, and an indication of whether they will provide services on a concessional or no charge basis.

## EXPENDITURE

Under the Memorandum of Understanding between the Minister for Sport and Recreation, Sport NZ and the Tribunal, Sport NZ employs the Registrar of the Tribunal, provides accommodation for the Tribunal office and funds support and information technology costs.

Sport NZ also funds the other operating costs of the Tribunal, which include those associated with hearing and deciding cases (such as the remuneration paid to Tribunal members, travel, hiring of hearing venues and teleconferencing costs) and producing information resources.

In 2018/19 the other operating costs were \$98,679.

# SPORTS TRIBUNAL BIOGRAPHIES

## CURRENT MEMBERS OF THE SPORTS TRIBUNAL



### **CHAIRMAN: HON SIR BRUCE ROBERTSON KNZM, VGSM**

Sir Bruce became a High Court Judge in 1987, later was President of the Law Commission and retired as a Court of Appeal Judge in 2010. He was Chair of the Rugby World Cup Authority in 2010-11 and is a member of the Judicial Control Authority for Racing. Sir Bruce sits on some Pacific Courts of Appeal and the Qatar International and Civil Court in Doha. He was a member of the Public Administrative Law Reform Committee which became the Legislation Advisory Committee, for 20 years and sits on various public legal and community boards.



### **DEPUTY CHAIRMAN: ALAN GALBRAITH QC**

Alan Galbraith QC is a senior barrister and former Rhodes Scholar who was appointed Queen's Counsel in 1987. He has been a member of the Public and Administrative Law Reform Committee (1985-87), the Legislation Advisory Committee (1987-96), the Broadcasting Commission (1989-93) and the New Zealand Racing Industry Board (1992-96). Alan has a long career in athletics, winning several New Zealand and Australian age-group track titles and won World Masters age-group titles in the 1500 metres (2001) and the 10 kilometre road race (2004).



### **DEPUTY CHAIRMAN: DR JAMES FARMER QC**

Jim Farmer QC is a barrister and former lecturer in law at Auckland and Cambridge Universities, with a PhD from Cambridge, and Blues awarded by both universities in track and cross country running. He was a one-time holder of the New Zealand Universities three mile record and winner of the Auckland six mile track title. In recent years, he has steered his "Georgia keelboats" to New Zealand Championships and in 2012 was the outright winner of the Geelong Race Week in Australia. He was previously a director of Team Zealand. He took part in the Targa Motor Rally in October 2013 and remains an active runner.



#### DR LYNNE COLEMAN MNZM

Lynne is a general practitioner and sports doctor who has been involved with elite sport for almost twenty years. Initially with North Harbour Rugby and Netball teams, she has also served as Medical Director for Basketball NZ, Athletics NZ and is currently Medical Director of Swimming NZ. Lynne has been travelling doctor for NZ BlackFerns and NZ U20s rugby teams. She started her work as an Olympic and Commonwealth Games doctor in Athens in 2004, co-led the NZOC Health Team from the Melbourne Commonwealth Games in 2006 and has led the NZOC Health Team since 2008 through to the 2012 London Olympics. She attended Glasgow 2014 and Rio 2016 games as team doctor. Lynne has also served as an elected member of the Waitemata District Health Board 2001-10.



#### CHANTAL BRUNNER

Chantal has more than 25 years of sporting experience. She represented New Zealand in the long jump at two Olympic Games, four World Championships and four Commonwealth Games. She is the Chair of the New Zealand Olympic Committee Olympians' Commission and is on the Executive Board of the World Olympians' Association. She works as senior legal counsel for Les Mills International in Auckland.



#### ROB HART

Rob played cricket for Northern Districts from 1992-04 and for the Black Caps from 2002-04 and is now a director at Ellice Tanner Hart Lawyers in Hamilton. He has been a board member of both the New Zealand Cricket Players Association and New Zealand Cricket. Rob is currently on the boards of General Finance Limited, The Balloons Over Waikato Charitable Trust, Te Puke Cricket Charitable Trust and the Children's Osteopathic Foundation Charitable Trust.



### GEORGINA EARL ONZM (FORMERLY GEORGINA EVERS-SWINDELL)

Georgina is a former New Zealand rower. She competed in the double sculls with her sister Caroline Meyer. Among her many achievements, Georgina is a double Olympic gold medalist, having won at Athens in 2004 and Beijing in 2008. In 2016 she and Caroline were awarded the prestigious FISA Thomas Keller Medal.



### PAULA TESORIERO MNZM

Paula was a New Zealand Paralympics racing cyclist. Among her many achievements, her world record-breaking time in the women's 500m time trial secured New Zealand's first gold medal at the 2008 Summer Paralympics and she then went on to win bronze in both the individual pursuit and the women's individual road time trial. Paula has held senior management positions in the public service. Paula is a former Board member of the Halberg Disability Sport Foundation, and the New Zealand Artificial Limb Service, and currently serves on the Boards of Sport Wellington and Paralympics New Zealand. Paula took up the role of Disability Rights Commissioner in July 2017.



### RUTH AITKEN ONZM

Ruth represented New Zealand at netball in 1979 and was the Silver Ferns coach from 2002-11, leading the team to two Commonwealth Gold Medals (2006 and 2010) and the 2003 World Netball Championship title. Named Halberg Coach of the Year in 2003 and awarded the ONZM in 2011 for services to netball, she retired as the most capped international netball coach in the world with 112 test matches to her credit. After her Silver Ferns retirement, Ruth spent three years in Singapore helping the national team to Asian Champs and Southeast Asian Games success. At the end of 2016 Ruth returned to her home town of Paeroa and is currently Performance Manager with Netball Waikato Bay of Plenty.

# CONTACT INFORMATION

The Sports Tribunal's office is in Wellington.  
Enquiries should be directed to the Registrar of the Sports Tribunal.

## CONTACT DETAILS

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