



National Sports Tribunal Act 2019

No. 68, 2019

**An Act to establish the National Sports Tribunal,
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

Part 1—Preliminary	1
1 Short title.....	1
2 Commencement.....	2
3 Object of this Act.....	2
4 Simplified outline of this Act.....	3
5 Definitions.....	4
6 Application of this Act.....	6
7 Crown to be bound.....	7
8 Extraterritorial application.....	7
Part 2—Establishment of the National Sports Tribunal	8
Division 1—Simplified outline of this Part	8
9 Simplified outline of this Part.....	8
Division 2—Establishment of the National Sports Tribunal	9
10 Establishment of the National Sports Tribunal.....	9
11 Divisions of the National Sports Tribunal.....	9
Division 3—Members of the National Sports Tribunal	10
12 Number of members.....	10
13 Appointment of members.....	10
14 Remuneration.....	10
15 Other terms and conditions.....	11
16 Disclosure of interests to the CEO.....	11
17 Resignation of appointment.....	11
18 Termination of appointment.....	11
19 Application of the <i>Public Governance, Performance and Accountability Act 2013</i>	12
20 General duties of members.....	12
Part 3—Resolution of disputes by the National Sports Tribunal	13
Division 1—Simplified outline of this Part	13
21 Simplified outline of this Part.....	13
Division 2—Anti-Doping Division	15
22 Applications for arbitration of disputes relating to anti-doping policies.....	15
Division 3—General Division	17
Subdivision A—Applications for arbitration of disputes	17
23 Disputes between a person and a sporting body.....	17

24	Disputes between 2 or more persons	18
Subdivision B—Applications for alternative dispute resolution processes		
25	Disputes between a person and a sporting body	20
26	Disputes between 2 or more persons	21
Division 4—Arbitration of disputes in Anti-Doping Division or General Division		
27	Arbitration of disputes in Anti-Doping Division or General Division	24
Division 5—Alternative dispute resolution processes		
28	Mediation, conciliation or case appraisal of disputes	26
29	Practice and procedure of National Sports Tribunal in mediation, conciliation or case appraisal	26
30	Evidence not admissible	26
Division 6—Appeals Division		
Subdivision A—Appealing decisions about anti-doping matters		
31	Appealing determinations made in Anti-Doping Division	28
32	Appealing decisions made by sporting bodies	30
33	Appealing decisions made by sporting tribunals	32
Subdivision B—Appealing decisions about other matters		
34	Appealing determinations made in General Division	34
35	Appealing decisions made by sporting tribunals	36
Subdivision C—Arbitration of disputes in Appeals Division		
36	Arbitration of disputes in Appeals Division	39
Division 7—Making applications		
37	Form of applications	40
38	Time limit on applications	40
Division 8—Manner of conducting arbitration		
39	Scope of Division	42
40	General principles relating to arbitration	42
41	CEO’s determination about practice and procedure of National Sports Tribunal in arbitration	42
42	Members may give notices	43
43	Failure to comply with notice	44
44	Refusal to be sworn or to answer questions	45
45	False or misleading evidence	46
Division 9—Costs		
46	Charging costs of an arbitration	47

47	Charging costs of alternative dispute resolution processes	47
Division 10—Civil penalty provisions		48
48	Civil penalty provisions	48
Division 11—Infringement notices		49
49	Infringement notices	49
Part 4—Administration of the National Sports Tribunal		50
Division 1—Simplified outline of this Part		50
50	Simplified outline of this Part	50
Division 2—Chief Executive Officer		51
51	Chief Executive Officer	51
52	Functions of CEO	51
53	Powers of CEO	52
54	Appointment of CEO	52
55	Acting appointments	52
56	Remuneration	53
57	Leave	53
58	Other terms and conditions	53
59	Other paid work	53
60	Disclosure of interests to the Minister	54
61	Resignation of appointment	54
62	Termination of appointment	54
63	Application of the finance law etc.	55
64	Directions to CEO	55
65	Delegation by CEO	56
Division 3—Persons assisting the Chief Executive Officer		57
66	Arrangements relating to staff of the Department	57
67	Other persons assisting the CEO	57
68	Consultants and expert witnesses	57
Part 5—Other matters		58
69	Simplified outline of this Part	58
70	Obstruction etc. of National Sports Tribunal	58
71	Intimidation etc. of witnesses or other persons	58
72	Secrecy	59
73	Protection and immunity	60
74	Protection from civil actions	60
75	Rules	61



National Sports Tribunal Act 2019

No. 68, 2019

An Act to establish the National Sports Tribunal, and for related purposes

[Assented to 19 September 2019]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *National Sports Tribunal Act 2019*.

Section 2

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	19 March 2020

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Object of this Act

- (1) The object of this Act is to establish the National Sports Tribunal to provide an effective, efficient, independent, transparent and specialist tribunal for the fair hearing and resolution of sporting disputes.
- (2) By establishing the Tribunal, this Act gives effect to certain obligations that Australia has as a party to the International Convention Against Doping in Sport and to any other international agreement prescribed by the rules for the purposes of this subsection.

4 Simplified outline of this Act

- This Act establishes the National Sports Tribunal. It has an Anti-Doping Division, a General Division and an Appeals Division. It consists of members appointed by the Minister.
- The Anti-Doping Division and the anti-doping matters dealt with in the Appeals Division rely on the Commonwealth's legislative power to give effect to the International Convention Against Doping in Sport.
- The General Division and the other matters dealt with in the Appeals Division only cover sporting disputes that the Commonwealth has constitutional power to regulate.
- In the Anti-Doping Division, persons may apply to the Tribunal for arbitration of certain disputes relating to anti-doping policies of sporting bodies.
- In the General Division, persons may apply to the Tribunal for arbitration of certain disputes if:
 - (a) those persons are bound by a constituent document covering a sporting body; and
 - (b) the document permits the dispute to be heard in the General Division or the persons who are in dispute agree to refer the dispute to the Tribunal.
- If an application for arbitration of a dispute is made, the Tribunal is to arbitrate the dispute and to make a written determination in relation to the dispute.
- In the General Division, persons may also apply to the Tribunal for mediation, conciliation or case appraisal of certain disputes if:
 - (a) those persons are bound by a constituent document covering a sporting body; and
 - (b) the persons who are in dispute agree to refer the dispute to the Tribunal.

Section 5

- A party to an arbitration or certain other persons or bodies may appeal to the Appeals Division from a determination made in an arbitration conducted in the Anti-Doping Division or General Division. In certain circumstances, a person may appeal to the Appeals Division from a sporting body's decision or a sporting tribunal's decision in relation to certain disputes.
- There is a Chief Executive Officer of the Tribunal. The CEO is to manage the administration and operation of the Tribunal.

5 Definitions

(1) In this Act:

ASADA CEO means the Chief Executive Officer of the Australian Sports Anti-Doping Authority.

athlete has the same meaning as in the *Australian Sports Anti-Doping Authority Act 2006*.

CEO means the Chief Executive Officer of the National Sports Tribunal.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

de-identified: information is **de-identified** if the information is no longer about an identifiable individual or an individual who is reasonably identifiable.

dispute: see subsection (2) of this section and subsection 6(2).

entrusted person means:

- (a) the CEO; or
- (b) a member; or
- (c) a person assisting the CEO in accordance with section 66 or 67; or

- (d) a person engaged as a consultant, or an expert witness, under section 68.

international agreement includes an international treaty or convention.

International Convention Against Doping in Sport means:

- (a) the International Convention Against Doping in Sport, adopted by the UNESCO General Conference at Paris on 19 October 2005; or
- (b) if the Convention has been amended by any amendment that has entered into force for Australia—the Convention as so amended.

Note: The Convention is in Australian Treaty Series 2007 No. 10 ([2007] ATS 10) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

member means a member of the National Sports Tribunal.

national sporting organisation, for a particular sport, means:

- (a) a sporting organisation that is recognised by the International Sporting Federation that has international control over the sport as being the organisation responsible for administering the affairs of the sport, or of a substantial part or section of the sport, in Australia; or
- (b) whether or not there is an International Sporting Federation that has international control over the sport—a sporting organisation that is recognised by the Australian Sports Commission as being responsible for administering the affairs of the sport, or of a substantial part or section of the sport, in Australia.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

protected information means information that:

- (a) was obtained by a person in the person's capacity as an entrusted person; and
- (b) relates to the affairs of another person (except a person in the person's capacity as an entrusted person); and

Section 6

- (c) identifies, or is reasonably capable of being used to identify, the other person.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

rules means rules made under section 75.

Secretary means Secretary of the Department.

sporting body means:

- (a) a national sporting organisation for a particular sport; or
(b) a body or organisation specified in an instrument under subsection (3).

support person has the same meaning as in the *Australian Sports Anti-Doping Authority Act 2006*.

World Anti-Doping Code has the same meaning as in the *Australian Sports Anti-Doping Authority Act 2006*.

- (2) Without limiting what is a dispute for the purposes of this Act, a dispute may arise in connection with a decision made by a person or body.
- (3) The CEO may, by notifiable instrument, specify a body or organisation for the purposes of paragraph (b) of the definition of **sporting body** in subsection (1).

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

6 Application of this Act

Anti-doping matters

- (1) Sections 22, 31, 32 and 33, and any other provision of this Act to the extent it relates to any of those sections, rely on the Commonwealth's legislative power under paragraph 51(xxix) of the Constitution to give effect to the International Convention Against Doping in Sport.

Other matters

- (2) Sections 23, 24, 25, 26, 34 and 35, and any other provision of this Act to the extent it relates to any of those sections, apply in relation to a dispute of any of the following kinds:
- (a) a dispute where the sporting body concerned is:
 - (i) a constitutional corporation; or
 - (ii) a body corporate that is incorporated in a Territory; or
 - (iii) a body corporate that is taken to be registered in a Territory under section 119A of the *Corporations Act 2001*;
 - (b) a dispute involving matters relating to a sporting event at which Australia is to be, is or was represented as a nation;
 - (c) a dispute involving matters that occur beyond the limits of the States and Territories.

7 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

8 Extraterritorial application

This Act extends to acts, omissions, matters and things outside Australia.

Part 2 Establishment of the National Sports Tribunal

Division 1 Simplified outline of this Part

Section 9

Part 2—Establishment of the National Sports Tribunal

Division 1—Simplified outline of this Part

9 Simplified outline of this Part

- | |
|--|
| <ul style="list-style-type: none">• The National Sports Tribunal is established.• It has an Anti-Doping Division, a General Division and an Appeals Division.• It consists of members appointed by the Minister. |
|--|

Division 2—Establishment of the National Sports Tribunal

10 Establishment of the National Sports Tribunal

The National Sports Tribunal is established by this section.

11 Divisions of the National Sports Tribunal

There are the following Divisions of the National Sports Tribunal:

- (a) an Anti-Doping Division;
- (b) a General Division;
- (c) an Appeals Division.

Note: Part 3 sets out the matters to be dealt with by each Division.

Division 3—Members of the National Sports Tribunal

12 Number of members

The National Sports Tribunal consists of such number of members as are appointed in accordance with this Act.

13 Appointment of members

- (1) A member is to be appointed by the Minister by written instrument, on a part-time basis.

Note: The member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) The member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (3) The Minister must not appoint a person as a member unless the Minister is satisfied that the person has experience or knowledge in at least one of the following fields:
- (a) sports law;
 - (b) sports governance or sports administration;
 - (c) scientific or medical expertise in relation to sport;
 - (d) dispute resolution;
 - (e) ethics;
 - (f) investigative practices or techniques;
 - (g) any other appropriate field of expertise.
- (4) The CEO is not eligible for appointment as a member.

14 Remuneration

- (1) A member is to be paid the remuneration that is determined by the CEO.
- (2) A member is to be paid the allowances (if any) that are determined by the CEO.

15 Other terms and conditions

A member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the CEO.

16 Disclosure of interests to the CEO

- (1) A member must give written notice to the CEO of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's duties.
- (2) The rules may do the following:
 - (a) prescribe how and when an interest must be disclosed;
 - (b) prescribe the consequences of disclosing an interest (for example, that the member must not deal with a particular dispute before the Tribunal).

17 Resignation of appointment

- (1) A member may resign the member's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

18 Termination of appointment

- (1) The Minister may terminate the appointment of a member:
 - (a) for misbehaviour; or
 - (b) if the member is unable to perform the duties of the member's office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of a member if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

Section 19

- (iii) compounds with the member's creditors; or
- (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
- (b) the member fails, without reasonable excuse, to comply with section 16; or
- (c) the member contravenes section 20.

19 Application of the *Public Governance, Performance and Accountability Act 2013*

A member is not an official for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

20 General duties of members

Duty to act honestly, in good faith and for a proper purpose

- (1) A member must discharge the member's duties honestly, in good faith and for a proper purpose.

Duty in relation to use of position

- (2) A member must not improperly use the member's position:
 - (a) to gain, or seek to gain, a benefit or an advantage for the member or any other person; or
 - (b) to cause, or seek to cause, detriment to the National Sports Tribunal, the Commonwealth or any other person.

Duty in relation to use of information

- (3) A member who obtains information as a member must not improperly use the information:
 - (a) to gain, or seek to gain, a benefit or an advantage for the member or any other person; or
 - (b) to cause, or seek to cause, detriment to the National Sports Tribunal, the Commonwealth or any other person.

Part 3—Resolution of disputes by the National Sports Tribunal

Division 1—Simplified outline of this Part

21 Simplified outline of this Part

- In the Anti-Doping Division, persons may apply to the National Sports Tribunal for arbitration of certain disputes relating to anti-doping policies of sporting bodies.
- In the General Division, persons may apply to the Tribunal for arbitration of certain disputes if:
 - (a) those persons are bound by a constituent document covering a sporting body; and
 - (b) the document permits the dispute to be heard in the General Division or the persons who are in dispute agree to refer the dispute to the Tribunal.
- If an application for arbitration of a dispute is made, the Tribunal is to arbitrate the dispute and to make a written determination in relation to the dispute.
- In the General Division, persons may also apply to the Tribunal for mediation, conciliation or case appraisal of certain disputes if:
 - (a) those persons are bound by a constituent document covering a sporting body; and
 - (b) the persons who are in dispute agree to refer the dispute to the Tribunal.
- A party to an arbitration or certain other persons or bodies may appeal to the Appeals Division from a determination made in an arbitration conducted in the Anti-Doping Division or General Division. In certain circumstances, a person may appeal to the Appeals Division from a sporting body's

Part 3 Resolution of disputes by the National Sports Tribunal

Division 1 Simplified outline of this Part

Section 21

decision or a sporting tribunal's decision in relation to certain disputes.

Division 2—Anti-Doping Division

22 Applications for arbitration of disputes relating to anti-doping policies

Anti-Doping Division recognised by anti-doping policy

- (1) If:
- (a) a sporting body has an anti-doping policy that has been approved by the ASADA CEO; and
 - (b) an athlete or support person is bound by the anti-doping policy; and
 - (c) the anti-doping policy permits disputes of a particular kind to be heard in the Anti-Doping Division of the National Sports Tribunal; and
 - (d) a dispute of that kind arises in relation to the athlete or support person;

the athlete or support person may apply to the National Sports Tribunal for arbitration of the dispute.

Note: See Division 7 for how applications are to be made.

Anti-Doping Division not recognised by anti-doping policy

- (2) If:
- (a) a sporting body has an anti-doping policy that has been approved by the ASADA CEO; and
 - (b) an athlete or support person is bound by the anti-doping policy; and
 - (c) a dispute arises in relation to the athlete or support person; and
 - (d) the dispute is of a kind in respect of which the World Anti-Doping Code provides for a form of hearing; and
 - (e) the anti-doping policy does not permit disputes of that kind to be heard in the Anti-Doping Division of the National Sports Tribunal; and

Section 22

(f) the athlete or support person, the sporting body and the ASADA CEO agree in writing to refer the dispute to the Anti-Doping Division of the National Sports Tribunal; the athlete or support person may apply to the National Sports Tribunal for arbitration of the dispute.

Note: See Division 7 for how applications are to be made.

Parties to arbitration

- (3) The parties to the arbitration are:
- (a) the athlete or support person; and
 - (b) the sporting body; and
 - (c) the ASADA CEO; and
 - (d) any other person or body:
 - (i) that is permitted by the anti-doping policy to participate in a hearing of a dispute of that kind; and
 - (ii) that advises the National Sports Tribunal in writing that the person or body wishes to be a party to the arbitration; and
 - (e) if the application is under subsection (2)—any other person or body:
 - (i) that is specified in the agreement mentioned in paragraph (2)(f) as being permitted to participate in a hearing of a dispute of that kind; and
 - (ii) that advises the National Sports Tribunal in writing that the person or body wishes to be a party to the arbitration.

Arbitration to be conducted in Anti-Doping Division

- (4) The arbitration is to be conducted in the Anti-Doping Division of the National Sports Tribunal.

Note: See Divisions 4, 8 and 9 for rules about the arbitration.

Division 3—General Division

Subdivision A—Applications for arbitration of disputes

23 Disputes between a person and a sporting body

- (1) If:
- (a) a dispute arises between:
 - (i) a person bound by one or more constituent documents by which a sporting body is constituted or according to which a sporting body operates; and
 - (ii) the sporting body; and
 - (b) either:
 - (i) one or more of those documents permit the dispute to be heard in the General Division of the National Sports Tribunal; or
 - (ii) if none of those documents permits the dispute to be heard in the General Division of the National Sports Tribunal—the person and the sporting body agree in writing to refer the dispute to the General Division of the National Sports Tribunal; and
 - (c) either:
 - (i) the dispute is of a kind prescribed by the rules for the purposes of this subparagraph; or
 - (ii) the dispute is approved by the CEO, in writing, as a dispute to which this section applies;

the person or the sporting body may apply to the National Sports Tribunal for arbitration of the dispute.

Note: See Division 7 for how applications are to be made.

Parties to arbitration

- (2) The parties to the arbitration are:
- (a) the person; and
 - (b) the sporting body; and
 - (c) any other person or body:

Section 24

- (i) that is permitted by any of the constituent documents to participate in a hearing of a dispute of that kind; and
- (ii) that advises the National Sports Tribunal in writing that the person or body wishes to be a party to the arbitration.

Arbitration to be conducted in General Division

- (3) The arbitration is to be conducted in the General Division of the National Sports Tribunal.

Note: See Divisions 4, 8 and 9 for rules about the arbitration.

Limits on CEO's power

- (4) For the purposes of subparagraph (1)(c)(ii), the CEO must not approve a dispute of a kind prescribed by the rules for the purposes of this subsection.
- (5) The CEO may give an approval under subparagraph (1)(c)(ii) only if the CEO is satisfied that there are exceptional circumstances justifying the giving of the approval.
- (6) Without limiting subsection (5), exceptional circumstances for the purposes of that subsection include the following:
 - (a) the CEO is satisfied that the dispute has been in existence for a protracted period of time, the parties to the dispute have made reasonable efforts to resolve the dispute and the dispute will not be resolved in the reasonably foreseeable future;
 - (b) the outcome of the dispute may set a precedent for dealing with similar disputes that may arise in the future.

Approval not a legislative instrument

- (7) An approval under subparagraph (1)(c)(ii) is not a legislative instrument.

24 Disputes between 2 or more persons

- (1) If:
-

- (a) a dispute arises between 2 or more persons bound by one or more constituent documents by which a sporting body is constituted or according to which a sporting body operates; and
- (b) either:
 - (i) one or more of those documents permit the dispute to be heard in the General Division of the National Sports Tribunal; or
 - (ii) if none of those documents permits the dispute to be heard in the General Division of the National Sports Tribunal—those persons agree in writing to refer the dispute to the General Division of the National Sports Tribunal; and
- (c) either:
 - (i) the dispute is of a kind prescribed by the rules for the purposes of this subparagraph; or
 - (ii) the dispute is approved by the CEO, in writing, as a dispute to which this section applies;

the sporting body may apply to the National Sports Tribunal for arbitration of the dispute.

Note: See Division 7 for how applications are to be made.

Parties to arbitration

- (2) The parties to the arbitration are:
 - (a) the 2 or more persons; and
 - (b) the sporting body; and
 - (c) any other person or body:
 - (i) that is permitted by any of the constituent documents to participate in a hearing of a dispute of that kind; and
 - (ii) that advises the National Sports Tribunal in writing that the person or body wishes to be a party to the arbitration.

Arbitration to be conducted in General Division

- (3) The arbitration is to be conducted in the General Division of the National Sports Tribunal.

Section 25

Note: See Divisions 4, 8 and 9 for rules about the arbitration.

Limits on CEO's power

- (4) For the purposes of subparagraph (1)(c)(ii), the CEO must not approve a dispute of a kind prescribed by the rules for the purposes of this subsection.
- (5) The CEO may give an approval under subparagraph (1)(c)(ii) only if the CEO is satisfied that there are exceptional circumstances justifying the giving of the approval.
- (6) Without limiting subsection (5), exceptional circumstances for the purposes of that subsection include the following:
 - (a) the CEO is satisfied that the dispute has been in existence for a protracted period of time, the parties to the dispute have made reasonable efforts to resolve the dispute and the dispute will not be resolved in the reasonably foreseeable future;
 - (b) the outcome of the dispute may set a precedent for dealing with similar disputes that may arise in the future.

Approval not a legislative instrument

- (7) An approval under subparagraph (1)(c)(ii) is not a legislative instrument.

Subdivision B—Applications for alternative dispute resolution processes

25 Disputes between a person and a sporting body

- (1) If:
 - (a) a dispute arises between:
 - (i) a person bound by one or more constituent documents by which a sporting body is constituted or according to which a sporting body operates; and
 - (ii) the sporting body; and
 - (b) the person and the sporting body agree in writing to refer the dispute to the General Division of the National Sports Tribunal; and

(c) either:

- (i) the dispute is of a kind prescribed by the rules for the purposes of this subparagraph; or
- (ii) the dispute is approved by the CEO, in writing, as a dispute to which this section applies;

the person or the sporting body may apply to the National Sports Tribunal for mediation, conciliation or case appraisal of the dispute.

Note: See Division 7 for how applications are to be made.

Participants in mediation, conciliation or case appraisal

- (2) The participants in the mediation, conciliation or case appraisal are:
- (a) the person; and
 - (b) the sporting body.

Mediation, conciliation or case appraisal to be conducted in General Division

- (3) The mediation, conciliation or case appraisal is to be conducted in the General Division of the National Sports Tribunal.

Note: See Divisions 5 and 9 for provisions about the mediation, conciliation or case appraisal.

Limit on CEO's power

- (4) For the purposes of subparagraph (1)(c)(ii), the CEO must not approve a dispute of a kind prescribed by the rules for the purposes of this subsection.

Approval not a legislative instrument

- (5) An approval under subparagraph (1)(c)(ii) is not a legislative instrument.

26 Disputes between 2 or more persons

- (1) If:
-

Section 26

- (a) a dispute arises between 2 or more persons bound by one or more constituent documents by which a sporting body is constituted or according to which a sporting body operates; and
- (b) those persons agree in writing to refer the dispute to the General Division of the National Sports Tribunal; and
- (c) either:
 - (i) the dispute is of a kind prescribed by the rules for the purposes of this subparagraph; or
 - (ii) the dispute is approved by the CEO, in writing, as a dispute to which this section applies;

the sporting body may apply to the National Sports Tribunal for mediation, conciliation or case appraisal of the dispute.

Note: See Division 7 for how applications are to be made.

Participants in mediation, conciliation or case appraisal

- (2) The participants in the mediation, conciliation or case appraisal are:
 - (a) the 2 or more persons; and
 - (b) the sporting body.

Mediation, conciliation or case appraisal to be conducted in General Division

- (3) The mediation, conciliation or case appraisal is to be conducted in the General Division of the National Sports Tribunal.

Note: See Divisions 5 and 9 for provisions about the mediation, conciliation or case appraisal.

Limit on CEO's power

- (4) For the purposes of subparagraph (1)(c)(ii), the CEO must not approve a dispute of a kind prescribed by the rules for the purposes of this subsection.

Approval not a legislative instrument

- (5) An approval under subparagraph (1)(c)(ii) is not a legislative instrument.

**Division 4—Arbitration of disputes in Anti-Doping
Division or General Division**

**27 Arbitration of disputes in Anti-Doping Division or General
Division**

- (1) If:
- (a) an application is made in the circumstances permitted by Division 2, or Subdivision A of Division 3, for arbitration of a dispute; and
 - (b) the application is in accordance with Division 7;
- the National Sports Tribunal must conduct the arbitration and make a written determination in relation to the dispute.

Note 1: See Division 6 for appeals to the Appeals Division of the National Sports Tribunal from the determination.

Note 2: See Divisions 8 and 9 for rules about the arbitration.

- (2) The determination takes effect on the day specified in the determination.
- (3) The National Sports Tribunal must give the parties to the arbitration written notice of the determination and the reasons for the determination.

Termination of arbitration

- (4) The National Sports Tribunal may terminate the arbitration:
- (a) if the parties to the arbitration agree to the termination; or
 - (b) if the Tribunal is satisfied that the application for arbitration was vexatious; or
 - (c) if the Tribunal is satisfied that the subject matter of the arbitration is trivial, misconceived or lacking in substance; or
 - (d) in the circumstances prescribed by the rules for the purposes of this paragraph.

Suspension of arbitration

- (5) The National Sports Tribunal may suspend the arbitration in the circumstances prescribed by the rules for the purposes of this subsection.

Division 5—Alternative dispute resolution processes

28 Mediation, conciliation or case appraisal of disputes

- (1) If:
 - (a) an application is made in the circumstances permitted by Subdivision B of Division 3 for mediation, conciliation or case appraisal of a dispute; and
 - (b) the application is in accordance with Division 7;the National Sports Tribunal must conduct the mediation, conciliation or case appraisal of the dispute.
- (2) The participants in the mediation, conciliation or case appraisal must act in good faith in relation to the conduct of the mediation, conciliation or case appraisal.

29 Practice and procedure of National Sports Tribunal in mediation, conciliation or case appraisal

- (1) In a mediation, conciliation or case appraisal of a dispute before the National Sports Tribunal, the members of the Tribunal must comply with any determination made by the CEO under subsection (2).
- (2) The CEO may, by notifiable instrument, make a determination in relation to the practice and procedure of the Tribunal in conducting a mediation, conciliation or case appraisal of a dispute.

30 Evidence not admissible

- (1) Evidence of anything said, or any act done, in a mediation, conciliation or case appraisal of a dispute before the National Sports Tribunal is not admissible:
 - (a) in any court; or
 - (b) in any arbitration of the dispute by the National Sports Tribunal.

Exception

- (2) Paragraph (1)(b) does not apply in relation to particular evidence if the parties to the arbitration agree to the evidence being admissible at the arbitration.

Division 6—Appeals Division

Subdivision A—Appealing decisions about anti-doping matters

31 Appealing determinations made in Anti-Doping Division

Appeals Division recognised by anti-doping policy

- (1) If:
- (a) the National Sports Tribunal makes a determination under section 27 in relation to the arbitration of a dispute as a result of an application under section 22; and
 - (b) the anti-doping policy concerned permits an appeal to the Appeals Division of the National Sports Tribunal from the determination;

a party to the arbitration, or any other person or body permitted by the anti-doping policy to make such an appeal, may appeal to the National Sports Tribunal from the determination.

Appeals Division not recognised by anti-doping policy

- (2) If:
- (a) the National Sports Tribunal makes a determination under section 27 in relation to the arbitration of a dispute as a result of an application under section 22; and
 - (b) the anti-doping policy concerned does not permit an appeal to the Appeals Division of the National Sports Tribunal from the determination; and
 - (c) the athlete or support person, the sporting body and the ASADA CEO have agreed in writing that an appeal is able to be made to the Appeals Division of the National Sports Tribunal from the determination;

a party to the arbitration, or any other person or body specified in that agreement as being able to make such an appeal, may appeal to the National Sports Tribunal from the determination.

Application

- (3) An appeal under subsection (1) or (2) is to be made to the National Sports Tribunal by application.

Note: See Division 7 for how applications are to be made.

Parties to appeal

- (4) The parties to the appeal are:
- (a) the parties to the arbitration; and
 - (b) the applicant (where the applicant was not a party to the arbitration); and
 - (c) if the appeal is under subsection (1)—any other person or body:
 - (i) that is permitted by the anti-doping policy to make an appeal to the Appeals Division of the National Sports Tribunal from the determination; and
 - (ii) that advises the National Sports Tribunal in writing that the person or body wishes to be a party to the appeal; and
 - (d) if the appeal is under subsection (2)—any other person or body:
 - (i) that is specified in the agreement mentioned in paragraph (2)(c) as being able to make an appeal to the Appeals Division of the National Sports Tribunal from the determination; and
 - (ii) that advises the National Sports Tribunal in writing that the person or body wishes to be a party to the appeal.

Appeal to be heard in Appeals Division

- (5) The appeal is to be heard in the Appeals Division of the National Sports Tribunal.

Note: See Subdivision C and Divisions 8 and 9 for rules about the appeal.

Section 32

32 Appealing decisions made by sporting bodies

Appeals Division recognised by anti-doping policy

- (1) If:
- (a) a sporting body has an anti-doping policy that has been approved by the ASADA CEO; and
 - (b) an athlete or support person is bound by the anti-doping policy; and
 - (c) a dispute arises in relation to the athlete or support person; and
 - (d) the sporting body makes a decision in relation to the dispute; and
 - (e) the decision is of a kind that the World Anti-Doping Code provides may be made without a hearing; and
 - (f) the anti-doping policy permits an appeal to the Appeals Division of the National Sports Tribunal from the decision;
- the athlete, support person or ASADA CEO, or any other person or body permitted by the anti-doping policy to make such an appeal, may appeal to the National Sports Tribunal from the decision.

Appeals Division not recognised by anti-doping policy

- (2) If:
- (a) a sporting body has an anti-doping policy that has been approved by the ASADA CEO; and
 - (b) an athlete or support person is bound by the anti-doping policy; and
 - (c) a dispute arises in relation to the athlete or support person; and
 - (d) the sporting body makes a decision in relation to the dispute; and
 - (e) the decision is of a kind that the World Anti-Doping Code provides may be made without a hearing; and
 - (f) the decision is of a kind that the World Anti-Doping Code permits an appeal from; and

- (g) the anti-doping policy does not permit an appeal to the Appeals Division of the National Sports Tribunal from the decision; and
- (h) the athlete or support person, the sporting body and the ASADA CEO have agreed in writing that an appeal is able to be made to the Appeals Division of the National Sports Tribunal from the decision;

the athlete, support person or ASADA CEO, or any other person or body specified in that agreement as being able to make such an appeal, may appeal to the National Sports Tribunal from the decision.

Application

- (3) An appeal under subsection (1) or (2) is to be made to the National Sports Tribunal by application.

Note: See Division 7 for how applications are to be made.

Parties to appeal

- (4) The parties to the appeal are:
 - (a) the athlete or support person; and
 - (b) the sporting body; and
 - (c) the ASADA CEO; and
 - (d) the applicant (where the applicant is not covered by paragraph (a), (b) or (c)); and
 - (e) if the appeal is under subsection (1)—any other person or body:
 - (i) that is permitted by the anti-doping policy to make an appeal to the Appeals Division of the National Sports Tribunal from the decision; and
 - (ii) that advises the National Sports Tribunal in writing that the person or body wishes to be a party to the appeal; and
 - (f) if the appeal is under subsection (2)—any other person or body:
 - (i) that is specified in the agreement mentioned in paragraph (2)(h) as being able to make an appeal to the

Section 33

Appeals Division of the National Sports Tribunal from the decision; and

- (ii) that advises the National Sports Tribunal in writing that the person or body wishes to be a party to the appeal.

Appeal to be heard in Appeals Division

- (5) The appeal is to be heard in the Appeals Division of the National Sports Tribunal.

Note: See Subdivision C and Divisions 8 and 9 for rules about the appeal.

33 Appealing decisions made by sporting tribunals

Appeals Division recognised by anti-doping policy

- (1) If:
- (a) a sporting body has an anti-doping policy that has been approved by the ASADA CEO; and
 - (b) the anti-doping policy permits disputes of a particular kind to be heard by a sporting tribunal administered by the sporting body; and
 - (c) a dispute of that kind arises in relation to an athlete or support person; and
 - (d) the athlete or support person is bound by the anti-doping policy; and
 - (e) the sporting tribunal makes a decision in relation to the dispute; and
 - (f) the anti-doping policy permits an appeal to the Appeals Division of the National Sports Tribunal from the decision;
- the athlete, support person, ASADA CEO or sporting body, or any other person or body permitted by the anti-doping policy to make such an appeal, may appeal to the National Sports Tribunal from the decision.

Appeals Division not recognised by anti-doping policy

- (2) If:
- (a) a sporting body has an anti-doping policy that has been approved by the ASADA CEO; and

- (b) the anti-doping policy permits disputes of a particular kind to be heard by a sporting tribunal administered by the sporting body; and
- (c) a dispute of that kind arises in relation to an athlete or support person; and
- (d) the athlete or support person is bound by the anti-doping policy; and
- (e) the sporting tribunal makes a decision in relation to the dispute; and
- (f) the decision is of a kind that the World Anti-Doping Code permits an appeal from; and
- (g) the anti-doping policy does not permit an appeal to the Appeals Division of the National Sports Tribunal from the decision; and
- (h) the athlete or support person, the sporting body and the ASADA CEO have agreed in writing that an appeal is able to be made to the Appeals Division of the National Sports Tribunal from the decision;

the athlete, support person, ASADA CEO or sporting body, or any other person or body specified in that agreement as being able to make such an appeal, may appeal to the National Sports Tribunal from the decision.

Application

- (3) An appeal under subsection (1) or (2) is to be made to the National Sports Tribunal by application.

Note: See Division 7 for how applications are to be made.

Parties to appeal

- (4) The parties to the appeal are:
 - (a) the athlete or support person; and
 - (b) the sporting body; and
 - (c) the ASADA CEO; and
 - (d) the applicant (where the applicant is not covered by paragraph (a), (b) or (c)); and

Section 34

- (e) if the appeal is under subsection (1)—any other person or body:
 - (i) that is permitted by the anti-doping policy to make an appeal to the Appeals Division of the National Sports Tribunal from the decision; and
 - (ii) that advises the National Sports Tribunal in writing that the person or body wishes to be a party to the appeal; and
- (f) if the appeal is under subsection (2)—any other person or body:
 - (i) that is specified in the agreement mentioned in paragraph (2)(h) as being able to make an appeal to the Appeals Division of the National Sports Tribunal from the decision; and
 - (ii) that advises the National Sports Tribunal in writing that the person or body wishes to be a party to the appeal.

Appeal to be heard in Appeals Division

- (5) The appeal is to be heard in the Appeals Division of the National Sports Tribunal.

Note: See Subdivision C and Divisions 8 and 9 for rules about the appeal.

Subdivision B—Appealing decisions about other matters

34 Appealing determinations made in General Division

Appeals Division recognised by constituent documents

- (1) If:
 - (a) the National Sports Tribunal makes a determination under section 27 in relation to the arbitration of a dispute as a result of an application under section 23 or 24; and
 - (b) one or more of the constituent documents concerned permit an appeal to the Appeals Division of the National Sports Tribunal from the determination;

a party to the arbitration, or any other person or body permitted by one or more of the constituent documents to make such an appeal, may appeal to the National Sports Tribunal from the determination.

Appeals Division not recognised by constituent documents

- (2) If:
- (a) the National Sports Tribunal makes a determination under section 27 in relation to the arbitration of a dispute as a result of an application under section 23 or 24; and
 - (b) none of the constituent documents concerned permits an appeal to the Appeals Division of the National Sports Tribunal from the determination; and
 - (c) the parties to the arbitration have agreed in writing that an appeal is able to be made to the Appeals Division of the National Sports Tribunal from the determination;
- a party to the arbitration, or any other person or body specified in that agreement as being able to make such an appeal, may appeal to the National Sports Tribunal from the determination.

Application

- (3) An appeal under subsection (1) or (2) is to be made to the National Sports Tribunal by application.

Note: See Division 7 for how applications are to be made.

Parties to appeal

- (4) The parties to the appeal are:
- (a) the parties to the arbitration; and
 - (b) the applicant (where the applicant was not a party to the arbitration); and
 - (c) if the appeal is under subsection (1)—any other person or body:
 - (i) that is permitted by one or more of the constituent documents to make an appeal to the Appeals Division of the National Sports Tribunal from the determination; and

Section 35

- (ii) that advises the National Sports Tribunal in writing that the person or body wishes to be a party to the appeal; and
- (d) if the appeal is under subsection (2)—any other person or body:
 - (i) that is specified in the agreement mentioned in paragraph (2)(c) as being able to make an appeal to the Appeals Division of the National Sports Tribunal from the determination; and
 - (ii) that advises the National Sports Tribunal in writing that the person or body wishes to be a party to the appeal.

Appeal to be heard in Appeals Division

- (5) The appeal is to be heard in the Appeals Division of the National Sports Tribunal.

Note: See Subdivision C and Divisions 8 and 9 for rules about the appeal.

35 Appealing decisions made by sporting tribunals

Appeals Division recognised by constituent documents

- (1) If:
 - (a) a dispute arises between:
 - (i) a person bound by one or more constituent documents by which a sporting body is constituted or according to which a sporting body operates; and
 - (ii) the sporting body; and
 - (b) a sporting tribunal administered by the sporting body makes a decision in relation to the dispute; and
 - (c) either:
 - (i) the dispute is of a kind prescribed by the rules for the purposes of this subparagraph; or
 - (ii) the dispute is approved by the CEO, in writing, as a dispute to which this section applies; and
 - (d) one or more of the constituent documents permit an appeal to the Appeals Division of the National Sports Tribunal from the decision;

the person or sporting body, or any other person or body permitted by one or more of the constituent documents to make such an appeal, may appeal to the National Sports Tribunal from the decision.

Appeals Division not recognised by constituent documents

- (2) If:
- (a) a dispute arises between:
 - (i) a person bound by one or more constituent documents by which a sporting body is constituted or according to which a sporting body operates; and
 - (ii) the sporting body; and
 - (b) a sporting tribunal administered by the sporting body makes a decision in relation to the dispute; and
 - (c) either:
 - (i) the dispute is of a kind prescribed by the rules for the purposes of this subparagraph; or
 - (ii) the dispute is approved by the CEO, in writing, as a dispute to which this section applies; and
 - (d) none of the constituent documents permits an appeal to the Appeals Division of the National Sports Tribunal from the decision; and
 - (e) the person and the sporting body have agreed in writing that an appeal is able to be made to the Appeals Division of the National Sports Tribunal from the decision;

the person or sporting body, or any other person or body specified in that agreement as being able to make such an appeal, may appeal to the National Sports Tribunal from the decision.

Application

- (3) An appeal under subsection (1) or (2) is to be made to the National Sports Tribunal by application.

Note: See Division 7 for how applications are to be made.

Parties to appeal

- (4) The parties to the appeal are:
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Section 35

- (a) the person; and
- (b) the sporting body; and
- (c) the applicant (where the applicant is not covered by paragraph (a) or (b)); and
- (d) if the appeal is under subsection (1)—any other person or body:
 - (i) that is permitted by one or more of the constituent documents to make an appeal to the Appeals Division of the National Sports Tribunal from the decision; and
 - (ii) that advises the National Sports Tribunal in writing that the person or body wishes to be a party to the appeal; and
- (e) if the appeal is under subsection (2)—any other person or body:
 - (i) that is specified in the agreement mentioned in paragraph (2)(e) as being able to make an appeal to the Appeals Division of the National Sports Tribunal from the decision; and
 - (ii) that advises the National Sports Tribunal in writing that the person or body wishes to be a party to the appeal.

Appeal to be heard in Appeals Division

- (5) The appeal is to be heard in the Appeals Division of the National Sports Tribunal.

Note: See Subdivision C and Divisions 8 and 9 for rules about the appeal.

Limits on CEO's power

- (6) For the purposes of subparagraph (1)(c)(ii) or (2)(c)(ii), the CEO must not approve a dispute of a kind prescribed by the rules for the purposes of this subsection.
- (7) The CEO may give an approval under subparagraph (1)(c)(ii) or (2)(c)(ii) only if the CEO is satisfied that there are exceptional circumstances justifying the giving of the approval.

Approval not a legislative instrument

- (8) An approval under subparagraph (1)(c)(ii) or (2)(c)(ii) is not a legislative instrument.

Subdivision C—Arbitration of disputes in Appeals Division

36 Arbitration of disputes in Appeals Division

- (1) If:
- (a) an appeal is made in the circumstances permitted by Subdivision A or B from a determination or decision made in relation to a dispute; and
 - (b) the application by which the appeal is made is in accordance with Division 7;

the National Sports Tribunal must conduct an arbitration of the dispute and make a written determination in relation to the dispute.

Note 1: See Divisions 8 and 9 for rules about the arbitration.

Note 2: In many cases, the arbitration of the dispute will be a re-arbitration of the dispute because of an earlier arbitration of the dispute.

- (2) A determination under subsection (1) takes effect on the day specified in the determination.
- (3) The National Sports Tribunal must give the parties to the appeal written notice of the determination under subsection (1) and the reasons for the determination.

Termination of arbitration

- (4) The National Sports Tribunal may terminate the arbitration:
- (a) if the parties to the appeal agree to the termination; or
 - (b) in the circumstances prescribed by the rules for the purposes of this paragraph.

Suspension of arbitration

- (5) The National Sports Tribunal may suspend the arbitration in the circumstances prescribed by the rules for the purposes of this subsection.

Division 7—Making applications

37 Form of applications

An application under Division 2, 3 or 6 must:

- (a) be made in accordance with a form approved, in writing, by the CEO; and
- (b) be accompanied by the application fee (if any) prescribed by the rules; and
- (c) contain the information that the form requires; and
- (d) set out the reasons for the application; and
- (e) satisfy any other requirement prescribed by the rules for the purposes of this paragraph.

38 Time limit on applications

- (1) This section sets out the timing rules for making an application under Division 2, 3 or 6.

Anti-Doping Division

- (2) Subject to subsection (5), for an application under Division 2:
 - (a) if the anti-doping policy concerned specifies a period within which an application may be made to the Anti-Doping Division of the National Sports Tribunal for arbitration of the dispute—the application must be made before the end of that period; or
 - (b) in any other case—the application must be made before the end of the period (if any) worked out in accordance with the rules prescribed for the purposes of this paragraph.

General Division

- (3) Subject to subsection (5), for an application under Subdivision A of Division 3:
 - (a) if a constituent document concerned specifies a period within which an application may be made to the General Division of

- the National Sports Tribunal for arbitration of the dispute—the application must be made before the end of that period; or
- (b) in any other case—the application must be made before the end of the period (if any) worked out in accordance with the rules prescribed for the purposes of this paragraph.

Appeals Division

- (4) Subject to subsection (5), for an application under Division 6:
- (a) if the anti-doping policy concerned or a constituent document concerned specifies a period within which an appeal may be made to the Appeals Division of the National Sports Tribunal from the determination or decision—the application must be made before the end of that period; or
- (b) in any other case—the application must be made before the end of the period worked out in accordance with the rules prescribed for the purposes of this paragraph.

Limit of period of operation of National Sports Tribunal

- (5) Any application under Division 2 or 3 or section 32, 33 or 35 must be made before the end of the following number of years beginning on the day this section commences:
- (a) 2 years;
- (b) if the rules prescribe a larger number of years for the purposes of this paragraph—that number of years.

Division 8—Manner of conducting arbitration

39 Scope of Division

This Division applies in relation to an arbitration of a dispute before the National Sports Tribunal.

40 General principles relating to arbitration

- (1) In the arbitration:
 - (a) the procedure of the Tribunal is, subject to this Act, within the discretion of the Tribunal; and
 - (b) the arbitration must be conducted with as little formality and technicality, with as much expedition and at the least cost to the parties as a proper consideration of the matters before the Tribunal permit; and
 - (c) the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.
- (2) The parties must act in good faith in relation to the conduct of the arbitration.

41 CEO's determination about practice and procedure of National Sports Tribunal in arbitration

- (1) In the arbitration, the members of the Tribunal must comply with any determination made by the CEO under subsection (2).
- (2) The CEO may, by notifiable instrument, make a determination in relation to the practice and procedure of the Tribunal in conducting an arbitration of a dispute.
- (3) Without limiting subsection (2), a determination under that subsection may deal with one or more of the following:
 - (a) the making of either or both of oral and written submissions;
 - (b) requiring parties to provide further information;
 - (c) the representation of parties;

- (d) the giving of notices under section 42;
- (e) the calling of witnesses to give evidence;
- (f) the taking of evidence on oath or affirmation and the administering of oaths or affirmations;
- (g) payments to witnesses (including for the preparation of reports by expert witnesses);
- (h) timing rules for doing things in the course of an arbitration;
- (i) the circumstances in which hearings are or are not to be held;
- (j) the conduct of hearings (including when hearings are to be conducted in private);
- (k) the identification, and protection, of confidential information provided to the Tribunal;
- (l) the giving of directions by members;
- (m) the circumstances in which the Tribunal may proceed in the absence of a party who has had reasonable notice of an arbitration;
- (n) the circumstances in which determinations of the Tribunal, and reasons for the determinations, are to be published or not published (including the circumstances in which information is to be de-identified).

Note: Different matters may be determined for dealing with disputes in the Anti-Doping Division, the General Division and the Appeals Division and for dealing with different kinds of disputes in those Divisions (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

- (4) Despite subsection 14(2) of the *Legislation Act 2003*, a determination under subsection (2) of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

42 Members may give notices

Evidence

- (1) If a member constituting the National Sports Tribunal for the purposes of dealing with a dispute before the Tribunal reasonably believes that a person is capable of giving evidence relevant to the
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Section 43

dispute, the member may, by notice in writing given to the person, require the person to appear before the Tribunal to give evidence on the day, and at the time and place, specified in the notice.

Giving information or producing documents or things

- (2) If a member constituting the National Sports Tribunal for the purposes of dealing with a dispute before the Tribunal reasonably believes that a person has information, documents or things relevant to the dispute, the member may, by notice in writing given to the person, require the person:
- (a) to give the information specified in the notice to the Tribunal in accordance with the notice; or
 - (b) to produce the documents or things specified in the notice to the Tribunal in accordance with the notice.

Notice requirements

- (3) A notice under subsection (1) or (2):
- (a) must ensure that the person has at least 14 days to comply with the notice; and
 - (b) must set out the consequences of the person not complying with the notice.

43 Failure to comply with notice

Offence

- (1) A person commits an offence if:
- (a) the person is given a notice under section 42; and
 - (b) the person fails to comply with the notice.

Penalty: Imprisonment for 12 months.

Civil penalty

- (2) A person contravenes this subsection if:
- (a) the person is given a notice under section 42; and
 - (b) the person fails to comply with the notice.

Civil penalty: 60 penalty units.

44 Refusal to be sworn or to answer questions

Oath or affirmation

- (1) A person commits an offence if:
- (a) the person appears as a witness before the National Sports Tribunal; and
 - (b) a member has required the person to take an oath or make an affirmation; and
 - (c) the person fails to take the oath or make the affirmation.

Penalty: Imprisonment for 12 months.

- (2) A person contravenes this subsection if:
- (a) the person appears as a witness before the National Sports Tribunal; and
 - (b) a member has required the person to take an oath or make an affirmation; and
 - (c) the person fails to take the oath or make the affirmation.

Civil penalty: 60 penalty units.

Questions

- (3) A person commits an offence if:
- (a) the person appears as a witness before the National Sports Tribunal; and
 - (b) a member has required the person to answer a question; and
 - (c) the person fails to answer the question.

Penalty: Imprisonment for 12 months.

- (4) A person contravenes this subsection if:
- (a) the person appears as a witness before the National Sports Tribunal; and
 - (b) a member has required the person to answer a question; and
 - (c) the person fails to answer the question.

Section 45

Civil penalty: 60 penalty units.

45 False or misleading evidence

A person commits an offence if:

- (a) the person appears as a witness before the National Sports Tribunal; and
- (b) the person gives evidence; and
- (c) the person does so knowing that the evidence is false or misleading.

Penalty: Imprisonment for 12 months.

Division 9—Costs

46 Charging costs of an arbitration

The rules may make provision for and in relation to the CEO:

- (a) charging one or more of the parties to an arbitration, or to an appeal where an arbitration is conducted, for the costs in conducting the arbitration; and
- (b) apportioning the charge between one or more of the parties; and
- (c) waiving the whole or a part of the charge.

Note: A charge must not be such as to amount to taxation: see paragraph 75(2)(c).

47 Charging costs of alternative dispute resolution processes

The rules may make provision for and in relation to the CEO:

- (a) charging the participants in a mediation, conciliation or case appraisal of a dispute for the costs in conducting the mediation, conciliation or case appraisal; and
- (b) apportioning the charge between the participants; and
- (c) waiving the whole or a part of the charge.

Note: A charge must not be such as to amount to taxation: see paragraph 75(2)(c).

Division 10—Civil penalty provisions

48 Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the CEO, on behalf of the Commonwealth, is an authorised applicant in relation to the civil penalty provisions of this Act.
- (3) The CEO may, in writing, delegate to an SES employee, or an acting SES employee, in the Department the CEO's powers and functions as an authorised applicant in relation to the civil penalty provisions of this Act.
- (4) A delegate must comply with any written directions of the CEO.

Relevant court

- (5) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
 - (a) the Federal Court of Australia;
 - (b) the Federal Circuit Court of Australia.

Division 11—Infringement notices

49 Infringement notices

Provisions subject to an infringement notice

- (1) A civil penalty provision of this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

- (2) For the purposes of Part 5 of the Regulatory Powers Act, the CEO is an infringement officer in relation to the provisions mentioned in subsection (1).

Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the CEO is the relevant chief executive in relation to the provisions mentioned in subsection (1).

Delegation by CEO

- (4) The CEO may, in writing, delegate to an SES employee, or an acting SES employee, in the Department the CEO's powers and functions as an infringement officer or as the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (5) A delegate must comply with any written directions of the CEO.

Part 4 Administration of the National Sports Tribunal

Division 1 Simplified outline of this Part

Section 50

Part 4—Administration of the National Sports Tribunal

Division 1—Simplified outline of this Part

50 Simplified outline of this Part

- There is a Chief Executive Officer of the National Sports Tribunal.
- The CEO's main functions are to manage the administration and operation of the National Sports Tribunal and to assist the Tribunal in the performance of its functions.
- The CEO is to be assisted by APS employees in the Department and may be assisted by other persons such as officers or employees of a State or Territory.

Division 2—Chief Executive Officer

51 Chief Executive Officer

There is to be a Chief Executive Officer of the National Sports Tribunal.

52 Functions of CEO

- (1) The CEO's functions are:
 - (a) to manage the administration and operation of the National Sports Tribunal; and
 - (b) to assist the Tribunal in the performance of its functions; and
 - (c) such other functions as are conferred on the CEO under this Act, the rules or any other law of the Commonwealth; and
 - (d) to do anything incidental or conducive to the performance of any of the above functions.
- (2) Without limiting subsection (1), the CEO must:
 - (a) allocate the member who is, or the members who are, to constitute the National Sports Tribunal for the purposes of dealing with a dispute before the Tribunal; and
 - (b) if 2 or more members are to constitute the Tribunal for the purposes of dealing with a dispute before the Tribunal—nominate a presiding member; and
 - (c) reconstitute the Tribunal for the purposes of dealing with a dispute before the Tribunal if a member covered by paragraph (a) stops being a member or is for any reason unavailable; and
 - (d) promote the services of the Tribunal to athletes, support persons, sporting bodies and any other persons or bodies the CEO considers appropriate; and
 - (e) establish and maintain a panel of legal practitioners who are willing to provide free legal assistance to the parties or participants in relation to a dispute before the Tribunal.

Section 53

- (3) In performing the functions referred to in paragraphs (2)(a) to (c), the CEO must comply with the principles determined in an instrument under subsection (4).
- (4) The CEO must, by notifiable instrument, determine principles for the purposes of subsection (3).

53 Powers of CEO

The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of the CEO's functions.

54 Appointment of CEO

- (1) The CEO is to be appointed by the Minister by written instrument, on a full-time basis.

Note: The CEO may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (3) A member is not eligible for appointment as the CEO.

55 Acting appointments

The Minister may, by written instrument, appoint a person (except a member) to act as the CEO:

- (a) during a vacancy in the office of the CEO (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

56 Remuneration

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by that Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by an instrument under subsection (4).
- (2) The CEO is to be paid the allowances that are prescribed by an instrument under subsection (4).
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Minister may, by legislative instrument, prescribe:
 - (a) remuneration for the purposes of subsection (1); and
 - (b) allowances for the purposes of subsection (2).

57 Leave

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

58 Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

59 Other paid work

The CEO must not engage in paid work outside the duties of the CEO's office without the Minister's approval.

Section 60

60 Disclosure of interests to the Minister

- (1) The CEO must give written notice to the Minister of all interests, pecuniary or otherwise, that the CEO has or acquires and that conflict or could conflict with the proper performance of the CEO's functions.
- (2) Section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) does not apply to the CEO.

61 Resignation of appointment

- (1) The CEO may resign the CEO's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

62 Termination of appointment

- (1) The Minister may terminate the appointment of the CEO:
 - (a) for misbehaviour; or
 - (b) if the CEO is unable to perform the duties of the CEO's office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of the CEO if:
 - (a) the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the CEO's creditors; or
 - (iv) makes an assignment of the CEO's remuneration for the benefit of the CEO's creditors; or
 - (b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

- (c) the CEO engages, except with the Minister's approval, in paid work outside the duties of the CEO's office (see section 59); or
- (d) the CEO fails, without reasonable excuse, to comply with section 60.

63 Application of the finance law etc.

- (1) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the CEO is taken to be an official of the Department.
- (2) The Secretary, when preparing the Department's annual report under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period, must include information in that report about the operation of the National Sports Tribunal during that period.

64 Directions to CEO

CEO subject to directions by Minister

- (1) The Minister may, by legislative instrument, give directions to the CEO in relation to the CEO performing the CEO's functions or exercising the CEO's powers.
- (2) However, such a direction must not relate to:
 - (a) a particular athlete, support person or sporting body; or
 - (b) a particular dispute before the National Sports Tribunal.
- (3) The CEO must comply with a direction under subsection (1).

CEO not subject to directions by Secretary

- (4) The CEO is not subject to the directions of the Secretary in relation to the CEO performing the CEO's functions or exercising the CEO's powers.

Section 65

65 Delegation by CEO

The CEO may, in writing, delegate any of the CEO's functions or powers under this Act or the rules to an SES employee, or an acting SES employee, in the Department.

Division 3—Persons assisting the Chief Executive Officer

66 Arrangements relating to staff of the Department

- (1) The staff assisting the CEO are to be APS employees in the Department whose services are made available to the CEO, by the Secretary, in connection with the performance of any of the CEO's functions.
- (2) When performing services for the CEO, the persons are subject to the directions of the CEO.

67 Other persons assisting the CEO

- (1) The CEO may also be assisted:
 - (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
 - (b) by officers or employees of a State or Territory; or
 - (c) by officers or employees of bodies or organisations of the Commonwealth, a State or a Territory;whose services are made available to the CEO in connection with the performance of any of the CEO's functions.
- (2) When performing services for the CEO, the persons are subject to the directions of the CEO.

68 Consultants and expert witnesses

- (1) The CEO may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as:
 - (a) consultants to the CEO; or
 - (b) expert witnesses in relation to a dispute before the National Sports Tribunal.
- (2) The terms and conditions of the engagement of a person are those determined by the CEO in writing.

Part 5—Other matters

69 Simplified outline of this Part

- This Part deals with miscellaneous matters, such as:
 - (a) obstruction etc. of the National Sports Tribunal and intimidation etc. of witnesses or other persons; and
 - (b) protecting information obtained by persons performing functions or duties or exercising powers under this Act; and
 - (c) protection and immunity for members, persons representing parties and witnesses; and
 - (d) the making of rules by the Minister.

70 Obstruction etc. of National Sports Tribunal

A person commits an offence if:

- (a) the person does an act or omits to do an act; and
- (b) the act or omission obstructs, hinders, intimidates or resists the National Sports Tribunal or a member in the performance of the member's duties.

Penalty: Imprisonment for 12 months.

71 Intimidation etc. of witnesses or other persons

A person (the *first person*) commits an offence if:

- (a) the first person:
 - (i) threatens, intimidates or coerces another person; or
 - (ii) uses violence against, or inflicts an injury on, another person; or
 - (iii) causes or procures an act covered by subparagraph (i) or (ii) in relation to another person; or
 - (iv) causes or procures damage, loss or disadvantage to another person; and

- (b) the first person does so because the other person:
 - (i) proposes to appear, or has appeared, as a witness before the National Sports Tribunal; or
 - (ii) proposes to give, or has given, information to the National Sports Tribunal; or
 - (iii) proposes to produce, or has produced, documents or things to the National Sports Tribunal.

Penalty: Imprisonment for 12 months.

72 Secrecy

- (1) A person commits an offence if:
 - (a) the person is, or has been, an entrusted person; and
 - (b) the person discloses or otherwise uses information; and
 - (c) the information is protected information.

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply in relation to a disclosure or use of protected information if the disclosure or use:
 - (a) is for the purposes of this Act or the rules; or
 - (b) is for the purposes of the performance of the functions of the CEO or the exercise of the CEO's powers; or
 - (c) is for the purposes of, or in connection with, the performance or exercise of the person's functions, duties or powers in the person's capacity as an entrusted person; or
 - (d) is in accordance with the rules prescribed for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) does not apply in relation to a disclosure or use of protected information if:
 - (a) the person to whom the protected information relates has consented to the disclosure or use; and
 - (b) the disclosure or use is in accordance with that consent.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

Section 73

- (4) Subsection (1) does not apply in relation to a disclosure of protected information if it has already been lawfully made available to the public.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- (5) Except where it is necessary to do so for the purposes of giving effect to this Act or the rules, a person is not to be required:
- (a) to produce a document containing protected information to a court; or
 - (b) to disclose protected information to a court.

73 Protection and immunity

Members

- (1) A member has, in the performance of the member's duties as a member, the same protection and immunity as a Justice of the High Court.

Barristers etc.

- (2) A barrister, solicitor or other person appearing before the National Sports Tribunal on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

Witnesses

- (3) A person appearing before the National Sports Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

74 Protection from civil actions

Each of the following:

- (a) the CEO;
- (b) a person assisting the CEO in accordance with section 66 or 67;

- (c) a person engaged as a consultant, or an expert witness, under section 68;
- is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith:
- (d) in the performance or purported performance of any function of the CEO; or
 - (e) in the exercise or purported exercise of any power of the CEO.

75 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (3) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

*[Minister's second reading speech made in—
House of Representatives on 24 July 2019
Senate on 9 September 2019]*

(145/19)
