



National Sports Tribunal Rule 2020

I, Richard Colbeck, Minister for Youth and Sport make the following rule.

Dated 3 March 2020

Senator the Hon Richard Colbeck
Minister for Youth and Sport

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Part 1—Preliminary

1 Name

This instrument is the *National Sports Tribunal Rule 2020*.

2 Commencement

This instrument commences on 19 March 2020.

3 Authority

This instrument is made under subsection 75(1) of the Act.

4 Definitions

Note: A number of expressions used in this instrument are defined in section 5 of the Act, including the following:

- (a) athlete
- (b) CEO
- (c) dispute
- (d) member
- (e) protected information
- (f) sporting body
- (g) support person.

In this instrument:

Act means the *National Sports Tribunal Act 2019*.

member protection policy means a policy adopted by a sporting body that aims to protect the members of the sporting body from discrimination, harassment, abuse, bullying and other forms of inappropriate behaviour.

Part 2—Additional functions of the CEO

5 Additional functions

- (1) For the purposes of paragraph 52(1)(c) of the Act, the CEO has the function of assessing whether an application made under Division 2, 3 or 6 of Part 3 of the Act meets the requirements of the Act and the rules.
- (2) If an application does not meet the requirements of the Act and the rules, the CEO is not required to accept the application.
- (3) For the purposes of paragraph 52(1)(c) of the Act, the CEO has the function of the procedural management of any dispute before a tribunal member is appointed to deal with it (the ***procedural management function***).
- (4) Without limiting the scope of the procedural management function, it may include any of the following:

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- (a) convening a preliminary conference and require the parties to the dispute to attend;
 - (b) requiring parties to make reasonable attempts to narrow the issues in dispute;
 - (c) determining a provisional timetable for the conduct of the proceedings by the Tribunal;
 - (d) consulting with the parties about which member, or members of the Tribunal are to be appointed to deal with the dispute;
 - (e) consulting with the parties about the estimated cost of the proceedings and the proposed apportionment of that cost;
 - (f) where the application is for arbitration, any of the following:
 - (i) requiring the parties to identify proposed witnesses, and expert evidence the parties may wish to bring forward in an arbitration hearing;
 - (ii) requiring the parties to specify the recipient and type of notice (whether for the production of documents or things, or appearance of a witness) the party wishes to request the Tribunal to issue under section 42 of the Act;
 - (iii) consulting with the parties about how many members will constitute the Tribunal.
- (5) Where a member has been appointed to deal with a dispute, nothing in subsection (3) or (4) prevents the CEO from assisting that member with the procedural management of the dispute.
- (6) In this section, a reference to a dispute is a reference to a dispute about which an application has been made to the Tribunal

Part 3—Disclosure of interests

6 Disclosure of interests to the CEO

- (1) A member must notify the CEO of any interest that is required to be notified under subsection 16(1) of the Act as soon as reasonably practicable after any of the following occurs:
 - (a) the member is appointed to the Tribunal;
 - (b) there is a relevant change in the member's circumstances;
 - (c) the CEO notifies the member that the CEO is considering allocating the member to a dispute before the National Sports Tribunal.
- (2) The disclosure must be by notice in writing given to the CEO.
- (3) Without limiting subsection (1), a member is taken to have an interest that conflicts, or could conflict, with the proper performance of the member's duties if the member:
 - (a) participates, or is involved in any way, in the administration of a sport, at any level of the sport; or
 - (b) is a member of a sporting body, a constituent part of a sporting body, or an affiliate to a sporting body; or

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- (c) is involved in any way in the administration of a sporting event or sporting venue; or
 - (d) is related to, or has or had some involvement in the affairs of, a party to a dispute the subject of an application to the Tribunal; or
 - (e) is a member of a sporting tribunal administered by a sporting body; or
 - (f) has been retained by a sporting body for the purposes of providing it with legal advice.
- (4) Subject to subsection (5), if:
- (a) a member discloses an interest related to a particular dispute; or
 - (b) the CEO is, or becomes aware that the member has an interest related to the dispute;
- the member must not deal with the dispute.
- (5) Subsection (4) does not apply if:
- (a) the CEO has notified the parties to the dispute of the nature of the interest; and
 - (b) the parties to the dispute have agreed to the member dealing with the dispute.

Part 4—Kinds of disputes

7 Kinds of disputes for which an application to the National Sports Tribunal may be made

Arbitration

- (1) For the purposes of subparagraphs 23(1)(c)(i) (Disputes between a person and a sporting body) and 24(1)(c)(i) (Disputes between 2 or more persons) of the Act, the following kinds of disputes are prescribed:
- (a) disputes about athlete eligibility or selection, however described in the constituent documents of the sporting body;
 - (b) disciplinary disputes, including but not limited to disputes relating to disciplinary action taken, or proposed to be taken, under a member protection policy of the sporting body;
 - (c) disputes relating to disciplinary action taken, or proposed to be taken, by a sporting body against a constituent part of its sport, where the constituent part is a body corporate.

Note 1: Sections 23 and 24 of the Act set out when an application for arbitration of a dispute may be made to the National Sports Tribunal.

Note 2: The CEO may approve other kinds of disputes: subparagraphs 23(1)(c)(ii) and 24(1)(c)(ii) of the Act.

Note 3: Subsections 23(4) and 24(4) of the Act prohibit the CEO approving disputes of a kind prescribed by the rules: section 9 of this Rule prescribes the kinds of disputes that the CEO must not approve.

Alternative dispute resolution

- (2) For the purposes of subparagraphs 25(1)(c)(i) (Disputes between a person and a sporting body) and 26(1)(c)(i) (Disputes between 2 or more persons) of the Act, the following kinds of disputes are prescribed:
- (a) disputes about athlete eligibility or selection, however described in the constituent documents of the sporting body;
 - (b) disciplinary disputes, including but not limited to disputes relating to disciplinary action taken, or proposed to be taken, under a member protection policy of the sporting body;
 - (c) disputes about bullying, harassment or discrimination, however described in the constituent documents of the sporting body;
 - (d) disputes relating to disciplinary action taken, or proposed to be taken, by a sporting body against a constituent part of its sport, where the constituent part is a body corporate.

Note 1: Sections 25 and 26 of the Act set out when an application may be made to the National Sports Tribunal for mediation, conciliation or case appraisal.

Note 2: The CEO may approve other kinds of disputes: subparagraphs 25(1)(c)(ii) and 26(1)(c)(ii) of the Act.

Note 3: Subsection 25(4) and 26(4) of the Act each prohibit the CEO approving disputes of a kind prescribed by the rules: section 9 of this Rule prescribes the kinds of disputes that the CEO must not approve.

8 Kinds of disputes that may be appealed to the National Sports Tribunal

For the purposes of subparagraph 35(1)(c)(i) (Appeal – decisions made by sporting tribunals where Appeal Division recognised by constituent documents) and subparagraph 35(2)(c)(i) (Appeal – decisions made by sporting tribunals where Appeal Division not recognised by constituent documents), the following kinds of disputes are prescribed:

- (a) disputes about athlete eligibility or selection, however described in the constituent documents of the sporting body;
- (b) disciplinary disputes, including but not limited to disputes relating to disciplinary action taken, or proposed to be taken, under a member protection policy of the sporting body;
- (c) disputes relating to disciplinary action taken, or proposed to be taken, by a sporting body against a constituent part of its sport, where the constituent part is a body corporate.

Note 1: Subsections 35(1) and 35(2) of the Act set out when an appeal can be made to the National Sports Tribunal from a decision of a sporting body.

Note 2: The CEO may approve other kinds of disputes: subparagraphs 35(1)(c)(ii) and 35(2)(c)(ii) of the Act.

Note 3: Subsection 35(6) of the Act prohibits the CEO approving disputes of a kind prescribed by the rules: section 9 of this Rule prescribes the kinds of disputes that the CEO must not approve.

9 Kinds of disputes that must not be approved by the CEO

Arbitration and appeals

- (1) For the purposes of subsections 23(4), 24(4) and 35(6) of the Act, the CEO must not approve the following kinds of disputes:
 - (a) disputes relating to remuneration or other benefits payable to an individual under a contract for services, or relating to the termination of a contract for services with an individual, except where those disputes arise in connection with an alleged breach of a disciplinary rule of the sporting body;
 - (b) employment disputes, except where those disputes arise in connection with an alleged breach of a disciplinary rule of the sporting body;
 - (c) anti-doping disputes;
 - (d) disputes occurring in the field of play, however described or occurring;
 - (e) disputes of any kind in which damages as a remedy are being sought from another party to the dispute.

Note: In relation to paragraph 8(1)(d), see for example OG 02/007, *Korean Olympic Committee / International Skating Union*, in which the Court of Arbitration for Sport affirmed that it would not review a ‘field of play’ decision merely because the applicant has disagreed with that decision.

- (2) In paragraph (1)(b), **employment disputes** means matters in respect of which a remedy is available:
 - (a) under the *Fair Work Act 2009* or a general State industrial law within the meaning of s 26(3) of that Act; or
 - (b) at general law for the breach of a contract of employment.

Note: An example of an employment dispute in respect of which a remedy is available elsewhere is a dispute concerning the contravention of the National Employment Standards in the *Fair Work Act 2009*.

Alternative dispute resolution

- (3) For the purposes of subparagraphs 25(4) (Disputes between a person and a sporting body) and 26(4) (Disputes between 2 or more persons) of the Act, the CEO must not approve the following kinds of disputes:
 - (a) anti-doping disputes;
 - (b) disputes occurring in the field of play, however described or occurring.

Part 5—Suspension or termination of an arbitration

10 Circumstances in which the National Sports Tribunal may suspend or terminate an arbitration or appeal

- (1) For the purposes of paragraph 27(4)(d), subsection 27(5), paragraph 36(4)(b) and subsection 36(5) of the Act, the Tribunal may direct that an arbitration or appeal be suspended or terminated in the following circumstances:

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- (a) where criminal proceedings have been, or are, commenced in respect of conduct that is substantially the same conduct that is the subject of the dispute before the Tribunal;
 - (b) if the arbitration is in the General Division or the Appeals Division—where separate proceedings arising out of the same subject matter have been instituted in any other court or tribunal;
 - (c) if the arbitration is in the Anti-Doping Division—where a party has exercised a right to appeal to the Court of Arbitration for Sport;
 - (d) where there is undue delay, without reasonable excuse, by the applicant in pursuing their application;
 - (e) where costs, however determined under section 13, have not been paid.
- (2) The Tribunal may direct that an arbitration or appeal be suspended where the parties have made an application under section 25 or section 26 of the Act (Applications for alternative dispute resolution processes).
 - (3) The Tribunal may make a direction to terminate an arbitration or appeal in the circumstances described in paragraph (1)(a), (1)(b) or (1)(c) subject to the condition that the termination has effect only once the other proceedings have been resolved by the other court or tribunal, or by the Court of Arbitration for Sport.

Part 6—Making applications

11 Application fee

- (1) For the purposes of paragraph 37(b) of the Act, the application fees are as follows:
 - (a) for an application for mediation, conciliation or case appraisal— \$750;
 - (b) for an application to commence an arbitration in the General Division— \$500;
 - (c) for an application to commence an arbitration in the Anti-Doping Division—\$0;
 - (d) for an application to commence an arbitration in the Appeals Division— \$1500;
 - (e) for an application to join an existing arbitration before the National Sports Tribunal—\$250.
- (2) The application fees prescribed in subsection (1) may be paid by one party, or by the parties together, apportioned as agreed between them.
- (3) The CEO may waive an application fee if the CEO is satisfied that paying the fee would cause financial hardship to the applicant.

12 Time limit on certain applications

Anti-Doping Division

- (1) For the purposes of paragraph 38(2)(b) of the Act, if the application is made under subsection 22(1) of the Act, it must be made within 21 days after the day the applicant receives the notice from the sporting body that establishes the dispute (being a notice that asserts that the applicant contravened the anti-doping policy of the sporting body and contains a proposed sanction).

General Division

- (2) For the purposes of paragraph 38(3)(b) of the Act, the application must be made within a reasonable period after the event, or the most recent of the events, that gave rise to the dispute.
- (3) In deciding whether a period is reasonable for the purposes of subsection (2), the CEO is to take into account:
 - (a) the period since the event, or the most recent of the events, that gave rise to the dispute;
 - (b) any other matter the CEO considers relevant.

Note 1: The CEO determines whether the application complies with this Rule—see subsection (5)(1).

Note 2: Paragraph 38(3)(a) of the Act provides that where a constituent document of a sporting body prescribes a time period for making an application, the application must be made before the end of the period specified in the relevant constituent document.

Appeals Division

- (4) For the purposes of paragraph 38(4)(b) of the Act, the application must be made:
 - (a) for a dispute in relation to an anti-doping matter—within 21 days after the date of the decision or determination appealed from;
 - (b) for any other dispute—within 30 days after the date of the decision or determination appealed from.
- (5) Where the applicant is the World Anti-Doping Agency, the application must be made within 21 days after the later of:
 - (a) the last day on which any other party to the decision or determination could have appealed; or
 - (b) the day on which the World Anti-Doping Agency received the complete file relating to the decision or determination appealed from.

Note: Subsection 12(5) reflects the requirements of Art 13.2.3 of the World Anti-Doping Code.

Part 7—Charging costs of an arbitration or an alternative dispute resolution process

13 Charging costs of an arbitration or an alternative dispute resolution process

Costs of an arbitration in the Anti-Doping Division or General Division

- (1) For the purposes of section 46 of the Act, the CEO may make a determination in relation to charging a party or parties for the costs of an arbitration in the Anti-Doping Division or the General Division of the National Sports Tribunal.
- (2) A determination under subsection (1):
 - (a) may apportion the charges between the parties; and
 - (b) may provide that a party or parties to a dispute be charged a portion of the actual or estimated fees of the arbitration; and
 - (c) may require that a party or parties must pay the charge, or a portion of the charge, prior to or as a condition of the dispute being set down for hearing.
- (3) In making a determination under subsection (1), the CEO must have regard to the nature of the persons or entities that are the parties to the dispute.

Costs in the Appeals Division

- (4) For the purposes of section 46 of the Act, the CEO may make a determination in relation to charging a party or parties for the costs of an appeal to the Appeals Division.
- (5) A determination under subsection (4):
 - (a) may apportion the charges between the parties; and
 - (b) may provide that a party or parties to a dispute be charged a portion of the actual or estimated fees of the appeal; and
 - (c) may require that a party or parties must pay the charge prior to or as a condition of the appeal being set down for determination.
- (6) In making a determination under subsection (4), the CEO must have regard to the nature of the person or entity who instituted the appeal.

Costs of alternative dispute resolution

- (7) For the purposes of section 47 of the Act, the CEO may make a determination in relation to charging a party or parties for the costs of alternative dispute resolution under Division 5 of Part 3 of the Act.
- (8) A determination under subsection (7):
 - (a) may apportion the charges between the parties; and
 - (b) may provide that a party or parties to a dispute be charged a portion of the actual or estimated fees of the alternative dispute resolution; and
 - (c) may require that a party or parties must pay the charge prior to or as a condition of the dispute being listed for alternative dispute resolution.

Refund of charges

- (9) Where:
- (a) the CEO has made a determination of charges under subsection (1), (4) or (7) requiring a party or parties to pay a charge in respect of proceedings; and
 - (b) the final costs of the proceedings are less than the charges paid;

the CEO may determine that the party or parties are to be refunded the amount of the difference, apportioned as specified in the determination.

CEO may consult with members before making determination

- (10) Where a member has been appointed to deal with the dispute, the CEO may consult with the member before making a determination of charges under subsection (1), (4) or (7).

CEO may make more than one determination

- (11) For the avoidance of doubt, the CEO may make more than one determination of charges in respect of the same proceedings.

14 Waiver of charges

The CEO may waive or reduce any charge payable by a party under a determination made under subsection 13(1), (4) or (7) if the CEO is satisfied that requiring a party to pay the charge would cause the party to suffer financial hardship.

Part 8—Secrecy

15 Disclosure or use of protected information

- (1) For the purposes of paragraph 72(2)(d) of the Act, subsection 72(1) of the Act does not apply in relation to a disclosure or use of protected information if the disclosure or use:
 - (a) is made by the CEO in circumstances where the CEO considers it necessary to prevent or lessen a serious risk to the safety, health or well-being of a person; or
 - (b) is of information about a determination of the Tribunal that a person has breached a disciplinary rule of a sporting body, where the disciplinary rule relates to the protection of children participating in that sport, or the safety or participants in that sport.