

EXPLANATORY STATEMENT

Issued by the Minister for Sport

National Sports Tribunal Amendment Rule 2021

Authority

Subsection 75(1) of the *National Sports Tribunal Act 2019* (the Act) provides for the Minister to make rules prescribing matters required or permitted by the Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *National Sports Tribunal Rule 2020* (the Rule) came into effect on 19 March 2020.

Purpose

The *National Sports Tribunal Amendment Rule 2021* (the Amendment Rule) formally gives effect to the extension of the National Sports Tribunal pilot until 18 March 2023 and makes a number of amendments to the Rule to improve the operation of the NST. Namely it:

- specifically provides for the CEO of the NST to consult with parties about a prospective application and as to how the dispute will be resolved
- broadens and clarifies the types of dispute in respect of which an application can be made to the General Division of the NST for arbitration, mediation, conciliation or case appraisal, or to the Appeals Division of the NST
- reduces the application fee for mediation, conciliation and case appraisal so that it is consistent with the application fee for arbitration; and
- specifically allows the CEO of the NST to refund application fees where the Tribunal does not have jurisdiction to deal with the dispute that is the subject of an application

The Amendment Rule is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Rule commences the day after it is registered on the Federal Register of Legislation.

Details

Details of the Amendment Rule are set out in the **Attachment**.

Consultation

Amendments to the Rule were informed by the outcomes of a Continuous Improvement Review (the Review) undertaken by the NST in collaboration with the Department of Health's Design Lab. The Review identified opportunities for improvement to the NST's service design and delivery based on the NST's operation to date.

The NST consulted with the National Sports Tribunal Advisory Group (NSTAG) on the proposed amendments and draft provisions.

The NSTAG comprises representatives of national sporting organisations, as well as Sport Integrity Australia, Sport Australia, the Australian and New Zealand Sports Law Association, the legal profession and academia.

Details of the *National Sports Tribunal Amendment Rule 2021***Section 1 – Name**

Section 1 provides that the name of the instrument is the *National Sports Tribunal Amendment Rule 2021*.

Section 2 – Commencement

Section 2 of the instrument provides that the whole instrument commences the day after it is registered.

Section 3 – Authority

Section 3 provides that the instrument is made under subsection 75(1) of the *National Sports Tribunal Act 2019*.

Section 4 – Schedules

Specifies that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to this instrument has effect according to its terms. This is a technical provision that gives operational effect to amendments contained in the Schedules.

Schedule 1 amends the *National Sports Tribunal Rule 2020*.

Schedule 1 – Amendments***National Sports Tribunal Rule 2020*****Item 1 Subsection 5(1)**

This item specifically provides for the CEO to take such steps as are required to decide whether an application meets the requirements of the Act and the rules. Such steps may include, but are not limited to, a pre-application meeting with the parties.

Item 2 Paragraph 5(4)(a)

This item omits “require” and substitutes “requiring” at paragraph 5(4)(a).

Item 3 After paragraph 5(4)(e)

This item inserts new paragraphs 5(4)(ea) and (eb). These functions will specifically provide for the CEO to consult with the parties as to the method of dispute resolution, and about the attendance of any representative or support person in proceedings before the Tribunal.

Item 4 Section 7

This item repeals existing section 7 of the *National Sports Tribunal Rule 2020*, which specifies the kinds of disputes for which an application to the General Division of the NST may be made, and replaces it with a provision that allows the NST to deal with any type of sporting dispute, as long as:

- the dispute arises under one or more of the constituent documents of the sporting body, and
- the constituent documents provide a dispute resolution framework or mechanism for dealing with that dispute.

It also allows for the NST to deal with a dispute that arises under the terms of an agreement between a sporting body and a person bound by the constituent documents of the sporting body – for example, a dispute that arises:

- under the terms of a player contract between the player and the sporting body; or
- under an agreement between a sporting body and a constituent part of that sporting body.

Existing section 7 confers on the NST jurisdiction in relation to disputes about specified subject matters. However, the experience of the NST has been that sporting disputes tend to be complex, and at times difficult to characterise by reference to a specific subject matter. This amendment will make it easier for parties to a dispute to ascertain whether the NST has jurisdiction to deal with a dispute arising between them.

Section 7 also excludes from the ‘ordinary’ jurisdiction of General Division the same categories of disputes that are stipulated in Section 9 as being types of disputes that the CEO must not exercise their discretion to approve for the General Division to deal with.

Item 5 Section 8

This item repeals existing section 8 of the *National Sports Tribunal Rule 2020*, which specifies the kinds of disputes that can be appealed in the Appeals Division of the NST from a decision of a sporting tribunal, and replaces it with a provision that allows the NST to deal with any appeal from a sporting tribunal decision, as long as:

- the Appeals Division is recognised for an appeal of that type under the constituent documents of the sport; or
- the dispute arises under one or more of the constituent documents of the sporting body and the constituent documents provide for a dispute resolution framework or mechanism for dealing with that dispute; or
- the dispute arises under the terms of an agreement between a sporting body and a person bound by the constituent documents of the sporting body – for example, a dispute that arises:
 - under the terms of a player contract between the player and the sporting body; or
 - under an agreement between a sporting body and a constituent part of that sporting body.

Existing section 8 confers on the NST jurisdiction in relation to appeals about specified subject matters. However, the experience of the NST has been that sporting disputes tend to be complex, and at times difficult to characterise by reference to a specific subject matter. This amendment will make it easier for parties to a dispute to ascertain whether the NST has jurisdiction to deal with a dispute arising between them.

Section 8 also excludes from the ‘ordinary’ jurisdiction of Appeals Division the same categories of disputes that are stipulated in Section 9 as being types of disputes that the CEO must not exercise their discretion to approve for the Appeals Division to deal with.

Item 6 Section 9

Section 9 stipulates certain types of disputes that the CEO must not approve for the General Division to deal with. This item repeals existing section 9 and replaces it with the effect that there is no longer a prohibition on the CEO approving disputes that deal with employment related disputes, and disputes that arise under a contract for services. The amendment also clarifies what is meant by the phrase ‘field of play’.

Item 7 Paragraph 11(1)(a)

This item omits “\$750” and substitutes “\$500” at paragraph 11(1)(a) making the application fee for mediation, conciliation or case appraisal the same as the application fee to commence an arbitration in the General Division.

Item 8 Subsection 11(3)

This item inserts “or other party responsible for paying the application fee” after “applicant” in subsection 11(3).

This amendment reflects that an application fee may be paid jointly by the parties, and allows for the CEO of the NST to waive the fee for any party, if the CEO is satisfied that paying the fee would cause financial hardship to the party.

Item 9 After subsection 11(3)

This item inserts new subsection 11(4), which specifically allows the CEO to refund an application fee where the NST does not have jurisdiction to deal with the dispute that is the subject of the application.

Item 10 Paragraph 12(4)(a)

This item omits “of” and substitutes “the applicant receives” at paragraph 12(4)(a). The aim of this amendment is to ensure, consistently with the requirements of the World Anti-Doping Code, that the applicant has a full 21 days after receipt of an anti-doping decision or determination to make an appeal to the Appeals Division.

Item 11 Paragraph 12(4)(b)

This item omits “of” and substitutes “the applicant receives” at paragraph 12(4)(b). The aim of this amendment is to ensure that the applicant has a full 30 days after receipt of a decision or determination in relation to any other sport related dispute to make an appeal to the Appeals Division.

Item 12 Subsection 13(3)

This item inserts “and financial circumstances” after “nature” at subsection 13(3). This amendment ensures that the CEO of the NST has regard to a party’s financial circumstances when determining a charge to be paid by a party toward the costs of an arbitration in the Anti-Doping Division or General Division of the NST.

Item 13 Subsection 13(6)

This item omits “of the person or entity who instituted the appeal” and substitutes “and financial circumstances of the person or entities that are parties to the appeal”. This amendment ensures that the CEO of the NST has regard to a party’s or the parties’ financial circumstances when determining a charge to be paid by a party or parties to an appeal in the Appeals Division of the NST.

Item 14 Paragraph 15(1)(b)

This item corrects a typographical error by omitting “safety or participants” and substituting “safety of participants”.

Item 15 At the end of Part 8

Paragraph 38(5)(b) of the Act provides for the termination of NST operations, unless a rule is made to extend the operation of the Tribunal.

This item provides for the NST to deal with any valid applications made up until 18 March 2023.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

NATIONAL SPORTS TRIBUNAL AMENDMENT RULE 2021

This legislative instrument is compatible with the rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This legislative instrument is made under subsection 75(1) of the *National Sports Tribunal Act 2019* (the Act).

This legislative instrument amends the *National Sports Tribunal Rule 2020* to prescribe matters to support the operation of the National Sports Tribunal (NST), namely it:

- specifically provides for the CEO of the NST to consult with parties about a prospective application and as to how the dispute will be resolved
- broadens and clarifies the types of dispute in respect of which an application can be made to the General Division of the NST for arbitration, mediation, conciliation or case appraisal, or to the Appeals Division of the NST
- reduces the application fee for mediation, conciliation and case appraisal so that it is consistent with the application fee for arbitration; and
- specifically allows the CEO of the NST to refund application fees where the Tribunal does not have jurisdiction to deal with the dispute that is the subject of an application

Human rights implications

This legislative instrument may engage the following human right:

- the right to an effective remedy in Article 2(3) of the *International Covenant on Civil and Political Rights*.

Right to an effective remedy

This legislative instrument engages the right to access to justice, which is implied in the right to an effective remedy under Article 2(3) of the *International Covenant on Civil and Political Rights* (ICCPR).

Article 2(3) of the ICCPR protects the right to an effective remedy for violation of rights and freedoms recognised by the ICCPR, and provides for a person's right to be determined by competent judicial authorities, by administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State party.

The current legislative instrument that this amends specifies various fees for applications to the NST, namely \$500 for an application for arbitration, \$750 for an application for mediation, conciliation or case appraisal, and \$1,500 for an appeal. This legislative instrument will reduce the application fee for mediation, conciliation and case appraisal to \$500, bringing the application fee in line with that of arbitration. This means, for example, that where a party has made an application for arbitration of a dispute, but it then becomes apparent after that application for arbitration has been made that mediation would be more appropriate to resolve the dispute, the parties do not need to make a further payment to access mediation. This legislative instrument will also make specific provision for the CEO to refund an application fee in circumstances where a matter does not go forward because the NST does not have jurisdiction to deal with it.

Finally, this legislative instrument will expand the jurisdiction of the NST by broadening the types of disputes that fall within the NST's General Division and Appeals Division. These amendments will enhance the right to an effective remedy by broadening and clarifying the types of dispute in respect of which an application can be made to the General Division of the NST for arbitration, mediation, conciliation or case appraisal, or to the Appeals Division of the NST.

Conclusion

This Rule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and, to the extent the Rule may limit human rights, those limitations are reasonable, necessary and proportionate.

Senator the Hon Richard Colbeck, Minister for Sport