



National Sports Tribunal Amendment Rule 2021

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

Dated 6 July 2021

Senator the Hon Richard Colbeck
Minister for Sport

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1 Name

This instrument is the *National Sports Tribunal Amendment Rule 2021*.

2 Commencement

- (1) Each provision of this instrument 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 instrument.	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

National Sports Tribunal Rule 2020

1 Subsection 5(1)

Repeal subsection 5(1), substitute:

(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 s 37 of the Act and any requirement prescribed under these rules for the purposes of that section.

(1A) The CEO may take such steps as are required to decide whether an application meets those requirements, including, but not limited to, convening a pre-application meeting.

2 Paragraph 5(4)(a)

Omit “require”, substitute “requiring”.

3 After paragraph 5(4)(e)

Insert:

- (ea) consulting with the parties as to whether the dispute will be resolved through arbitration, mediation, conciliation or case appraisal;
- (eb) consulting with the parties about the attendance of any representative or support person in Tribunal proceedings;

4 Section 7

Repeal section 7, substitute:

7 Disputes that can be dealt with by the National Sports Tribunal

(1) For the purposes of subparagraphs 23(1)(c)(i) and 25(1)(c)(i) (Disputes between a person and a sporting body) and subparagraphs 24(1)(c)(i) and 26(1)(c)(i) (Disputes between 2 or more persons) of the Act, an application can be made in respect of any dispute that arises:

- (a) under one or more of the constituent documents of the sporting body and in respect of which the constituent documents describe a dispute resolution mechanism; or
- (b) under the terms of an agreement between a sporting body and a person bound by one or more constituent documents of the sporting body (whether the person is an individual or a constituent part of the sport that is a body corporate), and the sporting body and the person agree to refer the dispute to the Tribunal.

(2) Despite subsection (1), an application cannot be made in respect of a dispute of a kind listed in section 9.

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. 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 23(1)(c)(ii), 24(1)(c)(ii), 25(1)(c)(ii) and 26(1)(c)(ii) of the Act.

Note 3: Subsections 23(4), 24(4), 25(4) and 26(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.

5 Section 8

Repeal section 8, substitute:

8 Disputes that can be appealed to the National Sports Tribunal

- (1) For the purposes of subparagraph 35(1)(c)(i) (Appeal – decisions made by sporting tribunals where Appeals Division recognised by constituent documents), an appeal to the Tribunal can be made in respect of any dispute that arises under one or more constituent documents of the sporting body.
- (2) For the purposes of subparagraph 35(2)(c)(i) (Appeal – decisions made by sporting tribunals where Appeals Division not recognised by constituent documents), an appeal to the National Sports Tribunal can be made in respect of any dispute that arises:
 - (a) under one or more of the constituent documents of the sporting body and in respect of which the constituent documents describe a dispute resolution mechanism; or
 - (b) under the terms of an agreement between a sporting body and a person bound by one or more constituent documents of the sporting body (whether the person is an individual or a constituent part of the sport that is a body corporate), and the sporting body and the person agree to refer the dispute to the Tribunal.
- (3) Despite subsections (1) and (2), an appeal cannot be made in respect of a dispute of a kind listed in subsection 9(1).

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.

6 Section 9

Repeal section 9, substitute:

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) anti-doping disputes;
 - (b) field of play' decisions made on the playing field (however described or occurring) by judges, referees, umpires or other officials, who are responsible for applying the rules or laws of the particular game;
 - (c) 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)(b), 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.

Alternative dispute resolution

- (2) 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) ‘field of play’ decisions made on the playing field (however described or occurring) by judges, referees, umpires or other officials, who are responsible for applying the rules or laws of the particular game.

7 Paragraph 11(1)(a)

Omit “\$750”, substitute “\$500”.

8 Subsection 11(3)

After “applicant”, insert “or other party responsible for paying the application fee”.

9 After subsection 11(3)

Insert:

- (4) Where the Tribunal does not have jurisdiction to deal with the dispute that is the subject of an application, the CEO may refund the application fee.

10 Paragraph 12(4)(a)

Omit “of”, substitute “the applicant receives”.

11 Paragraph 12(4)(b)

Omit “of”, substitute “the applicant receives”.

12 Subsection 13(3)

After “nature”, insert “and financial circumstances”.

13 Subsection 13(6)

Omit “of the person or entity who instituted the appeal”, substitute “and financial circumstances of the persons or entities that are parties to the appeal”.

14 Paragraph 15(1)(b)

Omit “safety or participants”, substitute “safety of participants”.

15 At the end of Part 8

Add:

Part 9—Extension of the National Sports Tribunal

16 Extension of the National Sports Tribunal

For the purposes of paragraph 38(5)(b) of the Act, an application under Division 2 or 3 of Part 3, or section 32, 33 or 35 of the Act must be made before the end of 18 March 2023.