

EXPLANATORY STATEMENT

National Sports Tribunal Act 2019

National Sports Tribunal Amendment Rule 2022

Authority

Subsection 75(1) of the *National Sports Tribunal Act 2019* (the Act) provides that the Minister may 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 and prescribes matters to support the operation of the National Sports Tribunal (the Tribunal).

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose

The Tribunal commenced as a pilot program on 19 March 2020, and the Rule currently provides for the operation of the Tribunal until 18 March 2023.

Paragraph 38(5)(b) of the Act provides for the termination of Tribunal operations unless a rule extends the operation of the Tribunal. Paragraph 38(5)(b) of the Act requires the Rule to prescribe a finite number of years beginning on the day that section 38 of the Act commenced. The Rule cannot provide for an application to bring a matter to the Tribunal to be made before the end of an indefinite period.

Currently, an application under Division 2 or 3 of Part 3, or section 32, 33 or 35 of the Act, which deal with matters such as disputes relating to anti-doping policies; applications for arbitration of disputes; and appealing decisions made by sporting bodies and tribunals, must be made before the end of 18 March 2023.

In the October 2022 Budget, the Australian Government announced the continuation of the Tribunal as a permanent, ongoing national-level dispute resolution entity for Australian sport: *Continuation of the National Sports Tribunal* measure.

The National Sports Tribunal Amendment Rule 2022 (the Amendment Rule) amends the Rule to allow the Tribunal to continue to deal with valid applications under Division 2 or 3 of Part 3, or section 32, 33 or 35 of the Act for a further period of five years (until 18 March 2028). In due course, it is intended that the Act will be amended to remove the time limit on applications being made to the Tribunal and enable the Tribunal to operate as an ongoing entity.

Consultation

The Australian Government's decision to continue the Tribunal as a permanent, ongoing Tribunal was informed by an independent evaluation of the pilot phase. The evaluation involved consultation with a broad spectrum of stakeholders, including representatives of national sporting organisations; the Australian Sports Commission; Sport Integrity Australia; the Australian and New Zealand Sports Law Association; academia; and individuals and organisations who have used the Tribunal's services.

Commencement

This Amendment Rule is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* and commences on the day after it is registered on the Federal Register of Legislation.

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

The Amendment Rule is compatible with the rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A statement of compatibility with human rights is set out in **Attachment B**.

Details of the National Sports Tribunal Amendment Rule 2022

Section 1 - Name

Section 1 provides that the name of the instrument is the *National Sports Tribunal Amendment Rule 2022* (the Amendment Rule).

Section 2 - Commencement

Section 2 provides that the Amendment Rule commences on the day after it is registered on the Federal Register of Legislation.

Section 3 - Authority

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

Section 4 - Schedule

Section 4 specifies that the instrument specified in the Schedule, the *National Sports Tribunal Rule 2020*, is amended as set out in the item in the Schedule and has effect according to its terms. This is a technical provision that gives operational effect to the amendment contained in the Schedule.

Schedule 1 – Amendment

National Sports Tribunal Rule 2020

Item 1 - Section 16

Item 1 amends section 16 of the *National Sports Tribunal Rule 2020* by omitting the words “18 March 2023” and substituting “18 March 2028”. In doing so, it provides for the National Sports Tribunal to be extended to deal with any valid applications made until 18 March 2028.

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 2022

This Disallowable Legislative Instrument 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*.

Overview of the Disallowable Legislative Instrument

The *National Sports Tribunal Amendment Rule 2022* (the Amendment Rule) is made under subsection 75(1) of the *National Sports Tribunal Act 2019* (the Act).

This instrument amends the *National Sports Tribunal Rule 2020* (the Rule) to formally give effect to the extension of the operation of the National Sports Tribunal by an additional five years, from 18 March 2023 to 18 March 2028.

Human rights implications

The Amendment Rule engages the following rights:

- The right to an effective remedy in Article 2(3) of the *International Covenant on Civil and Political Rights* (ICCPR); and
- The right to a fair hearing under Article 14 of the 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 rights 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 relevant State party. Currently the Rule provides for the operation of the National Sports Tribunal only until 18 March 2023. This legislative instrument will extend the operation of the National Sports Tribunal by five years to 18 March 2028, thus extending access to an effective remedy for disputes in Australian sport.

Article 14 of the ICCPR provides that all persons are equal before the courts and tribunals, and protects the right to a fair and public hearing before a competent, independent and impartial tribunal established by law. The Amendment Rule will ensure continued access to a fair hearing by parties to a dispute, by extending the operation of the National Sports Tribunal.

Conclusion

The Amendment Rule is compatible with human rights because it promotes the protection of human rights.