



National Sports Tribunal (Practice and Procedure) Determination 2024

I, Dr Michelle Gallen, Chief Executive Officer of the National Sports Tribunal, make the following determination.

Dated 4 November 2024

Dr Michelle Gallen
Chief Executive Officer of the National Sports Tribunal

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Chapter 1—Introductory provisions

Part 1—Preliminary

1 Name

This instrument is the *National Sports Tribunal (Practice and Procedure) Determination 2024*.

2 Commencement

This Determination commences the day after it is registered.

3 Authority

This Determination is made under subsections 29(2) and 41(2) of the *National Sports Tribunal Act 2019*.

3A 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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

4 Application of this Determination

This Determination applies to all disputes before the National Sports Tribunal, whether or not the application to the Tribunal was made before or after the commencement of the Determination.

5 Definitions

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

- Sport Integrity Australia CEO;
- dispute;
- member;
- national sporting organisation;
- sporting body;
- World Anti-Doping Code.

In this Determination:

Act means the *National Sports Tribunal Act 2019*.

employee in the Tribunal means a person made available to the CEO under subsection 66(1) of the Act or a person assisting the CEO under subsection 67(1) of the Act.

party means:

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- (a) in an application for the arbitration of a dispute - a person or body permitted by the Act to be a party
 - (b) in an application for mediation, conciliation or case appraisal – a person or body permitted by the Act to be a participant.

person under a legal incapacity means:

- (a) a minor; or
- (b) a person with intellectual disability.

Rule means the *National Sports Tribunal Rule 2020*.

SIA means Sport Integrity Australia.

SIA Act means the *Sport Integrity Australia Act 2020*.

6 Use of terms in this Determination

- (1) A reference in this Determination to a ***Tribunal member*** means:
 - (a) where one member is appointed to deal with a dispute—the member; or
 - (b) where more than one member is appointed to deal with the dispute—the member who the CEO has designated to be the presiding member for the dispute.

7 Waiving compliance

The CEO or a Tribunal member (as relevant) may waive compliance with any provision of this Determination by a party to a dispute, either before or after the occasion for compliance arises.

8 Directions other than in a hearing

A Tribunal member appointed to deal with a dispute may make directions other than in a hearing.

Chapter 2—Provisions that apply to all disputes before the Tribunal

Part 2 contains provisions that apply to all disputes that are brought before the Tribunal.

Part 1—Forms and other preliminary matters

9 Application of Chapter 2

- (1) So far as the context permits, the provisions of this Chapter apply to disputes in the Anti-Doping Division, the General Division, and the Appeals Division of the Tribunal.
- (2) For the avoidance of doubt, where a provision in another Chapter of this Determination makes more specific provision in relation to a matter, that provision prevails to the extent of any inconsistency with a provision of this Part.

10 Approved forms

- (1) The CEO may approve a form for the purposes of a provision of this Determination.
- (2) Where the CEO approves a form, the form is to be published on the website for the Tribunal.
- (3) If this Determination requires that an approved form be used, it is sufficient compliance if a document is substantially in accordance with the approved form.

11 Lodgement of documents

- (1) A document must be lodged with the Tribunal by:
 - (a) emailing the document to an email address approved by the CEO for the lodgement of documents by email; or
 - (b) lodging the document by another method approved by the CEO.
- (2) A document lodged by email must meet the requirements of section 12.

Note: The email addresses approved for lodgement of documents are submissions@nationalsporttribunal.gov.au and enquiries@nationalsporttribunal.gov.au.

12 Lodgement of documents by email

- (1) If a document is lodged by email, the document must be attached to the email:
 - (a) for a statutory declaration or affidavit—as a PDF or other image format approved by the CEO as the circumstances of the case require; or
 - (b) for any other document—as an attachment in Word, RTF or PDF format or another format approved by the CEO.
- (2) Documents are to be lodged without any security restrictions.

Note: A document lodged with a security restriction is to be taken not to have been lodged until it is lodged without the security restriction.

- (3) The covering email should state:
- (a) the name, address, and telephone number of the natural person sending the email; and
 - (b) an email address to which the CEO or an employee in the Tribunal authorised by the CEO may send notices or other documentation; and
 - (c) if the document is an application to the Tribunal to deal with a dispute by arbitration or by conciliation, mediation or case appraisal—that fact; and
 - (d) if the document relates to an existing matter—the Tribunal matter number.

Application to the Tribunal to deal with a dispute

- (4) If a document lodged by email is an application to the Tribunal to deal with a dispute:
- (a) the CEO, or an employee in the Tribunal who is authorised by the CEO to do so, must send an acknowledgment of lodgement, by email, to the person lodging the document; and
 - (b) the application is not taken to have been lodged until the acknowledgment of lodgement in paragraph (a) has been sent; and
 - (c) once the acknowledgment of lodgement mentioned in paragraph (a) has been sent, the application is taken to have been lodged at the time it was received electronically by the Tribunal.
- (4A) An acknowledgment of lodgement referred to in subsection (4) does not constitute an acceptance of the validity of the application.
- (5) A person who lodges a document by email must:
- (a) retain a copy of the document; and
 - (b) retain a copy of either:
 - (i) a ‘delivered’ statement or ‘read receipt’ indicating that the document was delivered to the Tribunal; or
 - (ii) the email as a ‘sent item’ showing the transmission address and the date and time that the email was sent; and
 - (c) produce copies of the documents retained under paragraphs (a) and (b) if requested by the CEO or directed to do so by a Tribunal member.

13 Signing of documents

- (1) The CEO may require a document that is lodged with the Tribunal (other than an annexure or exhibit attached to another document) to be dated and signed by either:
- (a) the party to the dispute; or
 - (b) the lawyer or authorised representative of the party.

Electronic signatures

- (2) If a document (other than a statutory declaration or affidavit) is required by this Determination to be signed by a person, the requirement may be satisfied:
 - (a) by affixing the person's signature to the document by electronic means by, or at the direction of, the person required to sign the document; or
 - (b) if the document is an approved form that is lodged with the Tribunal by email—by typing the name of the person completing the form in the box beside the word "Signature".

14 Service of documents by parties

- (1) A person who lodges a document with the Tribunal must serve a copy of the document on all other parties to the dispute by email, at the email address nominated by the party for service of documents (*nominated email address*).

Service of documents by email

- (2) A document will be served by email if it is emailed to the nominated email address, provided that the person who is serving the document retains:
 - (a) a 'delivered' statement or 'read receipt' indicating that the document was delivered to the nominated address; or
 - (b) the email as a 'sent item' showing the transmission address and the date and time that the email was sent;

and produces copies of the documents mentioned in paragraph (a) or (b) if requested to do so by the CEO or directed to do so by a Tribunal member.

- (3) If a party does not have a nominated email address, a document may be served by post, or in person as set out in subsections (4) or (5).

Service of documents by post

- (4) A document will be served by post if it is posted in a prepaid envelope sent by Express Post or Registered Post to the residence, or usual place of residence, of the individual intended to be served provided the person serving the document retains the barcode of the Express Post or Registered Post pre-paid envelope and produces it if requested to do so by the CEO or directed to do so by a Tribunal member.

Service of documents in person

- (5) A document is served in person if it is:
 - (a) left with the individual to whom it is addressed; or
 - (b) left with an individual, apparently over the age of 15 years, at the residence, or usual place of business, of the individual who is intended to be served.

Service of documents on person under a legal incapacity

- (6) Where a person under a legal incapacity has an authorised representative, any document that is required to be served must be served on the representative.

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- (7) Where a person under a legal incapacity does not have an authorised representative:
- (a) the CEO may request; or
 - (b) a Tribunal member may direct
- that documents be served in some other way or on some other person, to enable the interests of the person under the legal incapacity to be properly represented.

15 Service of documents by the Tribunal

- (1) Where the CEO considers that it is necessary or appropriate to do so in a particular dispute, the CEO or an employee in the Tribunal may serve documents on behalf of a party or parties to the dispute.
- (2) Where the CEO or an employee in the Tribunal serves a document on a person, service must be effected by one of the methods in section 14.

16 Requiring another party to produce documents

- (1) The Tribunal member may, on application by a party to the dispute, or on the member's own initiative, direct another party to the dispute to produce a document in its custody or under its control.
- (2) Before the Tribunal member makes such a direction, the member must be satisfied that the document exists and is relevant to the dispute.

Note: The power to direct a party to a dispute to produce a document in its custody or under its control is separate to the exercise of the Tribunal's power under subsection 42(2) of the Act.

17 Calculation of time

- (1) A period of time for doing an act or thing required by this Determination or by a direction of the Tribunal is to be calculated in accordance with this section.
- (2) If the time fixed is to be calculated by reference to a particular day or event, the particular day or the day of the particular event is not to be counted.
- (3) An act or thing may be done on the next business day in a place if:
 - (a) the last day for doing the act or thing is not a business day in the place where the act or thing is to be done; and
 - (b) the act or thing may only be done on a day that is a business day in the place.
- (4) Where this Determination or a direction of a Tribunal member fixes a day for doing any act or thing, then the act or thing must be done by midnight on that day, unless determined otherwise by the Tribunal member.

18 Disputes as to jurisdiction

- (1) If there is a dispute between the parties as to whether the Tribunal has jurisdiction to deal with a dispute, the CEO is to determine that dispute in such manner as the CEO thinks fit.

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- (2) For the purposes of subsection (1), the CEO may request that a Tribunal member determine whether the Tribunal has jurisdiction to deal with the dispute.

Note: Subsection 5(1) of the Rule provides that, 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 section 37 of the Act and any requirement prescribed under the rules for the purposes of that section.

19 Representation

- (1) Subject to subsection 20(1), there is no requirement for a party to a dispute to be represented by a lawyer or an authorised representative.
- (2) Any person may be an authorised representative.
- (3) Where a lawyer or authorised representative starts to act for a party to a dispute before the Tribunal, the lawyer or authorised representative must notify the Tribunal in writing.
- (4) A person who ceases to act as a lawyer or authorised representative of a party to a dispute must notify the Tribunal in writing.
- (5) A notice given under subsection (3) must contain the following information:
 - (a) the name and contact details of the lawyer or authorised representative;
 - (b) the party that is being represented;
 - (c) an address for service of documents by email;
 - (d) the date of the notice.
- (6) A notice given under subsection (4) must contain the following information:
 - (a) the name and contact details of the lawyer or authorised representative;
 - (b) the party that was being represented;
 - (c) the last known address of that party; and
 - (d) the date of the notice.
- (7) The CEO or a Tribunal member may permit a person (*support person*) to accompany a party in proceedings.
- (8) A support person is not to act as a lawyer or authorised representative for the party in the proceedings.

Note: A support person may assist a party to formulate what to say, provide advice to the party and undertake other supportive actions including taking notes. A support person is not an advocate, and cannot speak on behalf of a party.

20 Persons under a legal incapacity

- (1) Where a party to a dispute is a person under a legal incapacity, they must be represented by a lawyer or authorised representative.
- (2) A party or an interested person may apply for the appointment of a lawyer or authorised representative to act on behalf of the person under a legal incapacity.
- (3) The lawyer or authorised representative must not have a different interest in the dispute to the person under a legal incapacity.

Note: Where a person under a legal incapacity does not wish to be represented by a lawyer or authorised representative, they may ask the Tribunal to exercise its power under section 7 of this Determination to waive compliance with the requirement in subsection (1).

Part 2—Expedited resolution of disputes

21 Where application to deal with a dispute requires expedition

- (1) If, on receiving an application for arbitration, mediation, conciliation or case appraisal of a dispute, the CEO is satisfied that it is necessary to deal with the application expeditiously, the CEO is to convene a preliminary conference (if appropriate) and then immediately appoint one or more Tribunal members to deal with the dispute.
- (2) The CEO and the Tribunal member or members are to take all steps necessary to deal with the dispute as expeditiously as the case requires.
- (3) The steps to be taken in subsection (2) may include, but are not limited to, waiving compliance with any provision of this Determination that a party to the dispute would otherwise have to comply with.

Note: Section 7 of this Determination enables the CEO or Tribunal (as relevant) to waive compliance with any provision of this Determination by a party to a dispute, either before or after the occasion for compliance arises.

Part 3—Management of arbitration by the Tribunal

22 Notice of application

If an application is made to the Tribunal for arbitration of a dispute, the CEO must give the following persons written notice of the receipt of the application, and a copy of the application:

- (a) the applicant;
- (b) for a dispute in the Anti-Doping Division—
 - (i) the SIA CEO;
 - (ii) the sporting body that is party to the dispute;
 - (iii) any other person or body that is permitted by the anti-doping policy, or by a separate agreement, to participate in a hearing of a dispute of the relevant kind;
- (c) for a dispute in the General Division—
 - (i) the sporting body that is party to the dispute;
 - (ii) the other person or persons that are parties to the dispute (where the application is brought under subsection 23(1) of the Act), or the 2 or more persons who are in dispute (where the application is brought under subsection 24(1) of the Act);
 - (iii) any other person or body that is permitted by a constituent document, or by a separate agreement, to participate in a hearing of a dispute of the relevant kind.

23 Responding to an application

- (1) A person or body mentioned in subparagraph 22(b)(i) or (ii), or 22(c)(i) or (ii) who receives written notice of an application from the CEO under section 22 is to provide their response to the CEO within 7 days of receiving that written notice, setting out a brief statement of defence and any jurisdictional objections.
- (2) A person or body mentioned in subparagraph 22(b)(iii) or 22(c)(iii) who receives written notice of an application from the CEO under section 22 and who wishes to participate in an arbitration as a party is required to notify the Tribunal within 7 days of receiving that written notice.
- (3) The CEO may vary the timeframe in subsection (1) or (2) in accordance with subsection 21(3), or by agreement with the relevant person or body.
- (4) A response under (1) or notification under (2) must be in the approved form (if any).
- (5) A response under (1) or notification under (2) must include the party's address for service of documents by email.
- (6) Where a person or body mentioned in subparagraph 22(b)(iii) or 22(c)(iii) does not notify the CEO within 7 days and has not sought an extension of time to file a notification, the CEO may request the party to show cause as to why they should be allowed to participate in the arbitration.

23A Preliminary conference

The CEO may hold a preliminary conference as soon as practicable after receipt of the response referred to in subsection 23(1), or the expiry of the timeframe referred to in subsections 23(2) or 23(3), to carry out the procedural management function set out in section 5 of the Rule.

24 Allocating a Tribunal member to an arbitration

The CEO is to appoint a panel of one or more Tribunal members to deal with a dispute before the Tribunal.

Note: In allocating a Tribunal member to deal with a dispute, the CEO is required to comply with the principles determined in the instrument made under subsection 52(4) of the Act. More information about the process of appointing Tribunal members to deal with disputes can be found at www.nationalsporttribunal.gov.au.

25 Challenging the appointment of an arbitrator

- (1) A party may challenge the appointment of a Tribunal member to arbitrate a dispute on the ground of actual or apprehended bias.

Note: The test for apprehended bias is whether a fair-minded observer might reasonably suspect that the decision-maker is not impartial.

- (2) A party that wishes to challenge the appointment of a Tribunal member must submit an application to the CEO within 7 days of being notified by the CEO of the appointment, or within a reasonable time in the circumstances, on becoming aware of the actual or apprehended bias.

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- (3) The application must set out the reasons for the challenge.
 - (4) If the Tribunal member has not ceased dealing with the dispute in the interim, the CEO is to decide the challenge, and notify the parties.
 - (5) If the CEO is required to reconstitute the Tribunal for the purposes of dealing with the dispute, the CEO is required to comply with the principles determined under subsection 52(4) of the Act.

Note: Section 16 of the Act and section 6 of the Rule deal with the disclosure of interests by Tribunal members. Subsection 6(4) of the Rule relevantly prohibits a Tribunal member who has a material interest from dealing with a dispute.

26 Pre-hearing conferences by Tribunal members prior to arbitration

- (1) A Tribunal member appointed to deal with a dispute may conduct as many pre-hearing conferences as appropriate prior to the substantive hearing of the dispute.
- (2) Any pre-hearing conference will normally be by telephone, or another electronic communications medium, unless all of the parties agree to a pre-hearing conference in person.
- (3) Where a panel of three members has been appointed for an arbitration, the pre-hearing conference will normally be conducted by the presiding member. The other members may also participate in the pre-hearing conference.

Note: Paragraph 5(4)(a) of the Rule enables the CEO to convene a preliminary conference with the parties before a Tribunal member is appointed to deal with the dispute, as part of the CEO's procedural management function (subsection 5(3) of the Rule). Section 26 also enables the Tribunal member (once appointed) to conduct further pre-hearing conferences as appropriate.

27 Joining of matters in arbitration

- (1) If the CEO is satisfied that two or more applications for arbitration should be dealt with together, the CEO is to appoint the same Tribunal member or members to deal with the multiple disputes together in the same proceeding.
- (2) Where two or more disputes are dealt with together, the Tribunal is to make a single determination in respect of all of the disputes, unless the circumstances in subsection (3) apply.
- (3) The Tribunal may make a separate determination in respect of each dispute only where:
 - (a) the disputes do not arise out of the same set of facts; and
 - (b) no prejudice would result to a party to any of the disputes as a result of the Tribunal making separate determinations.
- (4) Where the Tribunal decides to make a separate determination in respect of each dispute, it is to issue the determinations under subsection 27(1) of the Act at the same time.

Note: Appeal timeframes are often set by reference to the date on which a decision or termination has been issued by the first instance tribunal. The requirement for determinations to be published at the same time is intended to ensure that appeal periods run uniformly.

28 How the Tribunal informs itself in arbitration

- (1) The Tribunal is not bound by rules of evidence, but is required to act in accordance with principles of procedural fairness.
- (2) The Tribunal is to conduct the arbitration of a dispute before it with as little formality and technicality, and as much expedition, as the fair and proper consideration of the matters before the Tribunal permit.
- (3) In an arbitration of a dispute, the Tribunal may inform itself on any matter in such manner as it thinks appropriate, including but not limited to the following:
 - (a) requiring a person to attend before the Tribunal;
 - (b) inviting oral or written submissions;
 - (c) requiring a person to provide copies of documents or records, or to provide any other information, to the Tribunal;
 - (d) taking evidence under oath or affirmation;
 - (e) recommending to the CEO that an expert witness be appointed under paragraph 68(1)(b) of the Act;
 - (f) conducting a pre-hearing conference;
 - (g) holding a hearing.

29 Directions in arbitration

- (1) In an arbitration, a Tribunal member is to give such directions as the member considers appropriate for the fair, efficient and inexpensive determination of the dispute.
- (2) The types of directions a Tribunal member may make include, but are not limited to, directions:
 - (a) requiring any person who is a party to the dispute to provide further information in relation to the dispute; or
 - (b) requiring any person who is a party to the dispute to provide a statement of matters or contentions upon which reliance is to be placed at the hearing; or
 - (c) limiting the number of witnesses who may be called to give evidence (either generally, or on a specified issue arising in the dispute); or
 - (d) requiring witnesses to give evidence at the same time; or
 - (e) limiting the time for giving evidence or making oral submissions; or
 - (f) limiting the length of written submissions.
- (3) The Tribunal member may specify in any direction the consequences of not complying with the direction.
- (4) The Tribunal member may also give a direction (either on application by a party to the dispute or on its own initiative) that unless another party takes a step in the arbitration by a specified date:
 - (a) the arbitration is to be terminated; or
 - (b) the arbitration is to proceed to hearing; or
 - (c) the arbitration is to proceed to a determination.

30 Agreement as to jurisdiction or procedure in arbitration

- (1) The CEO or the Tribunal member (as relevant) may require all the parties to a dispute to sign a separate agreement as to jurisdictional or procedural matters (including as to the estimated cost of the arbitration as determined by the CEO) before the arbitration proceeds to a hearing.
- (2) An agreement made pursuant to subsection (1) subsists in any appeal.

31 Timeframe for the conduct of an arbitration

- (1) A Tribunal member is to complete an arbitration of a dispute as soon as possible after having been appointed to deal with the dispute, having regard to the complexity of the dispute.
- (2) As a general principle, a Tribunal member is expected to issue the Tribunal's determination of a dispute as soon as practicable but in any case within 3 months after final submissions and evidence have been lodged by the parties.

32 General obligation on parties to assist the Tribunal in arbitration

A party to a dispute before the Tribunal, and any person representing such a party, is to act in such a way as to promote the fair, efficient and inexpensive determination of the dispute.

Note: Subsection 40(2) of the Act also requires the parties to act in good faith in relation to the conduct of the arbitration.

33 Witnesses

- (1) Witness statements may be provided by way of statutory declaration or affidavit.
- (2) A witness giving oral evidence before the Tribunal in an arbitration must do so under oath or affirmation if so required by the Tribunal.

34 Expert witnesses—Tribunal expert

- (1) This section applies where the CEO agrees to appoint an expert witness under paragraph 68(1)(b) of the Act (*tribunal expert*), to provide assistance to the Tribunal in the arbitration of a dispute.
- (2) The CEO may appoint a tribunal expert at the request of the Tribunal member or on the application of any party.
- (3) The tribunal expert must be, in the CEO's opinion, independent of the parties and have expertise in the subject matter of the dispute such that they are able to assist and advise the Tribunal.
- (4) The tribunal expert may provide oral or written evidence to the Tribunal.
- (5) The tribunal expert is subject to cross-examination in relation to their evidence, by any party to the arbitration.

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- (6) It is at the discretion of the CEO to make a determination, if necessary, in relation to charging a party or parties for the costs of engaging the tribunal expert.

35 Expert witnesses generally—giving evidence

If 2 or more parties to a dispute intend to call experts to give opinion evidence about a similar question, a Tribunal member appointed to arbitrate a dispute may make any of the following directions, to expedite the arbitration of the dispute:

- (a) that the experts confer, either before or after providing their evidence ;
- (b) that the experts produce to the Tribunal a document identifying where the expert opinions agree or differ;
- (c) that the expert’s evidence in chief be limited to the contents of the expert’s initial evidence provided;
- (d) that the experts give evidence one after another;
- (e) that each expert be called at the same time and that the cross examination and re-examination be conducted by putting to each expert in turn each question relevant to one subject or issue at a time, until the cross examination or re-examination is completed;
- (f) that each expert gives an opinion about the other expert’s opinion;
- (g) that the experts be cross examined and re-examined in any particular manner or sequence.

36 Notice requiring person to appear before the Tribunal

- (1) A Tribunal member appointed to arbitrate a dispute may, on the member’s own initiative or on application by a party to the dispute, give a notice to a person under subsection 42(1) of the Act requiring the person to appear before the Tribunal.
- (2) The notice is to be on the form approved by the CEO for this purpose and signed by the Tribunal member.
- (3) The Tribunal member is to only give a notice if the member reasonably believes that the person to whom the notice is to be given is capable of giving evidence relevant to the dispute.
- (4) A copy of the notice is to be served on the person who is required to appear before the Tribunal.

Note: Section 28A of the *Acts Interpretation Act 1901* has effect. It relevantly describes what it means to ‘give’ or ‘serve’ a notice.

37 Notice requiring person to produce documents or things, or information

- (1) A Tribunal member appointed to arbitrate a dispute may, on the member’s own initiative or on application by a party to the dispute, give a notice to a person under subsection 42(2) of the Act requiring the person to produce to the Tribunal documents or things, or to provide information to the Tribunal.

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- (2) The notice is to be on the form approved by the CEO for this purpose and signed by the Tribunal member.
 - (3) The Tribunal member is to only give a notice if the member reasonably believes that the person to whom the notice is to be given has documents or things, or information, relevant to the dispute.
 - (4) A copy of the notice is to be served on the person who is required to provide the information to the Tribunal, or to produce the documents or things to the Tribunal.
 - (5) A person will comply with the notice by producing the documents, things or other information specified in the notice to the CEO or employee in the Tribunal at the place specified in the notice before the time specified in the notice for the provision of the documents, things or information.

Note 1: Section 28A of the *Acts Interpretation Act 1901* has effect. It relevantly describes what it means to 'give' or 'serve' a notice.

Note 2: The expression 'employee in the Tribunal' is defined in section 5 of this Determination.

38 Process for applications for notices

- (1) A party to a dispute may make an application for a notice under subsections 42(1) or 42(2) of the Act at any time after the Tribunal has been constituted to deal with the dispute.
- (2) An application is to be made in the approved form.
- (3) Before deciding whether to give a notice, the Tribunal member is to allow the other party or parties to the dispute a reasonable opportunity to make submissions in relation to whether the notice should be given.
- (4) The Tribunal member is to only give a notice where the requirement in subsection 36(3) or 37(3) is met.
- (5) The Tribunal member may decide an application for a notice without a hearing.

39 Appearance by a person to whom a notice has been issued

- (1) If a person appears as a witness before the Tribunal as required by a notice given to them under subsection 42(1) of the Act, the Tribunal member is to ensure that the parties to the dispute are given the opportunity to question the person.
- (2) The Tribunal member may also ask the person questions.

40 Confidentiality of hearings

- (1) Hearings are to be conducted in private, unless a party requests that the hearing be conducted in public, and the CEO or Tribunal member, in their absolute discretion, agrees.
- (2) The Tribunal member may give directions in relation to the persons who may be present at a hearing.

41 Directions for confidentiality of information before the Tribunal

- (1) The CEO or Tribunal member (as relevant) may, on application by a party to the dispute, give directions prohibiting or restricting the publication or other disclosure of information that relates to a dispute and is any of the following:
 - (a) information that comprises evidence or information about evidence;
 - (b) information lodged with or otherwise given to the Tribunal.
- (2) The CEO or Tribunal member (as relevant) may, on their own initiative or on application by a party to the dispute, give directions prohibiting or restricting the publication or other disclosure of information:
 - (a) tending to reveal the identity of a witness in a proceeding before the Tribunal; or
 - (b) information otherwise concerning a person referred to in paragraph (a).
- (3) The CEO or Tribunal member (as relevant) may give such directions, irrespective of whether the arbitration of the dispute is to be held in public.

Note: Irrespective of whether an order is made, parties to a dispute may be subject to implied obligations of confidentiality. For example, where a party to a dispute has been compelled to disclose information or documents for the purposes of the dispute, the other parties to the dispute can only use that information or those documents for the purposes of the dispute.

42 Recording of hearings

- (1) A Tribunal member may, on their own initiative or on application by a party to the dispute, request that the CEO record or engage a transcription provider to make an official transcript of an arbitration hearing before that member.
- (2) Unless otherwise agreed by the CEO, no other person is permitted to record, transcribe, or photograph hearings of the Tribunal.
- (3) For the avoidance of doubt, subsection (2) does not prevent a party to a dispute, or their authorised representative, making notes for their use in the hearing.

43 Correction of determinations

- (1) The CEO or a Tribunal member (as relevant) may, on their own initiative or on application by a party to the dispute, amend a determination to correct a clerical error or an error arising from an accidental slip or omission.
- (2) The following persons must be notified before making a correction under subsection (1):
 - (a) the relevant Tribunal member (if the correction is made by the CEO);
 - (b) the CEO (if the correction is made by the Tribunal member); and
 - (c) the parties to the dispute.
- (3) This provision applies to any determination, whether published or not.

Note: Subsections 27(3) and 36(3) of the Act require the Tribunal to give the parties to an arbitration or appeal written notice of the determination and the reasons for the determination.

Chapter 3—Anti-Doping Division

44 Application of Chapter 3

Each party to an application for arbitration of a dispute under section 22 of the Act must comply with:

- (a) this Chapter; and
- (b) any other sections of this Determination that are relevant to, and not inconsistent with, this Chapter.

Note: Section 22 of the Act provides for applications to be made to the Tribunal for the arbitration of disputes relating to anti-doping policies.

45 Where party has exercised right of appeal to Court of Arbitration for Sport

- (1) Where a party to a dispute has, in accordance with the terms of the relevant anti-doping policy, or separate agreement referring the dispute to the Anti-Doping Division, exercised its right to appeal to the Court of Arbitration for Sport, the CEO or a Tribunal member (as relevant) is to determine whether the arbitration should be suspended pending the outcome of the appeal to the Court of Arbitration for Sport, or terminated.
- (2) In this section, *Court of Arbitration for Sport* means the body operating under the authority of the International Council of Arbitration for Sport to resolve sports related disputes.

Note: Section 10 of the Rule relevantly provides that the Tribunal may suspend or terminate an arbitration where a party has exercised a right of appeal to the Court of Arbitration for Sport.

46 Hearing, standard of proof and sanctions

- (1) The burdens and standards of proof and methods of establishing facts and presumptions are to be as set out in the anti-doping policy of the sporting body to which the applicant belongs.
- (2) If the Tribunal member appointed to arbitrate a dispute determines that there has been a breach of the anti-doping policy, the Tribunal member may determine such sanctions as are permitted by the anti-doping policy of the sporting body.

47 Hearings in the Anti-Doping Division - Privacy

A hearing of a dispute in the Anti-Doping Division is to be conducted in private, unless the applicant requests that the hearing be conducted in public, and the CEO or Tribunal member, in their absolute discretion, agrees.

48 Content of determinations

- (1) The Tribunal's determination of an anti-doping dispute must include the following:
 - (a) the jurisdictional basis and applicable rules, including the sport;
 - (b) a detailed factual background of the dispute;

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- (c) the name of the athlete or other person who was alleged to have committed the anti-doping rule violation;
 - (d) where applicable, the anti-doping rule violations that have been established;
 - (e) the prohibited substance or prohibited method involved (if any); and
 - (f) the applicable consequences and the date on which they are to take effect.
- (1A) The determination must also include the Tribunal's reasons, including its findings on material questions of fact and reference to the evidence or other material on which its findings were based.
- (2) In this section, ***anti-doping rule violation, prohibited substance, prohibited method*** and ***consequences*** have the same meanings as those expressions in the World Anti-Doping Code.
- (3) Where the determination is adverse to the applicant, the Tribunal must, at the same time it gives the determination to the applicant, give the applicant a written statement setting out their rights of appeal from the determination.

49 Publication of determinations

- (1) In accordance with the relevant anti-doping policy and subject to subsections (4) and (5), the CEO is to publish all determinations of the Anti-Doping Division, including the reasons for those determinations.
- (2) The Tribunal member who prepared the determination may recommend to the CEO that the CEO publish a version of the determination containing a pseudonym so that a witness is not able to be identified.
- (3) A pseudonym is not to be applied to protect the identity of a party to the dispute.
- (4) Where the Tribunal has determined that a minor, a protected person, or a recreational athlete against whom an anti-doping rule violation has been asserted has committed the anti-doping rule violation, the CEO:
- (a) is not to publish the determination or its reasons unless the applicant consents; but
 - (b) may publish information about the outcome of the matter that is proportionate to the facts and circumstances of the case.
- (4A) In this section, ***minor, protected person*** and ***recreational athlete*** have the same meanings as those expressions in the anti-doping policy of the sporting body to which the applicant belongs.
- (5) Where the Tribunal has determined that the person against whom an anti-doping rule violation has been asserted has not committed the anti-doping rule violation, the CEO is not to publish the determination or its reasons unless the applicant for arbitration consents, and may do so in its entirety or in such redacted form as the applicant may approve.

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- (6) Subsection (5) does not prevent the CEO publishing, on the Tribunal’s website, that the decision has been appealed or, with the consent of the applicant, a summary of the decision.
- (7) Where feasible, a summary published under subsection (6) should not contain information that would identify the parties, or that could reasonably identify the parties, unless the parties agree to be named.

Chapter 4—General Division Arbitration

50 Application of Chapter 4

The provisions of this Chapter apply to applications which are made to the Tribunal under the following provisions of the Act:

- (a) subparagraphs 23(1)(b)(i) or 23(1)(b)(ii) —dispute between a person and a sporting body;
- (b) subparagraphs 24(1)(b)(i) or 24(1)(b)(ii)—dispute between 2 or more persons.

51 CEO to consider whether to recommend to applicant to make an application for alternative dispute resolution

On receiving an application for arbitration, the CEO may consider whether mediation, conciliation or case appraisal (*alternative dispute resolution*) might assist to resolve some or all of the matters in dispute, and if so, to provide advice to the parties to the dispute about the availability of alternative dispute resolution.

52 Tribunal may determine dispute without a hearing

Where the Tribunal member appointed to arbitrate a dispute considers it appropriate to do so and all the parties to the dispute agree, the Tribunal may determine the dispute without a hearing.

52A Rules for resolution of a dispute

- (1) In resolving a dispute, the Tribunal is to act in accordance with the terms of the relevant constituent documents of the sporting body, or the separate agreement between the parties to the dispute referring the dispute to the Tribunal.
- (2) Where neither the constituent documents nor the separate agreement provide a procedure, this Determination applies.

53 Tribunal may encourage parties to apply for mediation, conciliation or case appraisal

Where appropriate, the Tribunal member may encourage the parties to a dispute to consider whether the issue in dispute, or an aspect of the issues in dispute, could be resolved through mediation or conciliation, or could be the subject of a case appraisal.

54 Hearings in the General Division - Privacy

A hearing of a dispute in the General Division is to be conducted in private, unless all the parties to the dispute agree to the hearing being conducted in public.

55 Burden and standard of proof

- (1) For a dispute before the General Division, the burden and standard of proof and method of establishing facts and presumptions are to be as set out in the constituent documents of the sporting body, or in the separate agreement between the parties to the dispute referring the dispute to the Tribunal.
- (2) Where neither the constituent documents nor the separate agreement set out a standard of proof, the default standard of proof is to be the balance of probabilities.

56 Publication of determinations

- (1) Subject to subsection (2), the CEO is not to publish a determination of a dispute in the General Division.
- (2) The CEO may publish a determination where:
 - (a) all the parties to the dispute agree to publication; or
 - (b) the Tribunal member or members who prepared the determination and the CEO agree that a determination of the dispute is of such precedential value that it is to be published; or
 - (c) the Tribunal member or members who prepared the determination and the CEO agree that it is in the public interest to publish a determination of the dispute.
- (3) If paragraph (2)(b) or (c) applies, the CEO is to then give each party the opportunity to make submissions on whether any parts of the determination should be redacted before publication.
- (4) The CEO, having regard to those submissions, is to make the redactions (if any) they consider appropriate.
- (5) The CEO is to publish the determination with the redactions made under subsection (4).

57 Publication of a summary of each determination

- (1) The CEO is to publish a summary of each determination of a dispute in the General Division.
- (2) A summary is not to identify the parties to the dispute, unless:
 - (a) all the parties agree; or
 - (b) the summary is of a determination to which paragraph 56(2)(b) or (c) applies.

Chapter 5—Alternative Dispute Resolution

Part 1—Application for mediation, conciliation or case appraisal

58 Application of Chapter 5

- (1) A person or a sporting body that is a party to a General Division dispute may make an application under subsection 25(1) or subsection 26(1) of the Act for one of the following:
 - (a) mediation of the dispute; or
 - (b) conciliation of the dispute; or
 - (c) case appraisal of the dispute.
- (2) An application is to be made in the approved form.

Note: Subsections 25(2) and 26(2) of the Act specify the participants in a mediation, conciliation or case appraisal.

59 Timing of application for dispute resolution

A party to a General Division dispute may make an application for mediation, conciliation or case appraisal before, during or after, making an application for arbitration of the General Division dispute.

Note: Sections 51 and 53 of this Determination respectively provide for the CEO and the Tribunal to encourage the parties to a General Division dispute to apply for mediation, conciliation or case appraisal, where appropriate.

Note: The application for alternative dispute resolution may be made by an amendment to the existing application for arbitration.

60 Alternative dispute resolution list

- (1) The CEO is to maintain a list of members (*alternative dispute resolution list*) who, in the CEO's opinion, have appropriate qualifications, experience and skills in the mediation or conciliation of disputes, or who are able to conduct case appraisals.
- (2) In this Determination, a reference to a *mediator*, or *conciliator*, or *case appraiser* is a reference to a member.

61 Conduct of alternative dispute resolution

Where the parties to the dispute agree and the Tribunal member considers it is appropriate to do so, alternative dispute resolution may be conducted by telephone or another appropriate electronic communications medium.

62 Preliminary conference

The CEO may conduct a preliminary conference with the participants before appointing a Tribunal member to deal with the dispute.

Part 2—Mediation

63 What is mediation?

Mediation is a process in which the parties to a dispute, with the assistance of a Tribunal member (the mediator) identify the disputed issues, develop options, consider alternatives and attempt to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

64 Agreement to mediate

At or before the mediation commences, the participants in a mediation must sign an agreement to mediate stipulating the issues to be mediated.

Note: The participants in a mediation are described in subsections 25(2) and 26(2) of the Act

65 Appointment of the mediator

The CEO is to appoint a mediator from the alternative dispute resolution list.

Note 1: Section 16 of the Act and section 6 of the Rule deal with the disclosure of interests by Tribunal members. Subsection 6(4) of the Rule relevantly prohibits a Tribunal member who has a material interest from dealing with a dispute.

Note 2: In allocating a Tribunal member to deal with a dispute, the CEO is required to comply with the principles determined in the instrument made under section 52(4) of the Act. More information about the process of appointing Tribunal members to deal with disputes can be found at www.nationalsporttribunal.gov.au.

66 Responsibilities of the mediator

- (1) The mediator is to:
 - (a) before the mediation, read the documents provided to the mediator by the participants; and
 - (b) at the start of the mediation, explain the nature of mediation, set out the procedure for the conduct of the mediation; and
 - (c) assist the participants in drawing up any written settlement agreement.
- (2) The mediator is to maintain their independence and impartiality throughout the mediation.

67 Authority to settle

If a participant in the mediation is represented, the party must ensure that the representative has the necessary authority to settle the dispute.

68 Conduct of the mediation

- (1) The mediation is to be conducted in the manner agreed by the participants.
- (2) The mediator may meet with one or more participants separately at any stage of the mediation.

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- (3) Where there is not agreement between the participants, the mediator is to determine the manner in which the mediation is to be conducted.
 - (4) The participants are to use their best endeavours to agree a joint set of documents for the mediation.
 - (5) Each participant shall cooperate in good faith with the mediator.
 - (6) The mediator may determine that the attendance of other persons at the mediation is permitted for the purpose of:
 - (a) providing assistance to a participant (as a **support person**); or
 - (b) providing information or evidence to assist the mediation.

Note: Subsection 19(7) of the Determination provides that the Tribunal may permit a person (support person) to accompany a party in proceedings. Subsection 19(8) provides that a support person cannot act as a lawyer or an authorised representative for the party.

69 Suspending or terminating a mediation

- (1) A mediator may suspend or terminate a mediation if they form the view that mediation is no longer suitable for resolving the dispute.
- (2) The circumstances in which a mediator may suspend or terminate a mediation include, but are not limited to, where the mediator forms the view that:
 - (a) a participant is unable or unwilling to participate or continue in the mediation; or
 - (b) a participant is misusing the mediation; or
 - (c) a participant is not engaging in the mediation in good faith; or
 - (d) the safety of one or more participants may be at risk.
- (3) The mediator may also suspend or terminate a mediation where the participants agree that the mediation be suspended or terminated.
- (4) The mediator must terminate a mediation if a participant withdraws their agreement to mediate.
- (5) In accordance with the agreement to mediate given pursuant to section 64 above, a participant who withdraws their agreement to mediate may be required to pay the costs of the mediation.

70 Confidentiality and recording

- (1) The mediation is to be held in private.
- (2) Except to the extent necessary to prepare a settlement agreement, neither the mediator, nor a participant in the mediation, is to make a record or transcript of the mediation.
- (3) For the avoidance of doubt, subsection (2) does not prevent a participant, or their authorised representative, making notes for their use in the mediation.

Note: Section 30 of the Act has the effect that evidence of anything said or done in a mediation is not admissible in any court, or in an arbitration of the dispute by the Tribunal unless the parties to the arbitration otherwise agree.

71 When mediation ends

The mediation ends when:

- (a) the participants enter into a written settlement agreement; or
- (b) the mediator is satisfied that all reasonable attempts to resolve the dispute (other than by arbitration) have been, or are likely to be, unsuccessful.

72 Mediator to ask participants whether they wish to proceed to arbitration

- (1) If a mediation ends without resolution, the mediator is to ask the participants whether they wish to proceed to arbitration of their dispute, unless the mediator considers it is not appropriate to proceed to arbitration.
- (2) If the participants wish to proceed to arbitration, the mediator is to advise the CEO, who is to then arrange a meeting with the participants to discuss the possible arbitration of the dispute.

73 Mediator not to conduct arbitration of dispute

Where the dispute remains unresolved after mediation, the mediator is not to conduct arbitration of the dispute.

Part 3—Conciliation

74 What is conciliation?

Conciliation is a process in which the parties to a dispute, with the assistance of the conciliator, identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, and may actively encourage the participants to reach an agreement to settle their dispute.

74A Agreement to conciliate

At or before the conciliation commences, the participants in a conciliation must sign an agreement for the conduct of the conciliation.

Note: The participants in a conciliation are described in subsections 25(2) and 26(2) of the Act.

75 Appointment of the conciliator

The CEO is to appoint a conciliator from the alternative dispute resolution list.

Note 1: Section 16 of the Act and section 6 of the Rule deal with the disclosure of interests by Tribunal members. Subsection 6(4) of the Rule relevantly prohibits a Tribunal member who has a material interest from dealing with a dispute.

Note 2: In allocating a Tribunal member to deal with a dispute, the CEO is required to comply with the principles determined in the instrument made under section 52(4) of the Act. More information about the process of appointing Tribunal members to deal with disputes can be found at www.nationalsporttribunal.gov.au.

75A Responsibilities of the conciliator

The conciliator is to:

- (a) before the conciliation, read the documents provided to the conciliator by the participants; and
- (b) at the start of the conciliation, explain the nature of conciliation and set out the procedure for the conduct of the conciliation; and
- (c) assist the participants in drawing up any written settlement agreement.

76 Authority to settle

If a participant in the conciliation is represented, the participant has to ensure that the representative has the necessary authority to settle the dispute.

77 Conduct of the conciliation

- (1) The conciliation is to be conducted in the manner agreed by the participants.
- (2) The conciliator may meet with one or more participants separately at any stage of the conciliation.
- (3) Where there is not agreement between the participants, the conciliator is to determine the manner in which the conciliation is to be conducted.
- (4) The participants are to use their best endeavours to agree a joint set of documents for the conciliation.
- (5) Each participant shall cooperate in good faith with the conciliator.
- (6) The conciliator may determine that the attendance of other persons at the conciliation is permitted for the purpose of:
 - (a) providing assistance to a participant (as a *support person*); or
 - (b) providing information or evidence to assist the conciliation.

Note: Subsection 19(7) of the Determination provides that the Tribunal may permit a person (support person) to accompany a party in proceedings. Subsection 19(8) provides that a support person cannot act as a lawyer or an authorised representative for the party.

78 Suspending or terminating a conciliation

- (1) A conciliator may suspend or terminate a conciliation if they form the view that conciliation is no longer suitable for resolving the dispute.
- (2) The circumstances in which a conciliator may suspend or terminate a conciliation include, but are not limited to, where the conciliator forms the view that:
 - (a) a participant is unable or unwilling to participate or continue in the conciliation; or
 - (b) a participant is misusing the conciliation; or
 - (c) a participant is not engaging in the conciliation in good faith; or
 - (d) the safety of one or more participants may be at risk;

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- (3) The conciliator may also suspend or terminate a conciliation where the participants agree that the conciliation be suspended or terminated.
 - (4) The conciliator must terminate a conciliation if a participant withdraws their agreement to conciliate.
 - (5) In accordance with the agreement to conciliate given pursuant to section 74A above, a participant who withdraws their agreement to conciliate may be required to pay the costs of the conciliation.

79 Confidentiality and recording

- (1) The conciliation is to be held in private.
- (2) Except to the extent necessary to prepare a settlement agreement, neither the conciliator, nor a participant in the conciliation, is to make a record or transcript of the conciliation.
- (3) For the avoidance of doubt, subsection (2) does not prevent a participant in the conciliation, or their authorised representative, making notes for their use in the conciliation.

Note: Section 30 of the Act has the effect that evidence of anything said or done in a conciliation is not admissible in any court, or in an arbitration of the dispute by the Tribunal unless the parties to the arbitration otherwise agree.

80 When conciliation ends

The conciliation ends when:

- (a) the participants enter into a written settlement agreement; or
- (b) the conciliator is satisfied that all reasonable attempts to resolve the dispute (other than by arbitration) have been, or are likely to be, unsuccessful.

81 Conciliator to ask participants whether they wish to proceed to arbitration

- (1) If a conciliation ends without resolution, the conciliator is to ask the participants whether they wish to proceed to arbitration of their dispute, unless the conciliator considers it is not appropriate to proceed to arbitration.
- (2) If the participants agree to proceed to arbitration, the conciliator is to advise the CEO, who is to then arrange a meeting with the participants to discuss the possible arbitration of the dispute.

82 Conciliator not to conduct arbitration of dispute

Where the dispute remains unresolved after conciliation, the conciliator is not to conduct arbitration of the dispute.

Part 4—Case appraisal

83 What is case appraisal?

Case appraisal is an advisory process in which a Tribunal member, chosen on the basis of their knowledge of the subject matter of the type of dispute, assists the parties to resolve the dispute by providing a non-binding opinion on the facts and likely outcomes.

84 Appointment of the appraiser

The CEO is to appoint a case appraiser from the alternative dispute resolution list.

Note 1: Section 16 of the Act and section 6 of the Rule deal with the disclosure of interests by Tribunal members. Subsection 6(4) of the Rule relevantly prohibits a Tribunal member who has a material interest from dealing with a dispute.

Note 2: In allocating a Tribunal member to deal with a dispute, the CEO is required to comply with the principles determined in the instrument made under section 52(4) of the Act. More information about the process of appointing Tribunal members to deal with disputes can be found at www.nationalsporttribunal.gov.au.

85 Case appraisal process

- (1) Before a case appraiser can review any material relating to a case appraisal, the participants must:
 - (a) agree on the scope of the case appraisal and the questions to be answered by the case appraiser; and
 - (b) sign an agreement stipulating the scope of the case appraisal.
 - (2) The participants will provide to an employee in the Tribunal authorised by the CEO relevant factual information and (where requested) written submissions about those facts.
- Note: The participants in a case appraisal are described in subsections 25(2) and 26(2) of the Act.
- (3) The case appraiser is to review the material provided by the participants.
 - (4) The case appraiser may convene a meeting with the participants to conduct the case appraisal or may conduct the case appraisal without a meeting and by reference only to the documents provided.
 - (5) The case appraiser may determine that the attendance of other persons at the meeting is permitted for the purpose of:
 - (a) providing assistance to a participant (as a **support person**); or
 - (b) providing information or evidence to assist the appraisal.

Note: Subsection 19(7) of the Determination provides that the Tribunal may permit a person (support person) to accompany a party in proceedings. Subsection 19(8) provides that a support person cannot act as a lawyer or an authorised representative for the party.

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- (6) The case appraiser may suspend or terminate a case appraisal or refuse to provide an opinion if the participants have not provided sufficient relevant information to enable the case appraisal to be undertaken.
 - (6) The case appraiser is to communicate their opinion to the participants as soon as the appraisal is complete. The case appraiser is to communicate their opinion orally, unless the participants otherwise agree for the opinion to be provided in writing.

86 Confidentiality and recording

- (1) The case appraisal is to be held in private.
- (2) Except to the extent necessary to prepare the case appraisal and notify the participants, neither the case appraiser, nor a participant in the case appraisal, is to make a record or transcript of the appraisal.
- (3) For the avoidance of doubt, subsection (2) does not prevent a participant in the case appraisal, or their authorised representative, making notes for their use in the appraisal.

Note: Section 30 of the Act has the effect that evidence of anything said or done in a case appraisal is not admissible in any court, or in an arbitration of the dispute by the Tribunal unless the parties to the arbitration otherwise agree.

87 Case appraiser to ask participants whether they wish to proceed to arbitration

- (1) At the conclusion of the case appraisal, the case appraiser is to ask the participants whether they wish to proceed to arbitration of their dispute, unless the case appraiser considers it is not appropriate to proceed to arbitration.
- (2) If the participants agree to proceed to arbitration, the case appraiser is to advise the CEO, who is to then arrange a meeting with the participants to discuss the possible arbitration of the dispute.

88 Appraiser not to conduct arbitration of dispute

Where the dispute remains unresolved after case appraisal, the case appraiser is not to conduct arbitration of the dispute.

Chapter 6—Appeals Division

89 Form of notice of appeal

- (1) A person or body that wants to bring an appeal from either:
 - (a) a determination of the Anti-Doping Division or the General Division; or
 - (b) a determination or decision of a sporting body as described in section 32 of the Act; or
 - (c) a determination or decision of a sporting tribunal as described in either section 33 or section 35 of the Act;must lodge a notice of appeal in accordance with the approved form.
- (2) The notice of appeal must:
 - (a) state whether the whole decision or determination, or only part of the decision or determination, are appealed from; and
 - (b) if only part of the decision or determination is appealed from—state the part of the decision or determination appealed from; and
 - (c) identify the provision(s) of the anti-doping policy, constituent document, or separate agreement that permit the appeal; and
 - (d) state briefly but specifically, the grounds relied on in support of the appeal consistent with the grounds of appeal permitted by the relevant policy, constituent document, or separate agreement; and
 - (e) state the determination the appellant wants instead of the decision or determination appealed from.
- (3) The notice of appeal must include the appellant’s address for service of documents by email.

Note 1: Subsection 38(4) of the Act, and section 12 of the Rule, set out the time limits for an application for an appeal.

Note 2: The scope of appeals (eg permitted grounds of appeal, timeframes) will ordinarily be determined by the sporting body’s anti-doping policy, or constituent documents, or separate agreement to refer the matter to the NST.

90 Service on parties and lodgement

- (1) An appellant must serve a notice of appeal on each person who was a party to the arbitration in the body appealed from.
- (2) Where the appeal is against a decision by a sporting body of a kind that the World Anti-Doping Code provides may be made without a hearing, the appellant must serve the notice of appeal on the following:
 - (a) where the appellant is an athlete or other person—on the sporting body, SIA, WADA and (where applicable) the international sporting federation for the sport;
 - (b) where the appellant is SIA—on the sporting body, the athlete or other person, WADA and (where applicable) the international sporting federation;

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- (c) where the appellant is the international sporting federation—on the sporting body, the athlete or other person, SIA and WADA;
 - (d) where the appellant is WADA—on the sporting body, the athlete or other person, SIA and (where applicable) the international sporting federation.

Note: Anti-doping policies relevantly provide for a right of appeal by an international sporting federation (in the case of an international level athlete) and WADA.

91 Lodgement of appeal documents

- (1) The appellant must, within 21 days after lodging the notice of appeal, lodge with the Tribunal and serve on the respondent or respondents an appeal brief.
- (2) For an appeal of a determination of the Tribunal, the appeal brief is to contain the following:
 - (a) the facts supporting the grounds of appeal (that were set out in the notice of appeal);
 - (b) an explanation as to how the appeal is permitted by the provision(s) of the anti-doping policy, constituent document, or separate agreement, as the case may be;
 - (c) submissions as to why the appellant considers the Tribunal's decision to be incorrect;
 - (d) a copy of the determination being appealed against;
 - (e) where it exists, the transcript of the evidence and argument in the matter from which the appeal is brought, or the relevant extract from the transcript;
 - (f) each document that was an exhibit or written submission in the matter from which the appeal is brought;
 - (g) any additional evidence that the appellant intends to rely on in the appeal.
- (3) For an appeal of a decision or determination of a sporting body or sporting tribunal, the appeal brief is to:
 - (a) address the matters mentioned in paragraphs (2)(a), (2)(b) and (2)(c); and
 - (b) contain:
 - (i) a copy of the decision or determination being appealed against; and
 - (ii) where those documents exist—
 - (A) the documents mentioned in paragraphs (2)(e) and (2)(f); and
 - (B) any additional evidence that the appellant intends to rely on in the appeal.
- (4) Where the appellant does not comply with subsection (1), the Tribunal is to request the appellant to provide reasons as to why their appeal should not be suspended or terminated.
- (5) Where the Tribunal has requested the appellant to provide reasons as to why their appeal should not be terminated, and the appellant fails to provide adequate reasons or fails to respond at all, the Tribunal is to consider whether it should direct that the appeal be suspended or terminated.

Note: Paragraph 36(4)(b) and subsection 36(5) of the Act respectively provide for the Tribunal to suspend or terminate an arbitration in the Appeals Division in the circumstances prescribed by

the rules. Section 10 of the Rule relevantly enables the Tribunal to direct that an appeal be suspended or terminated where there is undue delay, without reasonable excuse, by the applicant in pursuing their application.

92 Lodgement of response to the appeal brief

- (1) Within 14 days of receiving the appeal brief, the respondent is to lodge and serve on the appellant (and any other respondents to the appeal) a response to the appeal brief (*response*).

Note: There may be more than one respondent to an appeal.

- (2) The response is to contain:
 - (a) a statement of defence;
 - (b) if applicable, any jurisdictional objections;
 - (c) any additional evidence that the respondent intends to rely on in the appeal.
- (3) Where there is more than one respondent to an appeal, all of the respondents are required to respond to the appeal brief at the same time, unless the Tribunal otherwise directs.
- (4) Where a respondent does not provide a response as required by subsection (1) or subsection (3), the Tribunal may proceed to determine the appeal.

93 First instance arbitrator not to be appointed to appeal panel

For the avoidance of doubt, the arbitrator whose decision is being appealed is not to be appointed to the appeal panel.

Note 1: Section 24 of this Determination applies to the process for selecting arbitrators for the appeal.

Note 2: In allocating members to a dispute and nominating a presiding member, the CEO must comply with the principles determined in the instrument made under subsection 52(4) of the Act.

94 Agreement as to jurisdiction or procedure

Notwithstanding any agreement under section 30, which subsists in the appeal, the CEO or the Tribunal member (as relevant) may require all the parties to a dispute to sign a separate agreement as to jurisdictional or procedural matters (including as to the estimated cost of the arbitration as determined by the CEO) before the appeal proceeds to a hearing.

95 Hearings and evidence

Anti-Doping appeals

- (1) If the parties to the appeal agree that an appeal can be decided without a hearing, and the Tribunal is satisfied that it would be appropriate to do so, the Tribunal may determine the appeal by reference only to the documents lodged by the parties. Otherwise, the Tribunal is to conduct the appeal with a hearing.
- (2) The Tribunal is to conduct the appeal by way of a hearing de novo.

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- (3) The Tribunal has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the determination or decision appealed against was made.

General Division and Sporting Tribunal appeals

- (4) If the parties to the appeal agree that the appeal can be decided without a hearing, and the Tribunal is satisfied that it would be appropriate to do so, the Tribunal may determine the appeal by reference only to the documents lodged by the parties. Otherwise, the Tribunal is to conduct the appeal with a hearing.
- (5) The Tribunal is to conduct the appeal by way of a rehearing, unless:
 - (a) the constituent document or separate agreement referring the dispute to the Tribunal otherwise provides; or
 - (b) the basis of the appeal is such that a rehearing would be inappropriate; or
 - (c) the parties agree otherwise.
- (6) The Tribunal may admit new evidence on appeal in the following circumstances:
 - (a) as permitted by the constituent document or separate agreement between the parties to the dispute referring the dispute to the Appeals Division of the Tribunal;
 - (b) where all of the parties to the appeal agree; or
 - (c) where the Tribunal is satisfied that appropriate circumstances warrant the admission of new evidence.

96 Publication of determinations on appeal

Determinations of Anti-Doping appeals

- (1) In accordance with the relevant Anti-Doping Policy and subject to subsections (4) and (5), the CEO is to publish all written determinations of Anti-Doping appeals.
- (2) The Tribunal may recommend to the CEO that the CEO publish a version of the determination containing a pseudonym so that a witness is not able to be identified.
- (3) A pseudonym is not to be applied to protect the identity of a party to the dispute.
- (4) Where the Tribunal has determined that a Minor, a Protected Person, or a Recreational Athlete, as defined in the relevant Anti-Doping Policy, against whom an anti-doping rule violation has been asserted has committed the anti-doping rule violation, the CEO:
 - (a) is not required to publish the determination; and
 - (b) may otherwise publish information about the outcome of the matter that is proportionate to the facts and circumstances of the case.
- (5) Where the Tribunal has determined that a person against whom an anti-doping rule violation has been asserted has not committed the anti-doping rule violation, the CEO is not to publish the determination unless the applicant consents, and may do so in its entirety or in such redacted form as the applicant may approve.

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- (6) Subsection (5) does not prevent the CEO publishing, on the Tribunal's website, that the decision has been appealed or, with the consent of the parties, a summary of the decision.
 - (7) Where feasible, a summary published under subsection (6) should not contain information that would identify the parties, or that could reasonably identify the parties, unless the parties agree to be named.

Determinations of General Division and Sporting Tribunal appeals

- (8) Subject to subsection (9), the CEO is not to publish a determination of a General Division or Sporting Tribunal appeal.
- (9) The CEO may publish a determination where:
 - (a) all the parties to the dispute agree to publication; or
 - (b) the Tribunal member or members who prepared the determination and the CEO agree that a determination of the appeal is of such precedential value that it is to be published; or
 - (c) the Tribunal member or members who prepared the determination and the CEO agree that it is in the public interest to publish a determination of the appeal.
- (10) If paragraph (9)(b) or (c) applies, the Tribunal is to then give each party the opportunity to make submissions on whether any parts of the determination should be redacted before publication.
- (11) The Tribunal, having regard to those submissions, is to make the redactions (if any) it considers appropriate.
- (12) The CEO is to publish the determination with the redactions made under subsection (11).
- (13) The CEO is to publish a summary of each determination of a General Division appeal.
- (14) A summary is not to identify the parties to the dispute, unless:
 - (a) all the parties agree; or
 - (b) the summary is of a determination to which paragraph (9)(b) or (c) applies.

Schedule 1 – Repeal

National Sports Tribunal (Practice and Procedure) Determination 2021

1 The whole of the determination

Repeal the determination.