

Insurance Insights

Powerful new Sports Tribunal leads the way in bolstering integrity in Australian sport. Why is this important?

Key takeaways:

- New legislation governing arbitration/ADR of Australian sports disputes
- National Sports Tribunal introduced for resolution of sports disputes
- Two-year pilot
- Conditional opt out scheme
- Laws apply to acts committed or omitted within as well as outside of Australia
- Locally handled sporting Appeals have the potential to lower costs
- Significant civil penalties for breach
- Sports bodies must have approved policies in place to access the Tribunal

Big changes lie ahead with plans for a National Sports Integrity Commission, Sport Integrity Australia (**SIA**), as part of the 'Implementing Sport 2030' Scheme, aimed at safeguarding integrity in Australian sport. The SIA will consolidate the Australian Sports Anti-Doping Authority (**ASADA**), the national sports integrity functions of the National Integrity of Sports Unit (**NISU**) and Sport Australia (formerly the Australian Sports Commission).¹

As part of the reforms, new legislation establishes a new, independent National Sports Tribunal (**The Tribunal**)² aimed at ensuring the Australian sporting community has access to effective, efficient, independent and transparent specialist sports resolution services.³ Establishing the Tribunal was a specific

¹ Australian Government, Department of Health, Budget 2019-20, [Implementing Sport 2030 -Safeguarding the integrity of Australian Sport.](#)

² The [National Sports Tribunal Act 2019 \(Cth\)](#), and the *National Sports Tribunal (Consequential Amendments and Transitional Provisions) Bill 2019 (Cth)*.

³ Section 3, *National Sports Tribunal Act 2019 (Cth)*.

recommendation of the Government's Wood Review⁴ into integrity in sport, which found deficiencies in Australia's current sports dispute resolution mechanisms, particularly in relation to procedural powers, independence, transparency, accessibility and timeliness.⁵

The National Sports Tribunal will comprise of Three Divisions

The Anti-Doping Division

- Will hear disputes regarding Anti-Doping Rule Violations (**ADRV**).⁶
- Can conduct dispute resolution by application, but only if the sport has an approved anti-doping policy and has permission from ASADA's CEO.
- Disputes can be referred if agreed in writing, in situations where a sport's approved policy does not allow a dispute under the World Anti-Doping Code (**WADA**) to be heard in the Tribunal.

General Division

- Sports related disputes, including player selection, and sports code of conduct matters.
- Resolution of certain disputes, by application for mediation, conciliation or case appraisal, only if those who are in dispute agree to the referral to the Tribunal.

Appeals Division

- Appeals may be made from a determination in the Anti-Doping Division or the General Division.
- In certain circumstances, a person may appeal a decision by a sporting body or sporting tribunal in relation to certain disputes.

The Tribunal has powers to compel a witness to attend and answer questions, as well as produce documents. A witness retains the right to object to answering questions on the grounds of self-incrimination.

Individual sports can have doping disputes heard by internally-run tribunals within their own sport, rather than use the Tribunal, if certain criteria are met.

As a result of the Tribunal resolving disputes in accordance with contractual arrangements agreed between the parties for the resolution of their dispute, the scope for judicial review of a decision will be limited.

⁴ Review of Australia's Sports Integrity Arrangements (The Wood Review), August 2018, accessed at <https://www1.health.gov.au/internet/main/publishing.nsf/Content/the-review-of-australias-sports-integrity-arrangements>.

⁵ Commonwealth Government, House of Representatives, Explanatory Memorandum, National Sports Tribunal Bill 2019, 10.

⁶ Above n 5, 26. The Anti-Doping Division is activated by Australia's obligations under the *UNESCO International Convention Against Doping in Sport*. In order to attract government funding each national sporting organisation must have an anti-doping policy approved by the CEO of ASADA.

The operation of the Tribunal will be administered by a Chief Executive Officer (**CEO**), with wide powers including approval of disputes to be heard, determining procedures and practice, allocation of members hearing disputes, and application for enforcement of penalties.

The relevant legislation introduces a civil penalties scheme in addition to the pre-existing criminal offences, allowing the Tribunal to effectively manage its affairs without having to resort to managing non-compliance matters in the criminal courts. Penalties of up to 12 months imprisonment can now apply for obstructing the Tribunal, or intimidating witnesses. Unauthorized disclosure of information can incur a two-year imprisonment.

Sporting organizations need to prepare for the Scheme by examining their existing policies and rules for dispute resolution and anti-doping. Should a sport elect to access the Tribunal for resolution of disputes, the requisite amendments to the constitution, rules, bylaws and policies must be made.

Keep in Mind

Insurance professionals should be aware of these changes in the coverage of sporting organisations and their athletes moving forward. Depending on the nature of policies in place, it may impact the handling of claims dealing with this subject matter.

This article was written by Principals [Rob Minc](#) and [David Randazzo](#), and Lawyer Rosemary Blanden. If you would like details on the implications of these cases on your business, please contact us for further information.



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