

Australian Sports Regulation: Independent Review Findings

06 September 2018

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Worthwhile read for: Athletes, Sports Managers, Sports Lawyers

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Key issues

- A new national sports tribunal proposed
- Opt-in and opt-out features for dealing with the national sports tribunal
- Aimed at both established and emerging sports within Australia

Following a year-long independent review of the Australian sports regulatory environment, led by the Honourable James Wood AO QC (**the Wood Review**), the Australian Government recently released a report containing the Wood Review's findings and 52 recommendations.

The Wood Review, prompted by peptide scandals, fear of match fixing and the rapid growth of sports wagering, was commissioned by the Australian Government about one year ago and was aimed at all sports, both established and emerging, in Australia or on a global stage.

Establishment of a National Sports Tribunal

One of the recommendations made by the Wood Review is the establishment of a National Sports Tribunal (**NST**), as an attempt to achieve consistency of response across various sports to integrity issues.

Whilst established sports and their governing bodies within Australia (i.e. NRL, AFL, ARU, TA, CA, FFA and Netball Australia) have in-house dispute resolution tribunals to deal with integrity issues (e.g. doping, match fixing, governance etc.) many smaller sports do not have the same resources or capacity. Those sports instead rely on referrals to the Court of Arbitration of Sport (**CAS**) or an ad hoc tribunal to address these issues.

The establishment of the NST seeks to prevent the risks of a fragmented approach to integrity matters. Important risks identified in the Wood Review include inconsistency and unpredictability in outcomes for what are, in nature, similar integrity issues across a variety of sports.

Jurisdiction of the NST

The jurisdiction of the NST is proposed to consist of three separate divisions:

1. Anti-Doping,
2. General; and
3. Appeals.

The NST would operate an 'opt-out' system in relation to all anti-doping rule violations (**ADRVs**), which would be subject to a first hearing by the NST, with the exception of sports already operating their own internal tribunal (e.g. NRL, AFL etc.). As is currently the case, resolution of ADRV disputes would depend, in part, on the rules of the organisation managing the sample analysis for that particular sport (i.e. ASADA or the relevant international federation). Any appeal would also be heard by the NST, subject to the 'opt-out' provisions and the excepted sports mentioned above.

In relation to its 'General' division, the NST would, by contrast, operate on an 'opt-in' basis, providing individual sports with the option to have integrity and other disputes resolved by the NST, both at the first hearing and the appeal level. However, it is not proposed that the 'General' division jurisdiction would extend to commercial contract disputes, on-field violations not amounting to breaches of integrity policies, or to behavioural issues. The 'opt-in' nature of the General division would be facilitated by commercial agreements between athletes, governing bodies and/or sporting organisations and the NST.

The Wood Review also proposed an option for athletes whose case would normally be dealt with by an individual sports-run tribunal, to have leave to apply to have the matter heard in the first instance by the NST. This is likely to occur where the interests of fairness would justify it, (e.g. by allowing the exercise of evidence presentation that would not otherwise be available).

Powers of the NST

It is proposed that the NST be conferred with private arbitration powers, but would also be able to engage in mediation, conciliation and other dispute resolution strategies (particularly in respect of its 'General' jurisdiction) for the prompt and cost-effective resolution of cases. The NST is also proposed to have the characteristic of transparency and a closed list of arbitrators with specialised experience relevant to sporting disputes.

In relation to ADRVs, the current sports-run tribunals and the CAS have limited powers for gathering information and evidence - a hurdle that could be overcome by the establishment of the NST. At present, only ASADA is able to compel any person to produce documents or disclose information. Sports-run tribunals and the CAS' powers depend upon the contractual arrangements in place with the relevant sport. By their very nature, these contractual arrangements will include the athletes and any relevant support personnel (e.g. medical officers) within the sporting organisation, but would not extend to third parties who may have valuable information or evidence.

In order to address these limited powers, the Wood Review recommends that the NST have similar powers and immunities to those of the Fair Work Commission, including the power to require a person to attend before it, to provide copies of documents, records or other information and to take evidence under oath. A failure to comply with an order to attend as a witness or to produce documents could result in the imposition of penalties, including monetary fines or 12 months' imprisonment.

It is also proposed that the NST be answerable to the Australian Government only and not subject to ministerial discretion (except under limited circumstances) to remove the prospect of any actual or apprehended bias in the decision making process. The NST would operate under Australian law and be subject to judicial review, if it exceeded a proper exercise of its powers.

Adoption

The Wood Review makes reasonable proposals from a consistency perspective in relation to integrity in sports. The Australian Government is yet to comment on whether it will adopt any of the recommendations contained within the Wood Review. We will continue to monitor the response from the Australian Government to the Wood Review. In the circumstances that the recommendations of the Wood Review are adopted by the Australian Government, it is likely to impact many sporting bodies throughout Australia.

For more information or discussion, please contact HopgoodGanim Lawyers' [Leisure, Sport and Entertainment](#) team.

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