

Case: NST-E21-4222

Case title: Perth Heat v Canberra Cavalry and Baseball Australia

## Determination

### National Sports Tribunal

#### Appeals Division

sitting in the following composition:

Panel Member/s

Ms Judith Levine (Presiding Member)

Professor Jack Anderson

Mr Craig Green

in the arbitration between

**Perth Heat**

*(Appellant)*

Represented by Rory Vassallo

And

**Canberra Cavalry**

Represented by Dan Amodio

*(Respondent 1)*

And

**Baseball Australia**

*(Respondent 2)*

Represented by Cam Vale



## PARTIES

1. The Appellant is Perth Heat, one of six teams that is playing in the 2020-21 season of the Australian Baseball League (“**ABL**”). Perth Heat is represented in these proceedings by its Chairman, Rory Vassallo.
2. The First Respondent is Canberra Cavalry, another team in the ABL. Canberra Cavalry is represented in these proceedings by its Director, Dan Amodio.
3. The Second Respondent is Baseball Australia. Baseball Australia is the descriptor given to the Australian Baseball Federation, which is the governing body for all levels of baseball throughout Australia. Baseball Australia is a national sporting organisation as defined in section 5 of the National Sports Tribunal Act 2019 (Cth) (“**Act**”). Baseball Australia is the 100% owner of the ABL, and is represented in these proceedings by its CEO, Cam Vale, who is also the CEO of the ABL. An independent 3-member tribunal set up by the ABL issued the decision of 12 January 2021 that is the subject of the appeal in the present proceedings.
4. The four other teams playing in the 2020-21 ABL season were given an opportunity to make submissions in these proceedings as “interested parties”, given that the outcome of the appeal and any change in results arising from it could directly impact the current ABL standings. These four teams are the Adelaide Giants, the Brisbane Bandits, the Melbourne Aces, and the Sydney Blue Sox. Of these four teams, only the Melbourne Aces opted to make a written submission, which was filed by its Chairman, Brett Ralph.

## INTRODUCTION

5. This is an appeal brought by Perth Heat against Canberra Cavalry and Baseball Australia, pursuant to an agreement dated 18 January 2021 to refer their dispute to the National Sports Tribunal (“**NST**”).
6. The dispute concerns the four-game opening series of the ABL 2020-21 season that was scheduled to be played between Perth Heat and Canberra Cavalry in Perth on 18, 19 and 20 December 2020. The games were not played, as Canberra did not travel to Perth.
7. An independent tribunal convened by Baseball Australia (“**First Instance Tribunal**”) recommended, on 12 January 2021, that:

*As the series did not occur then it should be considered null and void and no outcome, including the allocation of wins and losses, should be registered. The series should be considered either postponed or abandoned.*

8. The First Instance Tribunal determined that the series was “COVID-19 effected and should be classified the same as all other series that have not been completed”. The Parties’ agreement referring this dispute to the NST describes the present appeal as being “made on a decision made by the Baseball Australia Tribunal to declare a series of games in December 2020 that were to involve Perth Heat and Canberra Cavalry as being COVID impacted and no result was awarded.”



9. The appeal is an urgent one, in light of the fact that the ABL season is currently ongoing and will conclude on Sunday, 7 February 2021. According to Perth Heat, in this “shortened season all results are important and the outcome of this appeal can impact the standings.”
10. This Determination first deals with the jurisdiction of this Tribunal. Next, it sets out the factual background to the Parties’ dispute, then recounts the history of the proceedings before the NST. The Tribunal then sets out in some detail the relevant rules and regulations which apply to the dispute, primarily the ABL’s “Rules and Regulations 2020-21”. The Tribunal next summarises the main submissions of the Parties, including the outcomes each Party proposes as appropriate in this case (ranging from a 4-0 or 2-0 forfeit, to a 2-2 split, or a ‘no outcome’ result awarding no points to either team). The Tribunal then assesses each of those proposed outcomes on their merits, based on the application of the relevant rules to the facts as established by the evidence.
11. For the reasons outlined below, the Determination reached by the Tribunal is that the appeal should be dismissed. The Tribunal does not consider a forfeit or a split result would be appropriate in this case. The Tribunal finds that the outcome recommended by the First Instance Tribunal was supported by the ABL’s Rules and Regulations, is justified by the facts of the case, and is consistent with an equitable outcome in all the circumstances. Accordingly, there shall be no result recorded for the Perth-Canberra games that were scheduled to be played on 18-20 December 2020.

## NST JURISDICTION

12. The basis of this Tribunal’s jurisdiction is section 35 of the Act, which provides in relevant part:
  - (2) *If:*
    - (a) *a dispute arises between:*
      - (i) *a person bound by one or more constituent documents by which a sporting body is constituted or according to which a sporting body operates; and*
      - (ii) *the sporting body; and*
    - (b) *a sporting tribunal administered by the sporting body makes a decision in relation to the dispute; and*
    - (c) *either:*
      - (i) *the dispute is of a kind prescribed by the rules for the purposes of this subparagraph; or*
      - (ii) *the dispute is approved by the CEO, in writing, as a dispute to which this section applies; and*



- (d) *none of the constituent documents permits an appeal to the Appeals Division of the National Sports Tribunal from the decision; and*
- (e) *the person and the sporting body have agreed in writing that an appeal is able to be made to the Appeals Division of the National Sports Tribunal from the decision;*

*The person or sporting body, or any other person or body specified in that agreement as being able to make such an appeal, may appeal to the National Sports Tribunal from the decision.*

13. On 21 January 2021, the CEO of the NST made a decision under section 35(2)(c)(ii) of the Act to approve the referral of the dispute to the NST, on the basis that the dispute met the conditions of 35(2)(a) and (b) of the Act. The constituent documents do not expressly refer to appeals of this nature to the Appeals Division of the NST, and thus the section 35(2)(d) condition is also satisfied. Finally, the Tribunal accepts that the Parties' signed agreement of 18 January 2021 constitutes an agreement for purposes of section 35(2)(e) of the Act.
14. The Tribunal therefore confirms that the requirements of section 35(2) are met in this case and that it has jurisdiction to decide the present appeal.
15. Under Section 95(5) of the National Sports Tribunal (Practice and Procedure) Determination 2020 (the "**P&P Determination**"), the Tribunal is to "conduct the appeal by way of a rehearing". Accordingly, this Tribunal considers afresh the question of how to treat the four-game opening series between Perth and Canberra that was scheduled for 18 to 20 December 2020.
16. Section 40(1) of the Act sets out general principles relating to arbitration in the NST, including that the NST is not bound by the rules of evidence but may inform itself on any material in such manner as it thinks appropriate.
17. Section 95(6) of the P&P Determination allows the Tribunal to admit new evidence on appeal as permitted by the agreement to refer the dispute, where all involved parties to the appeal agree, or where the Tribunal is satisfied that exceptional circumstances warrant the admission of new evidence. The Tribunal has relied on the evidence that was presented to the First Instance Tribunal, as well as the materials and information presented to this Tribunal by all participants in their documents filed with the NST, during their oral submissions at the hearing, and in follow up to the Tribunal's requests at the hearing. These included a summary of Canberra's travel bookings for the 18 December 2020 series, the ABL's Covid-19 Protocols, updates on how other games in the 2020-21 season have been dealt with in the face of changing travel restrictions, and the recent decision of the ABL to introduce an additional week of rescheduled games before the season closes.



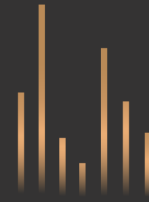
## FACTUAL BACKGROUND

18. What follows is a summary of the relevant facts and allegations based on the parties' written and oral submissions. Additional facts and allegations found in the parties' written submissions or made orally at the hearing of 29 January 2021 may be set out, where relevant, in connection with the discussion of the merits that follows. While the Tribunal has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Determination only to the submissions and evidence it considers necessary to explain its reasoning.
19. The ABL season takes place during the southern hemisphere summer, and features Australian and international players. The opening series of the 2020-21 season was scheduled to include four games between Canberra Cavalry and Perth Heat, to be held in Perth from 18 to 20 December 2020.
20. Unsurprisingly, due to the Covid-19 pandemic, the 2020-21 season was not a "normal" one. As Cam Vale, CEO of both the ABL and BA described, "everyone accepted that this year would pose significant challenges and require lots of variations" in order to make the season happen. These challenges included Australia's international border closure and quarantine rules for international import players; state and territory border restrictions imposed following new outbreaks of Covid-19 in Australia in December, and compliance with protocols to ensure the safety of all participants and stakeholders in the league. Nevertheless, all participants were committed to making the season happen, including for commercial reasons, and they would try to play and try to play safely.
21. Canberra Cavalry had experienced some initial problems in the pre-season with getting its roster of players ready, due in part to delays in the arrival of its international imports and their clearance of quarantine. Additionally, the parties referred to Canberra experiencing internal management issues and a "business partnership breakdown". These initial problems led Canberra Cavalry to reach out to Baseball Australia and other teams in early December seeking to borrow local players to help fill its roster. It received offers from other teams, including Perth Heat and the Brisbane Bandits to assist in making up numbers. The ABL also introduced a "Player Loan Rule" on 14 December 2020 to enable teams to compete when they were facing player shortages, and granted Canberra a one-week extension to finalise its roster for the opening series.
22. Despite the initial problems Canberra faced (some of which, in hindsight, Canberra admitted it could have done more to address), by 17 December 2020, with the assistance of the ABL and with loans from other teams, the Canberra Cavalry had managed to assemble and sign contracts with 24 players for the opening series. These 24 players, as well as 3 staff, were booked and ready to fly to Perth on the morning of 18 December 2020. This fact is not disputed, and was further established by updated travel documents produced by Baseball Australia to the NST on 30 January 2021.
23. However, on the night of 17 December 2020, less than twelve hours before the Canberra team was due to travel to Perth, the Western Australian government announced its decision to

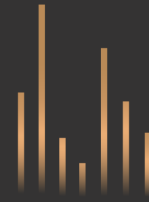


elevate the risk level of NSW from “very low risk” to “low risk”, with travel restrictions in effect from 12.01am on 18 December 2020.

24. As explained by Dan Amodio of Canberra Cavalry, the impact of the WA government’s decision was that most of the Canberra team were ineligible to travel to WA. That included team members who lived or worked in NSW (this is not uncommon, with Canberra being a border town); team members who had visited NSW in the previous 14 days, and anyone who had knowing contact with anyone from NSW. The latter category included all players who had attended training, because NSW-resident players had been at the training sessions. Between 16-18 of the 24 players scheduled to travel to Perth were not permitted to fly to WA.
25. This situation led to a series of overnight exchanges and attempted compromises among the ABL, Canberra Cavalry and Perth Heat. Dan Amodio of Canberra suggested in an email of 2:18am that the series should be cancelled, “or at the very least” Friday’s game should be postponed “to give us more time to figure this out tomorrow”. If Perth “really wanted to get this done tonight”, Canberra offered as an alternative proposal: (i) having its 8 eligible players (who were from Queensland or WA), (ii) having uniforms sent over separately, (iii) allowing the Canberra name be used, (iv) minimising injury risk to contracted Canberra players, (v) covering certain costs, and (vi) awarding 2 wins each to Perth and Canberra regardless of the outcome on the field. Baseball Australia replied noting some work was to be done the following day and that the ABL Rules, possibly to be interpreted by the Baseball Australia board, “will need to determine what occurs if this series isn’t played.” Canberra confirmed at 3.11am “we’ll do whatever we can to make this work.” Perth Heat did not reply to the 2:18am proposal.
26. By 9am on 18 December, there was no clear agreement with Perth Heat or instruction from Baseball Australia as to how to proceed. Canberra advised that “at least 22 of our 24 contracted players are now either not eligible to enter WA because of flight restrictions or no longer available to fly to Perth because of a lack of confirmation last night.” Thus, Canberra stated “we have gotten to the point where the Cavalry are unable to field a team to send to Perth”, noting that “the change of NSW to a ‘low risk’ state by the WA Government last night has handcuffed us to a critical point”. Canberra explained that without confirmation or reply to its proposal it was unable to ensure safety of its players, financial protection or good-faith stewardship of its brand. Accordingly, the Perth-Canberra games did not take place on 18-20 December.
27. Canberra did allow its players who were eligible to go to Perth to play if they wished. Four of those players, together with some players from Brisbane ended up playing two exhibition games in Perth. To some extent this met Perth’s commercial imperative of having home games on Friday and Saturday.
28. On 30 December 2020, Mr Vale wrote to both teams, stating that: “As we work through the latest schedule changes today and tomorrow, I want to make a decision on the Perth v Canberra 4 game series by no later than Tuesday 5<sup>th</sup> January.” He invited both teams to write to him with their positions “on what should occur, citing the rules and other information you see fit.”



29. On 31 December 2020, Rory Vassallo for Perth Heat submitted to the ABL that “the only result from Perth Heat’s cancelled series against Canberra Cavalry ... is a Canberra forfeit, with Perth Heat awarded all four (4) games.” The simple reason for this, he said, was that Canberra “mismanaged a total of nine (9) players” and Dan Amodio had been “well aware of his team’s issues to field a team for the opening series well before he withdrew Canberra from the series on the morning of Friday, December 18.” Perth questioned whether Canberra had met the deadline to submit 22 contracted players for the opening series and alleged that Canberra had not taken up offers of replacement players. Perth submitted that, “if it was Canberra’s decision [not to play], the result of the series should be a forfeit for each game”. Mr Vassallo also expected that the “license consequences of a forfeit or non-participation will be enforced in full as the decision not to participate was clearly discretion on behalf of Canberra’s management.”
30. In Canberra Cavalry’s submissions to the ABL of 31 December 2020, Mr Amodio recalled that on 17 December Canberra did have 24 contracted players and 3 support players ready to travel. Its inability to field a legal roster was out of its control due to external reasons, namely the WA government’s decision. Canberra stated that it was “open to a rescheduled series” but given the difficulties would “support abandoning that attempt and cancelling the games”, in which case “the series should be split with 2 wins each and we should focus on getting as many more games in as possible this season.” As a precedent for a split result, he referred to the bushfire-affected series the prior year, when rescheduling was not viable. He also referred to his overnight efforts to offer a solution that took account of player safety, financial protection and a fair series; and recalled that his offer was never accepted or even acknowledged.
31. On 6 January 2021, Cam Vale sought the input of three senior staff of Baseball Australia. Each described it as a difficult and challenging decision and they offered slightly different solutions:
- “Exec 1” recalled the earlier issues with Canberra, noted there was no fault of Perth, suggested the matter be referred to a tribunal, and that the reasonable options would be either a “games split per the rules if it is reasonable to assume Canberra could not have fielded a team” or a forfeit with licence-stripping consequences.
  - “Exec 2” also recalled Canberra’s initial problems with its international imports, the offers from Perth and Brisbane, and considered awarding Perth 2-0 wins as the best path forward if that option was available. He thought 4 wins to Perth would be excessive but that a 2-game split would not be fair as it would reward Canberra.
  - “Exec 3” initially felt “this is the definition of a COVID-19 affected series” and that it should be a 2-2 split. He noted that “Canberra had a team together ready to go the week of the series before quickly having the whole team affected” and observed that “Rory seems to be pushing the mistakes of the past led them to this point... In my opinion this is valid but is cancelled out by the fact Canberra did have a team the week of the series.” While Canberra had the opportunity to use non-Canberra players, “the vast majority of their players were knocked out” and they have a right to protect their team in some degree. Given the “schedule is still playing out” the two options he saw were “2-0 [to Perth]” or “0-0 Never existed”, noting that if the schedule pans out that Perth Heat will get back up towards 24 games... “then this is really the only option”.



32. Having obtained the input of the three executives, and also having consulted the other teams on 18 December 2020, the ABL CEO considered that Canberra should have made more of an effort to play but also considered that only if the games are not playable should they be ruled as split series or cancelled. With no clarity or agreement about the situation, the ABL decided to send the matter to an independent tribunal composed of the official in charge of in-season tribunals as well as two legally-qualified board members of Baseball Australia.

33. The First Instance Tribunal convened on 11 January 2021, was provided with submissions from both teams and background material from the ABL, and found as follows:

*The three-member independent tribunal recommend that as the series did not occur then it should be considered null and void and no outcome, including the allocation of wins and losses, should be considered postponed or abandoned.*

34. The reasons provided are reproduced below:

1. *Canberra Cavalry did not have enough players available to be reasonably expected to field a squad to travel to Perth to participate in the scheduled games.*
2. *Canberra Cavalry's roster was significantly affected by the circumstances of COVID-19, which rendered a high percentage of players unable to travel.*
3. *The ABL had foreseen the possibility that clubs may require additional players during the season and a loan-system was implemented to assist clubs to fulfill their commitments. This loan-system was created to top-up teams, not to replace almost the entire roster and a clear distinction needs to be made between the use of top-up players versus the majority of the team being replaced. In the case of top-up players whether it is loan or local players, this has been common practice in the ABL pre-Covid 19 and clearly during Covid-19. A replacement team or majority that have no connection to the rostered players is significantly different and while appropriate for an exhibition or to maintain a commercial outcome, it does not represent a proper game.*
4. *It is noted that Perth, with the assistance of the Brisbane Bandits, were in a position to make state league/development players available to play and represent Canberra Cavalry.*
5. *Due to Covid-19, a number of series during the 2020/21 ABL Season have been cut-short or abandoned due to similar restrictions that were a factor in Canberra Cavalry not being able to travel to Perth. In every one of these other cases there has been no suggestion that 'uniforms' be sent so local players could represent the visiting team and complete the fixtures....*
6. *The reasoning for declaring the series null and void and not allocating wins and losses, is because it is consistent with all other series that have been abandoned at some point or not played. In no other circumstances this season have wins and losses been subsequently awarded to a COVID-19 effected series.*



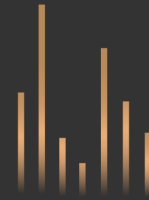


7. *It was suggested that Canberra was unprepared for the season and did not make sufficient effort to field a team for the series in Perth. No clear evidence was available to the independent tribunal to support this inference.*
8. *The inability of Canberra Cavalry to send a reasonable number of players and team staff to Perth was magnified due to it being the opening series of the season. Subsequently, multiple other clubs have been unable to send teams to fulfil scheduled playing commitments. In every case this was due to circumstances associated with Covid-19 and no penalties applied.*
9. *We determine that the series between Canberra Cavalry and Perth Heat was also Covid-19 effected and should be classified the same as all other series that have not been completed.*
35. The First Instance Tribunal referred to the treatment of other games in the season that were affected by Covid-19 restrictions. This included, for example, situations where the Melbourne Aces were flown back to Victoria mid-series with Sydney due to new travel restrictions being imposed, with the result that the two unplayed games were cancelled and no results recorded. Similarly, over the new year period, games in Brisbane were cancelled as a result of an outbreak there.
36. Perth Heat expressed dissatisfaction with the First Instance Tribunal's decision and the Parties agreed to refer the matter as an appeal to the NST.
37. As noted in Baseball Australia's submission to this Tribunal, "there is one other key piece of information that has occurred since the [First Instance] Tribunal" which is that "the ABL season has been lengthened by one week and Perth Heat have been given a replacement home series for the one missed against Canberra. So the Perth Heat will now be back playing a scheduled 12 home games and 13 away games although the opponent for this last series will change from Canberra to Melbourne Aces. The last week was created to have replacement series or games for those lost in late December and early January."
38. As explained at the hearing, with the extension of the season and additional games scheduled for the first week of February, most teams will complete the season having played at least 24 games (with the exception of Sydney). Baseball Australia also explained that the ABL will determine which teams go through to the play-offs based on a win:loss ratio of games played, rather than on points.



## PROCEEDINGS BEFORE THE NST

39. Perth Heat filed its Application for an Appeal on 20 January 2021, stating that it seeks the following outcome from the appeal: “A four (4) nil series victory to be awarded to Perth Heat or a minimum of 2 wins (a split series except Canberra being awarded 0).” Perth Heat requested that the appeal be dealt with on an expedited or urgent basis.
40. On 22 January 2021, the CEO of the NST held a Preliminary Conference with the Parties during which the composition of the panel was proposed and a timetable set for further submissions and a hearing on 29 January 2021. The same day the NST contacted the four other teams in the ABL to invite them to join as “interested parties” and to file any submissions by close of business on Monday 25 January 2021.
41. On 25 January 2021, the Parties agreed, and the NST confirmed, that the panel hearing the appeal would be composed of NST Members Ms Judith Levine of Sydney (presiding), Professor Jack Anderson of Melbourne, and Mr Craig Green of Hobart (“**Tribunal**”).
42. Also on 25 January 2021, (i) Canberra Cavalry filed its Response to the Application and confirmed its agreement to the NST resolving the dispute; (ii) Baseball Australia filed its Response to the Application and confirmed its agreement to the NST resolving the dispute; and (iii) the Melbourne Aces filed an application to join the dispute as an interested party and agreed to the dispute being heard by the NST.
43. While the NST had extended the opportunity to the Appellant to file further responsive submissions by 27 January 2021, Perth Heat did not file any further written submissions.
44. Pursuant to a request from the Tribunal conveyed via the NST, Baseball Australia provided the NST with a link to the Official Baseball Rules on 28 January 2021.
45. Also on 28 January 2021, the NST shared with the Parties the Tribunal’s proposed running order for the hearing. The NST advised the Melbourne Aces that they were invited to participate in the hearing if they so wished, but the Melbourne Aces declined and stated they wish to rely on the written statement that has been provided.
46. A hearing was held on Friday 29 January 2021. As explained to the Parties at the outset, and by the CEO of the NST at earlier preliminary conferences, the purpose of the hearing was for the parties to present evidence and submissions to the independent Tribunal, and the Tribunal would then make a binding and enforceable decision.
47. The Presiding Arbitrator reminded the Parties that pursuant to sections 40, 41 and 54 of the P&P Determination that the hearing, evidence and submissions are confidential. As such the Parties were not permitted to record, transcribe or photograph the hearing. She also reminded the hearing participants to answer all questions truthfully and to act in good faith in relation to the conduct of the arbitration, as required by section 40 of the Act. The Parties had already signed declarations that their submissions were correct to the best of their knowledge.



48. While the Tribunal had familiarised itself with the materials that had been filed to date, the NST Registry prepared a hearing bundle, containing the documents in the record, which was used throughout the hearing as a common point of reference.
49. Before hearing from the Parties, the Tribunal indicated that it would have questions both about the facts and about the application of the relevant rules. In particular, the Tribunal said it wished to understand the outcomes available and the basis for such outcomes under the relevant ABL Rules and Regulations and/or the Official Baseball Rules. To this end, it stated that it would be helpful to understand the rationale and the rules behind the First Instance Tribunal's decision to consider that the series "should be considered null and void and no outcome should be registered ... the series should be considered either postponed or abandoned". It also identified four possible outcomes apparent from the record (4-0 forfeit, 2-0 forfeit, 2-2 split, or 'no result') and stated that it would be asking each Party to identify which outcome would be the most appropriate, on what basis in the Rules, and on what justification on the facts.
50. As to factual questions, the Tribunal flagged that it wished to understand not only what happened in the lead up to 18 December 2020, but the wider context, including how the ABL has treated other games in similar circumstances, and any rescheduling of games that has taken place since 18 December 2020.
51. Mr Vassallo made submissions on behalf of Perth Heat and answered questions from the Tribunal. Mr Amodio made submissions on behalf of Canberra Cavalry and answered questions from the Tribunal. Mr Vale made submissions on behalf of Baseball Australia and answered questions from the Tribunal.
52. The hearing was held via video conference and lasted approximately three hours. All Parties were provided with an opportunity to reply to the submissions made by the other Parties, supplement their answers to the questions posed by the Tribunal, and make any further statements in closing. Members of the NST Registry were also in attendance.
53. Upon being satisfied that the Parties had no further submissions, the Presiding Arbitrator closed the proceedings and, acknowledging the desire by all Parties for a prompt decision, indicated that a written determination would be forthcoming from the Tribunal within a week.
54. Further to discussions during the hearing, on 1 February 2021, the NST forwarded to the Tribunal two items that Baseball Australia had agreed to provide, namely (i) flight booking information showing the number of Canberra players booked to travel to Perth on 18 December 2020 (updating a spreadsheet that was in the record from the prior week); and (ii) a copy of the "ABL Covid-19 Protocols" referenced at page 39 of the ABL Rules and Regulations.



## APPLICABLE RULES

55. The Tribunal has closely reviewed the **ABL Rules and Regulations 2020-21**, including portions of the **Official Rules of Baseball** which are incorporated into the ABL Rules in Rule 8.A. The Tribunal also reviewed the policy instituted by the ABL for player loans in the 2020-21 season, and the ABL's Covid-19 Protocols. The key provisions of these documents are set out below.

### a. ABL Rules 2020-21

56. **Rule 1** concerns player lists and numbers. Each Team is to submit a minimum of twenty-two (22) signed player agreements a week before the commencement of their team's first game of the 2020/21 ABL season. A player may be added to the Registered List during the season with ABL approval by midday prior to Game 1. Rule 1 provides that "final contracting and placement on the Registered List is at the sole discretion of the ABL." Once approved by the ABL, any player on the Registered List of a team cannot play for any other ABL team until removed from their team's Registered List or they "apply to the ABL for special consideration and are granted a release." A Team may place a maximum number of 35 players on its Registered List. Any changes must be notified to and approved by the ABL.

57. Under **Rule 2**, the ABL approves and registers player contracts, and regulates salary conditions and salary caps. Under Rule 3, no player can participate in any ABL game until it has signed a contract in the form prescribed" and that use of ineligible players shall subject the offending Team to penalties imposed by the ABL.

58. **Rule 5D** gives the ABL the "right to overturn or change any ruling from an official scorer [including forfeits] if deemed necessary" and that this "shall be at the absolute discretion of the ABL CEO..."

59. **Rule 7** deals with "Claim Presentation", and provides for the ABL to decide disputes on discipline, disputes between teams and players, and any "other complaint that any party may desire to submit for consideration, action or decision by the ABL".

60. **Rule 8** establishes that the Teams shall play all games according to the provisions of the Official Baseball Rules ("Official Baseball Rules").

61. With regard to **Schedules**, **Rule 9** provides as follows [emphasis added]:

A. **CHAMPIONSHIP SEASON.** *In each year the ABL shall prepare and issue the official schedule for the ABL Championship season. The ABL may, in its discretion, reschedule or postpone any game as the ABL may deem necessary, whether for reasons of inclement weather, unplayable field conditions or otherwise.*

62. With respect to the post-season, the ABL reserves the right to determine the hosting format independent of the team's rankings if "compelling circumstances such as field availability, team travel schedules, prohibitive flight availability and/or costs or other external circumstances arise" and such decisions will be "at the absolute discretion of the ABL".



63. **Rule 10** on “**Enforcement of Rules**” provides as follows:

A. *In case the ABL shall determine that a Team or person has violated any of the foregoing Rules, as to which penalty provisions are not otherwise set forth in these Rules, the ABL may take action it deems appropriate.*

...

64. Finally, but significantly, inserted at the end of the “Rules” portion of the ABL Rules, and appearing before the Regulations, is the following “**Special Note on ABL Rules**”:

*The ABL reserves the right in exceptional circumstances to allow certain exemptions to these rules if deemed necessary. Exemptions shall be at the absolute discretion of the ABL CEO.*

65. The Tribunal observes that consistently throughout the ABL Rules are expressions of broad powers and discretion of the ABL to enforce the Rules and make exceptions to them, and to deal with situations as it considers appropriate, including those that are not expressly covered by the Rules. Such powers extend to making exceptions to rules on player numbers and eligibility; deciding or changing outcomes of games; postponing or rescheduling games for reasons of weather, unplayable field conditions or “otherwise”; resolving complaints; and allowing exemptions to the Rules as deemed necessary.

#### **b. ABL Regulations (and relevant Official Baseball Rules)**

66. The ABL Regulations most pertinent to the present dispute are Regulation 3 on Uncompleted Games; Regulation 7.4 on Postponement; Regulation 7.6 on Rescheduling; and Regulation 7.7 on Postponed, Suspended and Tie Games.

67. **Regulation 3** on “**Uncompleted Games**” makes provision for suspended games, forfeits games, and records for games declared “No Game”.

#### **3.1 SUSPENDED GAMES**

*The rules for completion at a future date of suspended games, as described in Official Baseball Rule 7.02 are adopted for ABL play. A suspended game shall not be counted in league standings, and individual and team performances shall not be included in the official statistics, until after such game has been either completed pursuant to Official Baseball Rules 7.02(b)(1) through 7.02(b)(3) or called pursuant to Rules 7.02(b)(4)(A) or 7.02(b)(4)(B). See also Official Baseball Rule 4.04.*

*The Australian Baseball League also adopts the following optional rules for suspended games (as such, Official Baseball Rule 7.01(e) does not apply to ABL games):*



*Rule 7.02(a)(7) The game has not become a regulation game (4.5 innings with home team ahead, or 5 innings with visiting club ahead or tied).*

...

*The ABL may adopt any of Rules 7.02(a)(7), 7.02(a)(8) and 7.02(a)(9) for its post-season games or ABLCS at its sole discretion.*

### **3.2 FORFEITS**

**3.2.1 Score.** *A game shall be awarded to a Team by the score of nine (9) runs to none (0) in the event the other Team has forfeited the game pursuant to the Official Baseball Rules. See Official Baseball Rules 7.03 regarding Forfeited Games. Such forfeited games shall count in the championship season standings as if it has been a regulation game.*

**3.2.2 Fines.** *The ABL shall investigate any forfeited game and shall impose such fines or other discipline upon the forfeiting Team and/or its personnel as the ABL may deem appropriate...*

**3.2.3. Team withdrawal.** *Should a team, for whatever reason, fail to complete all games within the ABL season, the following shall apply:*

**3.2.3.1.** *The remaining games will constitute a 'bye' series for the scheduled opposition*

**3.2.3.2.** *All previously played game results and statistics stand*

**3.2.3.3.** *Wins and losses for the future 'bye' series will be awarded at a ratio of the withdrawing team's win/loss record from their last played game...*

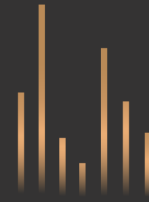
### **3.3 RECORDS**

*If a game is declared "No Game" pursuant to Official Baseball Rule 7.01(e), individual and team performances shall not be included in the official statistics. See also Regulation 3.1 (suspended game).*

68. As seen above, **Regulation 3** makes reference Rules 4.04, 7.01, 7.02 and 7.03 of the **Official Baseball Rules**. **Rule 4.04(c)** of the **Official Baseball Rules** on "**Weather and Field Conditions**" states:

*A postponed game shall be a "No Game" and shall be treated in the same manner as a game called before it has become a regulation game within the meaning of Rule 7.01(e).*

69. **Rule 7.00** of the Official Baseball Rules deals with "**Ending the Game**". **Rule 7.01** is on "**Regulation Games**" (consisting of nine innings, unless extended because of a tie score, or shortened because the second half of the ninth inning is not needed by the home team to win, or shortened because the umpire calls the game).



70. **Rule 7.01(e)** provides that:

*If a game is postponed or otherwise called before it has become a regulation game, the umpire-in-chief shall declare it "No Game," unless the game is called pursuant to Rules 7.02(a)(3) or 7.02(a)(4), which shall be a suspended game at any time after it starts.*

71. **Rule 7.02** of the **Official Baseball Rules** deals with "**Suspended, Postponed, and Tie Games**". Suspended games are those which have started but then have been suspended due to weather or playing conditions. As the games in this case had not ever started, the Tribunal has not treated them as 'suspended' games.

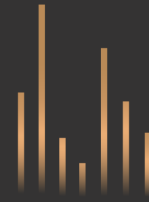
72. **Rule 7.02(5)** provides that:

*Any postponed game, suspended game (that has not progressed far enough to become a regulation game), or tie game that has not been rescheduled and completed prior to the last scheduled game between the two teams during the championship season must be played (or continued, in the case of a suspended or tie game) to a completed regulation game, if the League President determines that not playing such game might affect eligibility for the post-season and/or home-field advantage for any Wild Card or Division Series game.*

73. **Rule 7.03** of the **Official Baseball Rules** deals with "**Forfeited Games**" as follows:

(a) *A game may be forfeited to the opposing team when a team:*

- (1) *Fails to appear upon the field, or being upon the field, refuses to start play within five minutes after the umpire-in-chief has called "Play" at the appointed hour for beginning the game, unless such delayed appearance is, in the umpire-in-chief's judgment, unavoidable;*
- (2) *Employs tactics palpably designed to delay or shorten the game;*
- (3) *Refuses to continue play during a game unless the game has been suspended or terminated by the umpire-in-chief;*
- (4) *Fails to resume play, after a suspension, within one minute after the umpire-in-chief has called "Play;"*
- (5) *After warning by the umpire, willfully and persistently violates any rules of the game;*
- (6) *Fails to obey within a reasonable time the umpire's order for removal of a player from the game;*
- (7) *Fails to appear for the second game of a doubleheader within thirty minutes after the close of the first game unless the umpire-in-chief of the first game shall have extended the time of the intermission.*



- (b) *A game shall be forfeited to the opposing team when a team is unable or refuses to place nine players on the field.*
- (c) *A game shall be forfeited to the visiting team if, after it has been suspended, the order of the umpire to groundskeepers respecting preparation of the field for resumption of play intentionally or willfully is not complied with.*
- (d) *If the umpire-in-chief declares a game forfeited he shall transmit a written report to the League President within 24 hours thereafter, but failure of such transmittal shall not affect the forfeiture.*

...

74. **Regulation 7** of the **ABL Rules** contains a provision on “**Right to Postpone**” in Regulation 7.4, which provides for the home Team, after consultation with the ABL to have the right to determine whether a game shall not be started because of unsuitable weather conditions or unfit condition of the playing field. This is, however, subject to the ABL assuming that authority when the result of a possible postponement of a game during that series might affect final standings. The Regulation also provides that after a certain date to be determined by the ABL, the ABL shall be the sole authority empowered to determine whether a game shall not be started because of unsuitable weather conditions or the unfit conditions of the playing field. It adds:

*If any game is postponed or halted due to poor weather or playing conditions then in conjunction with the ABL General Manager and/or CEO a decision will be made about postponement, cancelation or resuming game...*

*The ABL shall decide at their sole discretion date and time of rescheduled game and shall inform all relevant persons ...*

75. **Regulation 7.6** sets out the following provision on “**Rescheduling**” [emphasis added]:

*The ABL and the teams shall make every effort to complete all championship season games in the city in which the games were originally scheduled. If any postponed or tied, games remain unplayed after the last scheduled date in any city between the affected Teams, such games shall be rescheduled on an available mutual off-day. If such date is not available, such games shall be rescheduled at the ballpark of the opposing Team, with the original home Team remaining as the home Team, notwithstanding the location of the rescheduled game. If no available mutual off-dates or series remain between the affected Teams, unplayed games will result in a ½ win awarded to each team.*

76. **Regulation 7.7** deals with “**Postponed, Suspended and Tie Games**” as follows:

*7.7.1 The ABL may select the date on which a postponed, suspended or tie game is to be rescheduled.*

...





**7.7.3 Other.** *No game shall be rescheduled for any reason other than as a postponed, suspended or tied game, unless the ABL has given prior approval to the rescheduling.*

**7.7.4** *Postponed, suspended or tied games or make up games that cannot be rescheduled prior to the last Sunday of the regular season will result in a half win being awarded to each team for games not played.*

**c. Additional Policies agreed for the 2020-21 Season**

77. In December 2020 the ABL introduced additional new policies to address some of the challenges caused by the Covid-19 pandemic.

78. One of these was entitled “ABL 2020-21 Player Loan”, in which the ABL decided to introduce a player loan rule in “response to the current global climate and the challenge in obtaining players” (“**Player Loan Rule**”). This Rule allowed players, upon approval of the ABL to be used when “there is a genuine player shortage that could cause a team to be unable to complete”. The Player Loan Rule set out provisions for players on a team’s registered list but not on an active list to be ‘loaned’ to another team. It set out a system for how the loaned players’ salaries, points allocations, and eligibility for play-offs, would be determined.

79. The ABL also issued detailed “ABL Covid Competition Protocols” for the 2020-21 season (“**Protocol**”). The preamble to the Protocol noted:

*Preparing for a season through a worldwide pandemic has been a monumental task for the ABL and ABL teams. The ABL will be one of the first Australian sporting leagues to conduct a home and away schedule, in addition to having a significant portion of international athletes competing.*

80. The purpose of the Protocol was, according to Paragraph 4(a), “to provide a framework to enable the safe return and delivery of the 2020-21 Season.”

81. The Guiding Principles of the Protocol include:

*(a) The health and wellbeing of its staff, players, fans and wider community is paramount to the ABL, as is the obligation to ensure that no additional risk to the community is created by the start of the 2020-21 ABL Season.*

...

*(h) Where relevant, Players, ABL Club Support Staff and Game Day Staff must ensure they comply with Australian, State and Territory Declarations, Directions and Orders.*

82. The Protocol sets out provisions on such matters as hygiene, Covid-19 testing, risk mitigation, and case management of infections. In Section 7 on “Travel”, paragraph 32(b) provides:



*Where scheduling permits, ABL Clubs should travel to and from Games on the same day, whether it be intrastate or interstate travel.*

83. The Protocol does not expressly deal with the consequences of cancellation, suspension or rescheduling of games as a result of Covid-19 related measures.

## MAIN SUBMISSIONS OF THE PARTIES

84. What follows is a summary of the parties' written and oral submissions as to the facts and legal consequences, including orders and relief sought. The Tribunal has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, and refers below only to the key points presented by each of the Parties. It does not repeat the factual statements made by the Parties which are already summarised under "Factual Background".

### a. Perth Heat

85. Perth Heat stated in its Application that the outcome it seeks from this appeal is:

*A four (4) nil series victory to be awarded to Perth Heat or a minimum of 2 wins (a split series except Canberra being awarded 0).*

86. Perth Heat submits that:

*Canberra's roster was significantly affected by the mismanagement of their squad throughout the off-season. Having their imports unavailable for Week 1 was not due to the circumstances of State border closures. All other teams in the league successfully had import players complete 14 days quarantine and be ready to complete by Opening Day – all teams were subjected to the same federal COVID requirements for entry to Australia.*

87. At the hearing, Rory Vassallo for Perth Heat described the case as being "about a business partnership breakdown and mismanagement of a roster" and submitted that Perth should not suffer from that situation.

88. Perth Heat recalled that the ABL and other teams (particularly Perth and Brisbane) went out of their way to help accommodate Canberra's shortages by offering to lend players, but claims Canberra opted not to use this option. Nothing in the Player Loan rule limits its usage to 'topping up' only small percentages of a team. Perth Heat also questioned whether there were real threats to player safety or Canberra's financial situation and also pointed out that the WA borders were closed to NSW, but not to Canberra itself. Mr Vassallo recalled that it was Canberra's decision not to send the team, and this should count as a forfeit.

89. Mr Vassallo said Perth had been "willing to do whatever it could to make things work" on 18 December, and that had not replied to Dan Amodio's 2:18am email offer because it was also addressed to Baseball Australia. He went to bed that night expecting there would be a



game the next day, and that jerseys would be brought over by a Baseball Australia official. By 9am though, Canberra had rescinded its offer.

90. Perth considered it wrong that the First Instance Tribunal took into account events that occurred after 18 December. However, if this Tribunal were to take subsequent events into account, they should note that Canberra used 8 borrowed players in its series against Melbourne.
91. As to the appropriate outcome, Perth maintained its view that a forfeit is appropriate, including any licensing or penalty consequences.
92. Perth submitted that there is no basis in the rules for the ABL to cancel games or for the First Instance Tribunal to have reached the 'no result' outcome that it reached. He noted that the ABL has the right to reschedule, but the games rescheduled for the first week of February are for every team's benefit and should not be characterised as a rescheduling of the Perth-Canberra series.
93. Finally, Perth confirmed that a 2-2 split would be even more harmful to Perth than the First Instance Tribunal's recommendation, because it would dilute its win:loss ratio and reward Canberra for unplayed games.

**b. Canberra Cavalry**

94. Canberra Cavalry considers that appropriate outcomes would either be the 2-2 split that it initially proposed by email at 2:18am on 18 December 2020, or the "no result" outcome which the First Instance Tribunal reached.
95. Canberra Cavalry maintains that, regardless of the internal management and rostering problems it experienced in the pre-season, by 17 December 2020 it had overcome these initial problems and had managed to assemble and contract a team of 24 players ready to travel to Perth on 18 December 2020.
96. According to Canberra, the reason it could not send the team to Perth was the intervening decision of the WA government, announced some 12 hours before the team was due to travel to Perth. This decision meant that most of its team was unable to play. Canberra is a border town, seven players live and work in NSW, 6-8 players had been in NSW in the 14-day period prior to the date of travel; the team had trained together and as a result those with contacts were also ineligible to travel. A combination of these reasons meant that 18 of Canberra's 24 players and 2 of 3 staff were not permitted to travel to Perth.
97. Mr Amodio also argued that all of Perth's arguments about Canberra's mismanagement of the six international import players who were still in quarantine are irrelevant. First, the situation was beyond Canberra's control due to a delay in government approvals. Second, in any event Canberra had managed to replace those players and had sufficient numbers ready by 17 December 2020. Third, even if Canberra had been better organised or more effective in lobbying for the international import players to be exempt or come out of quarantine on time,



those import players would have been denied entry to WA just like the other Canberra players, because they would have been in NSW or trained with team members who had been in NSW.

98. Canberra recalled to the Tribunal that it had tried to engage with Perth Heat to reach an acceptable environment for the event to go forward. However, its efforts to propose a compromise were met with silence from the executives of Perth Heat. It also had not received a clear directive from Baseball Australia (unlike its clear directions for the later Melbourne series). In those circumstances, by the morning, Canberra Cavalry abandoned their attempt to collaborate. It felt it was “not appropriate to send such a small contingent of players when safety of the players was a serious concern and 2/3 of the team would be replaced with local below-standard players.” At the hearing, Mr Amodio explained the safety concerns related to injury risk (playing without usual coaching staff). Canberra believes that during a “very unfortunately timed change in travel restrictions that was out of our control” they made the right decision not to send the team.
99. Canberra also points to events after 17 December, noting that other teams have experienced similar challenges related to restrictions, including the cancelled Melbourne/Sydney games. Melbourne was not asked to leave jerseys in Sydney so Sydney could make up a replacement team and play the remaining games. Likewise games were cancelled during the Brisbane outbreak in January.
100. Canberra shared the view of the First Instance Tribunal that the Player Loan Rule was “not intended to replace a majority or all of a team’s roster.” Indeed, in its series against Melbourne, Canberra utilised the rule on 2-3 January 2021 when travel restrictions required some of Canberra’s players to not compete. Canberra sent all 16 eligible players to Melbourne and borrowed 8 players under the Player Loan Rule to complete the roster. They did similar for the 14-17 January games in Melbourne.
101. As for outcomes, Canberra considers a 2-2 split or treating the game as cancelled would be acceptable. This situation was different from the bushfire precedent (which resulted in a 2-2 split) because in that season, rescheduling was not possible at all, whereas in this season, there has been some rescheduling (albeit not the same teams or cities). Canberra believes that the First Instance Tribunal made the right decision by treating the game as cancelled.

**c. Baseball Australia**

102. In its written response to Perth Heat’s Application, Baseball Australia accepted the fact that Perth Heat wished to appeal the First Instance Tribunal’s decision, noting that the decision had also gone against the consensus view of the management team which had considered a 2-0 result might be appropriate, on the basis two games could have been played (and in fact were played by the Brisbane Bandits Academy team). It explained however that the management staff had felt conflicted in whether their view was correct and that is why the matter had been sent to an independent and qualified tribunal. Baseball Australia then accepted the outcome of the First Instance Tribunal’s decision, and believes the process was “correct and consistent” and that, “whether right or wrong, an independent tribunal reviewed the evidence and submissions and made a clear unbiased decision.” Baseball Australia was also very



comfortable with a matter like this being appealed to the NST as it is at a “material level of significance.” Perth was offered an interim appeal to the full Baseball Australia board, but ultimately agreed to refer the matter to the NST.

103. Baseball Australia added, with respect to the extended season (as well as the two exhibition games held with Brisbane Bandits Academy players on 18 and 19 December), that “there is a strong argument to say Perth Heat have had the best schedule for both baseball and business purposes of any team.”
104. During the hearing, it was apparent from Cam Vale’s submissions for Baseball Australia that this has “not been a normal year” but rather an “asterisk season” where all participants have had to face challenges and adapt to variations from the normal in order to make the season happen for commercial reasons.
105. As for the Perth-Canberra series scheduled for 18-20 December, Mr Vale noted that Canberra did have enough players to play, but then WA government decision came in and at that point, the “key thing” was to do everything they could to give Perth a series to meet its commercial imperative of having a home game on Friday and Saturday nights. That was, according to Mr Vale, the key reason Perth did not want to reschedule or postpone. An exhibition game did still occur.
106. Mr Vale had some criticism of both teams, acknowledging that Perth could have been more flexible and responsive; and Canberra could have been more organized in the lead up to the series to mitigate the situation of having less than 35 contracted players going in.
107. This was a very unusual set of circumstances, and required difficult 12AM-4AM decision-making (contrasted with, for example, the Canberra-Melbourne series played later with more time and more clear directives in the lead up). Evidently, the rules do not provide a “Covid-19” exception. That said, Mr Vale told this Tribunal that ABL Rule 9 provides a blanket/catch-all for the ABL to make decisions it deems necessary in the circumstances. It reflects that the ABL needs to be able to make decisions for safety and in interest of the league, and therefore he disagreed with Perth Heat that there is no basis in the rules for cancelling games or treating them as having no result.
108. Mr Vale also acknowledged that forfeits are very serious and very rare and usually tied to circumstances due to fault of the forfeiting team. He has seen none in his 4 years at the ABL. He also drew a distinction between postponements due to weather (especially when teams were on the field and ready to play), and cancellations due to Covid-19.
109. Mr Vale noted that with the ABL having extended the season and rescheduled series for the first week of February, most teams would get to 24 games (with the exception of Sydney (14) and Melbourne (28)).



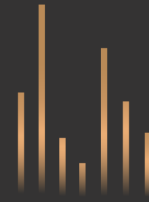
**d. Melbourne Aces**

110. The Melbourne Aces are supportive of the Perth Heat in the appeal and consider the Perth Heat should “receive at least a 2-0 result.” In reaching that result, they consider the earlier events and “Canberra’s mismanagement” throughout the course of the period leading up to 18 December 2020, and made the following points in their written submissions.

...

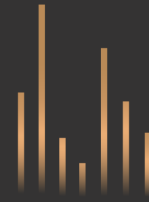
2. *Whilst W.A. border restrictions impacted on a handful of Canberra players availability to travel to Perth, they should have been in a position to field a team anyway, particularly when Perth, Brisbane and Melbourne made available ABL quality players to reinforce their squad.*
3. *Canberra’s import players that were still in quarantine were unavailable because of Canberra’s mismanagement, not because of some unforeseen circumstance. Every other team had their imports available to play. The unavailability of the imports in quarantine is a “forfeit” event not a “border restriction” event. If the borders had been open these players would still not have been available and Canberra had adequate notice that they would need substitute players and it was their responsibility to have made the necessary arrangements. Having failed to do so, other teams did the work for them in securing players of the necessary standard. Canberra chose not to take up the various offers. Many of those players travelled to Perth anyway and participated in exhibition games with Perth.*
4. *Whist Canberra could claim that their squad lacked the necessary depth to be competitive over a 4 game series, there is no doubt that they had a squad capable of competing for at least 2 games. Indeed, subsequent events have proven that, with loan players from other teams, they have been competitive over 4 game series.*
5. *A 2-0 result to Perth is not in the best interests of the Melbourne Aces from a competitive stand point as we battle with Perth for top position leading into the play-offs. But it is the just decision. Perth deserves the wins and Canberra needs to be held accountable for their disruption to Perth’s opening series and the ABL’s credibility as a National competition.*

111. The Melbourne Aces believe the First Instance Tribunal’s decision “should be set aside” because the First Instance Tribunal “lacked the necessary understanding of all the events that transpired.”



## MERITS

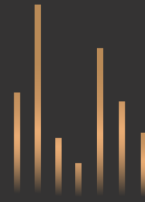
112. The Tribunal now turns to consider each of the outcomes proposed by the Parties, and assesses them according to the relevant rules, the facts of the case, and the fairness in the circumstances.
- a. Forfeit (4-0 or 2-0) under ABL Regulation 3.2.1, OBR Rule 7.03**
113. Perth Heat’s primary position is that the appropriate outcome in this case is a forfeit, with the result of recording 4-0 wins to Perth, and possible licensing consequences for Canberra.
114. The Rules do provide for forfeit in certain defined situations [ABL Reg 3.2, OBR 7.03]. These include failure to appear on the field, refusal to start play when on the field, delay in beginning the game (unless such delay is “unavoidable”), employment of “tactics palpably designed to delay”, “wilful and persistent violation of rules”, failure to obey umpires, as well as when a team is “unable or refuses to place nine players on the field.” These situations are characterised by a level of fault of the forfeiting team. They can be contrasted with other situations, involving unavoidable circumstances beyond the parties’ control (such as weather, curfew or malfunctioning lights) that are dealt with elsewhere in the Rules.
115. It is apparent from the grounds for forfeit set out in the Rules, and was confirmed by Mr Vale at the hearing, that a forfeit is a very serious matter. The consequences of a forfeit reflect that seriousness, and include recording a score of 9 runs to none to count in championship season standings [ABL Reg. 3.2.1], the imposition of “fines or other discipline” [ABL Reg. 3.2.2] and, as noted by Perth Heat and one of the ABL executives, the possibility of licenses being pulled. As such, forfeits are rare – Mr Vale had not seen one in the entire time he has been involved with the ABL.
116. The Tribunal has carefully considered the evidence before it and found insufficient evidence of fault on the part of Canberra Cavalry to justify a finding of forfeit. The situation that led to the games not being played on 18-20 December 2020 does not fall within the provisions on forfeit in the Rules.
117. Much was said by Perth Heat, Baseball Australia and its executives, and indeed the other teams in the competition about the problems that Canberra Cavalry brought upon itself early in the season, due to a combination of a business relationship breakdown, inadequate efforts to lobby the ACT government for quarantine exemptions for its international imports, and unreasonable insistence upon certain ‘quality’ standards in filling its roster. The Tribunal understands that this was the source of some frustration for the other teams, and required Baseball Australia to take extra efforts to step in and assist Canberra in reaching sufficient numbers in its roster to start the season. Dan Amodio acknowledged that with hindsight, that while some of these problems were brought about factors beyond their control, others might have been better managed by Canberra at the time.
118. The fact is, however, that these initial problems and mismanagement issues had been addressed and resolved by 17 December 2020. By that date, Canberra had assembled enough



players, had contracts signed, travel and accommodation booked, and a team approved by the ABL ready to fly to Perth on 18 December 2020. Perth Heat's arguments about mismanagement by Canberra fall away when it is clear that Canberra could have sent a team to Perth.

119. Through no fault of Canberra, the WA government announced late on 17 December 2020 that new restrictions were applicable to NSW. The Tribunal accepts that the WA decision made Canberra unable to send the vast majority of its players to Perth the next morning. Although it is technically true that the restrictions did not apply to Canberra or the ACT itself, the practical reality is that Canberra is a border town, some players lived and worked in NSW, some had been in NSW in the 14-day period prior to the date of travel, and the team had trained together in the lead-up to the series, meaning that those who had trained had had contact making them ineligible to travel to WA. This situation was not brought about by Canberra's mismanagement.
120. The Tribunal agrees with the observations of "Exec 3" that "Canberra had a team together ready to go the week of the series before quickly having the whole team affected. Rory seems to be pushing the mistakes of the past led them to this point, and put them in a hole to climb out of which ultimately was too big.... This is valid but is cancelled out by the fact Canberra did have a team the week of the series."
121. Even if Canberra's international imports had come out of quarantine earlier, Canberra's predicament would be no different. Those international imports would have been in NSW and/or trained with team members who had, and would in any event have been subject to the WA government's restrictions. This was borne out with Tucker Nathans, Canberra Cavalry's one international import who did get released from quarantine on time, but who became ineligible to travel to WA anyway by virtue of his contacts with NSW.
122. The Tribunal finds that Canberra's situation of having between 16-18 out of 24 players and 2 of 3 staff ineligible to travel to Perth was not its fault and cannot be grounds for forfeit.
123. That leaves the question of whether between the time of the WA announcement around 10pm on the Friday and the email at 9:16am on the Saturday when Canberra communicated it could not play, Canberra's conduct was such as to justify a forfeit. The Tribunal finds that Canberra's conduct does not justify a forfeit. The chain of emails shows that all participants had the intention of making the series happen and had made efforts to that end, with Perth and Brisbane offering players, and Canberra proposing in some detail the compromise that it set out in its 2:18am email. Unfortunately there was no response from Perth to the Canberra proposal (or even its request to discuss the following day) and there was also no clear directive from Baseball Australia. In those circumstances, Canberra did not act unreasonably and the Tribunal does not consider the evidence justifies a finding of forfeit.
124. Accordingly, the Tribunal rejects Perth Heat's request for "a four (4) nil series victory to be awarded to Perth Heat".





125. The Tribunal also rejects Perth's alternative request for Perth Heat to be awarded "a minimum of 2 wins (a split series except Canberra being awarded 0)". This 2-0 outcome was also suggested by Melbourne Aces, other teams and ABL executives.
126. The Tribunal notes that a 2-0 result might reflect the fact that two games were actually played in Perth (albeit exhibition games), and that Perth was able to reap some commercial benefits from having hosted the two exhibition games. It is commendable that Brisbane Bandits were able to offer players at short notice to help meet that commercial imperative. However, recording a 2-0 result against Canberra is not a result that finds any basis in the Rules, either on the basis of forfeit or a 'split series' (which would lead to a 2-2 result, discussed below). For the same reasons that the Tribunal has outlined above for rejecting the 4-0 forfeit result, it finds insufficient fault on Canberra's part to justify a 2-0 forfeit result.

**b. "Half-win" or "Split" 2-2 result under ABL Rule 9, ABL Regulation 7.6 or 7.7.4**

127. Canberra Cavalry noted in December and to the First Instance Tribunal, and repeated to this Tribunal, that it considered a half win (i.e., a split of 2 wins to each side) would be an acceptable outcome. This was also mentioned by executives of the ABL as one way to treat the series. For example, there was reference to team discussions noting that "any COVID-19 affected series that cannot be played would result in a ½ win to each team", and Exec 3, at least initially felt that "it should be a 2-2 split".
128. There is provision for a half win in the ABL Rules and Regulations in certain situations. Rule 9 provides that the "ABL may, in its discretion, reschedule or postpone any game as the ABL may deem necessary, whether for reasons of inclement weather, unplayable field conditions or otherwise."
129. Regulation 7.6 specifies, under the heading "Rescheduling" that "the ABL and the Teams shall make every effort to complete all championship season games in the city in which the games were originally scheduled. If any postponed or tied games remain unplayed ... such games shall be rescheduled. If no available mutual off-dates or series remain between the affected Teams, unplayed games will result in a ½ win awarded to each team."
130. Additionally, Regulation 7.7.4 provides that "postponed, suspended or tied games or make up games that cannot be rescheduled prior to the last Sunday of the regular season will result in a half win being awarded to each team for games not played."
131. The Parties recalled that a series between Canberra and Adelaide was postponed last season due to unplayable conditions created by bushfires. It was not possible at the time to reschedule any games and the result was a 2-2 series split.
132. The Tribunal is not convinced that a 'half-win' or 2-2 series split would be appropriate in the present case.



133. The half-win is reserved for situations when no available off-dates or series remain. That was the situation with the bushfires, but it is not quite the same situation with the current season because the ABL has been able to reschedule some games. The recent extension of the 2020-21 series to 7 February 2021 means that games have been effectively rescheduled such that the championship series is able to be completed with most teams (including Perth and Canberra) playing 24 games. The Tribunal understands that the scores of the rescheduled games will be used for the win:loss ratio to decide which teams will go to the play-offs.
134. The ABL Rules and Regulations contain some flexibility in changing location and timing of the games; however they do not expressly contemplate the situation here, which also involves a change in the composition of teams playing the rescheduled games. Therefore, this is not a “rescheduling” in the strict sense – they are not the same home teams or locations or opponents. But due to the extraordinary practical challenges that the Covid-19 situation has posed to the league, it is in effect the next best “rescheduling” in the circumstances, and it will result in a set of actual scores from additional games played. A half-win 2-2 split is therefore not necessary or appropriate. As further discussed in the next section, the “rescheduling” that the ABL has instituted for the extended season is within its powers under the Rules.
135. Finally, the Tribunal observes that a 2-2 split would lead to an unjust outcome. As the ladder this season will be determined by win:loss percentage and not points for games won, the Tribunal was told that Perth would actually be disadvantaged by a 2-2 allocation, as it would dilute Perth’s win:loss ratio for final calculation at the end of the championship series. Canberra Cavalry would be unfairly advantaged by the allocation, as it would slightly increase its win:loss ratio.
136. For the above reasons, the Tribunal decides that a half-win (2-2 split) would be an inappropriate result in this case.

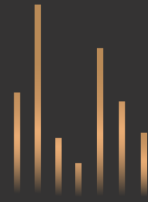
**c. “No Result” outcome under ABL Rule 9, Reg. 3.3, OBL 4.04, 7.01€**

137. The Tribunal now considers whether the result reached by the First Instance Tribunal is the appropriate outcome in the circumstances of the case.
138. The Tribunal has arrived at the same conclusion as the First Instance Tribunal that no result should be recorded for the four games scheduled to have taken place in Perth between Perth and Canberra on 18-20 December 2020.
139. The ABL has wide discretionary powers under the Rules and Regulations when it comes to scheduling, determining the results of games, postponing, cancelling and/or rescheduling games.
140. Reference has already been made to Rule 9, which grants discretion to the ABL to reschedule or postpone any game as the ABL may deem necessary, whether for reasons of inclement weather, unplayable field conditions “or otherwise”. The situation in this case of a team’s



ineligibility to travel at the last minute due to state border restrictions brought about by new outbreaks of Covid-19 falls within “or otherwise”. It also, in the view of the Tribunal, constitutes an “exceptional circumstance” within the meaning of the Special Note on the ABL Rules, which reserves to the ABL “the right in exceptional circumstances to allow certain exemptions to these rules if deemed necessary.”

141. These provisions, along with Regulations on rescheduling, give the ABL the flexibility and the discretion to make decisions about scheduling of games that were not played due to circumstances beyond the teams’ control. By analogy, for example, Regulation 7.4 deals with postponement or cancellation of games due to poor weather or playing conditions, and the ABL “shall decide at their sole discretion date and time of rescheduled game.” Regulation 7.7.3, headed “Other” allows the ABL to approve the rescheduling of games for “any reason other than a postponed, suspended or tied game.”
142. The ABL Rules and Official Baseball Rules also allude to the possibility of no outcome being recorded for games. For example, ABL Regulation 3.3 provides that “if a game is declared ‘No Game’ pursuant to Official Baseball Rule 7.03(e), individual and team performances shall not be included in the official statistics.” Official Baseball Rule 7.03(e) provides that if a “game is postponed or otherwise called before it has become a regulation game” it shall be declared “No Game”. ABL Regulation 3.1 states suspended games “shall not be counted in league standings” or have performances count for statistics until completed or called. And Official Baseball Rule 4.04 ,which deals with weather and field conditions, states that “a postponed game shall be a ‘No Game’.”
143. Recording no result is particularly appropriate when there are additional scheduled games and the new results from the games actually played can count instead. Those additional games are not strictly “rescheduled” games between the same teams in the same locations. However, as the Tribunal noted above, the format of the ABL’s extension of the series and scheduling of additional games in the exceptional circumstances created by Covid-19 and associated travel restrictions was a solution that was available to the ABL under the Rules.
144. The result of recording no outcome for the Canberra-Perth series also appears to this Tribunal to be a fair result, reflecting that neither side was truly at fault for missing the series. All teams made an effort to make the series happen. A lack of clarity and communication during the late hours between the time of the WA government’s ruling and the scheduled departure of the Canberra players also led to the decision not to play. The ABL has since made efforts to reschedule games so as to bring the number of games played by most teams up to 24 games. The First Instance Tribunal expressed a view that Covid-19 affected games “should be classified the same” and although each of the cancellations this season was brought about in slightly different circumstances, this Tribunal shares the view that consistency of treatment across the games affected by Covid-19 is appropriate and fair.
145. For all the above reasons, the Tribunal concludes that there should be no result recorded for the Perth-Canberra games that were scheduled to be played on 18-20 December 2020.



**THE TRIBUNAL THEREFORE DETERMINES:**

1. *The Appeal is dismissed.*
2. *Accordingly, there shall be no result counted for the four games previously scheduled to take place in Perth between the Perth Heat and the Canberra Cavalry from 18 to 20 December 2020.*

Date: 5 February 2021

*Signature*

Judith Levine

*Signature*

Jack Anderson

*Signature*

Craig Green