

## NATIONAL SPORTS TRIBUNAL – ANZSLA WEBINAR – 18 MARCH 2021 – Q&A

QUESTION	ANSWER
<p>Has the NST found the opt-in basis for matters and disputes to be effective? Is an opt-out basis a viable alternative?</p>	<p>The Wood Review proposed both an opt-in (for general sport related disputes) and an opt-out (for anti-doping disputes) model for the NST.</p> <p>The opt-in basis can be effective if sports wish to embed the NST into their policies or rules. Noting the somewhat lengthy process required for sports to amend their rules, ad hoc arrangements for sports to access the jurisdiction of the NST in the interim period has also been offered. This occurs by allowing parties to a dispute (including the NSO) to enter into an agreement in relation to that particular dispute.</p> <p>The opt-out part of our jurisdiction – anti-doping – was crafted that way through the regulatory authority of Sport Integrity Australia. This meant that sports should need to use the NST’s independent, transparent jurisdiction for disputes, unless they could (and chose to) demonstrate that they had a sophisticated enough in-house system of dispute resolution. The recent update to the World Anti-Doping Code, and subsequent update of Sport Integrity Australia’s template policy which has been adopted by approx. 90 sports, has seen the NST established as the first instance and appeals tribunal.</p>
<p>Has the take-up rate by sports organisations been what was expected in the first year?</p>	<p>Given the timing and impact of COVID-19 on sporting organisations and competitions since the establishment of the NST on 19 March 2020, the operations of the NST have been different to initial expectations. This has been due to the slower than anticipated integration of the NST into sport rules, as well as a reduced number of sporting disputes in the absence of most sporting competitions.</p> <p>The take-up has been excellent in Anti-Doping due to the new National Policy from 1 Jan 2021, with the update to the World Anti-Doping Code insisting on independent tribunals.</p>

	<p>In Selection matters, existing arrangements for the Tokyo Olympics have prevented use of the NST for 2021. But ongoing engagement with the Australian Olympic Committee (AOC), Commonwealth Games Australia (CGA) and Paralympics Australia (PA) will see changes made to nomination and selection policies so disputes in future major events will be brought to the NST.</p> <p>In other areas, especially member protection and disciplinary disputes, the new Sport Integrity Framework from Sport Integrity Australia will make a significant difference to the NST if sports adopt the new SIA complaints and discipline process.</p>
<p>How has COVID 19 disrupted the Tribunal? Are there lasting changes that might impact future Tribunal processes (eg. use of technology)?</p>	<p>Yes, with significant disruption to the priorities of sports, as well as the demand for dispute resolution services in the absence of many competitions.</p> <p>The hearings and mediations held by the NST have all been held virtually, with videoconferencing a cost-effective and efficient process for all involved. In addition to saving money and time on travel, it has also meant greater flexibility to select the right NST Member to allocate to a dispute no matter their location or that of the Parties.</p>
<p>I am interested in the panel's opinion on how sports organisations and clubs can make it easy and safe for individuals within a sports organisation or club to make a complaint of bullying or abuse, and for that complaint to be expeditiously managed to give the best likelihood of fair and just outcome.</p>	<p>The new Sport Integrity Australia National Integrity Framework, with a new Member Protection Policy and Child Safeguarding Policy, together with a new complaints mechanism will allow for an independent and professional process for issues.</p> <p>Individuals can lodge complaints directly with Sport Integrity Australia for investigation (independent of the club/organisation), followed where appropriate by mediation/conciliation or adjudication by the NST (also independent of the club/organisation and of Sport Integrity Australia).</p> <p>The matters heard by the NST so far have progressed in a very efficient and expeditious manner, and this is hoped to be continued in the context of the new Framework.</p>

I note that sporting organisations 'need to sign up' to benefit (that is, to accept the jurisdiction of the NST). By way of observation, small organisations will be 'no better off' OFF unless they sign up. Further, larger organisations have their own internal processes and are unlikely to sign up.

QUESTIONS:

1. What is the breakdown of organisations (both small and large) that have signed up to accept the jurisdiction of the NST?
2. What is being done - or proposed to be done - to encourage more sporting organisations to "sign up"?
3. Is the pilot on target for success? If so, what KPI's are being used to determine this?
4. Based on the results to date, what is envisaged at the end of the pilot period?

There is no "signing up" as such. The jurisdiction of NST is attracted by embedding the NST in the sporting organisation's relevant policies, or by ad hoc agreements for individual matters.

The existence of the ad-hoc jurisdiction was always intended as a transitional arrangement for smaller sports (allowing access to our jurisdiction as they progressed amendments to their rules). The NST will offer them effective and efficient management of disputes within their existing resource limitations.

Many professional sports do have well-established internal tribunals with well respected members, and they may not wish to step away from these at the current time. The NST will continue to work to demonstrate a process that is quicker, easier, more cost-effective, and professional, as well as providing an incontrovertible independence.

The ad-hoc part of our jurisdiction can also assist professional sports who have not incorporated the NST into their policies, with an option for those highly contentious matters where true independence and transparency may be more valued.

1. In anti-doping, 86 sports have adopted the new Anti-Doping Policy released by Sport Integrity Australia in January 2021 which established the NST as the first instance and appeals hearing panel. The larger sports are adopting the NST as the appeals panel and some of them also as the first instance hearing panel. Sports are also considering various methods of incorporating the NST to hear other disputes within their rules.
2. The NST has worked closely with Sport Integrity Australia specifically to make sure that the new National Integrity Framework properly engages the NST as the body to conduct mediation and conciliation and arbitration where the dispute fits in our jurisdiction. Ongoing consultation with sports will ensure any integration best serves the needs of the sports.

	<p>For Selection Policies, we have worked with the AOC, PA and CGA for their member sports to appoint the NST for any selection appeals from 2020 onwards. Several sports have already changed their selection appeals policies to adopt the template drafted by the NST.</p> <p>3. The impacts of COVID-19 have influenced the operations of the NST, but the decision to extend the pilot for another twelve months until 18 March 2023 indicates the commitment to solidify the NST as the dispute resolution mechanism of choice within Australia.</p> <p>The objectives of the NST – to provide independent, cost-effective dispute resolution services to sporting bodies, athletes and support personnel – has been met through the matters already heard by the NST in the first year of operation.</p> <p>4. The NST intends to continue providing dispute resolution services that are of value to the sporting community, with the goal of becoming an ongoing entity following the end of the pilot period.</p>
<p>Is the intention still that this will be a fee for service model ie: that the NST will be self-sustaining? If so, when and how is that to be realised?</p>	<p>It is still the intention that there will be application fees and service fees. It is not, and was never intended, that the NST would be entirely self-sufficient but that there will be a certain amount of cost recovery.</p> <p>The costs of the Registry have always been designed to be covered by Government, and the direct cost of delivering specific services (NST Member fees, and property/accommodation costs for hearings) would be recovered to a large extent. This reflects the commitment of Government to the importance of independent transparent dispute resolution in sport.</p> <p>The NST waived fees up to 30 September 2020 due to the financial repercussions of COVID-19 on sports and athletes, but since then there has been charging of modest fees for service. Parties can seek a waiver of fees on the basis of financial hardship.</p>

<p>How do you handle cultural sensitivities in the processes?</p> <p>Has it been effective?</p>	<p>The NST has a Diversity and Inclusion Policy which is implemented by the Registry and Tribunal Members. To date we have not had many issues in this regard.</p> <p>There are a range of services available, including the use of interpreters if needed, to ensure Parties are able to effectively participate in hearings. Parties in a hearing are also entitled to be accompanied by support person if they wish to.</p> <p>A conscious effort has been made to ensure diversity in gender, geographical location, experience and cultural background amongst the NST Member cohort. This will increase with the second tranche of NST Members who are expected to be appointed later this year.</p>
<p>Have there been any instances of witnesses compelled to give evidence?</p>	<p>Witnesses have not yet been compelled to give evidence. It was always expected that this would be a power used only in the most exceptional of circumstances</p>
<p>Does a party to the proceedings apply to the tribunal member seeking the order compelling a person to give evidence?</p>	<p>Yes, or the NST Member can give notice of their own initiative as per Section 36 of the <i>NST Practice and Procedure Determination 2020</i>.</p> <p>The other party is also given a reasonable opportunity to make submissions as to whether the notice should be given, as per Section 38 of the <i>NST Practice and Procedure Determination 2020</i>.</p>
<p>Have the case appraisal options been utilised?</p>	<p>Yes, the NST has provided one instance of a case appraisal services to resolve a dispute.</p> <p>In this instance the National Sporting Body sought the National Sports Tribunal's opinion regarding an alleged code of conduct breach by a state/territory sporting organisation board member.</p>
<p>Are the 4 summaries and decisions published on the NST website the only 4 matters to go to the NST to date/are there more still being determined?</p>	<p>The NST will only publish determinations in arbitration matters, with some details redacted in consultation with the Parties involved, in line with Section 56 and 57 of the <i>NST Practice and Procedure Determination 2020</i>.</p>

	<p>The outcomes of any mediation, conciliation or case appraisal will not be published, though a brief anonymous summary of these matters will be put on the NST website (coming soon).</p>
<p>The terms “dispute resolution and Mediation” have been used yet later on the focus seemed to be on the issuing of Determinations and imposing a decision. What is the focus - ADR or the imposition of a decision?</p>	<p>Depending on the type of dispute and nature of the Parties involved, it is critical the NST provides a range of dispute resolution methods to assist in reaching a satisfactory outcome.</p> <p>In some instances (eg. Anti-Doping matters) is it a requirement that an arbitration is conducted and a determination reached, whereas some other issues (eg. bullying) are more appropriately managed through a mediation or conciliation.</p>