

# Sports Law 2021

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**Published by**

Law Business Research Ltd

Meridian House, 34-35 Farringdon Street

London, EC4A 4HL, UK

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First published 2018

Third edition

ISBN 978-1-83862-407-1

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



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# Sports Law

## 2021

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Lexology Getting The Deal Through is delighted to publish the third edition of *Sports Law*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Australia.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to Centrefield LLP and Laffer Abogados, the contributing editors, for their assistance in devising and editing this edition.



London

August 2020

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This article was first published in September 2020

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# Australia

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## REGULATORY

### Governance structure

- 1 | What is the regulatory governance structure in professional sport in your jurisdiction?

The regulation of sport in Australia involves a combination of international and national governing bodies, as well as state and territory confederations and local associations and clubs, each with their own set of regulations.

While some aspects of sport in Australia are regulated by legislation (for example, under the Commonwealth anti-doping legislation), individual sports governing bodies are otherwise free to determine the manner in which a sport is governed, which is largely dependent upon the sporting code's size and complexity.

The Australian Sports Commission (ASC) is the Commonwealth authority responsible for supporting and investing in sport and physical activity at all levels. Although generally adopting a flexible approach to sports governance, the ASC has published a suite of governance principles. These principles are mandatory for national sporting organisations as a prerequisite for receiving ASC funding; however, other sporting bodies are free to self-govern and to establish the rules of their sport as they see fit.

### Protection from liability

- 2 | To what extent are participants protected from liability for their on-field actions under civil and criminal law?

Authorities in Australia generally respect the autonomy of sporting bodies and organisations to manage their own affairs. However, civil and criminal law applies to participants in Australian sporting activities. While the rules of a sport may define acceptable conduct, such rules cannot be considered as implied consent from a participant for others to act contrary to their legal obligations, or to displace their civil and criminal law rights.

Players may not be liable if their conduct falls within the rules or the normal occurrences to be expected when participating in their specific sport (for example, physical contact in sports such as football and boxing). Voluntary participation in the sport and the voluntary assumption of risk is a consideration taken into account by Australian police and courts, which are generally reluctant to interfere in the competition, rules and normal processes of a sport. Participants, however, never consent to dangerous or violent conduct that is outside of the sporting rules, and such conduct may give rise to criminal liability.

Players also owe a civil duty of care to one another whereby they must not act negligently or recklessly while participating in sport.

### Doping regulation

- 3 | What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

The Australian Sports Anti-Doping Authority (ASADA) is the Commonwealth statutory authority responsible for the protection of the integrity of Australian sport, and for the implementation of the obligations of the World Anti-Doping Code (Code).

Australia's anti-doping regime is set out in the Australian Sports Anti-Doping Authority Act 2006 (Cth) and its associated regulations. ASADA conducts testing (both in and out of competition) and investigations are conducted in accordance with the Act and the Code.

Offences relating to the use and dealing in proscribed drugs are contained in both Commonwealth and State legislation. Specific anti-doping frameworks do not preclude criminal offences from being brought against a participant under these laws.

### Financial controls

- 4 | What financial controls exist for participant organisations within professional sport?

In Australia, there are no general financial controls that exist specifically for organisations participating in professional sport. However, many organisations choose to incorporate under the Corporations Act 2001 (Cth), in which case they are subject to the Act's financial controls.

A number of participant organisations within professional sports are, however, subject to financial controls imposed by the relevant governing body of the individual sport.

A number of professional and amateur sports are subject to salary caps imposed by the relevant governing body for that sport. These caps are aimed at reducing the overall costs to clubs, and maintaining a competitive balance between the more and less lucrative clubs.

The ability to borrow money and related financial controls, including debt and borrowing limits and limits on losses, will also be governed by the sporting body's incorporation status and powers within its constituent documents.

## DISPUTE RESOLUTION

### Jurisdiction

- 5 | Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

Larger professional sports in Australia have their own processes and tribunals that facilitate dispute resolution within the sport. These often involve a first instance tribunal and an internal appeals process.

A new National Sports Tribunal (NST) has been introduced in Australia to hear and resolve national-level sporting disputes. The

NST has three divisions: anti-doping, general and appeals. Alternative dispute resolution processes are available in the general division of the NST on an 'opt in' basis, with a further avenue of appeal to the Court of Arbitration in Sport available.

Unless a major sport 'opts out' of the NST regime and applies their own internal dispute resolution procedures (which can only occur with the approval of Sports Integrity Australia), the anti-doping division of the NST is the default dispute resolution body for all anti-doping matters.

Notwithstanding the NST's dispute resolution functions, the NST is not intended to replace redress options that are more appropriately addressed through the courts (for example, general commercial matters) or the Fair Work Commission (for employment-related matters).

### Enforcement

#### 6 | How are decisions of domestic professional sports regulatory bodies enforced?

A sporting body's power to make a decision and to discipline a participant in the sport is derived from the contractual relationship between the sporting body and the participant. This contractual relationship usually includes an obligation on the participant to adhere to the rules of the sport, including the sporting body's decision making, disciplinary and judicial processes, as well as the sporting body's powers to enforce its decisions through sanctions and suspensions.

Sanctions imposed by sporting bodies and tribunals are ordinarily enforced in accordance with the rules and judicial structures of the individual sport. Internal appeals processes are available, however, if provided for in the rules or contractual relationship or by agreement, the NST may now also be involved in decision-making and enforcement.

### Court enforcement

#### 7 | Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

Generally, Australian courts are reluctant to interfere in the decisions of sporting tribunals.

There is a preference for sports governing bodies to self-regulate; however, Australian courts are prepared to intervene in certain circumstances, including where the governing body has not complied with its rules (both express and implied), where a rule is unlawful or where the rules of natural justice have been breached.

Where the courts have reviewed decisions of sporting tribunals, it has been noted that the rules and regulations of sporting clubs and bodies are not drafted with the same legal precision as formal commercial contracts. As such, Australian courts have taken a common-sense approach, aimed at ensuring a workable set of rules and avoiding a construction of terms in a narrow or overly legalistic way.

In Australia, there are no true proprietary image rights nor the requirement to register image rights.

Despite this, image rights can be commercialised, including in relation to an individual's physical image, but also in relation to other aspects of what would, in other jurisdictions, constitute image rights, including an individual's likeness and voice.

In some circumstances, image rights may be able to be registered and protected as items of intellectual property, such as a surname that has become sufficiently distinctive and otherwise satisfies the requirements of trademark registration.

## SPONSORSHIP AND IMAGE RIGHTS

### Concept of image rights

#### 8 | Is the concept of an individual's image right legally recognised in your jurisdiction?

In Australia, there are no true proprietary image rights nor the requirement to register image rights.

Despite this, image rights can be commercialised, including in relation to an individual's physical image, but also in relation to other aspects of what would, in other jurisdictions, constitute image rights, including an individual's likeness and voice.

In some circumstances, image rights may be able to be registered and protected as items of intellectual property, such as a surname that has become sufficiently distinctive and otherwise satisfies the requirements of trademark registration.

### Commercialisation and protection

#### 9 | What are the key legal considerations for the commercialisation and protection of individuals' image rights?

Individuals seeking to commercialise their image rights should ensure that those image rights are protected to the extent possible (noting that in Australia, unless image rights are also intellectual property rights, options for registration to achieve protection are limited).

Any legal documentation regulating the commercial relationship between parties in respect of the use and commercial exploitation of an individual's image rights should clearly define what image rights are being commercialised, and the circumstances in which those image rights may be used.

The individual should seek to retain control over the specific uses of their image rights (for example, by incorporating a requirement for any proposed use to be prior approved by the individual or outlining the circumstances in which the licence to use image rights may be immediately withdrawn).

#### 10 | How are image rights used commercially by professional organisations within sport?

Image rights are often used in Australia by professional organisations for commercial purposes including for promotional purposes and for merchandise production. Individual sporting professionals may enter into affiliations with certain brands, allowing the use of the individual's image rights in relation to the promotion and sale of certain goods and services.

Care should be taken when a professional organisation grants third parties the right to use an individual's likeness or image, to ensure that those rights are able to be exploited, and to avoid any breach of intellectual property rights (for example, any third-party copyright subsisting in the imagery), the tort of passing off (which includes passing off an affiliation, endorsement or sponsorship that does not exist), or a breach of the Australian Consumer Law including in relation to any misleading representations made by the use of the image.

Any use or commercialisation of an individual's image rights should be supported by appropriate contractual documentation, such as a player agreement, sponsorship agreement or licence agreement.

## Morality clauses

### 11 | How can morality clauses be drafted, and are they enforceable?

To regulate athlete behaviour in line with increasing conduct expectations of sporting organisations, sponsors and the broader community, morality clauses are becoming more commonplace in agreements with athletes.

These clauses attempt to prevent reputational harm to an associated sporting club, sponsor or other entity (and in some instances, to the participant), by giving the contracting party the right to commence dispute resolution, terminate the agreement or to otherwise impose penalty provisions (subject to the general principle that a penalty that is disproportionate to the actual loss or damage suffered or likely to be suffered is unenforceable) when the other party acts in an undesirable manner.

Morality clauses in favour of a club, sponsor or other entity should be drafted broadly, to ensure that any conduct of the athlete that violates any law or rule, as well as any conduct that may bring the athlete, club, sport or contracting party into disrepute, triggers rights for the contracting party. Conversely, athletes will usually seek a narrow drafting of the conduct that may trigger the operation of the clause.

## Restrictions

### 12 | Are there any restrictions on sponsorship or marketing in professional sport?

In Australia, there are certain restrictions on sponsorship and marketing in professional sport, which are imposed by the Australian Communications and Media Authority, as well as industry specific voluntary advertising codes including the Alcoholic Beverages Advertising Code.

While alcohol and gambling advertising is not prohibited outright, broadcasters are subject to certain restrictions when advertising these goods and services. Gambling and alcohol advertisements may only be broadcast at certain times of the day, and are subject to other limitations including the prohibition on advertising alcohol during the screening of programmes classified for children.

Notably, tobacco advertising is absolutely prohibited in Australia and, accordingly, tobacco manufacturers and associated brands cannot sponsor or advertise, including at any Australian sporting event.

## BRAND MANAGEMENT

### Protecting brands

#### 13 | How can sports organisations protect their brand value?

As the value of sports organisations and their associated brands continues to increase, so too does the need to take appropriate steps to protect those brands and to preserve their associated value.

Subject to satisfaction of the requirements for protection in Australia, sporting organisations should seek to register their brands and logos as trademarks under the Australian Trade Marks Act 1995 (Cth). Trademark registration provides the exclusive right to use the brand in respect of certain goods and services, and makes it quicker, easier and more cost-effective to deal with infringement. Sporting organisations should also register other items of intellectual property (where possible), including any designs and domain names, and regularly monitor for infringement.

Sporting organisations should seek to include protections in their contractual documentation (including sponsorship agreements) relating to the use of their brand, including restrictions on how that brand can be used, the requirements for prior approval for any particular uses, and the ability to immediately withdraw any rights to use the brand in circumstances where the licensee acts in a manner that may be detrimental to the sporting organisation or the brand.

#### 14 | How can individuals protect their brands?

As a participant's personal brand increases in value through their on and off-field performance, the individual should seek to protect their personal brand and to preserve its associated value.

While in some circumstances, this may be done through a trademark registration in respect of their personal names, other avenues for protection are also available. Individuals should seek to protect their reputation by monitoring use of their personal brand online (including any defamatory statements made or any intellectual property infringement), as well as ensuring that content posted online does not have the potential to do reputational harm to the individual.

Individuals should also seek to include protections in their contractual documentation relating to the use of their personal brand, including restrictions on how the individual's name, likeness and voice can be used, the requirement for prior approval for any particular uses, and the ability to immediately withdraw any rights to use the individual's brand in circumstances where the licensee acts in a manner that may be detrimental to the individual or his or her reputation.

## Cybersquatting

### 15 | How can sports brands and individuals prevent cybersquatting?

A sporting brand or individual can attempt to prevent cyber-squatting by registering their desired domain names with the relevant regulator.

If a sports brand or individual finds that a person has registered a domain that infringes on the brand or individual's rights, certain dispute resolution services are available. For international domains, the World Intellectual Property Organisation may assist in addressing complaints. If the domain name is an Australian site, then the .au Domain Administration will have carriage of the dispute and will assess the complaint. Having a registered trademark may also assist in achieving a successful outcome in a domain name dispute.

## Media coverage

### 16 | How can individuals and organisations protect against adverse media coverage?

Although it can be difficult to prevent adverse media coverage from occurring, it may be possible for smaller sporting organisations to commence defamation proceedings if their reputations are damaged as a result of false media reports. Uniform Defamation Laws operate in all states and territories of Australia, which provide individuals and certain organisations with recourse for defamatory statements made about them.

Professional sporting organisations (which operate for profit) are unable to commence defamation proceedings. Depending on the nature of the defamatory content, individual administrators of a sporting organisation may be able to bring action. Recent successful cases have included sports administrators defamed by an individual via social media.

## BROADCASTING

### Regulations

#### 17 | Which broadcasting regulations are particularly relevant to professional sports?

Broadcasting in Australia is governed by the Broadcasting Services Act 1992 (Act). The administration of the Act is the responsibility of the Australian Communications and Media Authority, which oversees the rules and regulations applying to all television and radio broadcasters, including those broadcasting professional sports.

Content rules, advertising rules and the relevant standards and codes govern the broadcasting of professional sports in Australia. In particular, the standards govern those events that must be made available for free to the general public, including certain professional sport events.

### Restriction of illegal broadcasting

#### 18 | What means are available to restrict illegal broadcasting of professional sports events?

Australia does not have a uniform prohibition against illegal broadcasting.

Individual states have enacted legislation to deal with illegal broadcasting at major events, including professional sporting events, such as the Victorian Major Events Act 2009 (Vic), which prohibits the recording and broadcasting of an event without authorisation from the event organiser.

Event organisers may seek to restrict illegal broadcasting by incorporating restrictions on recording and broadcasting into the terms and conditions of their ticket sales and venue entry. A breach of the ticket conditions or the conditions of venue entry may permit the event organiser to remove offenders from the venue, and to ban offenders from attending future events.

The issue of detection and enforcement of illegal broadcasting is challenging in Australia, particularly with the growing numbers of smartphones and other sophisticated recording devices.

## EVENT ORGANISATION

### Regulation

#### 19 | What are the key regulatory issues for venue hire and event organisation?

Many regulations apply in terms of venue hire and event organisation in Australia. Obligations arise in respect of local council regulation, public liability, occupational, health and safety legislative requirements, security standards, food handling requirements and liquor licensing. These regulations are not uniform, and Australian states legislate on these issues independently. An emerging issue for event organisation and venue hire is sanitisation and virus control in light of the covid-19 pandemic.

### Ambush marketing

#### 20 | What protections exist against ambush marketing for events?

In Australia, there is no specific law dealing with ambush marketing, however event organisers can rely on other legal avenues for dealing with ambush marketing, including those relating to infringement of intellectual property rights, the misleading and deceptive conduct provisions of the Australian Consumer Law as set out in the Competition and Consumer Act 2010 (Cth) and the common law tort of passing off.

Australia also has specific legislation in relation to ambush marketing at certain sporting events, including the Major Sporting Events (Indicia and Images) Act 2014 (Cth), which prohibits any marketing or advertisements that would suggest to a reasonable person that the company is a supporter or sponsor of certain major sporting events covered by the Act.

### Ticket sale and resale

#### 21 | Can restrictions be imposed on ticket sale and resale?

There is currently no single uniform Australian law regulating ticket sales and resales. In many circumstances, event organisers seek to impose their own restrictions on ticket resale in the terms and

conditions on which the tickets are initially sold, and to enforce those terms by imposing requirements for venue entry, including requiring the provision of photo identification by attendees.

Some states of Australia, such as New South Wales and Victoria, have enacted legislation that seeks to deter ticket 'scalping' by placing a cap on the price of resold tickets above the original ticket price.

While the legislative restrictions seek to stop the business of reselling tickets, criminal action under the relevant legislation may only be bought against offenders by a police officer or the Secretary or the Director of Public Prosecutions, meaning that offenders are not often prosecuted.

## IMMIGRATION

### Work permits and visas

#### 22 | What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

There are a variety of work permits and visa options available for foreign professional athletes, coaches and administrative staff seeking work in Australia. The relevant type of permit and visa will depend on the type of sporting activity undertaken.

To obtain a working visa, an individual will require sponsorship from an Australian organisation or government agency. The individual applying for the visa is required to provide supporting documentation with their application, including identity documents and a letter of endorsement from the Australian organisation or government agency.

#### 23 | What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

If foreign professional athletes, and coaching and administrative staff, are temporarily required to compete in Australia, the Department of Immigration can issue a Temporary Activity visa (sub-class 408). The applicant must be endorsed to participate in an Australian government endorsed to be eligible for this visa type. This visa allows the holder to undertake the sporting activity for which the visa was granted. If approved, the visa will allow the applicant to stay in Australia for the duration of the event, up to a maximum duration of four years.

### Residency requirements

#### 24 | What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

Australia's permanent residency visas hold stringent requirements for all applicants, including applicants who are an elite athlete or member of an elite sporting club. An approved visa for foreign professional athletes, and coaching and administrative staff, does not allow the applicant to stay in Australia long term or permanently. To extend their stay, applicants should explore other visa types to see if they are eligible.

For example, the Skilled Independent Visa (subclass 189) allows certain athletes and support staff to obtain permanent residency. However, eligibility requirements are strict and applicants must meet a range of professional and personal standards, including being nominated by a state or territory government or a family member living in an approved location.

**25 | Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?**

An applicant for an Australian visa is able to apply for 'members of the family unit' to have the same residency rights at the applicant. For example, if the applicant was approved for the Temporary Activity visa (sub-class 408), then this will allow their approved family members to have the same rights to reside in Australia for the duration of the visa, but it will not allow those family members additional benefits, such as working rights or the right to study in Australia.

## SPORTS UNIONS

### Incorporation and regulation

**26 | How are professional sporting unions incorporated and regulated?**

Participation in sporting unions is relatively high for Australian athletes. Professional sporting unions have been reluctant to become a registered organisation within the statutory framework of the Fair Work Act 2009 (Cth) and are generally incorporated associations under state legislation.

Representative bodies often negotiate common law collective agreements with the governing body for the sport. The collective agreements govern the core engagement, participation, terms and conditions of employment as well as a range of commercial matters and include things such as the use of the athletes' image, integrity issues, the obligations of the athlete to the broadcast partners, player wellbeing, medical standards, memorabilia guidelines and athlete movement and transfer arrangements.

The representative bodies also accredit and regulate athlete agents and the manner in which they are involved in negotiations on behalf of athletes, as well as how they operate in the sport.

### Membership

**27 | Can professional sports bodies and clubs restrict union membership?**

The Fair Work Act 2009 (Cth) (FWA) provides protections for employees who wish to undertake union activities. All Australian employers covered by the FWA, including professional sports bodies and clubs, are prohibited from:

- pressuring employees about their choice to unionise; or
- taking any adverse action (or threatening to take adverse action) against an employee for being a union member or taking part in industrial action.

Adverse action includes dismissal, a change in role or demotion, or changing the terms of an employment contract. Under the FWA, professional sports bodies are prohibited from restricting union membership. Some state-based laws also prohibit discrimination on grounds of union membership.

### Strike action

**28 | Are there any restrictions on professional sports unions taking strike action?**

The Fair Work Act 2009 (Cth) (FWA) regulates some industrial action. Exercising rights contained in the FWA, including dispute resolution and the right to take industrial action, is contingent upon the provisions of the individual employment relationship and contract.

If the FWA applies to professional athletes by virtue of their employment relationship and contract, they are entitled to take protected industrial action (including strike actions) provided:

- the strike does not occur before the expiry of an industrial agreement;
- the strike is done to genuinely try and reach an agreement; and
- the employer has had a reasonable amount of time to respond to the dispute.

Notwithstanding this, sport unions cannot organise industrial action to ensure that only members of a union should be employed in specific roles.

## EMPLOYMENT

### Transfers

**29 | What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?**

Individual transfers are governed primarily by contract law, and a combination of the sport's governing body rules or collective agreements.

Like employment contracts, sporting contracts may include restraint of trade provisions that limit or restrict a player from transferring to a different club during the term of their contract, or for a specific period after their contract has expired. As with all restraint of trade clauses, the enforceability of a restraint in a player's contract will depend on whether the restraint is reasonable in the circumstances.

It is not unusual for players, clubs and sporting bodies work together to negotiate transfers or trades in circumstances where either the player or the club has requested a transfer. In most sporting codes, players often transfer between clubs when their contract has expired with a club or will be expiring at the end of that season.

### Ending contractual obligations

**30 | Can individuals buy their way out of their contractual obligations to professional sports clubs?**

Australian professional sporting clubs usually enter fixed term contracts with their athletes. As a general rule, players cannot unilaterally elect to 'buy their way out' of their contractual obligations, including any obligations that bind the player after the contract has expired or has been terminated.

If a player intends not to be bound by a contract during a fixed term, they may elect to terminate their contract in accordance with any express contractual provisions (which may result in termination costs or fees). Alternatively, and as is often the case, players may negotiate with their club for an agreed mutual termination of the contract, agreement to which may be subject to payment of a certain fee.

### Welfare obligations

**31 | What are the key athlete welfare obligations for employers?**

Sporting clubs are subject to employer duties of care that are contained in the national uniform or state-based occupational health and safety legislation, the Fair Work Act 2009 (Cth) and relevant common law. Employers of athletes have a duty to ensure that the athlete has a safe working environment free from risks to health and safety.

## Young athletes

### 32 | Are there restrictions on the employment and transfer of young athletes?

Employment regulations for young employees, and therefore young professional athletes, differ between states. In some states, there is no minimum age for employment; however, restrictions exist on the type of employment a minor can be engaged in. In other states, the minimum age for employment ranges from 13 to 15 years old.

Employment contracts with people under 18 years old will only be enforceable if they are for the benefit of the minor.

### 33 | What are the key child protection rules and safeguarding considerations?

Safeguards to be considered by sporting organisations include regimes to manage and protect the physical safety and psychological wellbeing of children, and to protect them from mistreatment and abuse.

Australian statutory regimes must be followed by all participant organisations within professional sport. In particular, they must ensure that any person who works with child athletes has gone through a specific screening process, known as a Working with Children Check.

## Club and country representation

### 34 | What employment relationship issues arise when athletes represent both club and country?

The general Australian employment law principles apply to the employment of athletes.

Contractual restrictions may be imposed on an individual's professional and personal behaviour, provided that these restrictions are reasonably connected with the individual's employment. These restrictions may include the prohibition against promoting a brand that would otherwise compete with one of the club's official sponsors or partners. Conflicts may arise where a player represents Australia at international events, and the sponsors of those international events compete with the club's official partners and sponsors.

Other employment issues that may arise for athletes representing a particular club as well as Australia include the jurisdiction for hearing disputes and for any disciplinary proceedings.

## Selection and eligibility

### 35 | How are selection and eligibility disputes dealt with by national bodies?

The Court of Arbitration for Sport (CAS) is an international body available to Australian athletes who seek review of selection and eligibility decisions.

The National Sports Tribunal (NST) has been introduced in Australia to hear and resolve national-level sporting disputes. Where the parties have agreed to the jurisdiction of the NST, the NST general and appeals divisions have jurisdiction to hear selection and eligibility disputes. The agreement to the application of the NST can be automatically provided for in the governing body's regulations, rules, selection policy or by virtue of a contract between the athlete and the governing body.

The NST will apply mediation, conciliation, case appraisal or arbitration to assist the parties to resolve selection and eligibility disputes. Appeals to the appeals division of the NST can be made as a result of the decisions from the general division, or where applicable, the sport's internal tribunal.



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## TAXATION

### Key issues

#### 36 | What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?

Tax on the income of foreign athletes competing in Australia largely depends on whether the individual is an Australian resident or a temporary resident, for tax purposes. Generally, a foreign athlete will only be an Australian resident for tax purposes if he or she has moved to Australia and intends to stay for the foreseeable future.

A foreign athlete is a temporary resident, however, if they hold a temporary visa under the Migration Act 1958 (Cth), whereby they will only remain in Australia for a specified period or until a specified event concludes.

While Australian residents are taxed on their worldwide income from all sources, the Australian government does not require temporary residents in Australia to pay tax on foreign income. This means that athletes and support staff who are in Australia for the purposes of a Temporary Activity Visa need not pay tax in Australia on their income earned outside of Australia. These visa holders will, however, be liable to pay income tax on income earned in Australia, which may include prize money, appearance fees, product endorsement and sponsorship fees.

## UPDATE AND TRENDS

### Key developments of the past year

#### 37 | Are there any emerging trends or hot topics in your jurisdiction?

Topical legal issues in Australian sports (aside from those associated with the covid-19 pandemic) include the controversy surrounding Rugby Australia's termination of player, Israel Folau's employment for alleged breaches of the players' Code of Conduct.

Rugby Australia considered that certain social media posts by Folau violated the players' Code of Conduct and caused reputational damage to Rugby Australia and the sport. Folau took action against Rugby Australia for unfair dismissal, arguing that his employment was wrongfully terminated as a result of his religious beliefs.

This matter sparked broad public debate around the issues of free speech and freedom of religion and the balance between the rights of an employer through an employment contract, and an employee's rights and freedoms at law.

### Coronavirus

38 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Australian sporting leagues have adapted to changing circumstances posed by the covid-19 pandemic. A range of regulations have been imposed and regulated depending on their effectiveness. For example, the Australian Football League (AFL) commenced their season in March 2020. Like many other sports, this was subsequently suspended until June 2020 to allow the AFL to establish 'hubs' where the players would stay and be isolated to ensure that the covid-19 virus would not spread within the league.

Further, no spectators have been allowed in professional sporting arenas so as to slow the spread of the virus. As restrictions in Australia begin to ease, leagues such as the AFL and Rugby Union are assessing the possibility allowing up to 10,000 spectators spread out around the arena to support their teams. Local community sports are also set to resume with certain restrictions in place.

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