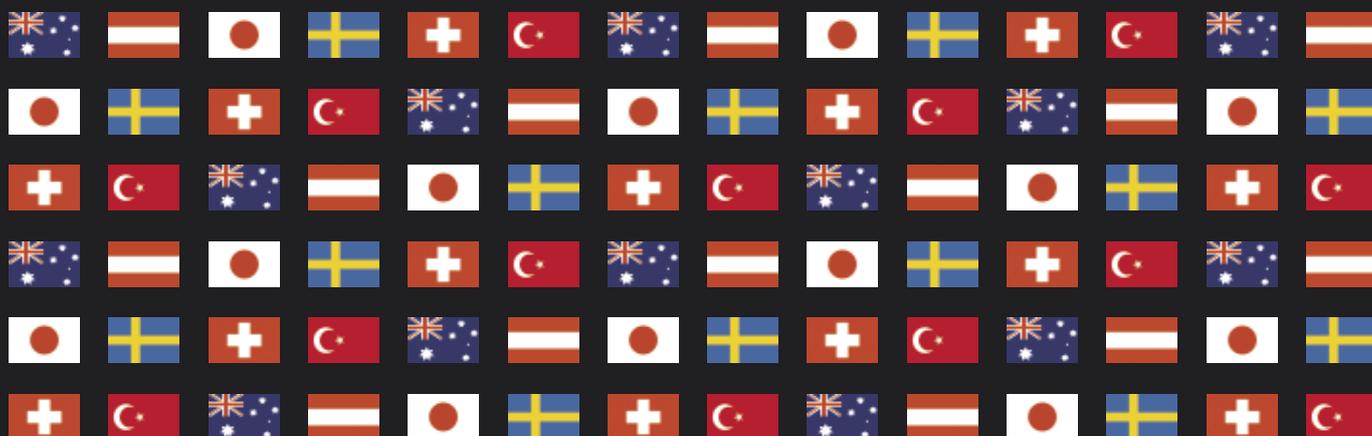


Sports Law 2022

Contributing editors

Moritz Jäggy, Marc Ph Prinz, Jonas D Gassmann and Delia Fehr-Bosshard



Publisher

Tom Barnes
tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent
adam.sargent@gettingthedealthrough.com

Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between August and September 2021. Be advised that this is a developing area.

© Law Business Research Ltd 2021
No photocopying without a CLA licence.
First published 2018
Fourth edition
ISBN 978-1-83862-722-5

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



Sports Law

2022

Contributing editors

**Moritz Jäggy, Marc Ph Prinz, Jonas D Gassmann and
Delia Fehr-Bosshard**

VISCHER AG

Lexology Getting The Deal Through is delighted to publish the fourth edition of *Sports Law*, which is available in print and online at 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 Austria.

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.

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 the contributing editors, Moritz Jäggy, Marc Ph Prinz, Jonas D Gassmann and Delia Fehr-Bosshard of VISCHER AG, for their continued assistance with this volume.



London
September 2021

Reproduced with permission from Law Business Research Ltd
This article was first published in September 2021
For further information please contact editorial@gettingthedealthrough.com

Contents

Australia	3	Sweden	24
Sven Burchartz, Natalie Lasek and Brighid Virtue Kalus Kenny Intalex		Karl Ole Möller NORDIA LAW	
Austria	10	Switzerland	31
Thomas Steiger MGLP Rechtsanwälte Attorneys-at-Law		Moritz Jäggy, Marc Ph Prinz, Jonas D Gassmann and Delia Fehr-Bosshard VISCHER AG	
Japan	18	Turkey	37
Atsushi Igarashi, Yoichiro Kuriyama, Takehiro Kaneko and Kosuke Ojio TMI Associates		Orcun Cetinkaya and Özgür Yasasin CETINKAYA	

Australia

Sven Burchartz, Natalie Lasek and Brigid Virtue

Kalus Kenny Intalex

REGULATORY

Governance structure

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

In Australia, professional sport is regulated by both the Australian Commonwealth, state and territory governments and by private sporting-code-specific governing bodies and local associations and clubs, each with their own set of regulations.

The Australian Commonwealth Government, in particular, has established a number of executive agencies, including Sport Australia (previously known as the Australian Sports Commission), which is the Australian government agency responsible for determining the overall direction of sport in Australia. While some aspects of sport in Australia are regulated by legislation enforced by these government agencies (for example, under the Commonwealth anti-doping legislation), individual sports governing bodies are, for the most part, otherwise free to determine the manner in which their sport is governed, which is largely dependent upon the sporting code's size and complexity.

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 the Australian sporting codes' governing bodies to manage the on-field actions of their players. 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?

Sport Integrity Australia, which incorporates the Australian Sports Anti-Doping Authority (ASADA), the National Integrity of Sport Unit and the national integrity programmes of Sport Australia, is the government agency responsible for the protection of the integrity of Australian sport and for the implementation of the World Anti-Doping Code (the Code) in Australia.

Australia's anti-doping regime is set out in the Sport Integrity Australia Act 2020 (Cth) and the Sport Integrity Australia Regulations 2020 (Cth). ASADA conducts testing (both in and out of competition) and investigations are conducted in accordance with the Sports Integrity Australia Act and the Code.

Offences relating to the use and dealing in prescribed 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.

The National Sports Tribunal (NST) hears and resolves national-level sporting disputes in Australia. 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 its own internal dispute resolution procedures (which can only occur with the approval of Sport Integrity Australia), the anti-doping division of the NST will be the default dispute resolution body for all anti-doping matters relating to that sport.

Notwithstanding the NST's dispute resolution functions, the NST is not intended to replace redress options that are more appropriately addressed through the Australian 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 the construction of terms in a narrow or overly legalistic way.

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 or any 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 (eg, 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 third party intellectual property rights. Such breaches might include, for example, any 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?

In order to regulate athletes' behaviour in line with increasing conduct expectations of sporting organisations, sponsors and the broader community, morality clauses are becoming increasingly common 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 certain rights when the other party acts in an undesirable manner. These rights can include the option 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 damaged suffered or likely to be suffered is unenforceable).

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 these types of clauses.

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 types of goods and services. Gambling and alcohol advertisements may only be broadcasted 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 enter into brand or product sponsorships or advertise their products 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 registered mark in respect of certain goods and services, and makes it quicker, easier and more cost-effective to deal with infringement. Sporting organisations should also seek to 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. These protections can include 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 more specifically.

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 given and family 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 or their sponsors.

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 their reputation.

Cybersquatting

15 | How can sports brands and individuals prevent cybersquatting?

A sporting brand or individual can attempt to prevent cybersquatting 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 Organization 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 (the 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 sporting 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.

However, the issue of detection and enforcement of illegal broadcasting is challenging in Australia, particularly with the growing number 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. Broadly speaking, obligations arise in respect of local council regulation, public liability, occupational, health and safety legislative requirements, security standards, food handling requirements and liquor licensing. However, these regulations are not uniform and Australian states legislate on these issues independently.

Since the beginning of the covid-19 pandemic, state government-based rules and regulations for organising public events in Australia have arguably become one of the more significant regulatory issues for venue hire and event organisation businesses to navigate.

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.

In addition, the Major Sporting Events (Indicia and Images) Act 2014 (Cth) prohibits any marketing or advertisements that would falsely 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. For example, in Victoria, the Major Events Act 2009 (Vic) provides that where an event is the subject of a major event ticketing declaration, it is an offence to resell a ticket to that event for more than 10 per cent above the original face value of the ticket.

While the legislative restrictions seek to stop the business of reselling tickets, criminal action under the relevant legislation may only be brought against offenders by a police officer or the Secretary or 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 to be 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 their supporting 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 required to be in Australia temporarily for a particular competition, 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 event in order 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 as the applicant. For example, if the applicant was approved for the Temporary Activity visa (subclass 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 any 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) provides protections for employees who wish to undertake union activities. All Australian employers are covered by the Fair Work Act, 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 Fair Work Act, 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) regulates some industrial action. Exercising rights contained in the Fair Work Act, including dispute resolution and the right to take industrial action, is contingent upon the provisions of the individual employment relationship and contract.

If the Fair Work Act 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 to 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, which may be subject to the 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 is an international body available to Australian athletes who seek review of selection and eligibility decisions.

The National Sports Tribunal (NST) has also 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.



Sven Burchartz

sburchartz@kkilawyers.com.au

Natalie Lasek

nlasek@kkilawyers.com.au

Brigid Virtue

bvirtue@kkilawyers.com.au

Level 1, 4 Riverside Quay
Southbank Vic 3006
Melbourne
Australia
Tel: +613 8825 4800
www.kkilawyers.com.au

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 taxation 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 include the legal battle between Cricket Australia, the governing body for professional and amateur cricket in Australia, and Seven West Media Pty Ltd (Channel 7) over changes to their summer schedule of cricket.

Earlier this year, Cricket Australia announced changes to its summer schedule of cricket for which Channel 7 owned the broadcasting rights. Cricket Australia sought to rely on the force majeure provisions in Channel 7's broadcasting contract to justify the changes, while Channel 7 considered that the changes amounted to breaches of

their broadcasting contract, on the basis that, as a result of the changes, the schedule lacked the quality that Channel 7 had agreed to and the value of the broadcasting rights has been reduced.

This matter was one of many disputes in the sports industry in Australia recently, which revolved around force majeure provisions and the obligation (or not) to fulfil contractual obligations in light of the uncertainty and changing restrictions associated with the covid-19 pandemic.

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 government regulations have been imposed, and sporting bodies have adapted accordingly. For example, late in May 2021, following an outbreak of coronavirus in Victoria and a Victorian government announcement that the state would go into a short-term circuit-breaker lockdown, the Australian Football League quickly reshuffled its fixture to ensure that no teams would play in Victoria during the lockdown. This meant that a number of clubs had to make arrangements to get their players and staff out of the state at very short notice.

Further, the number of spectators permitted by the state and territory governments to attend sporting events in Australia has increased and decreased throughout the pandemic, and as each of the Australian states has come in and out of government-mandated, covid-19 related lockdowns. By way of example, after the 2021 Australian Open had already begun, Victoria went into a five-day snap lockdown that forced the tournament to continue without spectators. Once the five-day lockdown was lifted, spectators returned for the end of the tournament, although spectator numbers were capped at 50 per cent capacity.

Other titles available in this series

Acquisition Finance	Dispute Resolution	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Distribution & Agency	Islamic Finance & Markets	Public Procurement
Agribusiness	Domains & Domain Names	Joint Ventures	Public-Private Partnerships
Air Transport	Dominance	Labour & Employment	Rail Transport
Anti-Corruption Regulation	Drone Regulation	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security Procurement			
Digital Business			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)