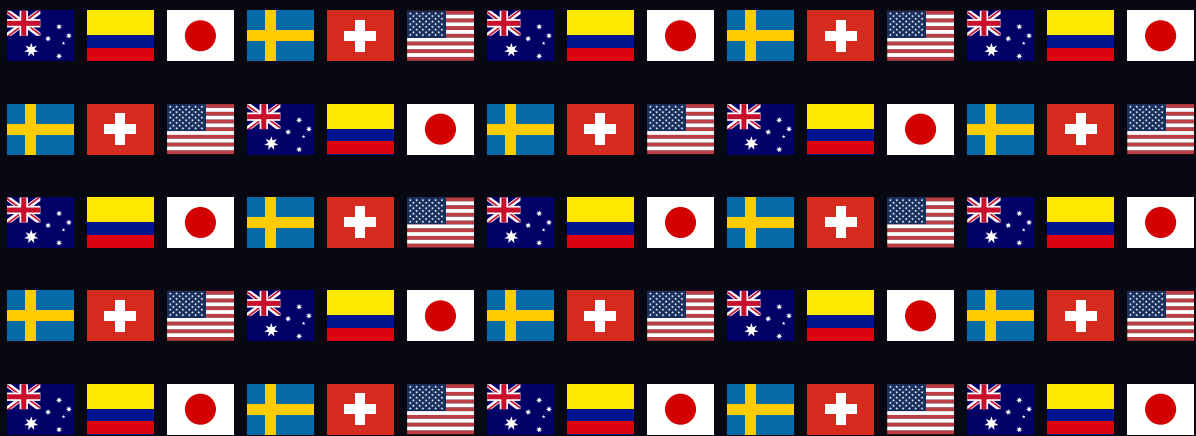


SPORTS LAW

Australia



Sports Law

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into regulatory issues (such as governance structure, doping regulations and financial controls); dispute resolution; sponsorship and image rights; brand management; broadcasting regulation; event organisation; immigration; sports unions; employment (including selection and eligibility issues); taxation issues; and recent trends.

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REGULATORY

Governance structure

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

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 the Australian Sports Commission (comprising Sports Australia and the Australian Institute of Sport), 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 (eg, under the Commonwealth anti-doping legislation), individual governing bodies in sport 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.

Law stated - 28 June 2023

Protection from liability

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 does apply 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.

Generally speaking, 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 (eg, 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 usual processes of a sport. However, voluntary participation is not accepted as a participant has consented 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, which means they must not act negligently or recklessly while participating in sport.

Law stated - 28 June 2023

Doping regulation

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 functions of 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 (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.

Criminal 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.

Law stated - 28 June 2023

Financial controls

What financial controls exist for participant organisations within professional sport?

In Australia, there are no general financial controls that apply broadly to all organisations participating in professional sports. However, many organisations choose to incorporate under the Corporations Act 2001 (Cth), in which case they are subject to the Corporation Act's financial controls.

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

Further, some 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 associated financial controls, including debt and borrowing limits and limits on losses, will also be governed by the sporting body's incorporation status and the powers specified within its constituent documents.

Law stated - 28 June 2023

DISPUTE RESOLUTION

Jurisdiction

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), which is made up of a panel of independent Tribunal Members appointed by the Australian Government Minister for Youth and Sport, provides an independent forum for the hearing and resolution of 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.

The anti-doping division of the NST can deal with anti-doping disputes, provided that the anti-doping policy of the relevant sport allows it. Alternatively, the relevant athlete or support person, the sporting body and the Sports Integrity Australia CEO may provide their written consent to the NST adjudicating a dispute.

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 (eg, general commercial matters) or the Fair Work Commission (for employment-related matters).

Enforcement**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 suspensions and other sanctioning.

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, the NST does have the capacity to be involved in decision-making and enforcement if this is provided for in the relevant sporting rules, by contractual relationship or by separate agreement.

Law stated - 28 June 2023

Court enforcement**Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?**

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

However, Australian courts are prepared to intervene in the decisions of sporting tribunals in certain circumstances, including where the governing body has not complied with its rules (both express or 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.

Law stated - 28 June 2023

SPONSORSHIP AND IMAGE RIGHTS**Concept of image rights****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, such as an individual's likeness and voice.

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

Law stated - 28 June 2023

Commercialisation and protection

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.

An individual should seek to retain control over the specific uses of their image rights. For example, this could be achieved by incorporating a requirement for any proposed use to be prior approved by the individual prior to any such use, and outlining the circumstances in which the licence to use image rights may be immediately withdrawn.

Law stated - 28 June 2023

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

Image rights, although not legally recognised or registrable in Australia, are often used in Australia by professional organisations for commercial purposes such as merchandise production or other promotional purposes. Individual sporting professionals may also enter into affiliations with certain brands, allowing the individual's image rights to be used for 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 not 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 such as any misleading representations made in using 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.

Law stated - 28 June 2023

Morality clauses

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

To regulate athletes' behaviour in line with increasing conduct expectations held by 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 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).

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.

Law stated - 28 June 2023

Restrictions

Are there any restrictions on sponsorship, advertising or marketing in professional sport?

There are certain restrictions on sponsorship and marketing in professional sports, 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. For example, gambling and alcohol advertisements may only be broadcasted at certain times of the day. Alcohol is also prohibited from being advertised during the screening of programmes classified for children.

Despite the restrictions on alcohol advertising noted above, there are some loopholes in sports marketing that allow for alcohol companies to advertise during children's programmes. For example, there is an exemption that allows alcohol advertisements to appear on weekends and public holidays.

Notably, tobacco advertising is prohibited in Australia due to the ethical and public health considerations surrounding tobacco products. Tobacco manufacturers and associated brands cannot enter into brand or product sponsorships or advertise their products including at any Australian sporting event.

Law stated - 28 June 2023

BRAND MANAGEMENT

Protecting brands

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 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.

Law stated - 28 June 2023

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 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 the 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.

Law stated - 28 June 2023

Cybersquatting

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 sports brand or the individual's rights, certain dispute resolution services are available. For international domains, the World Intellectual Property Organization can 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.

Law stated - 28 June 2023

Media coverage

How can individuals and organisations protect against adverse media coverage?

Although it can be difficult to prevent adverse media coverage from being published in the first instance, 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. These laws provide individuals and certain organisations with an avenue of legal recourse for defamatory statements made about them, subject to the requisite requirements of defamatory statements being established.

Professional sporting organisations that operate for profit are unable to commence defamation proceedings. However, depending on the nature of the defamatory content, individual administrators of a professional sporting organisation may be able to bring an action.

Law stated - 28 June 2023

BROADCASTING

Regulations

Which broadcasting regulations are particularly relevant to professional sports?

Broadcasting in Australia is governed by the Broadcasting Services Act 1992 (Cth). The administration of the Broadcasting Services 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.

Law stated - 28 June 2023

Restriction of illegal broadcasting

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, or to ban offenders from attending future events.

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.

Law stated - 28 June 2023

EVENT ORGANISATION

Regulation

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

Many regulations apply to 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.

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

Law stated - 28 June 2023

Ambush marketing

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.

Law stated - 28 June 2023

Ticket sale and resale

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 upon 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.

The Victorian Major Events Act also provides greater transparency for consumers when purchasing individual tickets and authorised ticket packages, prohibiting a person from selling tickets to a major event within a package unless they are authorised in writing to do so by a declared major event organiser.

Law stated - 28 June 2023

IMMIGRATION

Work permits and visas

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 to 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 (among other things) 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.

Law stated - 28 June 2023

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 – Sporting Activities visa (subclass 408). To be eligible for this type of visa, the applicant must have a sponsor or supporter, have a contract and a letter of support from a peak sporting body, and not work outside their specified sporting activities. This visa allows the holder to stay in Australia for the duration of the event, up to a maximum duration of two years.

Law stated - 28 June 2023

Residency requirements

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 elite athletes or members 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 will need to 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 include that, in some circumstances, applicants must have been invited to apply.

Law stated - 28 June 2023

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.

Law stated - 28 June 2023

SPORTS UNIONS

Incorporation and regulation

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 registered organisations 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 relevant sport. The collective agreements govern the core engagement, participation, terms and conditions of employment as

well as a range of commercial matters and include matters 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.

Law stated - 28 June 2023

Membership

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.

Law stated - 28 June 2023

Strike action

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

The Fair Work Act 2009 (Cth) regulates some industrial actions. 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, sports unions cannot organise industrial action to ensure that only members of a union should be employed in specific roles.

Law stated - 28 June 2023

EMPLOYMENT

Transfers

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.

Similarly to 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 in Australia, players often transfer between clubs when their contract has expired with a club or will be expiring at the end of that season.

Law stated - 28 June 2023

Ending contractual obligations

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 in Australia, 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.

Law stated - 28 June 2023

Welfare obligations

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. Importantly, these duties include a duty of employers of athletes to ensure that the athlete has a safe working environment free from risks to health and safety.

Law stated - 28 June 2023

Young athletes

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 do 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.

Further, employment contracts with people under 18 years old in Australia will only be enforceable if they are for the benefit of the minor.

Law stated - 28 June 2023

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 well-being 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 completed a specific screening process, known as a Working with Children Check.

Law stated - 28 June 2023

Club and country representation

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 also 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.

Law stated - 28 June 2023

Selection and eligibility

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) also has the authority 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 also 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 an 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.

Law stated - 28 June 2023

TAXATION

Key issues

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. However, a foreign athlete that holds a temporary visa under the Migration Act 1958 (Cth) who will only remain in Australia for a specified period or until the specified event concludes, will be considered a temporary resident.

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 do not need to pay tax in Australia on their income earned outside of Australia. However, these visa holders will be liable to pay income tax on income earned in Australia, which may include prize money, appearance fees, product endorsement and sponsorship fees.

Law stated - 28 June 2023

UPDATE AND TRENDS

Key developments of the past year

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

An emerging trend in Australian sport is the shift in the way athletes express their own opinions. While athlete activism is not new, the ease of access to social media has increased the ability and comfort of athletes to express their views on their own platform. Most commonly, athletes have been seen to publicly express their disapproval of their team's corporate partners in an attempt to take more control over their personal brand identity.

Notably, one of the better-known examples of athlete activism in Australia from the past year was where Australian netballer Donnell Wallam requested an exemption from wearing Netball Australia sponsor Hancock Prospecting's logo on her player uniform. Reportedly, Wallam requested the exemption because of historical racist remarks made against First Nations people by Hancock Prospecting's late founder, Lang Hancock. Following this request, Wallam's teammates publicly expressed their support and discussions between the players and Netball Australia failed to resolve the matter. This then led to Hancock Prospecting completely withdrawing its sponsorship.

The recent spotlight on athlete activism has led to a shift in the way sponsors, teams and players consider their obligations under sponsorship agreements. Stakeholders are now considering in more depth how they can be better protected in maintaining important commercial relationships and a positive public image for all involved.

Law stated - 28 June 2023

Jurisdictions

	Australia	Kalus Kenny Intalex
	Colombia	Triana Uribe & Michelsen
	Japan	TMI Associates
	Sweden	NORDIA LAW
	Switzerland	Wenger Vieli Ltd
	USA	Weil Gotshal & Manges LLP