

SPORTS TRIBUNAL of New Zealand

Information Guide 2016



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About this guide

This guide provides information about the types of disputes heard and decided by the Sports Tribunal of New Zealand (the Tribunal) and the process the Tribunal follows to resolve them. There is also advice on the steps that need to be taken when bringing a dispute before the Tribunal.

While the guide summarises the rules and processes of the Tribunal, it is not a substitute for the Rules of the Sports Tribunal of New Zealand (the Rules). If there is any conflict between the Rules and this guide, the Rules will prevail.

About the Tribunal

The Tribunal is an independent body, which decides certain types of disputes for the sports sector.

It was established in 2003 by the Board of Sport and Recreation New Zealand (formerly known as SPARC, now known as Sport New Zealand) under the name of the Sports Disputes Tribunal of New Zealand. It was set up in response to recommendations of the 2001 report of the Sport, Fitness and Leisure Ministerial Taskforce, *Getting Set for an Active Nation*. The Taskforce identified a need to help National Sport Organisations avoid lengthy and costly legal battles, and to provide athletes with an affordable forum where they could access quality and consistent decision making for disputes.

The Tribunal was continued under the new name of the Sports Tribunal of New Zealand as a result of section 29 of the Sports Anti-Doping Act 2006 (the Act). This part of the Act came into force on 1 July 2007.

The Act sets out the sorts of disputes the Tribunal can hear and allows the Tribunal to determine its own practices and procedures for performing its functions under the Act.

The Rules of the Sports Tribunal of New Zealand (the Rules) are made pursuant to section 39 of the Act and set out how the Tribunal decides disputes. The Tribunal may amend the Rules from time to time. At the date of writing this guide, the current Rules are the amended Rules that came into force on 6 March 2012.

The Rules are available online at www.sporttribunal.org.nz or can be obtained from the Tribunal's office (see Contact us at the end of this guide for full details).

MISSION OF THE SPORTS TRIBUNAL

The mission of the Sports Tribunal is to ensure that National Sports Organisations, athletes and other parties to a sports dispute have access to a fair, objective and just means of resolving sports disputes within the Tribunal's jurisdiction that is also affordable, timely and efficient.

WHO MAKES UP THE TRIBUNAL?

The Tribunal's Chairperson must be either a retired judge of a New Zealand court or statutory tribunal, or a senior barrister or solicitor of the High Court. The Chairperson must also have significant understanding of and interest or experience in sport. At least two other Tribunal members must be lawyers with substantial experience in the legal issues affecting sport, or substantial involvement in sport in some capacity. The other non-legal members of the Tribunal must have substantial experience in sport over a minimum of a 10-year aggregate period.

The Tribunal currently has nine members, each appointed for their expertise in law and/or sports, to cover the range of issues and matters the Tribunal can decide. See the Tribunal's website (www.sporttribunal.org.nz) for the biographical details of each member.

For each dispute hearing, three people are usually drawn from the pool of Tribunal members: the Chairperson or one of the lawyers, and two others.

If an issue is particularly complex or significant, more Tribunal members may be involved in deciding the dispute. The Chairperson or presiding Deputy Chairperson is responsible for guiding the procedure of the hearing and for issuing the Tribunal's directions on the dispute.

The Tribunal also has a Registrar, who conducts the Tribunal's day-to-day administration and management. All enquiries should be directed to the Registrar (see Contact us at the end of this guide for full details).

WHAT SORTS OF DISPUTES DOES THE TRIBUNAL HEAR AND DECIDE?

The types of disputes the Tribunal can hear and decide are set out in the Act. These include:

- anti-doping violations
- appeals against decisions made by a National Sport Organisation (NSO) or the New Zealand Olympic Committee (NZOC), so long as the rules of the NSO or NZOC specifically allow for an appeal to the Tribunal in relation to that issue. Such appeals could include:
 - appeals against disciplinary decisions
 - appeals against not being selected for a New Zealand team or squad
- other sports-related disputes that all of the parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear
- matters referred to the Tribunal by the board of Sport New Zealand.

CAN I HAVE SOMEONE TO HELP AND REPRESENT ME, AND DO I NEED A LAWYER?

Any person or party involved in a proceeding has the right to be represented or assisted by a person of their choice, at any stage of the proceeding. The representative may be a lawyer but does not have to be, although some parties find this helpful. Parties are responsible for choosing and paying for representatives.

You do not have to have a representative to appear before the Tribunal. The Tribunal will ensure that all parties have the opportunity to fairly put their case, whether or not they have a representative.

People under the age of 18 (considered 'minors') may be involved in a proceeding, either in bringing or responding to a dispute. They are bound by the Rules as if they were an adult. The Tribunal may appoint a representative for a minor.

IF I WANT A LAWYER, CAN THE TRIBUNAL HELP ME FIND ONE (THE LEGAL ASSISTANCE PANEL)?

The Tribunal has established a legal assistance panel scheme (formerly known as the Pro Bono Lawyer Scheme), which ensures parties have access to high-quality, affordable legal representation if needed. Through this scheme, skilled and experienced sports lawyers are available on a low-cost or, in some cases, free basis to help athletes and sports organisations involved in cases before the Tribunal.

The Registrar can provide parties involved in a case with a list of the contact details for these lawyers.

How disputes are decided

MEDIATION (PARTIES REACH AGREEMENT WITH ASSISTANCE)

Most disputes referred to the Tribunal are resolved by the Tribunal making a decision after a hearing. However, the Tribunal can offer mediation assistance to parties who request and agree to it. Mediation is a process by which an independent person helps parties explore whether they can reach agreement and settle their dispute.

The Tribunal has the power to order mediation to take place if it considers it appropriate. However, the Tribunal cannot order that a dispute must be resolved through mediation. For a dispute to be resolved through mediation, the parties have to agree on the outcome.

Mediation assistance may be provided by the Tribunal or an independent person. It is not available in anti-doping cases.

HEARING (THE TRIBUNAL HEARS AND DECIDES A MATTER)

Most cases are resolved by the Tribunal deciding the matter after conducting a hearing. Disputes that go through the Tribunal for resolution are known as 'proceedings'.

In conducting hearings, the Tribunal has to establish the facts of the dispute and ensure each party involved has a fair hearing. Each party is given the opportunity to put its case and be present when the other party is stating its case. The Tribunal then makes a decision or 'determination' about the facts presented.

The Tribunal has wide powers to inspect and examine documents, and can require witnesses to attend hearings and produce documents or other material for examination. The Tribunal will hear evidence that it considers appropriate and may take evidence under oath or affirmation. The proceedings are a form of inquiry, and the Tribunal may conduct its own research to gather additional information and evidence.

When hearing a dispute, the Tribunal is not bound by the dispute resolution procedures of the sport concerned, but it must apply the rules and policies of that sport in regard to the subject of the dispute. For example, when it is alleged that an athlete has committed an anti-doping violation, the Tribunal must follow the doping rules applying to that athlete's sport.

The Tribunal takes a flexible approach to each case, taking into account the individual circumstances, needs and reasonable wishes of the parties.

The length of time it takes to resolve a dispute depends on the circumstances of the case, the timetable set by the Tribunal for parties to file documents, the time required for preparation by the Tribunal, and the availability of all parties to attend a hearing. The Tribunal will always endeavour to hear and decide cases in a timely manner. In appropriate circumstances, cases may be heard under urgency.

CAN I GIVE MY EVIDENCE IN A LANGUAGE OTHER THAN ENGLISH?

The Tribunal has regard to the aims, aspirations and cultural differences of those involved in the proceedings. The proceedings are conducted in English and the Tribunal takes into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). The Tribunal recognises that Māori and New Zealand Sign Language, along with English, are the official languages of New Zealand.

If a party wishes to address the Tribunal in Māori or New Zealand Sign Language, they must let the Tribunal know at least 48 hours in advance of the hearing and provide a translator. The Tribunal will usually meet the translation cost, but it can choose to require the party to pay the cost.

If a party wishes to address the Tribunal in a language other than English, Māori or New Zealand Sign Language, they must apply to the Tribunal for permission at least 48 hours in advance. If the Tribunal accepts this application to hear evidence in a language other than English, Māori or New Zealand Sign Language through a translator, the party will usually be required to meet the costs of the translator.

ARE TRIBUNAL PROCEEDINGS PRIVATE AND CONFIDENTIAL?

Inquiries to the Tribunal are treated as private and confidential.

Under the Rules of the Sports Tribunal of New Zealand, cases proceeding before the Tribunal are also treated as private and confidential until a final decision is issued. The Tribunal will not disclose information about current cases to the media or anyone else making inquiries (unless the parties to a case agree otherwise or the Rules of the Sports Tribunal of New Zealand or any other relevant rules state otherwise).

This means that the Tribunal is generally unable to confirm whether a particular case is before it, or whether a particular athlete or sport is involved in a case before the Tribunal.

However, the Tribunal generally publishes its final decision on its website at the conclusion of a case.

There are some differences in privacy and confidentiality requirements between anti-doping cases and other cases:

Anti-doping cases

The Rules of the Sports Tribunal of New Zealand state that proceedings in anti-doping cases are private and confidential, except where the parties agree otherwise or the anti-doping rules governing the matter state otherwise. Anti-doping rules also generally state that provisional suspension hearings and provisional suspension decisions are to be kept confidential, until a final decision on the alleged anti-doping rule violation is made. However, the Tribunal can publicly report the provisional suspension decision before then, if it thinks it is in the best interests of the NSO.

Therefore, all details of anti-doping proceedings (such as the identity of the athlete or sport, whether there has been a provisional suspension, and when final hearings are to be held) will usually be private and confidential until the Tribunal issues its final decision.

The Tribunal reports its decision in accordance with the relevant anti-doping rules, which usually require the Tribunal to publish its final decision if the athlete is found to have committed an anti-doping violation. However, if the Tribunal decides the athlete has not committed an anti-doping violation, the decision can only be published if the athlete consents to this.

Other cases

The Rules of the Sports Tribunal of New Zealand state that proceedings in other cases (such as appeals against decisions of NSOs or the NZOC, or sports-related disputes referred by agreement) will usually be private and confidential. In these cases, the Tribunal can decide to hold a hearing in public if it considers there are exceptional circumstances or if the parties agree.

Final decisions in these cases are also published, unless the Tribunal decides otherwise.



The general process for proceedings

Having a dispute resolved by the Tribunal usually involves five steps:

STEP 1 Application

An application form needs to be completed to start proceedings and bring a dispute before the Tribunal. There are different forms, depending on the type of dispute. For example:

- an application for anti-doping rule violation proceedings uses Form 1
- an application for provisional suspension of an athlete for an alleged anti-doping rule violation uses Form 6
- an application to appeal a decision denying a therapeutic use exemption (TUE) uses Form 10
- an application to appeal the decision of an NSO or NZOC uses Form 3
- an application to refer a sports-related dispute by agreement of parties uses Form 9.

The appropriate form can be downloaded from www.sportstribunal.org.nz or obtained by contacting the Tribunal's Registrar (see Contact us at the end of this guide for full details). All forms are also available in the printed version of the Rules of the Sports Tribunal of New Zealand.

The application forms ask for information such as:

- contact details of the applicant, other parties to the dispute, any representatives, and any other interested parties
- any documents that support that the matter is one which the Tribunal has the power to hear
- the nature and details of the dispute
- whether the case is urgent and why
- the outcome sought by bringing the dispute to the Tribunal.

When the appropriate form has been completed, it should be sent to the Tribunal (see Contact us at the end of this guide for full details) along with payment of the filing fee for the hearing. The fees are as follows:

Proceeding	Filing Fee (includes GST)
Application for anti-doping rule violation proceedings	Nil
Application for provisional suspension (anti-doping)	Nil
Application to appeal a decision denying therapeutic use exemption (anti-doping)	Nil
Application to appeal decision of NSO or NZOC	\$500
Application to resolve sports-related dispute by agreement	\$250 per party

The applicant is also required to copy and 'serve' the application on the other party or parties to the dispute. The application form contains notices that inform the other party that the applicant has filed proceedings and gives instructions to the other party on what they need to do next.

STEP2 Advice of proceedings and filing of other documents

The Registrar acknowledges receipt of the application and informs the Tribunal Chairperson that an application has been received.

Generally, the Registrar will manage the communications between parties and the Tribunal.

Depending on the type of application, the parties may be required to file further documents. The Tribunal has specific forms for this purpose, which are detailed later in the guide (see Specific types of proceedings). Each form contains information about the next steps to be taken and timeframes.

The Registrar is available to answer any questions that parties may have concerning the next steps in a proceeding.

INTERESTED PARTIES

Sports disputes may be of considerable interest to other parties who may be affected by or have a close interest in the outcome. If the Tribunal decides that a third party has sufficient interest in the matter, it may formally invite them to be added as a party to the proceedings, or allow them to make submissions or present evidence. Interested parties who are added as a party to the proceedings have the same rights and obligations as the other parties to the proceeding.

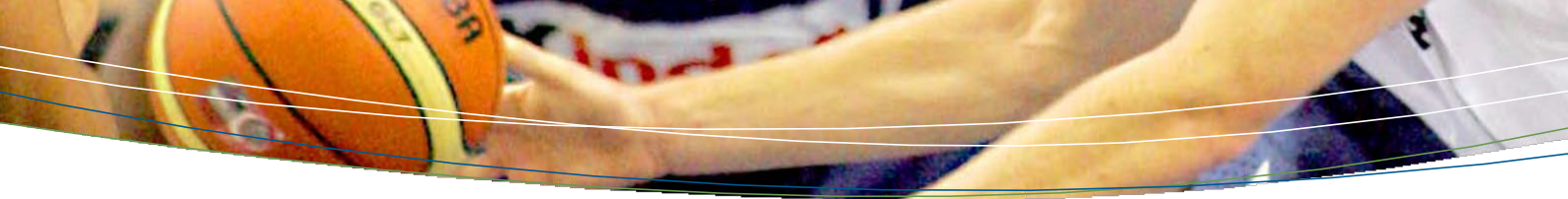
In anti-doping proceedings brought against an athlete by Drug Free Sport, the NSO of the athlete is automatically 'joined' (included) as an interested party.

STEP3 Pre-hearing proceedings

The Chairperson or presiding member will usually hold a pre-hearing discussion with all of the involved parties. This is called a 'pre-hearing conference' and is usually conducted as a teleconference (by telephone) arranged by the Registrar. It does not cost the parties anything. It may be necessary to have more than one pre-hearing conference.

Pre-hearing conferences are generally concerned with preliminary and/or procedural matters leading up to the hearing. These might include:

- discussing the matter under dispute
- examining the documents received from the parties and deciding whether anyone else needs to attend the proceedings
- considering whether or not the dispute fits within the types of disputes the Tribunal has the power to hear and, if appropriate, making a ruling
- requesting further information from the parties
- deciding whether independent experts are needed to assist the Tribunal during the hearing (in appropriate cases)
- exploring the possibility of referring parties to alternative dispute resolution, such as mediation (in appropriate cases, the Tribunal is able to offer mediation assistance itself)
- setting the date and venue for the hearing:
 - the location for any hearing will normally be at a place the Tribunal decides will be the most convenient for all the parties and the Tribunal members concerned
 - in appropriate cases, the Tribunal may decide that the hearing will take place by teleconference
- deciding the process the parties will follow leading up to and during the hearing (this may involve parties filing and exchanging written submissions and evidence)
- making any other direction considered necessary for the just, speedy and inexpensive resolution of the proceeding.



STEP4 The hearing

Hearings in anti-doping cases are confidential and not open to the public. Hearings in other types of disputes are also usually conducted in private, unless the Tribunal decides there are exceptional circumstances that make a public hearing appropriate, or the parties agree to a public hearing.

The hearing gives all involved parties the opportunity to present their case to the Tribunal. The Tribunal follows the principles of 'natural justice', which means that all parties have a fair opportunity to understand the issues, to consider all the relevant material and to prepare and present their evidence.

All the parties may not need to be physically present at a hearing. Where appropriate, hearings may be conducted by teleconference. In some cases, the Tribunal will be able to decide the dispute by reviewing the written submissions and documents filed by the parties.

After all the submissions and evidence have been presented (whether orally or in writing), the Tribunal will confer privately in order to make a decision.

COSTS

The Tribunal will usually arrange and pay for the hire of the venue for the hearing. Usually the parties are expected to pay their own other costs in any proceeding, but the Tribunal has the power to award costs in favour of any party or itself, and may dismiss any proceeding that it considers to be frivolous or vexatious.

STEP5 The Tribunal's decision

The Tribunal aims to make decisions that are not only fair and well reasoned, but also speedy and timely.

Some cases, such as appeals against not being nominated or selected for a New Zealand team, often require urgency. Where appropriate, the Tribunal may make an oral decision at the end of a hearing.

In most cases, the Tribunal needs further time to consider the matter and 'reserves' its decision. This means it will advise the parties of its decision at a later date.

The Tribunal always releases a written decision to all the parties, with an explanation of the reasons for the decision.

After the Tribunal has released its decision to the parties, it usually issues a media statement and posts the decision and other information on the Tribunal's website at www.sportstribunal.org.nz. However, the Tribunal may not do this if there are matters it decides should be kept confidential to the parties. In an anti-doping case, if the Tribunal decides an athlete has not committed any anti-doping violation, then the Tribunal can only publish that decision with the consent of the athlete.

Specific types of proceedings

There are four specific types of proceedings:

TYPE A: Anti-doping rule violation proceedings (including provisional suspension applications)

TYPE B: Appeal by athlete against decision denying a therapeutic use exemption (TUE)

TYPE C: Appeals proceedings (appealing NSO or NZOC decisions)

TYPE D: Other sports-related disputes referred by agreement of parties.

Following are detailed descriptions of each type of proceeding.

TYPE A ANTI-DOPING RULE VIOLATION PROCEEDINGS (INCLUDING PROVISIONAL SUSPENSION APPLICATIONS)

Anti-Doping Rule Violation Proceedings are usually brought by Drug Free Sport New Zealand (DFSNZ) when it considers there is sufficient information or evidence that an anti-doping rule violation has taken place. This might, for example, be on the basis of an athlete returning a positive drug test result or information (intelligence) it has received from witnesses.

Proceedings may also be brought on the basis of evidence supporting other alleged anti-doping rule violations, for example, use or attempted use, possession and trafficking of prohibited substances. There are ten anti-doping rule violations in total.

The list of prohibited substances in sport (the 'prohibited list') is published by the World Anti-Doping Agency (WADA) each year and is incorporated within New Zealand's Sports Anti-Doping Rules. Most NSOs in New Zealand have adopted the Sports Anti-Doping Rules (made by DFSNZ) as their anti-doping policy. These Rules are based on the WADA Code.

The Sports Anti-Doping Rules can be accessed on DFSNZ's website at www.drugfreesport.org.nz and the Tribunal's website at www.sportstribunal.org.nz.

The organisation bringing the proceedings (usually DFSNZ) is referred to as 'the applicant'. The applicant essentially acts as the prosecutor in the case. The athlete or other person alleged to have committed the offence is known as the 'respondent'.

The Tribunal has the jurisdiction to decide whether an anti-doping violation has been committed and to decide the appropriate sanction for the violation.

SANCTIONS FOR ANTI-DOPING RULE VIOLATIONS


Sanctions for anti-doping rule violations are set out in the Sports Anti-Doping Rules and are identical to those set out in the WADA Code. The most common sanction is a period of ineligibility (that is, a ban). An athlete or other person who has been declared ineligible, is banned from participating in any capacity in sport (and not just their own sport). This includes competing, training with a team, coaching, volunteering or otherwise participating in sport.

Sanctions can vary, depending on the type of prohibited substance involved (ie. if it is a "specified substance"), the level of fault and / or the type of anti-doping rule violation.

For example, for violations involving the presence of a prohibited substance in an athlete's sample, which is not a specified substance, the sanction is a mandatory four year period of ineligibility for a first violation, unless the athlete can show the violation was not intentional.

If the prohibited substance is a specified substance, and where DFSNZ cannot establish the violation was intentional, the period of ineligibility can be reduced to two years. In cases involving specified substances or contaminated products, the Tribunal has the discretion to impose a lesser sanction, provided the athlete can establish:

- how the substance entered their body or came into their possession;
- that the substance was not taken with the intention of enhancing their sports performance or to mask the use of a performance-enhancing substance; and
- they had no significant fault or negligence in committing the violation.



The athlete must also produce corroborating evidence, in addition to his or her own word, which establishes to the 'comfortable satisfaction' of the Tribunal that the athlete did not intend to enhance sports performance or mask the use of a performance-enhancing substance. This usually requires the athlete to have a witness to give this evidence. In these cases, the Tribunal can impose a sanction ranging from a reprimand and no period of ineligibility at the lowest end of the scale, up to a maximum of two years' ineligibility at the highest end of the scale.

PROVISIONAL SUSPENSION APPLICATIONS

If an athlete returns an adverse analytical finding (such as testing positive to a prohibited substance), there will usually be an application to the Tribunal to hold a preliminary hearing to have the athlete provisionally suspended. The Tribunal usually hears provisional suspension applications urgently. If the Tribunal makes a provisional suspension order, this means the athlete is banned from participating in sport until the Tribunal can hear the alleged anti-doping matter and make a final decision.

Provisional suspension applications used to be submitted by NSOs. However, from 2012, if the NSO has adopted the Sports Anti-Doping Rules as its anti-doping policy, DFSNZ is responsible for submitting provisional suspension applications.

Following the provisional suspension proceedings, DFSNZ will review all the evidence (the athlete may have requested a B sample test and the test results may not have been received until after the provisional suspension proceedings) and decide whether or not to proceed with the alleged anti-doping rule violation ('substantive' case) to the Tribunal.

If after receiving and hearing the substantive case, the Tribunal decides the athlete has committed an anti-doping rule violation and imposes a period of ineligibility, that period of ineligibility will be 'backdated' to start from the date the athlete was provisionally suspended (or even earlier in some cases).

STEPS IN ANTI-DOPING RULE VIOLATION PROCEEDINGS (INCLUDING PROVISIONAL SUSPENSION APPLICATIONS)

Step 1 If applicable, DFSNZ makes an application for provisional suspension to the Tribunal. DFSNZ:

- files the Application for Provisional Suspension in Anti-Doping Rule Violation Matter (Form 6) with the Tribunal, accompanied by a copy of the Doping Control Form and the report from the laboratory of an Adverse Analytical Finding
- serves a copy on the respondent
- serves a copy on the NSO
- informs the international federation and WADA.

The Tribunal may need to hold urgent proceedings to deal with this issue.

[steps continue on next page](#)

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Step 2 The applicant (usually DFSNZ):

- files the Application for Anti-Doping Rule Violation Proceedings (Form 1), accompanied by supporting documentation, with the Tribunal
- serves a copy of the Form 1 application and documents on the respondent
- serves a copy of the Form 1 application and documents on the NSO
- informs the international federation and WADA.

Step 3 The Registrar acknowledges receipt of the application and advises the Tribunal that anti-doping proceedings have been commenced.

Step 4 The respondent has seven working days from receiving the Form 1 application to respond. The respondent:

- files a Notice of Defence / Participation (Form 2) with the Tribunal
- serves a copy on the applicant
- serves a copy on the NSO.

This lets the Tribunal, the applicant and the NSO know whether the respondent wishes to:

- deny and defend that he or she committed an anti-doping violation
- admit that he or she committed an anti-doping violation, but request that he or she be given the opportunity to make submissions about the penalty they should receive
- admit that he or she committed the violation and advise that he or she does not want to participate in a hearing but acknowledges that the Tribunal may impose a penalty.

Step 5 If the respondent does not file the Notice of Defence / Participation within this time, he or she is deemed to have given up their right to participate in a hearing.

Step 6 The Tribunal may hold a pre-hearing conference to discuss what needs to be done leading up to the hearing.

Step 7 Any further evidence or submissions, as required by the Tribunal, are provided before the hearing.

Step 8 The hearing is held.

Step 9 The Tribunal decides whether an anti-doping rule violation has been committed. If the Tribunal finds the rule violation proven, or the athlete admits the rule violation, the Tribunal imposes sanctions (penalties) as appropriate.



APPEAL BY ATHLETE AGAINST DECISION DENYING A THERAPEUTIC USE EXEMPTION (TUE)

A non-International Level athlete may appeal to the Tribunal against a decision by DFSNZ's TUE committee that denies the athlete a therapeutic use exemption (TUE), depending on the relevant anti-doping policy or rules applying to the athlete. As noted above, most NSOs in New Zealand have adopted the Sports Anti-Doping Rules (made by DFSNZ) as their anti-doping policy.

An International Level athlete must apply to their relevant International Federation for a TUE. International Level athletes cannot appeal to the Tribunal in respect of a decision not to grant a TUE. Instead, a right of review through WADA and a subsequent right of appeal to the International Court of Arbitration for Sport (CAS) may be available.

STEPS IN AN APPEAL AGAINST A DECISION DENYING A THERAPEUTIC USE EXEMPTION (TUE)

Step 1 The athlete bringing the appeal (the appellant):

- files the Notice of Appeal from Decision Denying Therapeutic Use Exemption (Form 10) with the Tribunal
- serves a copy on the organisation denying the therapeutic use exemption, which is usually DFSNZ (the respondent).

Step 2 The Registrar acknowledges receipt of the application and advises the Tribunal that proceedings have been commenced.

Step 3 Within seven working days of receiving the Notice of Appeal, the respondent:

- files a Statement of Defence (Form 11) with the Tribunal
- serves a copy on the appellant.

Step 4 The Tribunal may hold a pre-hearing conference to discuss what needs to be done leading up to the hearing.

Step 5 Any further evidence or submissions, as required by the Tribunal, are provided before the hearing.

Step 6 The hearing is held.

Step 7 The Tribunal decides the appeal and makes orders (if appropriate).

TYPE C APPEALS PROCEEDINGS (APPEALING NSO OR NZOC DECISIONS)

WHAT CAN BE APPEALED?

A person or organisation (the appellant) can appeal against a decision of an NSO or the NZOC in certain circumstances. These are:

i. Rules of NSO or NZOC allow for appeals to the Tribunal against those sorts of decisions

- The constitution, rules or regulations (the rules) of the applicable NSO or the NZOC specifically allow for an appeal to be made to the Tribunal in respect of that matter.
- The rules are also likely to specify who can appeal the decision.
- If the rules do not allow for that matter to be appealed to the Tribunal, then all the parties (for example, the NSO and athlete) will have to agree in writing to refer the appeal to the Tribunal.

ii. Internal appeals procedures have been completed

- If the NSO or NZOC's rules set out internal appeal procedures before an appeal can be made to the Tribunal, these will need to have been completed first.

iii. Appeal made within prescribed time limit

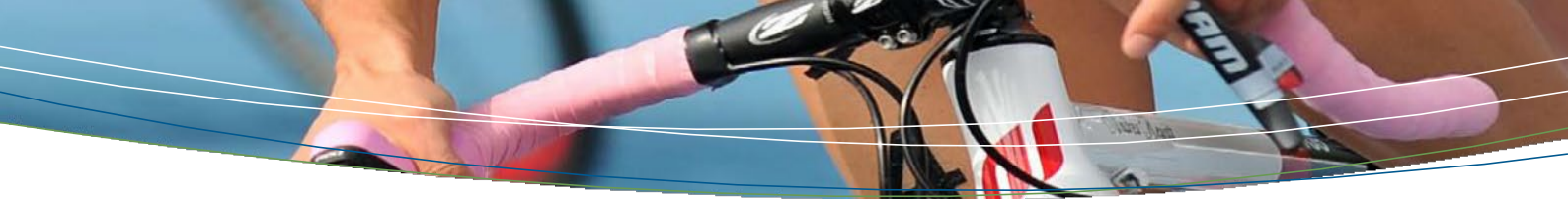
- The appeal to the Tribunal must be made within any time limits set out in the rules of the NSO or NZOC.
- It is important for people filing an appeal to find out from their NSO or the NZOC what the time limit is and file their appeal within this time.
- If the rules don't specify a time limit, then the appeal must be made to the Tribunal within 28 days of the decision appealed against being notified to the appellant.

iv. Appeal brought under stated grounds of appeal

Appeals must be brought under the grounds stated in the NSO or NZOC rules.

- If the rules do not state any grounds for making an appeal, the appeal must be brought under one or more of the following grounds:
 - that natural justice was denied
 - that the decision under appeal was made without jurisdiction
 - that substantial new evidence has become available after the decision
 - that the penalty was excessive or inappropriate.
- For appeals relating to the person appealing not being selected for a New Zealand representative team or squad (where appeal grounds are not stated in the rules), the grounds are that:
 - the selection criteria were not properly followed or implemented
 - the person seeking selection was not afforded a reasonable opportunity by the NSO to satisfy the applicable selection criteria
 - the selection decision was affected by actual bias
 - there was no material on which the selection decision could reasonably be based.

Note that the rules of individual NSOs and the NZOC may vary considerably. The Tribunal cannot advise on the content of the rules of individual NSOs or the NZOC. It is the responsibility of the parties to ascertain what is contained in the relevant rules.



STEPS IN APPEALS PROCEEDINGS (APPEALING NSO OR NZOC DECISIONS)

Step 1 The person or organisation appealing (the appellant):

- files the Notice of Appeal (Form 3) with the Tribunal, accompanied by the \$500 filing fee
- serves a copy on the applicable NSO or the NZOC (the respondent).

Conditions such as filing within time limits and satisfying internal appeal procedures have to be satisfied first (see above).

Step 2 The Registrar acknowledges receipt of the application and advises the Tribunal that appeal proceedings have been commenced.

The appellant will have served a copy of the application on the respondent, which contains a notice informing the respondent that appeal proceedings have been commenced with the Tribunal.

Step 3 Within 10 working days, the appellant:

- files an Appeal Brief (Form 4) with the Tribunal
- serves a copy on the respondent.

The Appeal Brief sets out in detail the circumstances of the appeal and is usually accompanied by evidence.

Step 4 Within 14 working days of receiving the Appeal Brief, the respondent:

- files a Statement of Defence (Form 5) with the Tribunal
- serves a copy on the appellant.

If the respondent does not file the Statement of Defence within this time (or any extra time allowed by the Tribunal), the Tribunal can proceed with the appeal and make its decision.

Step 5 The Tribunal may hold a pre-hearing conference to discuss what needs to be done leading up to the hearing. This may also involve consideration of whether the dispute can be resolved by mediation instead of a hearing. If appropriate, the matter may proceed to mediation.

Step 6 Any further evidence or submissions required by the Tribunal are provided before the hearing.

Step 7 The hearing is held.

Step 8 The Tribunal decides the appeal and makes orders (if appropriate).

TYPE D OTHER SPORTS-RELATED DISPUTES REFERRED BY AGREEMENT OF PARTIES

Where a dispute is not an anti-doping proceeding or an appeal proceeding, the dispute may still be able to be referred to the Tribunal. However, before the Tribunal can hear such a dispute:

- all parties to the dispute have to agree in writing to refer the dispute to the Tribunal
- the dispute has to be 'sports-related' (if there is an issue over whether a dispute is sports-related, the Tribunal will decide)
- the Tribunal must agree to hear the dispute.

STEPS IN SPORTS-RELATED DISPUTES REFERRED BY AGREEMENT OF PARTIES

Step 1 The parties to the dispute file with the Tribunal:

- an Application for Resolution of Sports-Related Dispute (Form 9)
- a signed agreement to refer the dispute to the Tribunal (this can be attached to the Form 9 application or incorporated into the Form 9 application document)
- filing fees of \$250 for each party.

Step 2 The Registrar acknowledges receipt of the application and advises the Tribunal that an Application for Resolution of Sports-Related Dispute has been received.

Step 3 The Tribunal has discretion over whether it will hear such disputes and may require further information. The Tribunal decides whether it will hear the dispute.

Step 4 The Registrar advises whether the Tribunal will hear the dispute and, if it will, advises the parties that proceedings have been commenced.

Step 5 The Tribunal holds a pre-hearing conference to discuss what needs to be done to resolve the dispute and what steps need to be taken up to the hearing (if a hearing is required).

Step 6 The Tribunal decides the dispute, either with or without a hearing, but in accordance with the principles of natural justice.



Appealing a Tribunal decision

In general, the decisions of the Tribunal are final and binding and cannot be questioned in any New Zealand court of law. Decisions and orders of the Tribunal may be enforced through the District Court.

In certain circumstances, decisions of the Tribunal may be appealed to the international Court of Arbitration for Sport. Rule 28 of the Rules of the Sports Tribunal of New Zealand provides further details about this.

Contact us

The Sports Tribunal's office is in Wellington. Inquiries should be directed to the Registrar of the Sports Tribunal.

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