

## **MEMBER PROTECTION**

### **PART C – COMPLAINT HANDLING POLICY**

**Adopted by NSW Netball Association Ltd Board Meeting on  
15<sup>th</sup> April 2008**

**Amended by NSW Netball Association Ltd Board Meeting on  
20<sup>th</sup> April 2010**

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## **POLICY STATEMENT**

*The Netball NSW Complaint Handling Policy forms one part of the Netball NSW Member Protection Policy, and as such, should be read in conjunction with the Member Protection Policy.*

## **OVERVIEW**

To ensure due process, consistency and that the principles of natural justice are followed in all aspects of handling or conducting complaints, allegations, investigations, tribunals and disciplinary measures, Netball NSW and/or District/League Associations will follow and implement the following procedures:

***ATTACHMENT C1***

***Complaints Procedure***

***ATTACHMENT C2***

***Mediation Procedure***

***ATTACHMENT C3***

***Investigation Procedure***

***ATTACHMENT C4***

***Investigation Procedure for Allegations of Child Abuse***

***ATTACHMENT C5***

***Policies and Procedures for Tribunals and Grading Panels***

***ATTACHMENT C6***

***Disciplinary Measures***

## **ATTACHMENT C1: Complaints Procedure**

A complaint can be about an act, behaviour, omission, situation or decision that someone thinks is unfair, unjustified, unlawful and/or a breach of this Policy. Complaints will always vary. They may be about individual or group behaviour; they may be extremely serious or relatively minor; they may be about a single incident or a series of incidents; and the person about who the allegation is made may admit to the allegations or emphatically deny them.

Given all of the variables that can arise, Netball NSW provides a step-by-step complaint procedure that people may use/enter at any stage. Individuals and organisations to which this Policy applies may also pursue their complaint externally under anti-discrimination, child-protection or other relevant legislation.

If at any point in the complaint process the Member Protection Information Officer or relevant personnel considers that a Complainant has **knowingly** made an untrue complaint or the complaint is vexatious or malicious, the matter may be referred to the Hearings Tribunal for appropriate action. All complaints will be kept confidential and will not be disclosed to another person without the Complainant's consent except if law requires disclosure or if disclosure is necessary to effectively deal with the complaint.

### **Step 1**

As a first step the Complainant should try to sort out the problem with the person or people involved if they feel able to do so.

### **Step 2**

- 2.1 If the issue cannot be resolved without assistance, the Complainant may make an initial approach to:
- a) an MPIO;
  - b) another appropriate person within the organisation (e.g. District/League President/Secretary or a team manager or coach)
- 2.2 If the person approached is an MPIO, they may:
- a) take notes about the complaint by completing the form "*MPIO's Confidential Record of Complaint*" (Netball NSW MPP – Part E (Reporting Forms) Attachment E1) (which the MPIO will keep in a secure and confidential place);
  - b) try to sort out the facts of the problem;
  - c) ask what outcome/how the Complainant wants the problem resolved and if they need support;
  - d) provide possible options for the Complainant to resolve the problem;
  - e) explain how the complaints procedure works;
  - f) act as a support person if the Complainant so wishes;
  - g) refer the Complainant to an appropriate person to help them resolve the problem, if necessary;

- h) inform the relevant government authorities and/or police if required by law to do so;
- i) maintain strict confidentiality.

### **Step 3**

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- 3.1 After talking with the MPIO, the Complainant may decide:
  - a) there is no problem;
  - b) the problem is minor and they do not wish to take the matter forward;
  - c) to try and work out their own resolution (with or without a support person such as a MPIO);
  - d) to seek a mediated resolution with the help of a third person (such as a mediator or a Manager).
- 3.2 If the Complainant wishes to remain anonymous, Netball NSW and/or District/League Associations can't assist them to resolve the complaint. Organisations have to follow the principles of natural justice and be fair to both sides. This means that Netball NSW and/or District/League Associations or the Complainant may be required to provide the person/people complained about with full details of the complaint so they have a fair chance to respond to all the allegations.

### **Step 4**

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- 4.1 If the complaint is not resolved to the Complainant's satisfaction, they may make a formal complaint in writing to the relevant body.
- 4.2 To avoid any doubt, any complaint relating to:
  - a) a Netball NSW program or event shall be referred to the MPIO and/or relevant personnel of Netball NSW;
  - b) a District/League Association program or event shall be referred to the MPIO and/or relevant personnel of the District/League Association. If the District/League Association has not appointed at least one MPIO and/or relevant personnel to deal with complaints, the complaint shall be referred to the MPIO and/or relevant personnel of a Region.
- 4.3 Approach a relevant external agency such as an equal opportunity commission, for advice.

### **Step 5**

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- 5.1 If the Complainant decides to make a formal complaint in writing under Step 4, the relevant personnel will, on receiving the formal complaint and based on the material they have provided, decide whether:
  - a) they are the most appropriate person to receive and handle the complaint.
  - b) if the relevant personnel consider that a complaint is minor, lacks substance, is frivolous or vexatious in nature and/or purely personal in nature with no connection to the activities of Netball NSW and/or District/League Associations, they may determine that the complaint does not warrant a formal resolution procedure. In this instance, the relevant personnel will

advise the complainant in writing of this determination, and the reasons for the determination.

- c) to appoint a person to investigate the complaint.
- d) to refer the complaint to a mediation session.
- e) to refer the complaint to a hearings tribunal.
- f) to refer the matter to the police or other appropriate authority.
- g) to implement any interim administrative or other arrangements that will apply until the complaint process set out in the Complaint Resolution Procedures is completed.

5.2 In making the decision(s) outlined above, the relevant personnel will take into account:

- i. whether they have had any personal involvement in the circumstances giving rise to the complaint and, if so, whether their ability to impartially manage the complaint is compromised or may appear to be compromised;
- ii. whether, due to the nature of the complaint, specific expertise or experience may be required to manage the complaint;
- iii. the Complainant's wishes, and the wishes of the Respondent, regarding the manner in which the complaint should be handled;
- iv. whether, due to the nature of the complaint, the relationship between the Complainant and the Respondent and any other relevant factors, the complaint should be referred (or should not be referred) to mediation or to a hearings tribunal. Relevant factors may include an actual or perceived power imbalance between the Complainant and the Respondent, the nature of any ongoing working relationship between the Complainant and the Respondent, and the personal attributes of the Complainant and the Respondent (for example, if one party does not speak English fluently, some of the possible complaints resolution mechanisms may not be appropriate);
- v. the nature and sensitivity of any information or other material that must be provided by the Complainant, the Respondent, and any of the other people involved in the complaint;
- vi. whether the facts of the complaint are in dispute;
- vii. the urgency of the complaint, including the likelihood and the consequences (if the complaint is ultimately proven) that the Complainant will be subject to further unacceptable behaviour while the complaint process set out in these Procedures is being conducted.

5.3 If the relevant personnel is the appropriate person to handle the complaint they will, to the extent that these steps are necessary:

- a) get full information from the Complainant about the complaint and how they want it resolved (if this information has not already been obtained through earlier steps) by completing the form "*Confidential Record of Formal Complaint*" (Netball NSW MPP – Part E (Reporting Forms) Attachment E2);

- b) put the information they've received from the Complainant to the person/people they're complaining about and ask them to provide their side of the story;
- c) decide whether they have enough information to determine whether the matter alleged in the complaint did or didn't happen;
- d) determine what, if any, further action to take. This action may include disciplinary action in accordance with Attachment C6 – Disciplinary Measures, appointing a person to investigate the complaint, referring the complaint to a mediation session or a hearings tribunal and/or referring the complaint to the police or other appropriate authority.

## **Step 6**

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- 6.1 If a person is appointed to investigate the complaint under **Step 5**, the investigator will conduct the investigation and provide a written report to the relevant personnel who will determine what, if any, further action to take. This action may include a direction to the investigator to make further enquiries and obtain additional information, disciplinary action, referring the complaint to a formal mediation session, a hearings tribunal and/or the police or other appropriate authority.
- 6.2 If the complaint is referred to a formal mediation session under **Step 5**, the mediation session will be conducted in accordance with Attachment C2 – Mediation Procedure or as otherwise agreed by the Complainant and the Respondent.
- 6.3 If the complaint is referred to a hearings tribunal under **Step 5**, the hearing will be conducted in accordance with Attachment C5 – Tribunal Policies and Procedures.
- 6.4 If the complaint is referred to the police or other appropriate authority under **Step 5**, Netball NSW and/or District/League Associations will use its best endeavours to provide all reasonable assistance lawfully required by the police or other appropriate authority.
- 6.5 If interim administrative or other arrangements are implemented under **Step 5**, Netball NSW and/or District/League Associations will periodically review these arrangements to ensure that they are effective.
- 6.6 Any reasonable costs relating to the complaint process set out in this Policy (e.g. investigation and/or mediation and/or tribunals' processes) are to be met by Netball NSW and/or District/League Associations.

## **Step 7**

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- 7.1 If, under **Step 6**, a formal mediation session is conducted, and the Complainant and the Respondent(s) cannot reach a mutually acceptable mediated solution to the complaint, the Complainant may request that the relevant personnel reconsider the complaint in accordance with **Step 5** within 14 days of the initial decision.
- 7.2 The Complainant or the Respondent(s) may be entitled to appeal where:
  - a) Under **Step 5**, a decision was made by the relevant personnel:
    - i. not to take any action; or
    - ii. to take disciplinary action; or

- b) Under **Step 6**, a decision was made by an investigator, a mediator or a tribunal's process:
- i. not to take any action; or
  - ii. to take disciplinary action.

- 7.3 The grounds for appeal and the process for appeals under this Policy are set out in Attachment C5 – Tribunal Policies and Procedures.
- 7.4 If the internal complaints processes set out in this Policy do not achieve a satisfactory resolution/outcome for the Complainant, or if they believe it would be impossible to get an impartial resolution within Netball NSW and/or a District/League Association, they may choose to approach an external agency such as an equal opportunity commission to assist with a resolution.

### **Step 8**

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- 8.1 The relevant personnel will document the complaint, the process followed and the outcome. This document will be stored in a confidential and secure place.
- 8.2 All documentation related to the complaint will be confidentially stored by the relevant body (the group that handled the complaint process).
- 8.3 If the matter is of a serious nature, or if the matter was escalated to and/or dealt with at the Netball NSW level, the original document will be stored at the Netball NSW office with a copy stored at the District/League Association office, where one exists.

### **External procedure**

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There may be a range of external options available to the Complainant depending on the nature of the complaint. If the Complainant feels that they have been harassed or discriminated against, they can seek advice from their State or Territory Equal Opportunity Commission without being obliged to make a formal complaint. If the Commission advises the Complainant that the problem appears to be a type of harassment that comes within its jurisdiction, they may then make a decision as to whether or not to lodge a formal complaint with the Commission.

Once a complaint is received by an anti-discrimination commission, an investigation will be conducted by that organisation. If it appears that unlawful harassment or discrimination has occurred, there will usually be an attempt to conciliate the complaint confidentially first. If this fails, or is inappropriate, the complaint may go to a formal hearing where a finding will be made as to whether unlawful harassment or discrimination occurred. The tribunal will decide upon what action, if any, will be taken. This could include financial compensation for such things as distress, lost earnings or medical and counselling expenses incurred.

An anti-discrimination commission can decline to investigate a complaint, or dismiss a complaint at any point in the investigation, conciliation or public hearing stages.

If a Complainant lodges a complaint under anti-discrimination law, they may use an appropriate person (e.g. an MPIO) as a support person throughout the process. It is also common to have a legal representative, particularly at the hearing stage of a complaint.

## ATTACHMENT C2: Mediation Procedure

Mediation is a process by which people who are in conflict can be helped to communicate with each other about what is important for them and how to make decisions about resolving their dispute. Mediators provide a supportive atmosphere and method of talking to one another, to assist in sorting out the issues, coming up with acceptable solutions and making mutually satisfactory agreements.

This attachment outlines the general procedure of mediation that will be followed by Netball NSW and/or District/League Associations.

1. The people involved in a formal complaint (Complainant and Respondent(s)) may work out their own resolution of the complaint or seek the assistance of a neutral third person or a mediator. Mediation may occur either before or after an investigation of the complaint.
2. Mediation (getting those involved to come to a joint agreement about how the complaint should be resolved) will only be recommended:
  - a) After the Complainant and Respondent have had their chance to tell their version of events to the relevant personnel on their own; and
  - b) The relevant personnel does not believe that any of the allegations warrant any form of disciplinary action - proven serious allegations will not be mediated, no matter what the complainant desires; and
  - c) Mediation looks like it will work (i.e. the versions given by the Complainant and Respondent tally or almost tally and/or at the very least, it looks as though it will be possible for each party to understand the other party's point of view).
3. Mediation will **not** be recommended if:
  - a) The Respondent has a completely different version of the events and they won't deviate from these;
  - b) The Complainant or Respondent is unwilling to attempt mediation; or
  - c) Due to the nature of the complaint, the relationship between the Complainant and the Respondent(s) and any other relevant factors, the complaint is not suitable for mediation.
4. If mediation is chosen to try and resolve the complaint, the relevant personnel will, under the direction of Netball NSW and/or District/League Associations and in consultation with the Complainant and the Respondent(s), arrange for a mediator to mediate the complaint.
5. The relevant personnel will notify the Respondent(s) that a formal complaint has been made, provide them with details of the complaint and notify Netball NSW or the District/League Association that it has decided to refer the matter to mediation to resolve the complaint.
6. The mediator's role is to assist the Complainant and Respondent(s) reach an agreement on how to resolve the problem. The mediator, in consultation with the Complainant and Respondent(s), will choose the procedures to be followed during the mediation. At a minimum, an agenda of issues for discussion will be prepared by the mediator.

7. The mediation will be conducted confidentially and without prejudice to the rights of the Complainant and the Respondent(s) to pursue an alternative process if the complaint is not resolved.
8. At the end of a successful mediation the mediator will prepare a document that sets out the agreement reached between the Complainant and Respondent(s) and it will be signed by them as their agreement.
9. If the formal complaint is not resolved by mediation, the Complainant may:
  - a) Write to the relevant personnel within 14 days of the mediation to request that they reconsider the complaint; *or*
  - b) Approach an external agency such as an anti-discrimination commission.

**NOTE:** “*Record of Mediation*” (Netball NSW MPP – Part E (Reporting Forms) Attachment E4) is to be completed by the mediator, along with any additional documentation as deemed appropriate by the mediator.

### **ATTACHMENT C3: Investigation Procedure**

If an investigation needs to be conducted the following steps are to be followed:

1. A written brief will be provided to the investigator to ensure the terms of engagement and scope of the investigator's role and responsibilities are clear.
2. The Complainant will be interviewed and the complaint documented in writing.
3. The details of the complaint will be conveyed to the person/people complained about (Respondent(s)) in full. The Respondent(s) must be given sufficient information to enable them to properly respond to the complaint.
4. The Respondent(s) will be interviewed and given the opportunity to respond. The Respondent'(s) response to the complaint will be documented in writing.
5. If there is a dispute over the facts, then statements from witnesses and other relevant evidence will be obtained to assist in the investigation.
6. The investigator will make a finding as to whether the complaint is:
  - a) substantiated (there is sufficient evidence to support the complaint);
  - b) inconclusive (there is insufficient evidence either way);
  - c) unsubstantiated (there is sufficient evidence to show that the complaint is unfounded); and/or
  - d) mischievous, vexatious or knowingly untrue.
7. A report documenting the complaint, investigation process, evidence, finding and, if requested, recommendations will be given to the relevant personnel.
8. A report documenting the complaint and summarising the investigation process and key points that were found to be substantiated, inconclusive, unsubstantiated and/or mischievous will be provided to the Complainant and the Respondent(s).
9. Both the Complainant and the Respondent(s) are entitled to support throughout this process from their chosen support person/adviser (e.g. MPIO or other person).
10. The Complainant and the Respondent(s) may have the right to appeal against any decision based on the investigation. Information on the appeals process is in Attachment C5 – Tribunal Policies and Procedures.

More detailed information on conducting internal investigations can be found at [www.ausport.gov.au/ethics/policy.asp](http://www.ausport.gov.au/ethics/policy.asp)

## **ATTACHMENT C4: Investigation Procedure – Child Abuse**

An allegation of child abuse is a very serious matter and must be handled with a high degree of sensitivity. The initial response to a complaint that a child has allegedly been abused should be immediate if the incident/s are serious or criminal in nature while less serious/urgent allegations should be actioned as soon as possible, preferably within 24 hours.

The following is a basic outline of the key processes to follow. More information can be obtained from NSW Department of Community Services (DOCS) at [www.community.nsw.gov.au](http://www.community.nsw.gov.au) or 132 111, or the Commission for Children and Young People at [www.kids.nsw.gov.au](http://www.kids.nsw.gov.au)

### ***Step 1 - Clarify basic details of the allegation***

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- 1.1 Any complaints, concerns or allegations of child abuse should be made or referred to the General Manager of Netball NSW, an MPIO and/or a District/League Association President/Secretary.
- 1.2 The initial response of the person that receives the complaint from the child (or person on behalf of the child) is crucial to the well-being of the child. It is important for the person receiving the information to:
  - a) Listen to, be supportive and do not dispute what the child says;
  - b) Reassure the child that what has occurred is not the fault of the child;
  - c) Ensure the child is safe;
  - d) Be honest with the child and explain that other people may need to be told in order to stop what is happening; and
  - e) Ensure that what the child says is quite clear but do not elicit detailed information about the abuse. You should avoid suggestive or leading questions.
- 1.3 The person receiving the complaint should obtain and clarify basic details (if possible) such as:
  - a) Child's name, age and address.
  - b) Person's reason for suspecting abuse (observation, injury or other).
  - c) Names and contact details of all people involved, including witnesses.
- 1.4 Complete the report form "*Confidential Record of Child Abuse Allegation*" (Netball NSW MPP – Part E (Reporting Forms) Attachment E3) of this Policy. Retain the original in a secure place and forward a copy to the General Manager of Netball NSW.

### ***Step 2 – Report allegations of a serious or criminal nature***

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- 2.1 Any individual or organisation to which this Policy applies, **should immediately report any incident of a serious or a criminal nature to the police and other appropriate authority.**
- 2.2 If the allegation involves a child at risk of harm, the incident should immediately be reported to the police or other appropriate government agency. You may need to report to both the police and the relevant government agency.

- 2.3 The NSW DOCS (132 111) should be contacted for advice if there is **any** doubt about whether the complaint should be reported.
- 2.4 If the child's parent/s are suspected of committing the abuse, report the allegation to the relevant government agency.

### ***Step 3 – Protect the child***

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- 3.1 The General Manager or MPIO and/or District/League Association President/Secretary should assess the risks and take interim action to ensure the child's/children's safety. Some options that Netball NSW and/or District/League Associations could implement include redeployment of the alleged offender to a non-child related position, supervision of the alleged offender or removal/suspension from their duties until the allegations are finally determined. **NOTE: it is not the MPIO's role to actually undertake action such as redeploying someone – an MPIO should only recommend possible actions.**
- 3.2 The General Manager or MPIO and/or District/League Association President/Secretary should also address the support needs of the person against whom the complaint is made. Supervision of the person should ideally occur with the knowledge of the person. If stood down, it should be made clear to all parties that are aware of the incident that this does not mean the person is guilty and a proper investigation still needs to be undertaken.

### ***Step 4 – Further clarify and investigate allegation***

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- 4.1 Seek advice from the police and relevant government agency as to whether Netball NSW and/or District/League Associations should carry out their own internal investigation (in addition to or in conjunction with any police or relevant government agency investigation).
- 4.2 If the police and/or relevant government agency advises that it is appropriate, then appoint an independent person (where possible) with appropriate expertise to conduct an investigation. The investigator should:
  - a) Contact the parents/carers of the child at an appropriate time and as directed by the police or relevant government agency.
  - b) If appropriate, meet with parents/carers and the child to clarify the incident and offer support on behalf of Netball NSW and/or the District/League Association if required (for example, professional counselling).
  - c) Meet with the person against whom the allegation refers at an appropriate time and as directed by the relevant authority and give the person an opportunity to explain or respond to the allegation and identify any witnesses and supporting evidence. The person should have an opportunity to invite a support person/adviser to attend at a meeting and should be offered support (for example, professional counselling) if necessary.
  - d) Obtain a signed statement and record of interview from the person.
  - e) Make contact with any witnesses and obtain written and signed statements outlining details of the allegation (what happened, when, how). This should only occur following advice from the relevant authority.
  - f) Obtain other information that could assist in making a decision on the allegation.

- 4.3 The information collected during the investigation should be made available to the relevant authorities.
- 4.4 Strict confidentiality, impartiality, fairness and due process must be maintained at all times.

#### ***Step 5 – Record and analyse all information***

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- 5.1 If an internal investigation was conducted under **Step 4**, the investigator will provide a report to the General Manager, District/League Association President/Secretary and/or relevant Tribunal.
- 5.2 The decision-maker(s) will be the General Manager, District/League Association President/Secretary and/or relevant Tribunal and will remain separate and at arm's length from the investigator.
- 5.3 The General Manager, District/League Association President/Secretary and/or relevant Tribunal will consider all the information and determine a finding. It will also recommend action and its rationale for the action.

#### ***Step 6 – Undertake disciplinary action***

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- 6.1 For incidents of a serious or criminal nature, consideration must be given to the findings of the police and/or the government agency before making a decision on disciplinary proceedings.
- 6.2 If disciplinary action is to be taken, follow the procedures outlined in Attachment C6 – Disciplinary Measures.
- 6.3 Implement any disciplinary decision recommended by the General Manager, District/League Association President/Secretary and/or relevant Tribunal. The action should be immediate.
- 6.4 Check with the relevant State government authority to see if a report needs to be forwarded (e.g. the NSW Commission for Children and Young People requires notification of relevant employment proceedings).
- 6.5 Complete the report form "*Record of Tribunal Decision*" (Netball NSW MPP – Part E (Reporting Forms) Attachment E5) of this Policy. Retain the original in a secure place and forward a copy to the General Manager of Netball NSW.

## **ATTACHMENT C5: Policies and Procedures for Tribunals and Grading Panels**

The following policy and procedures will be followed by Tribunals established by Netball NSW and District/League Associations.

### ***1. Establishment and Function of Tribunals***

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1.1 Tribunals shall be established as follows:

- a) Disciplinary Tribunal
- b) Hearings Tribunal
- c) Appeals Tribunal

1.2 The function of the Disciplinary Tribunal is to:

- a) Hear all Disciplinary matters relating to 'on court' complaints such as:
  - i. Players sent from the court by an official during a match
  - ii. Use of abusive language including obscene
  - iii. Racial / discriminatory abuse
  - iv. Contrary conduct
  - v. Disciplinary matters relating to 'on court' issues at State Championships, State Age Championships and State League/Inter District competitions where it has been deemed that a player / official / administrator has contravened the relevant Code of Conduct.

1.3 The function of the Hearings Tribunal is to:

- a) Hear all matters as provided in the Member Protection Policy in relation to allegations of offences under the Member Protection Policy including 'off court' matters.

In some cases there could be an option for a matter to be heard by either the Disciplinary Tribunal or the Hearings Tribunal. An example could be referring to a player's pregnant condition during a match as against a District/League Association's decision to prevent a player who is pregnant from participating. In such cases it would be the decision of the District/League Association and/or General Manager of Netball NSW to determine which Tribunal to use for a hearing.

1.4 The function of the Appeals Tribunal is to:

- a) Hear all appeals resulting from decisions of either the Disciplinary Tribunal or the Hearings Tribunal or the Grading Panel or where a registered financial member of a District/League Association is aggrieved by a decision and the matter has not been the subject of a Disciplinary or Hearings Tribunal decision.

The composition of the Appeals Tribunal would vary depending upon the type of appeal lodged.

In District/League Associations, appeals against grading decisions would normally be heard by a minimum of three persons with appropriate grading experience who were not involved in the original decision making process.

For appeals against Disciplinary Tribunals the appeal would be heard by a minimum of three persons who have expertise in the area under review. In such cases it would be preferable to have a person chair the Tribunal who has experience in chairing Tribunals.

For appeals against Hearings Tribunal decisions the appeal would be heard by a minimum of three persons. It is important that the people appointed have expertise in respect of the matter being appealed and where possible a solicitor, a person with appropriate legal training or a person with other relevant qualifications and experience should be sourced to Chair the Tribunal.

- 1.5 Each member of each relevant Tribunal established under this Policy shall be indemnified by the organisation which appointed them, from any claim or action for loss, damages, or costs made against them arising out of, or in connection with, their function as a member of the Tribunal under this Policy.
- 1.6 Except as otherwise provided in this Policy, all members of the Tribunal shall keep all matters relating to the hearing (including but not limited to the nature of the complaint, information obtained before and during the hearing and the decision of the Tribunal) confidential.
- 1.7 To the extent of any inconsistency between the hearing procedure set out in the constitution of Netball NSW and/or District/League Associations (if applicable) and the hearing procedure set out in this Policy, this Policy shall prevail in relation to all complaints under this Policy.

## ***2. Disciplinary Tribunal Policy and Procedure***

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The policy and procedure applies to all registered financial members of Netball NSW whether they are participating or not in District/League Association competitions and all Netball NSW governed competitions such as State Championships, State Age Championships and State League/Inter District Competitions in all Regions.

It has been developed to assist Netball NSW members in understanding the implications of poor behaviour demonstrated whilst participating in both Netball NSW and District/League Association competitions and raising their awareness of disciplinary penalties that may be imposed upon them in relation to competition based reported incidents.

The authority to determine and adjudicate upon all complaint processes and tribunal hearing procedures in relation to this policy are to be considered in conjunction with the Netball NSW Member Protection Policy and the relevant District/League Association Constitution or Netball NSW Constitution.

### ***2.1 Conduct of the Disciplinary Tribunal***

- 2.1.1 Where a player(s), team(s), spectator(s), and/or Club official (which includes coach, scorer or umpire) is reported by an umpire and/or Association Committee member at any event under the control of the Association further Tribunal action may be taken.
- 2.1.2 The Chairperson of the Disciplinary Tribunal will determine if the matter is to be heard by a Disciplinary Tribunal or a Hearings Tribunal.
- 2.1.3 The Disciplinary Tribunal may investigate any matter referred to it from any incident involving a financial member of Netball NSW arising out of any event under the control of Netball NSW and/or a District/League Association. Disciplinary Tribunals convened under this policy and procedure are generally related to 'on court' matters.

- 2.1.4 The Disciplinary Tribunal for District/League Association events is appointed by the relevant District/League Association Executive Committee and will consist of a minimum of three persons.
- 2.1.5 The Disciplinary Tribunal for Netball NSW events is appointed by the Netball NSW Appointments Panel and will consist of a minimum of three persons.
- 2.1.6 The Chairperson shall oversee the conduct of the proceedings.
- 2.1.7 The Disciplinary Tribunal convened to hear the matter shall determine who will be required to appear before the Tribunal.
- 2.1.8 Any person(s) attending with the alleged offender is not permitted to speak in the Disciplinary Tribunal or tender any evidence on behalf of any party.
- 2.1.9 The following principles apply to the conduct of a Disciplinary Tribunal:
- a) a District/League Association or a person must be given a reasonable opportunity to present their case before a decision is made which will affect them.
  - b) the player, umpire, coach, official, District/League Association member lodging the complaint must do so honestly and in good faith.
  - c) submissions to the Disciplinary Tribunal may include written verbal or visual components however the relevance of any submissions to the proceedings shall be the decision of the Disciplinary Tribunal. Submissions that are not relevant to proceedings are not admissible.
  - d) written submissions may be enough; the rules of natural justice do not necessarily require an opportunity be made to make oral submissions.
  - e) the Disciplinary Tribunal has the discretion to interview any other person(s) it deems appropriate.
  - f) parties should be given adequate notice to enable them to make submissions, having regard to the incident or incidents under investigation and the circumstances of the reports that led to the Disciplinary Tribunal.
  - g) any material which may affect the Disciplinary Tribunal and therefore the decision, should be disclosed and parties should have the opportunity to respond or rebut any allegations.
  - h) there is no absolute requirement that parties be able to have legal representation at the Disciplinary Tribunal. This depends on the circumstances of the case and the determination of the Disciplinary Tribunal.
  - i) there is no requirement that any party have the opportunity to cross-examine other parties.
  - j) the Disciplinary Tribunal must be perceived by a reasonable person to be free from bias when making a decision.
  - k) a member of the Disciplinary Tribunal cannot have any direct or indirect interest, pecuniary or otherwise in the subject matter of the decision.
  - l) the Disciplinary Tribunal is not bound by the rules of evidence.

## District/League Associations

2.2 The authority to determine and adjudicate upon a Disciplinary Tribunal within a District/League Association is contained in the Constitution of the District/League Association.

### 2.3 *Reporting Procedure*

2.3.1 An umpire or an official may report any incident in writing to the Secretary of the District/League Association. Where the incident being reported occurred during a competition match the umpire(s) is to complete the "*Incident Report Form*" (Netball NSW MPP – Part E (Reporting Forms) Attachment E6) immediately after the match in question has been completed.

2.3.2 Where an official lodges a report in respect of an incident in a match the report must be lodged in writing immediately after the match in question has been completed.

### 2.4 *Notification and General Procedures*

2.4.1 Where possible all persons required to attend a tribunal will be notified orally or in writing. Where a person is unable to be contacted by telephone, a message given to a responsible Club Official advising the person registered with that Club is to attend a tribunal will be regarded as official advice. Generally, at least 72 hours notice should be given to all persons requested to appear before the Disciplinary Tribunal.

2.4.2 An official from the Club responsible for the alleged offender shall be invited to attend the tribunal with the alleged offender. Where a person under the age of 18 years is called before a Disciplinary Tribunal, that person's parent(s) or guardian(s) is permitted to attend with the person. The alleged offender is permitted to remain in the tribunal room while any evidence is presented.

2.4.3 The order of appearance is generally:

- a) Person charged with offence(s),
- b) Umpire(s) (if applicable),
- c) Other witnesses (from either side),
- d) Recall of person charged to explore other evidence if required.

2.4.4 Where a Disciplinary Tribunal determines that the person(s) appearing before the Tribunal is to be suspended from playing and/or attending any competition matches and/or is to be fined, the decision of the Tribunal is to be conveyed to the person(s) immediately on completion of the Tribunal. The penalties that may be imposed are contained in the attached schedule of penalties. Where a fine is imposed, that fine is to be imposed on the Club responsible for the person(s).

2.4.5 Where a person(s) considers the penalty to be unjustly harsh or onerous, that person has 48 hours in which to lodge a written appeal, which must state the grounds of the appeal, through the relevant Club Secretary to the District/League Association Secretary. The District/League Association Secretary will refer the matter to the Appeals Tribunal who will review the evidence and either confirm or vary the decision of the Disciplinary Tribunal. While the Appeals Tribunal is considering the appeal, any penalty imposed will not apply.

## State and State Age Championships

- 2.5 The authority to determine and adjudicate upon a Disciplinary Tribunal emanating from a Netball NSW competition is contained in Clause 5 of the Netball NSW Constitution.
- 2.6 Disciplinary Tribunals will consist of a minimum of three persons and will be conducted within the following timeframes:
- a) If an alleged incident occurs before 2.00pm on any day except the final day of the event the Disciplinary Tribunal shall be conducted no earlier than 6.00pm on the same day at the venue where the alleged incident occurred.
  - b) If an alleged incident occurs after 2.00pm on any day except the final day of the event the Disciplinary Tribunal shall be conducted no earlier than 7.00am on the following day at the venue where the alleged incident occurred.
  - c) If an alleged incident occurs on the final day of the Championships the Disciplinary Tribunal will occur within five (5) days of the alleged incident.

### 2.7 *Reporting Procedure*

- 2.7.1 An umpire or an official may report any incident in writing to a Netball NSW Championship Referee on duty at the relevant venue.
- 2.7.2 Where the incident being reported occurred during a competition match the umpire(s) or official lodging the report is to complete the "*Incident Report Form*" (Netball NSW MPP – Part E (Reporting Forms) Attachment E6) within one (1) hour of the completion of the game where the alleged incident occurred.

### 2.8 *Notification and General Procedures*

- 2.8.1 Where possible all persons required to attend the Disciplinary Tribunal will be notified orally or in writing at least four (4) hours before the Disciplinary Tribunal. Where a person is unable to be contacted by telephone, a message given to a responsible District/League Association Official advising the person registered with that District/League Association is to attend the Tribunal, will be regarded as official advice.
- 2.8.2 A minimum of four (4) hours will be allowed for all parties before the Disciplinary Tribunal to prepare submissions. All matters are to be finalised as expeditiously as possible.
- 2.8.3 Any alleged charge(s) are to be based around the published Netball NSW Codes of Conduct and the charges identified in the "*Incident Report Form*" (Netball NSW MPP – Part E (Reporting Forms) Attachment E6).
- 2.8.4 Where separate incidents occur in the course of a match and are reported, separate reports should be submitted.
- 2.8.5 An official from the Club responsible for the alleged offender shall be invited to attend the tribunal with the alleged offender. Where a person under the age of 18 years is called before a Disciplinary Tribunal, that person's parent(s) or guardian(s) is permitted to attend with the person. The alleged offender is permitted to remain in the tribunal room while any evidence is presented.

2.8.6 The order of appearance is generally:

- a) Person charged with offence(s),
- b) Umpire(s) (if applicable),
- c) Other witnesses (from either side),
- d) Recall of person charged to explore other evidence if required.

2.8.7 Where a Disciplinary Tribunal determines that the person(s) appearing before the Tribunal has breached the Constitution or Code of Behaviour or Member Protection Policy and is guilty of an offence such penalties as deemed appropriate, having regard to the schedule of penalties, shall be imposed. Where a fine is imposed, that fine is to be imposed on the Club responsible for the person(s).

2.8.8 If the Disciplinary Tribunal finds a person reported for separate incidents within a match to be guilty of more than one offence, it should impose separate penalties in respect of each offence. In such cases penalties are cumulative and not concurrent.

2.8.9 Where a person(s) considers the penalty to be unjustly harsh or onerous, that person has 4 (four) hours in which to lodge a written appeal, which must state the grounds of the appeal, through the relevant District/League Association official. The District/League Association official will refer the matter to the Disciplinary Tribunal Chairperson who will immediately refer it to the Appeals Tribunal. The Appeals Tribunal will review the evidence and either confirm or vary the decision of the Disciplinary Tribunal. While the Appeals Tribunal is considering the appeal, any penalty imposed will not apply.

#### State League/Inter District (Regions 1 – 8)

2.9 The authority to determine and adjudicate upon a Disciplinary Tribunal emanating from a Netball NSW competition is contained in Clause 5 of the Netball NSW Constitution.

#### *2.10 Reporting Procedure*

2.10.1 An umpire or an official may report any incident in writing to the General Manager, Netball NSW for matches held in Region 1 and to the relevant Regional Co-ordinator for matches held in Regions 2 – 8.

2.10.2 Where the incident being reported occurred during a competition match the umpire(s) is to complete the *"Incident Report Form"* (Netball NSW MPP – Part E (Reporting Forms) Attachment E6) immediately after the match in question has been completed. Where an official lodges a report in respect of an incident in a match the report must be lodged in writing immediately after the match in question has been completed.

2.10.3 The matter will be referred to the Disciplinary Tribunal, which will consist of a minimum of three persons, who will determine if further action is to be taken and if so where the tribunal will be convened.

## 2.11 Notification and General Procedures

- 2.11.1 Where possible all persons required to attend a tribunal will be notified orally or in writing. Where a person is unable to be contacted by telephone, a message given to the District/League Association official advising the person registered with that District/League Association is to attend a tribunal, will be regarded as official advice. Generally, at least 72 hours notice should be given to all persons requested to appear before the disciplinary Tribunal.
- 2.11.2 A minimum of seventy two (72) hours will be allowed for all parties before the Disciplinary Tribunal to prepare submissions. All matters are to be finalised as expeditiously as possible.
- 2.11.3 Any alleged charge(s) are to be based around the published Netball NSW Codes of Conduct and the charges identified in the "Incident Report Form" (Netball NSW MPP – Part E (Reporting Forms) Attachment E6).
- 2.11.4 An official from the District/League Association responsible for the alleged offender shall be invited to attend the tribunal with the alleged offender. Where a person under the age of 18 years is called before a Disciplinary Tribunal, that person's parent(s) or guardian(s) is permitted to attend with the person. The alleged offender is permitted to remain in the tribunal room while any evidence is presented.
- 2.11.5 The order of appearance is generally:
- a) Person charged with offence(s),
  - b) Umpire(s) (if applicable),
  - c) Other witnesses (from either side),
  - d) Recall of person charged to explore other evidence if required.
- 2.11.6 Where a Disciplinary Tribunal determines that the person(s) appearing before the Tribunal is to be suspended from playing and/or attending any competition matches and/or is to be fined, the decision of the Tribunal is to be conveyed to the person(s) within forty eight (48) hours of completion of the Tribunal. The penalties that may be imposed are contained in the attached schedule of penalties. Where a fine is imposed, that fine is to be imposed on the District/League Association responsible for the person(s).

## **3. Hearings Tribunal Policy and Procedure**

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Where an MPIO of Netball NSW or a District/League Association (if applicable) receives a complaint referred to it under the Member Protection Policy he or she is required to follow the procedures set out below.

- 3.1 Upon receipt of the complaint, the District/League Association and/or General Manager shall as soon as possible do the following:
- a) determine the composition of the Hearings Tribunal, who should comprise a minimum of three persons who have expertise as follows:
    - i. a chairperson who is preferably a person with a legal background or has previous experience in the operation of the Hearings Tribunal;

- ii. a person with a thorough knowledge of the sport;
  - iii. a person with suitable experience and skills relevant to the matter to come before the Hearings Tribunal, provided that the persons do not include:
    - a person, who would, by reason of their relationship with the Complainant or the Respondent, be reasonably considered to be other than impartial; or
    - a person who has any actual or perceived conflict of interest.
- b) inform the Complainant and the Respondent by written notification outlining:
- i. that they have a right to appear at the Hearings Tribunal to hear and/or defend the complaint/allegation;
  - ii. the alleged breach including details of when/where it is alleged to have occurred;
  - iii. the date, time and place for the hearing of the alleged breach which shall be as soon as reasonably practicable after receipt of the complaint or information;
  - iv. that they can make either verbal or written submissions to the Hearings Tribunal;
  - v. that they may arrange for witnesses to attend the Hearings Tribunal in support of their position;
  - vi. in the case of the Respondent, any possible penalties that may be imposed if the complaint is found to be true;
  - vii. that if the Complainant or the Respondent is considered a minor, they should have a parent or guardian present;
  - viii. in addition, the Respondent may also have a representative of their Club attend with them; and
  - ix. where a person under the age of 18 years is called before a Hearings Tribunal that person's parent(s) or guardian(s) is permitted to attend with the person.
- c) Send to the Complainant, Respondent and Chairperson of the Hearings Tribunal a copy of the complaint ("referred to as the Notice of Alleged Breach").

### 3.2 Frivolous, vexatious or malicious complaints:

- a) If within 48 hours of sending the Notice of Alleged Breach, the Respondent alleges in writing to the District/League Association President/Secretary or General Manager that the complaint is frivolous, vexatious or malicious, the Chairperson shall as a preliminary issue, determine whether or not such complaint is frivolous, vexatious or malicious and shall advise the parties of his or her determination.
- b) The District/League Association President/Secretary or General Manager shall provide to the other parties to the hearing (see clause 3.4) a copy of the written allegation made by the Respondent, that the complaint is frivolous, vexatious or malicious.

- c) The Chairperson shall determine such preliminary issue as soon as practicable and in whatever manner the Chairperson considers appropriate in the circumstances provided that he or she does so in accordance with the principles of natural justice.
- d) The decision of the Chairperson under this clause 3.2 may be appealed within 48 hours of the determination to the Appeals Tribunal under section 4.
- 3.3 The Hearings Tribunal shall hear and determine the alleged breach in whatever manner it considers appropriate in the circumstances (including by way of teleconference, video conference or otherwise) provided that it does so in accordance with the principles of natural justice. The purpose of the hearing shall be to determine whether the Respondent has committed a breach of this Policy. If the Hearings Tribunal considers that the Respondent has committed a breach of this Policy, it may impose any one or more of the penalties set out in Attachment C6 – Disciplinary Measures.
- 3.4 The parties to the hearing shall include the Complainant, the Respondent, the relevant organisation (being Netball NSW or the relevant District/League Association) and any witnesses which the Hearings Tribunal considers necessary to participate in the hearing.
- 3.5 The Tribunal Chairperson will call the hearing to order at the designated time and determine if the Respondent(s) is present.
- 3.6 If the Respondent(s) is not present and the Tribunal Chairperson considers that no valid reason has been presented for their absence, the Hearings Tribunal will continue subject to the Chairperson being satisfied that all tribunal notification requirements have been carried out correctly.
- 3.7 If the Chairperson considers that a valid reason for the non-attendance of the Respondent(s) is presented, or the Chairperson does not believe the tribunal notification requirements have been carried out correctly, then the Hearings Tribunal will be rescheduled to a later date.
- 3.8 The Chairperson will inform the District/League Association President/Secretary or General Manager of the need to reschedule, and the District/League Association President/Secretary or General Manager will organise for the Hearings Tribunal to be reconvened.
- 3.9 The Chairperson will read out the complaint that is to be judged, ask the Respondent(s) if they understand the complaint being made against them, and if they agree or disagree with the complaint.
- 3.10 If the person agrees with the complaint, they will be asked to provide any evidence or witnesses that should be considered by the Hearings Tribunal when determining any disciplinary measures.
- 3.11 If the person disagrees with the complaint, the Complainant will be asked to describe the circumstances that lead to the complaint being made.
- Brief notes may be referred to.
  - The Complainant will be allowed to call witnesses.
  - The Respondent(s) may be allowed to question the Complainant and their witnesses.

- 3.12 The Respondent(s) will then be asked to respond to the complaint.
- Brief notes may be referred to.
  - The Respondent will be allowed to call witnesses.
  - The Complainant may be allowed to ask questions of the Respondent and their witnesses.
- 3.13 Both the Complainant and Respondent will be allowed to be present when evidence is presented to the Tribunal. Witnesses may be asked to wait outside the Hearings Tribunal until required.
- 3.14 The Tribunal will be allowed to:
- Consider any evidence, and in any form, that it deems relevant.
  - Question any person giving evidence.
  - Limit the number of witnesses presented if it is agreed by all parties that they will support the person who requested them, but will not provide any new evidence.
- 3.15 If the Tribunal considers that at any time during the Hearings Tribunal that there is any unreasonable or intimidatory behaviour from anyone allowed to be present, the Tribunal Chairperson shall have the power to stop any further involvement of the person in the relevant Tribunal.
- 3.16 If upon receipt of the Notice of Alleged Breach, the Hearings Tribunal considers that pending the determination of the matter the Respondent or Complainant may put at risk the safety and welfare of the Complainant or Respondent or others, it may order that the Respondent or Complainant be:
- a) suspended from any role they hold in Netball NSW or the relevant District/League Association; and/or
  - b) banned from any event or activities held by or sanctioned by Netball NSW and/or the District/League Association; and/or
  - c) required not to contact or in any way associate with the Complainant or Respondent or other person about whom the alleged breach relates, pending the determination of the hearing.
- 3.17 There is no right of appeal of the decision of a Hearings Tribunal under clause 3.16.
- 3.18 No party to the hearing may be represented by a barrister or solicitor. However the Chairperson of the Hearings Tribunal may grant leave for a party to the hearing to be represented by a barrister or solicitor where their livelihood or proprietary is at risk. A party may be represented by an advocate who is not a barrister or solicitor at the hearing.
- 3.19 Each party to the hearing shall bear their own costs in relation to the hearing.
- 3.20 The Hearings Tribunal shall give its decision as soon as practicable, but in any case within 7 days after the hearing, and will deliver to the following a statement of its written reasons to the District/League President/Secretary or the General Manager of the organisation which established the relevant Tribunal. The Hearings Tribunal must complete the report form "*Record of Tribunal Decision*" Part E – Reporting Forms (Attachment E5) of the Member Protection Policy. The District/League Association President/Secretary or General Manager shall then deliver the findings to:

- a) the Complainant;
- b) the Respondent; and
- c) any other party represented in the hearing.

3.21 Where a Hearings Tribunal determines that the person(s) appearing before the Tribunal is guilty of an offence and that person(s) wishes to lodge an appeal against the decision of the Hearings Tribunal the person(s) has 5 days in which to lodge the appeal.

#### **4. Grading Panel Policy and Procedure**

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The policy and procedure applies to all registered financial members of Netball NSW who participate in District/League Association competitions and all Netball NSW governed competitions such as State Championships, State Age Championships and State League/Inter District Competitions in all regions.

It has been developed to assist Netball NSW registered financial members in understanding the grading policy and procedures within Netball NSW and the District/League Association.

The authority to determine and adjudicate upon all grading procedure, complaint processes and tribunal hearing procedures in relation to this policy are to be considered in conjunction with the Netball NSW Member Protection Policy.

##### **4.1 Conduct of the Grading Panel**

- 4.1.1 Grading Policy and Procedures for District/League Association competitions are developed and approved by each individual District/League Association.
- 4.1.2 Grading Policy and Procedures for Netball NSW based competitions are defined in the NSW Grading Policy and Procedures and Rules for Championships and Competitions.
- 4.1.3 The grading panel for District/League Association events is appointed by the relevant District/League Association Executive Committee.
- 4.1.4 The grading panel for Netball NSW events is appointed by the Netball NSW Appointments Panel. A minimum of three persons and a maximum of five persons are appointed to this Panel.
- 4.1.5 The relevant Grading Panel will undertake all grading as appropriate.

## **5. Appeals Tribunal Policy and Procedure**

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### **5.1 Policy**

- 5.1.1 District/League Associations, Clubs and individual members of District/League Associations are provided with an avenue for appeal where a decision materially affects either the District/League Association or Club. In the case of an individual member, that person must show that the decision that materially affects them is because of a direct relationship with either Netball NSW or a District/League Association.
- 5.1.2 A Club, District/League Association or individual member represented at any Tribunal or Grading Panel may appeal a decision of a Tribunal or Grading Panel on one or more of the following bases:
- a) that a denial of natural justice has occurred;
  - b) that the grading awarded a team is inconsistent with that believed to be appropriate for the team entered;
  - c) that a player's name entered on a District/League Association team sheet has occurred without the knowledge or agreement of the player concerned;
  - d) that the disciplinary measure imposed is unjust, harsh or onerous;
  - e) that a financial member is materially affected or disadvantaged by a decision of a Disciplinary Tribunal or a Hearings Tribunal;
  - f) that a District/League Association or Club is materially affected or disadvantaged by a decision of a Disciplinary Tribunal or a Hearings Tribunal;
  - g) that an individual financial member is materially affected by a decision of a District/League Association or Netball NSW;
  - h) that an affiliated District/League Association is materially affected by a decision of Netball NSW; or
  - i) that a Club is materially affected by a decision of a District/League Association.
- 5.1.3 Any decision taken by any person or committee whether they be a volunteer or by any person employed by or engaged for service by the District/League Association or Netball NSW can be the subject of appeal except where an employment related matter is the subject of a grievance.
- 5.1.4 An employment related matter is one where a financial member alleges that they are materially affected by a decision while in employment, whether it be on a casual, temporary, part time or permanent nature or where a financial member is an applicant for an advertised vacancy that may lead to an offer of employment by Netball NSW.
- 5.1.5 In all cases, the appellant Club, District/League Association or individual member must be a financial member affiliated with Netball NSW.
- 5.1.6 All appeal hearings should be heard expeditiously and where possible within the timeframes established for the various categories of appeals as detailed in the procedures.

## 5.2 Procedures

- 5.2.1 An appeal against a decision of a Disciplinary Tribunal or a Hearings Tribunal or a Grading Panel established by a District/League Association shall be made to the Appeals Tribunal of the District/League Association.
- 5.2.2 An appeal against a decision of a Disciplinary Tribunal or Hearings Tribunal or a Grading Panel established by Netball NSW is made to the Appeals Tribunal of Netball NSW.
- 5.2.3 There is only one right of appeal following the decision of the Disciplinary Tribunal or Hearings Tribunal or Grading Panel. The decision of the Appeals Tribunal is final and binding on the parties except where an Appeal has been heard by an Appeals Tribunal and the appellant has evidence that proves a denial of natural justice and/or procedural fairness during the Tribunal process. In such cases the appellant can lodge a request for legal review with Netball NSW. Such review will be undertaken by a solicitor drawn from the Association's legal panel. Note: This provision does not prevent any person or organisation taking action under State or Federal law.
- 5.2.4 Where an appellant (a financial member or affiliated District) seeks a legal review the following procedures will apply:
- a) The appellant will forward all written evidence to the General Manager Netball NSW together with a lodgement fee of \$250.00.
  - b) The General Manager of Netball NSW will appoint a solicitor from the Association's legal panel who will undertake an assessment of the evidence presented in terms of procedural fairness and the rules of natural justice. The solicitor has the authority to make any further enquiries and request further evidence from any party deemed necessary to undertake the review.
  - c) On completion of the review the solicitor will present the findings to the General Manager.
  - d) Where the solicitor upholds the appeal, the Appeals Tribunal decision will be set aside and Netball NSW will convene a further Appeals Tribunal and the lodgement fee of \$250.00 will be refunded to the appellant. No person who was involved in any action relating to the appeal under review is permitted to be involved in the further appeal.
  - e) Where the solicitor dismisses the appeal the appellant will forfeit the lodgement fee of \$250.00.
  - f) The decision of the solicitor is final. Note: This provision does not prevent any person or organisation taking action under State or Federal law.

### 5.3 Lodgement of Appeals

5.3.1 The timeframes for the lodgement of appeals following notification of a decision is as follows:

| Nature of Appeal   | Lodgement Time |
|--|----------------|
| Appeals against District/League Association Grading Tribunal decisions.                            | 48 hours       |
| Appeals against Netball NSW Grading Tribunal decisions.  | 5 days         |
| Appeals against District/League Association Disciplinary Tribunal decisions.                       | 48 hours       |
| Appeals against Netball NSW Disciplinary Tribunal decisions for State and State Age Championships. | 4 hours        |
| Appeals against Netball NSW Disciplinary Tribunal decisions for State League Regions 1 – 8.        | 48 hours       |
| Appeals against District/League Association Hearings Tribunal decisions.                           | 5 days         |
| Appeals against any Netball NSW Committee, Panel or Administrative decision.                       | 5 days         |

5.3.2 For appeals against Disciplinary Tribunal decisions the grounds of the appeal is to be submitted to the General Manager of Netball NSW or the District/League Association President/Secretary, as appropriate, at the time of lodgement of the appeal. No extensions of time will be granted for appeals hearings in respect of Disciplinary Tribunal decisions. The appeal is to be made on the “*Application to Appeal Form*” Part E – Reporting Forms (Attachment E7).

5.3.3 For appeals against Hearings Tribunal decisions the grounds of the appeal is to be submitted to the General Manager of Netball NSW or the District/League Association President/Secretary, as appropriate, at least 72 hours before the Appeals Tribunal is scheduled to hear the appeal. If the appellant is unable to lodge the submission to the Appeals Tribunal within the timeframe permitted an extension of time stating the reasons for the extension required is to be submitted to the Chairperson of the Appeals Tribunal. The Chairperson will decide whether to grant an extension. The appeal is to be made on the “*Application to Appeal Form*” Part E – Reporting Forms (Attachment E7).

5.3.4 For appeals against Grading Panel decisions the grounds of the appeal is to be submitted to the General Manager of Netball NSW or the District/League Association President or Secretary, as appropriate, at least 72 hours before the Appeals Tribunal is scheduled to hear the appeal. No extensions of time will be granted for appeal hearings in respect of Grading Panel decisions. The appeal is to be made on the appropriate form.

5.3.5 An appeal in relation to a decision of a Tribunal established by a District/League Association is to be lodged with the President/Secretary of the relevant District/League Association.

5.3.6 An appeal in relation to a decision of a Tribunal established by Netball NSW is to be lodged with the General Manager of Netball NSW.

5.3.7 An appeal in relation to a decision of a Grading Panel established by a District/League Association is to be lodged with the President/Secretary of the relevant District/League Association.

5.3.8 An appeal in relation to a decision of a Grading Panel established by Netball NSW is to be lodged with the General Manager of Netball NSW.

#### 5.4 *Conduct of the Appeals Tribunal*

- 5.4.1 The Appeals Tribunal comprising a minimum of three persons including the Chairperson for appeals lodged in respect of District/League Association matters is appointed by the District/League Association Executive Committee.
- 5.4.2 The Appeals Tribunal comprising a minimum of three persons including the Chairperson for appeals lodged in respect of Netball NSW matters is selected from the panel of eligible persons appointed by the Appointments Panel (Board).
- 5.4.3 The Chairperson of the Appeals Tribunal is responsible for:
- a) ensuring the appeal is lodged within the relevant time frame of the original decision being appealed;
  - b) arranging the Appeals Tribunal Hearing which can include a determination as to whether the appeal can be accepted;
  - c) determining the place, time and date for the hearing of the appeal and as soon as possible thereafter notify all tribunal members;
  - d) in consultation with the Appeals Tribunal call those witnesses it deems necessary;
  - e) hearing and determining all appeals within the bounds of the Constitution, the By-Laws and any other rules/policies as may be in force at such time.
- 5.4.4 The Appeals Tribunal is not to be bound by the rules of evidence but may inform itself on any matter in such manner as the Tribunal thinks appropriate and as the proper consideration of the matter before the Tribunal permits.
- 5.4.5 A member of the Appeals Tribunal is not permitted to be present at any tribunal hearing where that members Club or District/League Association is the subject of an appeal.
- 5.4.6. A member of the Appeals Tribunal shall not be present at any part of a hearing where that members Club or District/League Association is the subject of an ancillary discussion or ruling.
- 5.4.7 A member of the Appeals Tribunal shall not be present at any tribunal hearing where a financial member of the same club or District/League Association is the subject of an appeal.
- 5.4.8 A member of the Appeals Tribunal shall not be present at any part of a hearing where a financial member of the same Club or District/League Association is the subject of an ancillary discussion or ruling.
- 5.4.9 The Appeals Tribunal has no power to award costs and each party shall bear their own costs in relation to any appeal.
- 5.4.10 To the extent of any inconsistency between the appeal procedures set out in the constitution of Netball NSW and or District/League Associations and the Appeals Tribunal procedures set out in this policy, this policy shall prevail in relation to all complaints and appeals under this policy.

5.4.11 Natural justice provisions are to apply to the conduct of appeals. The key principles of natural justice are:

- a) A Club or District/League Association or a person must be given a reasonable opportunity to present their case before a decision is made which will affect them.
- b) The member or Club or District/League Association lodging the Appeal must do so honestly and in good faith.
- c) Written submissions may be enough; the rules of natural justice do not necessarily require an opportunity be made to make oral submissions.
- d) Parties should be given adequate notice of relevant dates to enable them to make submissions.
- e) Any adverse material which may affect the decision should be disclosed and parties should have the opportunity to respond or rebut any allegations.
- f) There is no absolute requirement that parties be able to have legal representation at the hearings. This depends on the circumstances of the case and the determination of the Appeals Tribunal.
- g) There is no requirement that any party have the opportunity to cross-examine other parties.
- h) The Appeals Tribunal must be perceived by a reasonable person to be free from bias when making a decision.
- i) A member of the Appeals Tribunal cannot have direct or indirect interest, pecuniary or otherwise in the subject matter of the decision.

5.4.12 The Appeals Tribunal is to be by way of review of the decision appealed against.

5.4.13 Evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation the decision appealed against may not be given without the leave of the Appeals Tribunal.

5.4.14 All Appeals Tribunals should be heard expeditiously and where possible within the following time frames:

| <b>Nature of Appeal</b>  | <b>Time Frame to Hear Appeal</b> |
|--|----------------------------------|
| Appeals against District/League Association Grading Tribunal decisions.                            | 48 hours                         |
| Appeals against Netball NSW Grading Tribunal decisions.  | 5 days                           |
| Appeals against District/League Association Disciplinary Tribunal decisions.                       | 48 hours                         |
| Appeals against Netball NSW Disciplinary Tribunal decisions for State and State Age Championships. | 4 hours                          |
| Appeals against Netball NSW Disciplinary Tribunal decisions for State League Regions 1 – 8.        | 48 hours                         |
| Appeals against District/League Association Hearings Tribunal decisions.                           | 5 days                           |
| Appeals against Netball NSW Committee, Panel or Administrative Decisions.                          | 7 days                           |

- 5.4.15 During an Appeal Hearing, the Appeals Tribunal may make an order relating to the procedure to be followed in those proceedings.
- 5.4.16 Although the rules of evidence do not apply to an Appeal Hearing, the Appeals Tribunal must ensure that the evidence is logical and probative, relevant to the facts or issues in dispute and is not evidence based on speculation or unsubstantiated assumptions.
- 5.4.17 The Appeals Tribunal may call upon, where appropriate the original decision makers to explain the reasons for the decision(s). Written rules, where available used to justify the decision taken by the decision maker(s) are to be provided to the Appeals Tribunal by the decision makers(s) appealed against. Where the decision under appeal is the result of a Tribunal or other decision the minutes are to be provided to the Appeals Tribunal.
- 5.4.18 The Appeals Tribunal may interview the appellant, Club or the District/League Association depending upon the type of appeal. A maximum of two representatives will be permitted in the hearing room at any one time.
- 5.4.19 Where an individual or Club or District/League Association seeks leave for legal representation, it is mandatory that prior notification be made to the Chairperson of the Appeals Tribunal.
- 5.4.20 The Appeals Tribunal has the discretion to interview any other persons it deems appropriate.
- 5.4.21 At the Appeals Tribunal hearing all written evidence that is to be used in the decision making process must be provided to and left with the Tribunal.

#### 5.5 *Determination of the Appeals Tribunal Hearing*

- 5.5.1 Upon hearing the appeal, the Appeals Tribunal will endeavour to finalise its decision within 48 hours of the completion of its enquiries. The decision of the Appeals Tribunal will be provided orally to the authorised person notified on the form 'Application to Appeal' by either District/League Association President/Secretary or the General Manager, Netball NSW (or delegate) within 48 hours of the decision.
- 5.5.2 Upon hearing the Appeal, the Appeals Tribunal may do any one or more of the following:
- a) dismiss the appeal on the basis that the grounds of the appeal are not satisfied;
  - b) uphold the appeal and make a new decision in its place;
  - c) uphold the appeal;
  - d) impose any of the penalties set out in the Netball NSW Member Protection Policy – Part C (Complaint Handling Policy) Attachment C6 – Disciplinary Measures;
  - e) reduce, increase or otherwise vary any penalty imposed by either a Disciplinary Tribunal or a Hearings Tribunal.
- 5.5.3 Any appeal must be solely and exclusively resolved by the Appeals Tribunal and the decision of the Appeals Tribunal is final and binding on the parties.

- 5.5.4 If the penalty imposed by the Appeals Tribunal affects other bodies including a financial member, a Club, a District/League Association required to comply with this Policy, the General Manager of Netball NSW or the District/League Association President/Secretary shall as soon as possible notify in writing the relevant organisation of the penalty.
- 5.5.5 Where an Appeals Tribunal hears an appeal as a result of a decision by a Hearings Tribunal and suspends an individual member for a period that member is ineligible to be a member of any District/League Association in New South Wales for the period of the suspension imposed.
- 5.5.6 Where an Appeals Tribunal hears an appeal as a result of a decision by a Disciplinary Tribunal and suspends an individual member from participating for a period of less than twelve months that member may remain a financial member of the District/League Association in New South Wales.

## **ATTACHMENT C6: Disciplinary Measures**

1. Any disciplinary measure imposed by Netball NSW and/or a District/League Association under this Policy must:
  - a) observe any contractual and employment award rules and requirements;
  - b) conform to the principles of natural justice;
  - c) be fair and reasonable (the reasonableness test);
  - d) be based on the evidence and information presented;
  - e) be within the powers of the Disciplinary Tribunal, Hearings Tribunal and the Appeals Tribunal to impose the disciplinary measure

## **2. Factors to consider when imposing discipline**

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- 2.1 The form of discipline to be imposed on an individual or organisation will depend on factors such as:
  - a) jurisdiction over the individual or District/League Association;
  - b) nature and seriousness of the behaviour or incidents;
  - c) in a case where action is taken concurrently with or in lieu of a resolution of a formal complaint, the wishes of the complainant;
  - d) if the individual concerned knew or should have known that the behaviour was a breach of the policy;
  - e) level of contrition of the respondent(s);
  - f) the effect of the proposed disciplinary measure on the respondent(s) including any person, professional or financial consequences;
  - g) if there have been any relevant prior warnings or disciplinary action; and/or
  - h) if there are any mitigating circumstances such that the respondent(s) shouldn't be disciplined at all or not disciplined so seriously.
- 2.2 In circumstances where the form of discipline to be imposed amounts to cessation of membership, consideration must be given to whether the relevant conduct:
  - a) amounts to a breach of the Constitution;
  - b) is unbecoming of a member; and/or
  - c) is prejudicial to the interests and welfare of the Association.

### **3. What penalties may be imposed?**

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- 3.1 If a Tribunal considers that a person or organisation to whom this Policy applies, has breached this Policy, it may impose any or more of the following penalties:
- a) impose a written warning;
  - b) impose a monetary fine for an amount determined by the appropriate Tribunal;
  - c) direct that a Club be suspended or terminated in accordance with their applicable constitution;
  - d) direct that a District/League Association be disaffiliated with Netball NSW for a specific period of time;
  - e) direct that Netball NSW and/or the District/League Association cease to sanction events held by or under the auspices of that organisation;
  - f) direct the offender to attend counselling to address their conduct;
  - g) direct that Netball NSW and/or the District/League Association terminate the appointment of the role which the offender holds with such organisation;
  - h) where there has been damage to property, direct that the offender pay compensation to the relevant organisation which controls or has possession of the property;
  - i) direct that the offender be either suspended or terminated from membership for a specific period of time or indefinitely;
  - j) any other such penalty as the relevant Tribunal considers appropriate.
- 3.2 Where an Appeals Tribunal hears an appeal as a result of a decision by a Disciplinary Tribunal and suspends an individual member from participating for a period of less than twelve months that member may remain a financial member of the District/League Association in New South Wales.
- 3.3 Where an Appeals Tribunal hears an appeal as a result of a decision by a Hearings Tribunal and suspends an individual member for a period, that member is banned from becoming a member of any District/League Association in New South Wales for the period of the suspension imposed.
- 3.4 If a District/League Association, club and/or financial member commits a second or subsequent breach under this Policy, then the relevant Tribunal may have regard to the previous breach, the penalty imposed and any other relevant factors, in imposing a penalty for the second or subsequent breach.
- 3.5 If the penalty imposed by a Tribunal affects other organisations required to comply with this Policy, the General Manager and/or District/League Association President or Secretary from which the Tribunal is established shall as soon as possible notify the relevant organisations of the penalty. Notification of such penalty to a District/League Association shall be deemed notification to all members of the District/League Association.

- 3.6 Every organisation to which this Policy applies shall recognise and enforce any decision and penalty imposed by a Tribunal under this Policy.
- 3.7 When imposing any form of discipline, it will be accompanied by a warning that a similar breach of policy by that individual in the future may result in the imposition of a more serious form of discipline.

#### **4. Schedule of Penalties**

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In the case of penalties for offences heard by the Disciplinary Tribunal or escalated to the Appeals Tribunal by virtue of a decision of the Disciplinary Tribunal the following Schedule of Penalties applies:

- 4.1 Offences of charged persons towards registered members of the District/League Association.

| <b>No</b> | <b>Offence</b>                           | <b>Minimum Penalty</b> |
|-----------|--|------------------------|
| 1         | Fighting/Striking                        | 3 playing weeks        |
| 2         | Kicking                                  | 3 playing weeks        |
| 3         | Tripping                                 | 3 playing weeks        |
| 4         | Racial/discriminatory abuse              | 3 playing weeks        |
| 5         | Using abusive language including obscene | 1 playing weeks        |
| 6         | Undue rough play                         | Severe reprimand       |
| 7         | Repeated deliberate infringements        | Severe reprimand       |
| 8         | Contrary conduct                         | Severe reprimand       |

- 4.2 Offences of charged persons towards umpires, coaches and officials who are financial members of the District/League Association.

| <b>No</b> | <b>Offence</b>                           | <b>Minimum Penalty</b> |
|-----------|--|------------------------|
| 1         | Fighting/Striking                        | 26 playing weeks       |
| 2         | Kicking                                  | 26 playing weeks       |
| 3         | Racial/discriminatory abuse              | 3 playing weeks        |
| 4         | Using abusive language including obscene | 1 playing weeks        |
| 5         | Contrary conduct                         | Severe reprimand       |

- 4.3 Offences of charged persons towards registered members of any District/League Association at a State or State Age Championship.

| <b>No</b> | <b>Offence</b>                            | <b>Minimum Penalty (games)</b> |
|-----------|---|--------------------------------|
| 1         | Fighting/Striking with clenched fist      | 4 games                        |
| 2         | Strike with open hand                     | 4 games                        |
| 3         | Kicking/Attempting to kick                | 4 games                        |
| 4         | Strike opponent with ball or other object | 4 games                        |
| 5         | Deliberately trip an opponent             | 4 games                        |
| 6         | Deliberate elbowing                       | 4 games                        |
| 7         | Racial/Discriminatory abuse               | 4 games                        |
| 8         | Undue rough play                          | 3 games                        |
| 9         | Attempt to strike with clenched fist      | 3 games                        |
| 10        | Use abusive language including obscene    | 2 games                        |
| 11        | Unsporting conduct                        | 2 games                        |
| 12        | Contrary Conduct                          | 2 games                        |

4.4 Offences of charged persons towards Umpires, coaches and Officials at a State or State Age Championship.

| <b>No</b> | <b>Offence</b>                                   | <b>Minimum Penalty (games)</b> |
|-----------|--|--------------------------------|
| 1         | Striking/Kicking/Elbowing                        | 52 weeks                       |
| 2         | Strike with ball or other object                 | 52 weeks                       |
| 3         | Racial/Discriminatory abuse                      | 52 weeks                       |
| 4         | Attempting to strike, kick, elbow or fight       | 26 weeks                       |
| 5         | Use abusive, obscene and/or threatening language | 26 weeks                       |
| 6         | Unsporting conduct including disputing decisions | 12 weeks                       |
| 7         | Contrary conduct                                 | 6 weeks                        |