



netball

NEW SOUTH WALES

MEMBER PROTECTION POLICY

ATTACHMENT B – COMPLAINT HANDLING REGULATION

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1. OVERVIEW

Netball NSW and Affiliates seek to deal with complaints in a fair, timely and transparent manner. All complaints will be treated seriously.

Individuals may seek to resolve complaints through an informal process, a formal process or through making a complaint to the relevant external body, based on their preferences and the nature of the complaint.

Netball NSW and Affiliates aim to address complaints in a manner that maintains confidentiality as far as possible and will seek to ensure that no one is victimised for making, supporting or providing information about a complaint during the complaint handling process.

The following procedures may be followed to assist in the resolution of grievances and complaints.

2. DEFINITIONS

The following definitions apply throughout this Policy and are provided to ensure consistency across the process.

Affiliate means a Premier League Licensee, Association, or Club, howsoever described, whether incorporated, unincorporated or otherwise, which is a member of Netball NSW.

Appeals Tribunal is the Tribunal established by the Hearing Officer or relevant person to deal with and hear matters that have either been dealt with by the Hearings Tribunal or an Affiliate in which the Complainant is unsatisfied of the outcome. It is the final level of internal review by independent persons. The Appeals Tribunal can be established at either an Affiliate or Netball NSW level.

Business Day means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in NSW.

Calendar Days is any day of the week, including weekends.

Category A complaints are those complaints that involve:

- a) circumstances and actions that are likely to put into question and/or injure the reputation of Netball NSW or an Affiliate,
- b) breaching the WWCC requirements and conditions,
- c) verbally or physically assaulting another person by netball players, intimidating another person or creating a hostile environment within the sport undertaken outside of official games, such as during training and related team activities (NOTE: physical or verbal abuse on court during games will be dealt with under Attachment D – Disciplinary Measures Administrative Protocol), or
- d) verbally or physically assaulting another person by a spectator, intimidating another person or creating a hostile environment within the sport.

Category B complaints are those complaints that do not fall into the realm of Category A complaints.

Discipline offences are those that are identified at Attachment D –Disciplinary Measures Administrative Protocol. There are five levels of offences which can be reported either by way of formal complaint or by submission of an Incident Report Form, located in Attachment C – Reporting Requirements and Documents / Forms.

Formal approach is a complaint made in writing or verbally whereby the complainant wishes the matter to be dealt with utilising formal inquiry procedures.

Hearing Officer is the person appointed by the CEO of Netball NSW or the President of an Affiliate to undertake the role of managing complaints in accordance with the MPP.

Hearings Tribunal is a tribunal established by the Hearing Officer or relevant person to deal with and hear matters that are alleged breaches of the MPP. The Hearings Tribunal can be established either at an Affiliate or Netball NSW level.

Informal approach means a complaint raised whereby the complainant wishes the matter to be dealt with utilising lower level, informal means of resolution.

Investigator is the person appointed by the Hearing Officer or relevant person to undertake an investigation into allegations outlined in a formal complaint in accordance with the scope of the investigation appointment documentation and the investigation procedures established at Attachment B7 of the Complaint Handling Regulation.

Mediation is a process whereby a complainant and respondent(s) voluntarily enter into open discussion and negotiations with an aim to finding and agreeing on a resolution.

Mediator is a person who has undertaken mediation training who leads and guides the mediation process.

Member Protection Information Officer (MPIO) is the person appointed by the CEO of Netball NSW or the President of an Affiliate to provide input and guidance as to the applicability and relevance of the MPP to alleged issues and incidents raised at the lower informal level.

Relevant person is a person who has been identified by Netball NSW or the President of an Affiliate as being a person who has the responsibility and ability to undertake duties pertaining to the application of the MPP and the management of complaints.

3. ATTACHMENT B1: COMPLAINTS PROCEDURE

Netball NSW aims to support people associated with our sport to make and resolve any complaints they may have in a fair, timely and effective way.

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, the approach of Netball NSW to an individual complaint may vary. 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 it is determined that a Complainant has **knowingly** made an untrue complaint or the complaint is vexatious or malicious, the matter will be referred to the Hearings Tribunal for appropriate action. All complaints will be kept confidential within the procedural realm of complaint handling 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.

Members and participants of the complaints process are to be aware and to be made aware that the information and evidence provided by them during the complaint management process will be required to be disclosed to those parties involved. This disclosure is to ensure that persons are made aware of the evidence and allegations involved in the complaint to afford procedural fairness. This may also involve the final report being made available to the interested parties for completeness as part of the management and transparency of the process, subject to privacy considerations and deletions.

Discipline offences that have been charged can be dealt with by either a Hearing Officer or referred directly to a Hearings Tribunal for further action, depending upon the conduct and seriousness of the conduct. Refer to Attachment D – Tribunal Hearings and Disciplinary Measures for further guidance.

EXPECTATION MANAGEMENT

All persons are to be made aware at the outset of the complaints process that although participants can be kept informed of the process and how it is going, at the conclusion, there are strict and rigid limitations imposed by law which prevents them from being informed of the outcome.

It is appropriate for an outline of possible potential outcomes identified in the Attachment to be advised, however it is unlawful to provide specific outcomes.

INFORMAL APPROACHES

The following steps may be taken to assist in the resolution of complaints under this Policy:

Step 1: Talk with the other person (if safe, reasonable and appropriate)

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

Step 2: Contact a Member Protection Information Officer (MPIO)

- 2.1 If the first step is not possible or reasonable; if the Complainant is not sure how to handle the issues by themselves; if the Complainant wants to talk confidentially with someone and find out what options are available to resolve the problem or the problem continues after the Complainant has approached the other person, the Complainant may contact:
- a) an MPIO;
 - b) the Hearings Officer of Netball NSW or the Affiliate; or
 - c) another person within the organisation (e.g. Affiliate President/Secretary or a team manager or coach)
- 2.2 At no stage is the complaint to be the subject of an Executive Meeting or discussion amongst executives of an Affiliate or Netball NSW. The complaint is to be referred to the Secretary, or other relevant person, who is then to forward the complaint to the Hearing Officer. Complaints are always to remain confidential amongst participants of the process, dealt with in a professional and confidential manner and handled and managed by the MPIO or Hearing Officer appointed to deal with the complaint. No interference from Executives is permitted.
- 2.3 If 'another person' within the organisation is approached, the person must refer the matter to the Secretary, or other relevant person, who will then refer the matter to the MPIO or Hearing Officer; s/he is not to deal with the complaint him/herself. The person identified to take carriage of the complaint must be independent and have no direct interest in the outcome of the complaint. The process to be adopted will depend upon the role of the person identified to deal with the matter – i.e. Hearing Officer, MPIO or Investigation Officer.

HEARING OFFICER

- 2.4 If a Hearing Officer is contacted, the process to be adopted is set out under the Formal Approaches procedure identified below (at page 9).

RELEVANT PERSON

- 2.5 Where a relevant person has been contacted, the relevant person and the MPIO are to determine who is the best person to deal with the complaint, taking into account the following considerations:
- a) the relationship/social interactions between him/her and the complainant;
 - b) the relationship/social interactions between him/her and the alleged respondents;
 - c) whether the complaint involves or could potentially involve a decision, action or omission undertaken by him/her;
 - d) whether s/he has a personal, direct or indirect interest in the outcome of the complaint;

- e) whether s/he has an impartial and open mind, including consideration as to whether a person outside of the process would have the view that s/he would deal or has dealt with the complaint in an impartial manner and with an open mind.

2.6 If it is determined that the relevant person is the appropriate person to deal with the complaint, the process to be followed is at 2.7 (a) – (j) below.

MPIO

2.7 Where a MPIO is contacted, the MPIO is to consider whether s/he is the most appropriate person to deal with the complaint by applying the considerations identified at paragraph 2.5 above. Where the MPIO is satisfied that s/he is in a position to impartially and independently deal with the complaint, the MPIO (or relevant person) may:

- a) take notes about the complaint (such notes are to be kept in a secure and confidential place and be marked with the appropriate privacy markings);
- b) identify the actual subject of the complaint;
- c) identify an outline of the facts of the problem by implementing basic fact finding techniques and without undertaking formal investigative procedures;
- d) ask what outcome/how the Complainant wants the problem resolved and if they need support;
- e) provide possible options for the Complainant to resolve the problem;
- f) explain how the complaints procedure works;
- g) act as a support person if the Complainant so wishes;
- h) refer the Complainant to an appropriate person to help them resolve the problem, if necessary;
- i) inform the relevant government authorities and/or police if required by law to do so;
- j) maintain strict confidentiality.

At no time is the MPIO to undertake any form of inquiry or investigation into the complaint outside of the basic outline of the issues identified. This is to ensure the complaint does not proceed into a formal investigation realm and to avoid potential contamination of evidence.

Step 3: Outcomes from Initial Contact

- 3.1 After talking with the MPIO or other relevant person, 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 or relevant person);
 - d) to seek an informal mediated resolution with the help of a third person (such as a Mediator);
 - e) to resolve the matter through a formal process.

- 3.2 If the Complainant wishes to remain anonymous, Netball NSW and/or Affiliates cannot assist the Complainant to resolve the complaint. Organisations have to follow the principles of natural justice which requires fairness to both the Complainant and the Respondent. This means that Netball NSW and/or Affiliates or the Complainant are required to provide the person/people complained about with a signed copy of the written complaint as well as supporting evidence so that the respondent(s) have a fair chance to consider and respond to all the allegations.
- 3.3 Each complaint, the issues, evidence and outcome is to be formally documented, marked with the appropriate privacy marking and stored in a secure location.

FORMAL APPROCHES

Step 4: Making a Formal Complaint

- 4.1 If the complaint is not resolved to the Complainant's satisfaction, they may make a formal complaint in writing to the relevant netballing body. The Complainant may also make a formal complaint initially / in the first instance.
- 4.2 To avoid any doubt, any complaint relating to:
 - a) a Netball NSW program or event shall be referred to the MPIO, Hearing Officer or relevant person of Netball NSW;
 - b) an Affiliate program or event shall be referred to the MPIO, Hearing Officer or relevant person of the Affiliate. If the Affiliate has not appointed at least one MPIO, Hearing Officer or relevant person, it is the responsibility of the Affiliate to appoint a suitable person to manage the complaints procedure.
- 4.3 Upon receipt of a formal complaint, the relevant netballing body will appoint a Hearing Officer to handle the complaint. The Complainant will be informed by the Secretary of the Affiliate, or the Policy Coordinator of Netball NSW, the identity of the appointed Hearing Officer.
- 4.4 A Complainant also has the option of approaching a relevant external agency such as the Australian Human Rights Commission or the Anti-Discrimination Board of NSW for advice.

Step 5: Hearing Officer Process

- 5.1 If the Complainant decides to make a formal complaint in writing, the complainant is to address the complaint to the Hearing Officer or relevant person within the relevant netballing body. On receiving the formal complaint and based on the material they have been provided, the Hearing Officer or relevant person will identify if she/he has previously been involved with an informal approach for resolution of the matter, if applicable. In the instance that the Hearing Officer or relevant person has been involved in such a process, she/he is to turn their mind to and make an honest judgement about whether they are impartial enough to move forward. If in doubt, the Hearing Officer or relevant person is to refer the matter to another Hearing Officer or relevant person to deal with.

- 5.2 The Hearing Officer or relevant person will consider the complaint, the material supporting the complaint and consider whether:
- a) the complaint is properly made under this Policy;
 - b) they are the most appropriate person to receive and handle the complaint; and
 - c) whether the nature and seriousness of the complaint warrants:
 - i) a formal resolution procedure which could be one of the following:
 - appointing a person to investigate the complaint,
 - referring the complaint to an informal or formal mediation session,
 - referring the complaint to a hearings tribunal,
 - referring the complaint to the police or other appropriate authority,
 - ii) a written response to the allegations (for example, a letter acknowledging the allegations made), or
 - iii) no action.
- 5.3 Once the Hearing Officer or relevant person has taken into account the matters identified at paragraph 5.2 above, the Hearing Officer or relevant person must then consider:
- a) 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;
 - b) whether, due to the nature of the complaint, specific expertise or experience may be required to manage the complaint;
 - c) the Complainant's wishes, and the wishes of the Respondent (if known), regarding the manner in which the complaint should be handled;
 - d) 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 informal or formal 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);
 - e) 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;
 - f) whether the facts of the complaint are in dispute; and
 - g) 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.

- 5.4 In certain circumstances, consideration may also be given to the implementation of interim administrative or other arrangements that will apply until the complaint process set out in the Complaint Handling Regulation is completed. The procedure to be adopted to put in place such arrangements are identified at Attachment B6.
- 5.5 In the instance that the Hearing Officer or relevant person is the appropriate person to deal with 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);
 - b) provide a signed written copy of the complaint to the Respondent and ask them to provide their version of events;
 - c) upon receipt of the Respondent's response, decide whether they have enough information to determine the circumstances surrounding the matter alleged in the complaint by utilising the 'balance of probabilities' standard. This will require obtaining further comment from the complainant about the information provided by the respondent; and
 - d) determine what, if any, further action to take. This action may include:
 - i. a sanction as identified at Attachment B3,
 - ii. appointing a person to investigate the complaint,
 - iii. referring the complaint to an informal or formal mediation session or a hearings tribunal and/or
 - iv. referring the complaint to the police or other appropriate authority.
- 5.5 Some complaints may be of a minor and/or purely personal nature with no connection to the activities of Netball NSW or the Affiliate. In these cases, the Hearing Officer or relevant person may determine that the complaint does not warrant a formal resolution procedure.
- 5.6 Some complaints may not require an investigation or referral to a hearings tribunal, in which case the Hearing Officer or relevant person may determine that the complaint warrants a written response to the allegations by the respondent. In this instance, the Hearings Officer or relevant person is to notify the Complainant, in writing, of the determination on the allegation. Notification of the outcome of the Hearing Officer process is a mandatory step in ensuring the integrity and finalisation of the process. However, the Hearing Officer is to comply with privacy law requirements in the notification phase.

Step 6: Resolution Process

- 6.1 **Formal Investigation** - If a person is appointed to investigate the complaint under **Formal Approaches Step 5.4 (d) (ii)** above, the investigator will conduct the investigation in accordance with the scope of the written appointment and the procedures established at Attachment B7. Upon completion of the investigation, the investigator is to provide a written report to the Hearing Officer or relevant person who will undertake a preliminary review of the investigation report. The Hearing Officer or relevant person will determine whether the investigator is to make further enquiries and obtain additional information.

- 6.2 Investigators are only to identify circumstances and facts surrounding the allegations identified in the formal complaint and whether a breach of any policy has taken place, if relevant. Investigators are not to make any recommendations as to whether any further action is to take place.
- 6.3 Once the Hearing Officer or the relevant person is satisfied that the investigation report is complete and finalised, the Hearing Officer is to determine what further action, if any, should be taken. The Hearing Officer may refer the complaint to:
- a) an informal or formal mediation session,
 - b) a hearings tribunal, and/or
 - c) the police or other appropriate authority.

Alternately, the Hearing Officer may impose an appropriate sanction as identified at Attachment B3 where such sanction is deemed appropriate.

- 6.4 **Mediation** - If the complaint is referred to an informal or formal mediation session under **Informal Approaches – Step 3.1 (d)** or under **Formal Approaches – Step 5.2 (c)(i) or Step 5.4 (d)(iii)**, the mediation session will be conducted in accordance with Attachment B5 or as otherwise agreed by the Complainant and the Respondent(s).
- 6.5 **Hearings Tribunal** - If the complaint is referred to a hearings tribunal, in accordance with **Formal Approaches – Step 5.2 (c)(i) or Step 5.4 (d)(iii)**, the hearing will be conducted in accordance with Attachment D – Tribunal Hearings and Disciplinary Measures.
- 6.6 **External Reporting** - If the complaint is referred to the police or other appropriate authority under **Informal Approaches – Step 2.7 (i)** or under **Formal Approaches – Step 5.2 (c)(i) or Step 5.4 (d)(iv)**, Netball NSW and/or Affiliates will use its best endeavours to provide all reasonable assistance lawfully required by the police or other appropriate authority.
- 6.7 **Interim Arrangements** - If interim administrative or other arrangements are implemented under **Formal Approaches – Step 5.4**, Netball NSW and/or Affiliates will review these arrangements on a fortnightly or monthly basis, as deemed necessary, to ensure that they are appropriate and effective.
- 6.8 Any reasonable costs relating to the complaint process set out in this Policy (e.g. investigation and/or mediation and/or tribunal processes) are to be met by Netball NSW and/or Affiliates, taking into account the location, subject and seriousness of the complaint.

Step 7: Reconsideration of initial outcome, investigation or appeal

- 7.1 If, under **Step 6**, an informal or 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 Hearing Officer or relevant person 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 or Hearing Officer:
 - i. not to take any action; or
 - ii. to impose a sanction; or

- b) Under **Step 6**, a decision was made by the Hearing Officer or a Hearings Tribunal:
- 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 D – Tribunal Hearings and Disciplinary Measures.
- 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 an Affiliate, they may choose to approach an external agency such as an equal opportunity commission to assist with a resolution.

Step 8: Documenting the Resolution

- 8.1 It is important to ensure that the documentation pertaining to the complaint process is recorded and stored appropriately to ensure compliance with the *Privacy Act 1988*.
- 8.2 The Hearings Officer or relevant person is to document the complaint, the process followed and the outcome immediately upon completion of the process.
- 8.3 All documentation related to the complaint is to be confidentially stored by the relevant body (the group that handled the complaint process) in a secure location and depository.
- 8.4 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 Affiliate office, where one exists.

EXTERNAL PROCEDURE

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 sexually harassed, discriminated against or victimised, they can seek advice from the NSW Anti-Discrimination Board or other appropriate entity without being obliged to make a formal complaint. If the Board 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 Board.

Serious incidents, such as assault or sexual assault, should be reported to the police.

4. ATTACHMENT B2 - BASIC FACT FINDING PROCEDURES

1. The aim of this Attachment is to establish the procedures to be adopted and considerations to be undertaken when engaging in a basic fact finding process. Such a process is to be instituted by the MPIO during an 'Informal Approach' process and the 'Hearing Officer' during a 'Formal Complaint' process.
2. In the instance that a complaint is, at the outset, a Category A complaint or, during this process is identified as a Category A complaint, the MPIO is to refer the matter directly to a Hearing Officer for further action. If a Hearing Officer is dealing with the matter, the Hearing Officer is to either refer the matter for formal investigation or to a Hearings Tribunal.
3. **Aim of basic fact finding.** The aim of basic fact finding is to identify sufficient information to assist in determining the most appropriate manner to deal with a complaint. Basic fact finding is **not** designed to engage in any type of investigation or in depth investigative process nor to make a final determination as to the absolute truth of each matter. Determining sufficient information as to the actual complaint and related relevant circumstances will directly assist in determining the best course of action to proceed with.
4. The steps to be undertaken when engaging in a basic fact finding process are as follows:
 - a. **Step One:** Review the complaint and determine whether further information is required. In the instance that further information is required to assist with obtaining a better understanding of the complaint, request that the Complainant provide such within seven calendar days of the request. Upon receipt of the information required to gain a complete understanding of the complaint, identify the following:
 - i. the key points of the complaint;
 - ii. how the Complainant would like the matter to be resolved;
 - iii. the alleged Respondent(s); and
 - iv. that part of the Member Protection Policy, including its Attachments, that the alleged conduct may be in breach of.
 - b. **Step Two:** Provide a signed written copy of the complaint and any evidence in support to the Respondent for comment. This step is important to ensure that natural justice is afforded to the alleged Respondent(s). This is best undertaken in a formal interview process however, email is also acceptable. If a formal interview is undertaken, record the interview and draft up a document for the respondent(s)'s signature. If email is utilised, direct the Respondent(s) to provide a written response within five business days of receipt of the request. Discretion will be exercised in the event a request for an extension of time is lodged.
 - c. **Step Three:** Upon receipt of the response from the Respondent(s), consider the essence and basis of the complaint and identify whether the information provided by the Complainant and Respondent(s) is sufficiently consistent to determine the best course of action to follow.
 - i. **Step three (A)** - This step is to be utilised when the information about the complaint provided by the Complainant and the Respondent(s) are inconsistent and/or where information provided by the Respondent(s) contains allegations against the complainant as part of the complaint proper. In such instance, the information is to be provided to the complainant and the complainant given an opportunity to respond.

ii. The process at Step two (above) is to be followed. Upon receipt of the further information, consider all the information gathered.

d. **Step Four:** A determination is to be made as to how to deal with the complaint. In undertaking this process, persons are to consider all of the information provided by both the Complainant and Respondent(s), focusing on the alleged conduct the subject of the complaint. Final determinations as to the truth and the actual circumstances of the complaint is **not** to be made; you are to use the 'balance of probabilities' to make an assessment of what is likely to have taken place. That is, 'it is more likely than not' that certain actions/behaviours/conduct took place. If the complaint remains a Category B complaint and where the information provided by the parties is generally consistent, a decision as to how to proceed is to be made.

Note: There may be instances whereby the allegation(s) are admitted by the Respondent however, the circumstances surrounding the incident may justify the alleged conduct. Regardless of whether justification for the conduct is demonstrated, if the conduct alleged is admitted to and such conduct is inappropriate and/or in breach of the MPP, the conduct has still been carried out. Thus, although the conduct may be justifiable in the circumstances, it is still not appropriate. The circumstances in such a situation merely provide mitigation rather than a defence.

5. **Courses of Action.** The following courses of action are available:

- a. **MPIO** – the MPIO is to discuss the matter, including all the information provided, with the Complainant to assist the Complainant in determining the best way to proceed. The complainant is to determine whether:
- i. There is no problem;
 - ii. The problem is minor and they do not wish to take the matter forward;
 - iii. S/he will try to work out his/her own resolution (with or without a support person such as a MPIO or relevant person); or
 - iv. To seek an informal mediated resolution with the help of a third person (such as a Mediator); or
 - v. To lodge a formal complaint in accordance with this policy.
- b. **Hearing Officer** – the Hearing Officer may direct:
- i. that **consideration** be given to imposing a sanction (refer to Attachment B3);
 - ii. An investigation to take place (thus appoint an investigator);
 - iii. That the complaint be referred to an informal or formal mediation session;
 - iv. That the complaint be referred to a Hearings Tribunal; and/or
 - v. That the complaint be referred to the police or other appropriate authority.

6. No formal adverse action is to result directly from a fact finding process. Further inquiry and evidence gathering is required before any formal adverse action is to be implemented. This is to be undertaken in the form of a Show Cause process provided in Attachment B4.

7. **Recording.** All documentation and recorded interviews are to be stored under the relevant privacy classification and placed in a secure location. At all times, the handling and storage of such documentation is to be in accordance with the *Privacy Act 1988* (Commonwealth).

5. ATTACHMENT B3 - SANCTIONS

Application of Sanctions – General Consideration

The purpose of imposing any form of sanction is to identify the wrongdoing and/or shortcoming, to undertake actions that remedy as much as possible the wrongdoing and/or shortcoming and to provide an opportunity to improve ones conduct, performance and/or actions in an attempt to provide a positive influence on future actions. Sanctions are aimed at providing an opportunity to overcome the identified shortcoming and/or wrongdoing.

1. Any sanction imposed by Netball NSW and/or an Affiliate under this Policy must:
 - a) conform to the principles of natural justice;
 - b) be fair and reasonable;
 - c) be based on the evidence and information presented; and
 - d) be within the powers of the Hearing Officer to impose.

2. The form of discipline to be imposed on an individual or organisation will depend on factors such as:
 - a) jurisdiction over the individual or Affiliate;
 - b) nature and seriousness of the behaviour or incidents;
 - c) whether the individual concerned knew or should have known that the behaviour was a breach of the policy;
 - d) the level of contrition of the Respondent(s);
 - e) the person's actions post the alleged incident;
 - f) the effect of the proposed sanction on the Respondent(s) including any personal, professional or financial consequences;
 - g) if there have been any relevant prior warnings, sanctions or disciplinary action; and/or
 - h) if there are any mitigating circumstances such that the Respondent(s) shouldn't be sanctioned at all or not sanctioned so seriously.

3. If the Hearing Officer considers that a person or organisation to whom this Policy applies, has breached this Policy, it may impose one or more of the following sanctions:
 - a) For breaches committed by organisations: If the Hearing Officer considers that Netball NSW, an Affiliate or any other organisation has breached this Policy, it may impose one or a combination of the following sanctions on such organisations:
 - i. direct that any funding granted or given to it by Netball NSW or an Affiliate cease from a specified date;
 - ii. impose a monetary fine for an amount determined by the appropriate Tribunal;
 - iii. impose a warning;
 - iv. recommend to Netball NSW and / or the relevant Affiliate that its membership of such organisation be suspended or terminated in accordance with their applicable constitution;
 - v. direct that any rights, privileges and benefits provided to that organisation by Netball NSW or an Affiliate be suspended for a specified period and / or terminated;

- vi. direct that Netball NSW and/or the Affiliate cease to sanction events held by or under the auspices of that organisation; or
 - vii. any other such sanction as the Hearing Officer considers appropriate in the circumstances however, such other sanction must be linked to the wrongdoing.
- b) For breaches committed by individual persons: If the Hearing Officer considers that an individual person to whom this Policy applies has breached this Policy, it may impose any one or a combination of the following sanctions on such person:
- i. direct that the offender attend counselling to address their conduct;
 - ii. recommend that Netball NSW or the relevant Affiliate terminate the appointment of the role which the offender holds with such organisation;
 - iii. where there has been damage to property, direct that the offender pay reparation to the relevant organisation which controls or has possession of the property;
 - iv. impose a monetary fine for an amount determined by the Hearing Officer;
 - v. impose a warning;
 - vi. withdraw any awards, placings, records won in any tournaments, activities or events held or sanctioned by Netball NSW or an Affiliate;
 - vii. direct the offender to repay all or part of any financial assistance (excluding any fee for service, wages or expenses) given to them by Netball NSW, an Affiliate or any other organisation which has provided funding;
 - viii. de-register the person as a member of NNSW and an Affiliate with consideration given to a period of time in which the person is not to be a registered member of NNSW and an Association;
 - ix. any other such sanction as the Hearing Officer considers appropriate in the circumstances, but it must be related to the wrongdoing.
4. The process to be adopted is at Attachment B4.
5. If an Affiliate, club or individual financial member commits a second or subsequent breach under this Policy within 10 years of the last breach, then the Hearing Officer shall have regard to the previous breach, the sanction imposed and any other relevant factors, in imposing a sanction for the second or subsequent breach.
6. If the penalty imposed by a Hearing Officer affects other organisations required to comply with this Policy, the Hearing Officer or relevant person shall as soon as possible notify the relevant organisations of the sanction.
7. Every organisation to which this Policy applies shall recognise and enforce any decision and penalty imposed by a Hearing Officer under this Policy.
8. When imposing any form of sanction, it will be accompanied by a warning that a similar breach of policy by that individual or organisation in the future may result in the imposition of a more serious form of sanction.

6. ATTACHMENT B4 - SHOW CAUSE PROCESS

Before any form of sanction is imposed, a person is to be afforded procedural fairness by utilising a Show Cause process. The steps that are to be undertaken by the Hearing Officer or relevant person are as follows:

STEP ONE: A written document providing the following information is to be provided to the member:

- a. the proposed sanction that is being considered. The sanction must be reasonable, appropriate and relevant to the identified wrongdoing/shortcomings;
- b. an outline of the allegations and/or shortcomings;
- c. evidence in support of the allegations and/or shortcomings;
- d. the alleged breaches of NNSW and/or Affiliate policy, citing specific paragraphs and clauses relevant to the identified allegations and/or shortcomings;
- e. allow an opportunity for the member to provide a response to the proposed sanction, evidence in support and comment on the information provided in the Show Cause document. The time for a response depends upon the seriousness of the proposed sanction. A period of 7-14 calendar days is generally appropriate;
- f. allow the member the opportunity to propose another sanction and provide reasons to justify such action; and
- g. allow the member to provide his/her own information and evidence in support.

STEP TWO: Upon receipt of the member's response, the Hearing Officer is to review the response, information and evidence provided by the member and balance it up against the information provided in the Show Cause document. The Hearing Officer is to analyse and consider all information and evidence pertaining to the allegations and alleged breaches of policy/policies and determine whether the proposed sanction, another sanction or no sanction is relevant and appropriate.

STEP THREE: Provide a written document to the member stating the decision made and the outcome of the Show Cause process. Where a sanction is imposed, the Hearing Officer is to provide reasons and justification for the imposed sanction. The Hearing Officer is also to inform the member of his/her option to appeal the decision to the Appeals Tribunal, identifying timeframes and other pertinent information required to be complied with to ground an appeal. Refer to Attachment D – Tribunal Hearings and Disciplinary Measures for further information.

7. ATTACHMENT B5 - MEDIATION PROCEDURE

Mediation is a voluntary process that allows the people involved in a complaint to talk through the issues with an impartial person – the mediator – to communicate with each other about what is important for them and how to make decisions about resolving their dispute.

The role of the mediator is to 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; it is not to decide who is right or wrong nor is it their role to tell either side what they must do.

Mediators engaged to undertake mediation procedures are to be trained by a recognised mediation institution such as LEADR & IAMA, the Australian Disputes Centre, Mindful Mediation, Fighting Fair, the Australian Mediation Association or a mediation course facilitated by Netball NSW.

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

- 1.1 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 at any stage in the complaints process.
- 1.2 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 MPIO or Hearings Officer or relevant person on their own; and
 - b) The Hearings Officer or relevant person 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).
- 1.3 Mediation may **not** be appropriate if:
 - a) The Complainant or Respondent is unwilling to attempt mediation;
 - b) When the issues raised are sensitive in nature;
 - c) When there is a real or perceived power imbalance between the people involved;
 - d) Matters that involve serious, proven allegations;
 - e) 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.
- 1.4 If mediation is chosen to try and resolve the complaint, the Hearings Officer or relevant person will, under the direction of Netball NSW and/or Affiliates and in consultation with the Complainant and the Respondent(s), arrange for a mediator to mediate the complaint.

- 1.5 The Hearing Officer or relevant person will notify the Respondent(s) that a complaint has been made, provide them with details of the complaint and notify Netball NSW or the Affiliate that it has decided to refer the matter to mediation to resolve the complaint.
- 1.6 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.
- 1.7 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.
- 1.8 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. This document will be binding on the parties signing the document.
- 1.9 If a resolution is reached at mediation, no further action may be taken under this Policy, except by agreement between the parties.
- 1.10. If the complaint is not resolved by mediation, the Complainant may:
 - a) Write to the Hearings Officer or relevant person **within 14 calendar days** of the mediation to request that they reconsider the complaint in accordance with the procedures set out under the **Formal Approaches** Step 7 or
 - b) Approach an external agency such as an anti-discrimination commission or equal opportunity commission to resolve the matter.
- 1.11. The Hearing Officer or relevant person is to complete the report form in Attachment C4 of this Policy – Record of Mediation. Retain the original in a secure place and forward a copy to the Hearing Officer or relevant person of the Affiliate or Netball NSW.

8. ATTACHMENT B6 - INTERIM ADMINISTRATIVE OR OTHER ARRANGEMENTS

The procedures in this attachment are to be followed when consideration is given to implementing and enforcing any interim administrative or other arrangement that is deemed appropriate in the specific circumstances of each matter.

What type of arrangements are covered by this attachment?

1. There are varying types of arrangements that may be regarded as appropriate and reasonable in each particular situation and complaint that arises. The type of arrangement that is proposed to be put into place must be related to and/or have a connection with the alleged behaviour or the surrounding circumstances of the alleged behaviour or conduct complained of. Examples of arrangements include, but are not limited to:
 - a. Temporary suspension from role;
 - b. Temporary suspension from playing netball;
 - c. A formal direction that the person is not to attend any netball games;
 - d. A formal direction that the person is not to participate in any tournaments, games etc.;
 - e. A formal direction that the person does not contact in any form a named person or persons;
 - f. A formal direction that a person does not approach or be in the presence of a named person or persons.

Procedure for actioning a proposed arrangement

2. In determining the type of arrangement that is proposed to be put into place, the Hearing Officer or relevant person are to follow the steps outlined in this document.
3. **STEP ONE:** Consideration as to whether the implementation of an arrangement would be appropriate, beneficial and reasonable in the circumstances. In the initial stages of this process, the Hearing Officer or relevant person is to consider:
 - a. The nature and seriousness of the allegation(s);
 - b. The effect or impact that the Respondent has had or may have upon the Complainant;
 - c. The effect or impact that the Respondent has had or may have upon other persons;
 - d. The relationship/role of the Respondent to the Complainant;
 - e. The effect or impact that the arrangement may have on the Respondent;
 - f. The type of arrangement proposed to be implemented;
 - g. Whether the arrangement would provide a protective or comforting role for the Complainant.
4. After consideration of the above factors, if the Hearing Officer or relevant person is of the opinion that an arrangement is appropriate, then identification of the specific type of arrangement is required. The type of arrangement proposed **MUST**:
 - a. Be related to the complaint, including alleged behaviour and/or conduct identified in the complaint as well as the circumstances,
 - b. Be balanced against the seriousness of the complaint,
 - c. Take into account the points identified at paragraph 3 (above), and
 - d. Be reasonable in all the circumstances

5. **STEP TWO:** The Hearing Officer or relevant person is to notify the respondent of the proposal to consider implementing the arrangement on him/her. This notification is to be undertaken formally in writing and is to provide the following information:
- a. Name of the Respondent.
 - b. Allegation that has been made by the Complainant against the Respondent, including relevant supporting information.
 - c. Identify the arrangement proposed to be implemented (primary), including an alternative proposed arrangement that is of lesser impact/effect.
 - d. Identify why the proposal is being considered (e.g. safety of Complainant).
 - e. Provide an opportunity for the Respondent to respond in writing – five to seven calendar days is usually sufficient.

When dealing with serious matters, a greater period of time in which the Respondent is able to provide a response is appropriate.

6. The Respondent is to review the documentation, the supporting information and either:
- a. put forth arguments in written form as to why the proposed primary and/or alternative arrangement should not be implemented; or
 - b. formally notify in writing his/her intention to provide no input.

This is the important time that the Respondent is able to have his/her say and provide input into the decision making process. This should not be taken lightly.

7. **STEP THREE:** Upon receipt of the response, the Hearing Officer or relevant person is to review the notification documentation and the Respondent's reply and make a decision as to whether the initial or alternative proposed arrangement is to be implemented. When making a decision, the Hearings Officer or relevant person must consider the points stated at **Step One**, clause 4 (above). The type of arrangement determined to be put into place must be relevant to and consistent/aligned with the type and seriousness of the allegation(s) and above all, reasonable and appropriate in the circumstances. An arrangement put in place that is more severe than justified by the type and seriousness of the allegations may be challenged and determined to be excessive.
8. Once a decision is made, the Hearings Officer or relevant person is to formally advise in writing the Respondent as to the decision that has been made, clearly identifying:
- a. the arrangement to be put in place.
 - b. the conditions associated with the arrangement.
 - c. a brief outline as to why the arrangement has been put in place.
 - d. that a review of the arrangement will take place every two/four weeks from the date of the determination, whichever is deemed appropriate.
 - e. that the Respondent can make submissions for review for consideration at each review.

The formal decision document is to be provided to the Respondent.

9. **STEP FOUR:** All documentation pertaining to this process is to be marked with the appropriate privacy markings and securely stored.

10. **APPEAL OF DECISION.** If the Respondent is of the opinion that the arrangement put in place is excessive or unreasonable given the circumstances of the allegation(s), then the Respondent can formally request a review of the decision. In doing so, the Respondent must:
 - a. Identify the basis upon which s/he believes that the arrangement is excessive or unreasonable;
 - b. Provide all documentation pertaining to the process;
 - c. Identify his/her proposed arrangement or course of action;
 - d. Provide justification as to why his/her proposed arrangement or course of action is more appropriate and/or reasonable and/or relevant.

This documentation is to be provided to an independent Hearing Officer or relevant person who has not had any dealings with the matter at any stage of the process for consideration. The process outlined at **Step Three** above is to be adopted when undertaking a re-consideration of the decision. This includes formally advising the Respondent in writing the decision on the Respondent's proposal.

11. **REVIEW OF IMPOSED ARRANGEMENT.** The Hearing Officer or relevant person who has put the arrangement into place is to review the arrangement fortnightly/monthly, as at the date upon which the decision document was signed. The frequency of review depends upon the seriousness of the allegation(s) as well as the severity of the arrangement. However, at all times, the process adopted must be reasonable and justifiable. The reviewing officer is to formally advise the Respondent in writing of the outcome of the review.

9. ATTACHMENT B7 - INVESTIGATION PROCEDURE

This attachment is to be followed when an investigator is to be appointed to undertake an investigation into a complaint.

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

- 1.1. The Hearing Officer or relevant person is to formally appoint an investigator in writing, by name.
- 1.2. A written brief is to be provided to the investigator by the Hearing Officer or relevant person to ensure the terms of engagement and scope of the investigator's role and responsibilities are clear.
- 1.3. The investigator is to sign a statement of impartiality.
- 1.4. All persons are to be given copies of the following documents:
 - a. rights and responsibilities of witnesses;
 - b. confidentiality notice;
 - c. privacy notice.

Each person is to sign the above documents to acknowledge their contents and return to the Investigation Officer. Templates for these documents are found in Attachment C – Reporting Requirements and Documents / Forms.

- 1.5. The Complainant and identified witnesses will be interviewed, with the interview being recorded, and the substance of the complaint is to be documented in writing.
- 1.6. A signed written copy of the complaint will be provided to the Respondent/s in full. The Respondent(s) must be given sufficient information and a date upon which the Respondent(s) will be interviewed.
- 1.7. The Respondent(s) will be interviewed and given the opportunity to respond to the allegation(s). The Respondent's response to the complaint will be recorded and documented in writing.
- 1.8. Where necessary, statements from witnesses and other relevant evidence is to be obtained to assist in making a determination. In the instance there is a clear dispute over the facts, witnesses may be required to be interviewed/provide statements so as to assist in providing clarification of the facts.
- 1.9. Any person who is interviewed and who is below the age of 18 years is required to have a parent or guardian present. In this instance, approval is to be sought in writing from the parent or guardian, signed to confirm that the parent or guardian has given permission for their child to be interviewed.
- 1.10. All persons interviewed or requested to provide any form of evidence or information to the investigator are required to fully co-operate with and provide all documentation and information without delay.
- 1.11. The investigator will provide a report to the Hearing Officer or relevant person, whomever appointed him/her.

1.12. The report is to:

- A) outline:
- i) The complaint(s)
 - ii) The investigation process undertaken, including who was interviewed and/or provided statements
 - iii) Key evidence, including an outline of that evidence that supports and disputes the complaint(s).
- B) consider the evidence and the complaint and advise, on the balance of probabilities, whether, in his/her view, it is possible for the complaint to be considered as:
- i) substantiated (there is sufficient evidence to support the complaint);
 - ii) inconclusive (there is insufficient evidence either way);
 - iii) unsubstantiated (there is sufficient evidence to show that the complaint is unfounded);
 - iv) mischievous, vexatious or knowingly untrue.

Note: The investigator is **not** to make any recommendations as to how to proceed.

1.13 The report is to be delivered to the Hearing Officer or relevant person who will consider the report and examine the complaint and evidence and determine, on the 'balance of probabilities', whether the complaint is:

- a. substantiated (in that there is sufficient evidence to support the complaint);
- b. inconclusive (in that there is insufficient evidence either way);
- c. unsubstantiated (there is sufficient evidence to show that the complaint is unfounded); or
- d. mischievous, vexatious or knowingly untrue.

1.14 The Hearing Officer will then make a determination as to whether there has been a breach of the MPP or inappropriate conduct. In the instance that a determination is made that there is a breach of the MPP or evidence of inappropriate conduct, the Hearing Officer will determine what, if any, further action is warranted. This action may include disciplinary action in accordance with Attachment D – Tribunal Hearings and Disciplinary Measures, referring the complaint to an informal or formal mediation session or a hearings tribunal and/or referring the complaint to the police or other appropriate authority.

1.15. 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).

1.16. 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).

1.17. The Complainant and the Respondent(s) may be able to appeal against any decision implemented and the basis of the investigation report. Information on the appeals process is in Attachment D – Tribunal Hearings and Disciplinary Measures.

10. ATTACHMENT B8 - INVESTIGATION PROCEDURE FOR ALLEGATIONS OF CHILD ABUSE

If you believe a child is in immediate threat of danger or a life threatening situation, contact the Police immediately on 000.

Fact sheets on reporting allegations of child abuse are available at www.playbytherules.net.au

Netball NSW and Affiliates treat allegations of child abuse or neglect seriously and will endeavour to manage such complaints promptly and with sensitivity.

All people working with Netball NSW or Affiliates in a paid or unpaid capacity have a duty to report any concerns to the appropriate authorities, following the steps outlined below.

1. *Receive the allegation*

- 1.1 Any complaints, concerns or allegations of child abuse should be made or referred to the Hearings Officer or relevant person of Netball NSW.
- 1.2 If a child or young person raises with you an allegation of child abuse or neglect that relates to them or to another child, it is important that you listen, stay calm and be supportive. Refer to the below table for tips on dealing with this situation.

DO	DON'T
Make sure you are clear about what the child has told you.	Do not challenge or undermine the child.
Reassure the child that what has occurred is not his or her fault.	Do not seek detailed information, ask leading questions or offer an opinion.
Explain that other people may need to be told in order to stop what is happening.	Do not discuss the details with any person other than those detailed within these procedures.
Promptly and accurately record the discussion in writing.	Do not contact the alleged offender.

2. Report the allegation

- 2.1 **Immediately report any allegation of child abuse or neglect, or any situation involving a child at risk of harm, to the police and/or the relevant child protection agency. You may need to make a report to both.**
- 2.2 NSW DOCS (132 111) or the police should be contacted for advice if there is **any** doubt about whether the allegation should be reported.
- 2.3 If the allegation involves a person to whom this policy applies, then also report the allegation to Netball NSW or the relevant Affiliate.

3. Protect the child and manage the situation

- 3.1 If Netball NSW or an Affiliate receives a report of allegations of child abuse, the following steps may be taken as appropriate:
 - 3.1.1 The Hearings Officer or relevant person will assess the immediate risks to the child and take interim steps to ensure the child's safety and the safety of any other children.
 - 3.1.2 This may include redeploying the alleged offender to a position where there is no unsupervised contact with children, supervising the alleged offender or removing/suspending him or her until any investigations have been concluded. If a suspension is imposed the administrative procedures within Attachment B4 & B6 may be considered.
 - 3.1.3 The Hearing Officer or relevant person will consider what services may be most appropriate to support the child and his or her parent/s.
 - 3.1.4 The Hearing Officer or relevant person will consider what support services may be appropriate for the alleged offender.
 - 3.1.5 The Hearing Officer or relevant person will seek to put in place measures to protect the child and the alleged offender from possible victimisation and gossip.

4. Take internal action

- 4.1 If Netball NSW or an Affiliate receives a report of allegations of child abuse, the following steps may be taken as appropriate:
 - 4.1.1 Regardless of the findings of any investigation conducted by the police and/or any child protection agency, the Hearing Officer or relevant person may assess the allegations and information provided during the initial referral / lodgement of the complaint to decide whether the alleged offender should return to his or her position, be dismissed, be banned or face any other disciplinary action.

- 4.1.2 At no time is the Hearing Officer to undertake any further inquiry nor is the Hearing Officer to interfere with or seek evidence from the police or other party investigating the allegations. Such actions are inappropriate and have the potential to put at risk the reliability of the evidence and the investigation process. Furthermore, such actions may be regarded as interfering with a police investigation and may leave the Hearing Officer open to criminal charges.
- 4.1.3 The Hearing Officer or relevant person may consider all information relevant to the matter – including any findings advised by the police, the child protection authority and/or court to determine a course of action.
- 4.1.4 If disciplinary action is recommended, the Hearing Officer or relevant person may follow the procedures set out in the Member Protection Policy.
- 4.1.5 The Hearing Officer or relevant person may provide the relevant government agency with a report of any disciplinary action taken, where that is required.
- 4.1.6 The Hearing Officer or relevant person will complete the report form in Attachment C3 – Reporting Requirements and Documents / Forms of the Member Protection Policy and retain the original in a secure place.