



MEMBER PROTECTION

ATTACHMENT E – HEARINGS AND APPEALS TRIBUNAL PROCEDURAL REQUIREMENTS

**Adopted by NSW Netball Association Ltd Board Meeting and effective as
at 1 January 2017**

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TABLE OF CONTENTS

	<i>Page</i>
1. Definitions	3
2. Hearings Tribunal Procedures	3
3. State and State Age Championships Hearings Tribunal Procedures.....	5
4. NNSW / Affiliate Governed Events (excluding State & State Age Championships Hearings Tribunal Procedures	7
5. Appeals Tribunal Procedures	9

1. DEFINITIONS

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

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.

2. HEARINGS TRIBUNAL PROCEDURES

- 2.1 The Tribunal Chairperson will call the hearing to order at the designated time and determine if the Respondent(s) is present.
- 2.2 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.
- 2.3 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.
- 2.4 The Chairperson will inform the Affiliate President/Secretary or Chief Executive Officer of the need to reschedule, and the Affiliate President/Secretary or Chief Executive Officer will organise for the Hearings Tribunal to be reconvened.
- 2.5 When all conditions have been met, 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.
- 2.6 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.
- 2.7 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.
- 2.8 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.

- 2.9 Both the Complainant and Respondent are required to be present for the duration of the Tribunal. Witnesses may be asked to wait outside the Hearings Tribunal until required. The Complainant and Respondent will be entitled to have a support person present with them.
- 2.10 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.
- 2.11 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 modify the proceedings as considered appropriate or stop any further involvement of the person in the relevant Tribunal.

3. STATE AND STATE AGE CHAMPIONSHIPS HEARINGS TRIBUNAL PROCEDURES

- 3.1 The authority to determine and adjudicate upon a Hearings Tribunal emanating from a Netball NSW governed event is contained in the Netball NSW Constitution.
- 3.2 Hearings Tribunals will consist of a minimum of three persons, including the Chairperson, 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 Hearings Tribunal shall be conducted no earlier than 5.00pm 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 Hearings 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 Hearings Tribunal will occur within five days of the alleged incident.
- 3.3 An umpire or an official may report any incident in writing to a Netball NSW Championship Head of Venue on duty at the relevant venue.
- 3.4 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"* within one hour of the completion of the game where the alleged incident occurred.
- 3.5 Where possible all persons required to attend the Hearings Tribunal will be notified orally or in writing. Where a person is unable to be contacted by telephone, a message given to a responsible Affiliate Official advising the person registered with that Affiliate is to attend the Tribunal, will be regarded as official advice.
- 3.6 Any alleged charge(s) are to be based around the published Netball NSW Codes of Behaviour and the charges identified in the *"Incident Report Form"*
- 3.7 Where separate incidents occur in the course of a match and are reported, separate reports should be submitted.
- 3.8 An official from the Affiliate 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 Hearings Tribunal, that person's parent(s) or guardian(s) is permitted to attend with the person. The alleged offender is required to remain in the tribunal room while any evidence is presented.

- 3.9 Both the Complainant and Respondent are required to be present for the duration of the Tribunal. Witnesses may be asked to wait outside the Hearings Tribunal until required. The Complainant and Respondent will be entitled to have a support person present with them.
- 3.10 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
- 3.11 Where a Hearings Tribunal determines that the person(s) appearing before the Tribunal has breached the Member Protection Policy and/or Codes of Behaviour 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 Affiliate responsible for the person(s).
- 3.12 If the Hearings 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.
- 3.13 Where a person(s) considers the penalty to be unjustly harsh or onerous, that person has four hours in which to lodge a written appeal, which must state the grounds of the appeal, through the relevant Affiliate official. The Affiliate official will refer the matter to the Hearings 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 Hearings Tribunal. While the Appeals Tribunal is considering the appeal, any penalty imposed will not apply.

4. NNSW / AFFILIATE GOVERNED EVENTS (EXCLUDING STATE CHAMPIONSHIPS AND STATE AGE CHAMPIONSHIPS) HEARINGS TRIBUNAL PROCEDURES

- 4.1 The authority to determine and adjudicate upon a Hearings Tribunal emanating from a Netball NSW governed event is contained in the Netball NSW Constitution.
- 4.2 An umpire or an official may report any incident in writing to the Hearing Officer and/or relevant person of Netball NSW or the affiliate for matches relating to Netball NSW governed or Affiliate governed events.
- 4.3 Where the incident being reported occurred during a competition match the umpire(s) is to complete the *"Incident Report Form"* 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.
- 4.4 The Chairperson of the Hearings Tribunal will determine if the matter is to be heard by a Hearings Tribunal.
- 4.5 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 Affiliate official advising the person registered with that Affiliate is to attend a tribunal, will be regarded as official advice. Generally, at least forty eight hours' notice should be given to all persons requested to appear before the Hearings Tribunal.
- 4.6 A minimum of forty eight hours will be allowed for all parties before the Hearings Tribunal to prepare submissions. All matters are to be finalised as expeditiously as possible.
- 4.7 Any alleged charge(s) are to be based around the published Netball NSW Codes of Behaviour and the charges identified in the *"Incident Report Form"*
- 4.8 An official from the Affiliate 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 Hearings Tribunal, that person's parent(s) or guardian(s) is permitted to attend with the person. The alleged offender is required to remain in the tribunal room while any evidence is presented.
- 4.9 Both the Complainant and Respondent are required to be present for the duration of the Tribunal. Witnesses may be asked to wait outside the Hearings Tribunal until required. The Complainant and Respondent will be entitled to have a support person present with them.
- 4.10 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.

- 4.11 Where a Hearings 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 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 Affiliate responsible for the person(s).

5. APPEALS TRIBUNAL PROCEDURES

- 5.1 The Appeals Tribunal comprising a minimum of three persons including the Chairperson for appeals lodged in respect of Affiliate matters is appointed by the Affiliate Executive Committee.
- 5.2 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 Board.
- 5.3 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 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.
- 5.5 A member of the Appeals Tribunal is not permitted to be present at any tribunal hearing where that member's Affiliate is the subject of an appeal.
- 5.6 A member of the Appeals Tribunal shall not be present at any part of a hearing where that member's Affiliate is the subject of an ancillary discussion or ruling.
- 5.7 A member of the Appeals Tribunal shall not be present at any tribunal hearing where a financial member of the same Affiliate is the subject of an appeal.
- 5.8 A member of the Appeals Tribunal shall not be present at any part of a hearing where a financial member of the same Affiliate is the subject of an ancillary discussion or ruling.
- 5.9 Natural justice provisions are to apply to the conduct of appeals. The key principles of natural justice are:
- a) An affiliate 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 Affiliate 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.

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

5.11 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.

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

Nature of Appeal	Time Frame to Hear Appeal
Appeals against Netball NSW Hearing Tribunal decisions for State and State Age Championships.	4 hours
Appeals against Netball NSW Hearing Tribunal decisions for Premier League, Metro League and Night Inter District.	48 hours
Appeals against Affiliate Hearings Tribunal decisions.	5 business days
Appeals against Netball NSW Committee, Panel, Administrative or non-Hearing Tribunal Decisions.	7 business days

5.13 During an Appeal Hearing, the Appeals Tribunal may make an order relating to the procedure to be followed in those proceedings.

5.14 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.

5.15 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.

- 5.16 The Appeals Tribunal may interview the appellant or Affiliate depending upon the type of appeal. A maximum of two representatives will be permitted in the hearing room at any one time.
- 5.17 Where an individual or Affiliate seeks leave for legal representation, it is mandatory that prior notification be made to the Chairperson of the Appeals Tribunal.
- 5.18 The Appeals Tribunal has the discretion to interview any other persons it deems appropriate.
- 5.19 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.
- 5.20 Upon hearing the appeal, the Appeals Tribunal will endeavour to finalise its decision within forty eight 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 the Affiliate President/Secretary or the Chief Executive Officer, Netball NSW (or delegate) within forty eight hours of the decision.
- 5.21 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