



## **POLICY – Human Resources**

### **Policy Number 03-022 – Member Protection Policy - *Part G- Complaint Handling Policy***

#### **Document Control**

#### **Version Control**

<b>Date</b>	<b>Version</b>	<b>Details</b>	<b>Author</b>
8 <sup>th</sup> April 2014	1	New	Liana Roccon Jodie Terry
2 <sup>nd</sup> May 2014	2	New	Anna Carroll Liana Roccon
16 <sup>th</sup> May 2014	3	New	Anna Carroll Liana Roccon
8 <sup>th</sup> February 2017	4	New	John Mullins

#### **Approval**

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Position: Chief Executive Officer

A handwritten signature in black ink, appearing to read "Catherine Clark".

Signature:

Date: 8<sup>th</sup> February 2017

**COMPLAINTS HANDLING PROCEDURE  
FOR NETBALL QUEENSLAND  
AND ITS MEMBER ASSOCIATIONS**

**1 Handling complaints**

Netball Queensland (**NQ**) and its affiliated Associations and their Clubs (each, a **Netball Entity**) aim to provide a simple, confidential and trustworthy procedure for resolving complaints based on the principles of procedural fairness. The below procedures apply to all Clubs, Member Associations, other members of NQ and to NQ.

**2 Who may lodge a complaint?**

Any person (**Complainant**) may report a complaint (**Complaint**) about a person, people or organisation bound by this policy (**Respondent**) if they feel they have been discriminated against, harassed, bullied or there has been any other serious breach of a Netball Entity's policies.

**3 Who do you complain to?**

In the first instance, Complaints should be reported to the relevant Netball Entity's Complaints Officer. Complaints are preferred in writing but this is not essential.

Complaints should not be automatically made to NQ. Complaints should at first be made to the relevant Netball Entity. If a Complaint relates to behaviour or an incident that occurred at the:

- (a) state level, or involves people operating at the state level, then the Complaint should be reported to NQ to be handled by NQ in the first instance. This could relate to incidents which happen at an event or competition organised by NQ;
- (b) Regional Branch Committee level, or involves people operating at that level, then the Complaint should be reported to and handled by the relevant Regional Branch Committee in the first instance. This could relate to incidents which happen at an event or competition organised by a Regional Branch Committee;
- (c) Association level, or involves people operating at the Association level, then the Complaint should be reported to and handled by the relevant Association in the first instance; This could include examples involving players from different Clubs during an Association-sponsored match or event; or
- (d) club level, or involves people operating at the club level, then the Complaint should be reported to and handled by the relevant club in the first instance. This could include disputes among team members or between two teams within a Club.

## 4 **Complaint Handling Procedure**

- 4.1 Where a Complaint is made, the Netball Entity that receives the Complaint will determine what, if any, initial action to take. This action may include:
- (a) appointing a person or persons to investigate the Complaint who may be the Complaints Officer;
  - (b) referring the Complaint to an informal or a formal mediation session or investigation;
  - (c) referring the matter to a Hearing Tribunal;
  - (d) referring the Complaint to the police or other appropriate authority; and/or
  - (e) taking no further action and dismissing the Complaint.
- 4.2 A Complaint may be handled informally or formally. Informal resolution could be possible by a low-key conversation where both parties accept the basic facts of a situation; the person 'in the wrong' can be instructed about a better way to have acted.
- 4.3 The Complainant may indicate his or her preference and the Complaints Officer should consider whether that is an appropriate way to handle the particular Complaint. For example, the law may require that the Complaint/allegation be reported to an appropriate authority. The Netball Entity is not obliged to comply with the Complainant's preference.
- 4.4 All Netball Entities should aim to resolve Complaints quickly (given the nature of the complaint and the nature of potential harm) and fairly. Complaints may be resolved by agreement between the people involved with no need for disciplinary action.

## 5 **Improper complaints and victimisation**

- 5.1 Each Netball Entity should ensure that their complaints procedure has integrity and is free of unfair repercussions or victimisation against any person making a Complaint.
- 5.2 All necessary steps should be taken to make sure that people involved in a Complaint are not victimised. Disciplinary measures may be implemented in respect of a person who harasses or victimises another person for making a Complaint or supporting another person's Complaint.
- 5.3 If at any point in the Complaint handling process the Complaints Officer or a senior member of the applicable Netball Entity (Complaints Officer) considers that a Complainant has knowingly made an untrue Complaint, or the Complaint is malicious or inappropriately intended to cause distress to the Respondent, the matter may be referred in writing to the Netball Entity's Board or Management Committee for review and appropriate action, including possible disciplinary action against the Complainant.

## 6 Investigation

The procedure for the investigation of Complaints is outlined in **Attachment 1**. Where a Netball Entity decides that a Complaint should be the subject of an investigation process, it should take place where appropriate in accordance with Attachment 1.

## 7 Subsequent Action

7.1 Once a Netball Entity receives a written report from the investigator (in accordance with Attachment 1), the Netball Entity Board or Management Committee will determine what, if any, further action to take. This action may include:

- (a) a direction to the investigator to make further enquiries and obtain additional information;
- (b) disciplinary action; or
- (c) referring the Complaint to an informal or a formal mediation session, a Hearing Tribunal and/or the police or other appropriate authority.

The Netball Entity Board or Management Committee may also determine to take no further action and dismiss the Complaint.

7.2 The decision of the Netball Entity Board or Management Committee is final and there is no right of appeal.

## 8 Mediation

8.1 Mediation is a confidential process that allows those involved in a Complaint to discuss the issues or incident in question and come up with mutually agreed solutions. It may occur before, after or instead of the investigation of a Complaint. Mediation might not be a suitable method for resolution of a Complaint in all cases.

8.2 Mediation can only occur with the agreement of both parties. If a Complainant wishes to resolve the Complaint with the help of a mediator, the Complaints Officer will, in consultation with the Complainant, arrange for an independent mediator where possible.

8.3 Where a Netball Entity Board or Management Committee refers a Complaint to mediation, the mediation should proceed in accordance with the process in **Attachment 2**.

8.4 Lawyers or other support persons or representatives may be permitted to participate in the mediation process with the consent of the other party.

8.5 Where there are costs of the mediation these may be paid by the Netball Entity or by agreement by the parties.

## 9 Tribunals

- 9.1 A matter should be referred to the Hearing Tribunal where there is a breach of the By-Laws, Policies or Constitution of the Netball Entity or NQ which requires disciplinary action being taken against the perpetrator (individual or organisation).
- 9.2 The Hearing Tribunal will be convened to hear a proceeding referred to it by a Netball Entity.
- 9.3 Where a Netball Entity refers a Complaint to a Hearing Tribunal, the Hearing Tribunal should proceed in accordance with **Attachment 3**.
- 9.4 Every Netball Entity bound by this policy will recognise and enforce any decision of a Hearing Tribunal or Appeals Tribunal.

## ATTACHMENT 1 - INVESTIGATION PROCEDURE

There will be times when a Complaint will need to be investigated and evidence gathered. An investigation helps determine the facts relating to the incident, as well as produce findings and recommendations. Any investigation that a Netball Entity conducts should be fair to all parties involved.

If a Netball Entity Board or Management Committee decides that a Complaint should be investigated the following steps should 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 by the investigator 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) will be given sufficient information and time to enable them to properly respond to the Complaint.
4. The Respondent(s) will be interviewed by the investigator 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, statements from witnesses and other relevant evidence will be obtained to assist in a determination.
6. The investigator will determine 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. The investigator will produce a report documenting the Complaint, investigation process, evidence, and findings and, if requested, recommendations. This report will be given to the relevant Netball Entity Board or Management Committee.
8. The relevant Netball Entity may provide a report documenting the Complaint and summarising the investigation process and key points that were found to be substantiated, inconclusive, unsubstantiated and/or mischievous to the parties.
9. Both parties are entitled to support throughout this process from their chosen support person including lawyers.

## ATTACHMENT 2 - MEDIATION PROCEDURE

Mediation is a process that allows all people involved in a Complaint to talk through the issues with an impartial person – the mediator – and work out a mutual solution.

The mediator does not decide who is right or wrong and does not tell either side what they must do. Instead, he or she helps those involved talk through the issues making sure that the process is as fair as possible for all concerned.

The following is the general procedure for the conduct of mediations under this policy.

1. The people involved in a 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.
2. Mediation will only be recommended:
  - (a) after the Complainant and Respondent have had their chance to tell their version of events to the relevant Netball Entity; and
  - (b) the relevant Netball Entity Board or Management Committee 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 align or almost align 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 are unwilling to attempt mediation;
  - (c) when the issues raised are sensitive in nature;
  - (d) when there is a real or perceived power imbalance between the people involved;
  - (e) matters involve serious, proven allegations; or
  - (f) the Complaint is not suitable for mediation due to the nature of the Complaint, the relationship between the Complainant and the Respondents and any other relevant factors.
4. If mediation is chosen to attempt to resolve the Complaint the relevant Netball Entity will, in consultation with the parties arrange for a mediator to mediate the Complaint. Mediation can only occur with the agreement of all parties.

5. The mediator's role is to assist the parties reach an agreement on how to resolve the issues between them. The mediator, in consultation with the parties, will determine the procedures to be followed during the mediation. An agenda of issues for discussion will be prepared by the mediator.
6. The mediation will be conducted confidentially and without prejudice. The parties will preserve their right to pursue an alternative process if the Complaint is not resolved.
7. If the Complaint is resolved by mediation, the mediator will prepare a document that sets out the agreement reached between the parties and it will be signed by them as their agreement. The relevant Netball Entity will be advised of the resolution of the matter. NQ expects parties involved to respect and comply with the terms of the agreement executed.
8. If the Complaint is not resolved by mediation, the matter will be returned to the Netball Entity Board or Management Committee for further consideration and direction.

## ATTACHMENT 3 - HEARING & APPEAL TRIBUNALS PROCEDURE

The following hearing procedure will be followed where a Netball Entity convenes a hearing tribunal (**Hearing Tribunal**) in Queensland.

### A. HEARING TRIBUNAL

Where NQ or a Netball Entity determines to refer a matter to the Hearing Tribunal the procedure set out below shall be followed:

#### 1 Make up of Hearing Tribunal

The Hearing Tribunal for each hearing shall be appointed by the relevant Netball Entity and shall be comprised of the following persons:

- (a) a barrister or solicitor (who shall be the chairperson) or if after reasonable attempts have been made to obtain such person without success, then a person with considerable previous experience in the legal aspects of a disciplinary/hearing tribunal; and
- (b) a person with a thorough knowledge of Netball; and
- (c) a person of experience and skills suitable to the function of the Hearing Tribunal, provided that such persons do not include:
  - (i) a person who is a member of the board (however described) of the relevant Netball Entity which appoints the Hearing Tribunal; or
  - (ii) a person, who would, by reason of their relationship with any of the parties, be reasonably considered to be other than impartial.

#### 2 Hearings Officer

The Netball Entity shall appoint a Hearings Officer to deal with all administrative matters relating to the Hearing and where applicable Appeal.

#### 3 Notice of Alleged Breach

The Hearing Tribunal shall ensure that the Netball Entity has sent a Notice of Alleged Breach to the Respondent(s) in writing informing them that a Hearing Tribunal hearing will take place. The notice will outline:

- (a) that the Respondent has a right to appear at the Hearing Tribunal to defend the Complaint/allegations;
- (b) the details of the Complaint and of all allegations, as well as the provision or clause of any policy, rule or regulation that has allegedly been breached;
- (c) the date, time and venue of the Hearing Tribunal hearing;

- (d) that verbal and/or written submissions can be presented at the Hearing Tribunal;
- (e) that witnesses may attend the Hearing Tribunal;
- (f) that the Respondent may with consent of the Tribunal cross examine or question any witness;
- (g) an outline of any possible sanctions that may be imposed if the Complaint is found to be substantiated;
- (h) that legal representation may be allowed with consent of the Hearing Tribunal;
- (i) that the respondent may be assisted by a support person at a Hearing Tribunal. For example, where the respondent is a minor, he or she should have a parent or guardian present.

A copy of any information/documents that have been given to the Hearing Tribunal (e.g. investigation report findings) will be provided to the Respondent(s) unless otherwise determined by the Chairperson of the Hearing Tribunal.

#### 4 **Frivolous, vexatious or malicious Complaints**

- 4.1 If within 48 hours of receiving the Notice of Alleged Breach, the Respondent alleges in writing to the Chairperson of the Hearing Tribunal that the Complaint is frivolous, vexatious or malicious, the Chairperson of the Hearing Tribunal shall as a preliminary issue, determine whether or not such Complaint is frivolous, vexatious or malicious and advise the parties of his or her determination.
- 4.2 The Chairperson shall determine the preliminary issue of whether the Complaint is frivolous, vexatious or malicious 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.
- 4.3 If the Complaint is determined to be frivolous, vexatious or malicious by the chairperson, then the Complaint will be dismissed. The decision of the chairperson is final and there is no appeal.

#### 5 **Hearing Tribunal Process**

- 5.1 The Hearing 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.

5.2 The purpose of the hearing shall be to determine whether the Respondent has committed a breach of any relevant rule, regulation or policy of NQ or the relevant Netball Entity.

5.3 If the Hearing Tribunal considers that the Respondent has committed such a breach of a Policy, it may impose any one or more of the sanctions set out below.

## 6 Immediate Action by Hearing Tribunal

6.1 If upon receipt of the Notice of Alleged Breach the Hearing Tribunal considers that pending the determination of the matter the Respondent may put at risk the safety and welfare of the Complainant or others it may order that the Respondent be:

- (a) immediately suspended from any role they hold with Netball;
- (b) immediately banned from any event or activities held by or sanctioned by Netball Queensland or the Netball Entity; and/or
- (c) immediately required not to contact or in any way associate with the Complainant or other person about whom the alleged breach relates, pending the determination of the hearing.

6.2 There is no right of appeal of the decision by a Hearing Tribunal under clause 5.1.

## 7 Representation

The chairperson of the Hearing Tribunal may grant leave for a party to the hearing to be legally represented. A party may be represented by an advocate who is not legally qualified at the hearing.

## 8 Costs

Each party to the hearing shall bear their own costs in relation to the hearing.

## 9 Decision of the Hearing Tribunal

9.1 The Hearing Tribunal shall give its decision as soon as practicable after the hearing and the Chairman of the Hearing Tribunal will deliver a written statement of the determination and reasons to the Netball Entity.

9.2 The Netball Entity shall inform the following of the decision:

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

## 10 Indemnity

10.1 Each member of each Hearing Tribunal established under this Policy shall be indemnified by the Netball Entity 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 Hearing Tribunal.

10.2 Each party appearing before a Hearing Tribunal shall release each member of that tribunal 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 Hearing Tribunal. If required by the tribunal each party will sign a document giving effect to such release.

## 11 Confidentiality

All members of the Hearing 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 Hearing Tribunal) confidential.

## **B. APPEALS**

### **1 Appeal Rights**

A party against whom a penalty has been imposed by a Hearing Tribunal may appeal a decision of that Hearing Tribunal on the ground that:

- (a) Natural justice has not been provided at the hearing of the Hearing Tribunal.
- (b) The decision is manifestly wrong.
- (c) The penalty imposed is excessive.

### **2 Appeal Tribunal**

An appeal against a decision of a Hearing Tribunal established by a Netball Entity, shall be made to the appeal tribunal of 3 persons established by NQ (**Appeal Tribunal**). Subject to the discretion of the chairperson of the Appeal Tribunal all appeals shall be heard at the principal place of business of NQ.

### **3 Final Appeal**

It is agreed that no party to such appeal may institute or maintain proceedings in any external court or tribunal until they have exhausted their appeal rights under these procedures.

### **4 Appeal Process**

The process for such appeal is as follows:

- (a) the party wishing to appeal ("Appellant") shall within 72 hours of a Hearing Tribunal delivering its decision, advise in writing, the Hearings Officer of NQ of their intention to appeal (**Notice of Intention to Appeal**);
- (b) as soon as possible after receipt of the Notice of Intention to Appeal, NQ shall appoint an Appeal Tribunal to hear and determine the appeal (which shall comprise of independent persons and not the same persons who were part of the Hearing Tribunal that made the decision to which the appeal relates); and
- (c) within 5 days of lodging the Notice of Intention to Appeal, (or such shorter time as determined by the Appeal Tribunal if there is urgency) the Appellant shall:
  - (i) pay a non-refundable appeal fee of \$550.00 (including GST) to NQ; and
  - (ii) submit to NQ, four written copies of the grounds of appeal. NQ shall provide a copy of the grounds of appeal to the Chairperson of the Appeal Tribunal.

- (d) If either of the requirements in this sub-clause (c) are not met by the required time the appeal shall be deemed to be withdrawn;
- (e) Upon completion of the procedures in clauses 4(a) to (c) above, the Chairperson of the Appeal Tribunal shall determine a time and date for the hearing of the appeal and as soon as possible thereafter notify all parties to the appeal in writing of such details; and
- (f) The procedure for the appeal shall be determined by the Appeal Tribunal.

## 5 **Appeal Outcomes**

Upon hearing the appeal, the Appeal Tribunal may do any one or more of the following:

- (a) dismiss the appeal;
- (b) uphold the appeal;
- (c) impose any of the sanctions set out in clause C2 below; and/or
- (d) reduce, increase or otherwise vary any sanction imposed by the initial Hearing Tribunal.

## 6 **Application of Penalties**

If the penalty imposed by the appeal body affects any other Netball organisations, NQ shall as soon as possible notify in writing the relevant Netball Entity of the penalty. Notification of such penalty shall be deemed to be notification to all members of the relevant Netball Entity. Every Netball Entity shall recognise and enforce any decision and penalty imposed by an Appeal Tribunal under this policy.

## 7 **Costs**

The Appeal Tribunal has no power to award costs and each party shall bear their own costs in relation to any appeal.

## 8 **Appeal Rules**

The hearing and appeal procedures set out above prevail over any other rules, regulations and policies of NQ or any Netball Entity.

## 9 **Indemnity**

- 9.1 Each member of each Appeal Tribunal established under this Policy shall be indemnified by the Netball Entity 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 Appeal Tribunal.

9.2 Each party appearing before a Appeal Tribunal shall release each member of that tribunal 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 Appeal Tribunal. If required by the tribunal each party will sign a document giving effect to such release.

10 **Confidentiality**

All members of the Appeal 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 Appeal Tribunal) confidential.

## C. **SANCTIONS**

### 1 **Principles**

Any disciplinary measure imposed by a Hearing Tribunal or Appeal Tribunal 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 Tribunal and Appeal Tribunal to impose the disciplinary measure.

### 2 **Penalties**

If a Hearing Tribunal or Appeal Tribunal considers that a person or organisation has breached a rule, regulation or policy of NQ or any other relevant Netball Entity it may impose any one or more of the following penalties:

- (a) For breaches committed by organisations:

If the Hearing Tribunal or Appeal Tribunal considers that any Netball Entity has breached a rule, regulation or policy of NQ or any other relevant Netball Entity, it may impose any one or more of the following penalties on such organisation:

- (i) direct that any funding granted or given to it by NQ cease from a specified date, or from a specified period;
- (ii) impose a monetary fine for an amount determined by the Hearing Tribunal or Appeal Tribunal;
- (iii) impose a warning;
- (iv) recommend to NQ that:
  - A. the organisation's membership be suspended or terminated in accordance with the applicable constitution;
  - B. any rights, privileges and benefits provided to that organisation by NQ be suspended for a specified period and/or terminated;
  - C. NQ cease to sanction events held by or under the auspices of that organisation;
- (v) any other such penalty as the Hearing Tribunal or Appeal Tribunal considers appropriate.

(b) For breaches committed by individual persons:

If the Hearing Tribunal or Appeal Tribunal considers that an individual person has breached a rule, regulation or policy of NQ or any other relevant Netball Entity, it may impose any one or more of the following penalties on such person:

- (i) recommend that NQ or the Netball Entity terminates the appointment of the role which the offender holds with such organisation;
- (ii) impose a warning;
- (iii) (in the case of a coach) direct the relevant organisation to de-register the accreditation of the coach for a period or indefinitely;
- (iv) withdraw any awards, placing, records won in any tournaments, activities or events held or sanctioned by NQ;
- (v) in the case of disciplinary action taken against a team or a club, the penalties may include disqualification from a competition or finals series and the removal of competition points;
- (vi) any other such penalty as the Hearing Tribunal considers appropriate.

**D. BINDING NATURE OF DECISION**

- 1 The decision of the Hearing Tribunal or the Appeal Tribunal is binding upon the Netball Entity that has referred the matter to the relevant tribunal.
- 2 If the penalty imposed by the Hearing Tribunal or Appeal Tribunal affects any other Netball Entity, the Netball Entity from which the Hearing Tribunal is established shall as soon as possible notify the other relevant Netball Entity of the penalty. Notification of such penalty to a Netball Entity shall be deemed to be notification to all members of that Netball Entity.
- 3 Every Netball Entity in Queensland shall recognise and enforce any decision and penalty imposed by a Hearing Tribunal or Appeal Tribunal.
- 4 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.