

TRIBUNALS & HEARINGS

The following Netball SA Tribunal Hearing Procedures are intended to be guidelines for our Associations and Clubs when dealing with dispute resolution.

TRIBUNAL JURISDICTION, POWERS AND COMPOSITION

A sporting organisation's Constitution should provide the board of the organisation with the power to create by-laws for the effective delivery of the organisation's purposes and objects. Sporting organisations need to check or establish within their Constitution, a by-law or by-laws that specifically address disciplinary proceedings and how they will be conducted. The constitution and by-laws of a sporting organisation form a 'contract' between the sporting organisation or its associations, clubs and participants. It must be clearly documented who the tribunal hearing / disciplinary process will have jurisdiction over.

A sporting organisation may consider establishing a pool of people who can be drawn upon to form a tribunal panel when an issue requires a decision or resolution. It is preferable that anyone who is required to be a member of a tribunal panel possess relevant skills, knowledge and/or experience that would be beneficial to the process. The tribunal panel should consist of people that do not have any actual or perceived conflict of interest in relation to the issue, incident or complaint. Sporting organisations will need to decide on the number of members that will sit on a tribunal and how the members will be selected from the pool of members. A Tribunal Chairperson, who preferably has some legal qualifications or experience, will also need to be appointed. All tribunal hearing procedures must be consistent with the organisations' Constitution and by-laws.

TRIBUNAL HEARING PROCEDURES

The establishment and conduct of a tribunal (such as a sporting tribunal hearing / disciplinary tribunal) does not need to follow any specific legal formalities or processes. In general, sporting organisations are able to determine how a tribunal hearing is formulated, who adjudicates on the tribunal, and how the process is to be conducted. When conducting a tribunal hearing, however, the basic principles of natural justice must be followed to ensure a fair and equitable process is achieved. The principles of natural justice include the following:

1. Notification of the Charge

- The person accused should receive a written notice clearly outlining the allegation/s in sufficient detail so as to allow the person to properly prepare and respond at the hearing. The notification should outline the rule, regulation or policy they have allegedly breached, and any possible penalty that may be imposed.
- The notification should provide the option for admission of the allegation/s and acceptance of the advised penalty (if applicable) by a specified date, avoiding the need for a tribunal hearing.
- The notification should clearly outline the date, time, venue and composition of the tribunal hearing.
- The notification should clearly outline the expectations and rights of the accused, including any entitlement to legal representation.

2. Opportunity to Respond

- The person accused should be given the opportunity to respond to the allegations.
- The person accused must be given sufficient time to prepare and state their case, including calling any witnesses.

3. Decision Makers to be Unbiased

- There should not be any perceived or actual preconceived opinions, vested interests, personal involvement or conflict of interest by the tribunal members.
- The tribunal members should ensure that the above two principles are followed.

LEGAL ISSUES AND REPRESENTATION

A tribunal hearing is not required to follow any specific legal process other than that outlined in the organisation's Constitution and by-laws. A tribunal hearing is not expected to act as a court of law, but should conduct the hearing as quickly, informally and comprehensively as practicable. The tribunal hearing procedures should be clearly stated and accessible and enforceable to all members/participants. Justice should be done and seen to be done.

To ensure that any tribunal hearing or disciplinary process remains sound and reliable, an organisation should seek broad input and legal advice in drafting the initial by-law and/or policy and then regularly review the details to ensure they remain current, relevant and effective in light of experience gained from their application.

There is no absolute right to legal representation at a tribunal hearing. Most tribunal hearings, however, are given a discretionary power in their rules to allow legal representation. Tribunal rules may provide that legal representatives are not permitted to represent their clients or address the tribunal, but may attend the hearing to give guidance and advice to their clients.

Where an issue relates to a person's livelihood and/or a serious allegation, then the person should be allowed to be legally represented. If a tribunal hearing is to adjudicate on a matter that involves a person under the age of 18 years, it is strongly recommended that a parent/guardian accompany them.

FAILURE TO APPEAR

If a person has been correctly notified that they are required at a tribunal hearing and has chosen not to attend, the hearing may still proceed in their absence. If a valid reason is presented to the tribunal prior to the commencement or during the tribunal's deliberation on the matter, or it is determined that the person has not been correctly notified, then the hearing should be rescheduled for a later time to ensure the requirements for natural justice are met.

EVIDENCE AND QUESTIONING

A tribunal can use any information available to it which it is prepared to accept, even if it would not normally be admissible in a court of law. The tribunal should not randomly disregard relevant evidence, nor should it act upon irrelevant evidence. Hearsay evidence can be considered by the tribunal if it is considered reliable, applicable, appropriate and fair to do so. The tribunal hearing rules should determine whether the hearing will accept exclusively, or a combination of verbal or written evidence.

A tribunal can also determine if it wants to use an 'investigative' (ask questions to clarify / expand on any evidence presented by the parties) or 'adversarial' (the tribunal is a passive recipient of any evidence presented by the parties alone) approach during the hearing. There is no requirement under natural justice for cross examination of witnesses to occur during a tribunal hearing. Tribunal hearing rules may allow a discretionary power for cross examination to occur, which if permitted should be consistent for both parties. Tribunals must remember however, that because the tribunal hearing is not a court of law, there is no legal obligation for witnesses to disclose relevant information, or even to answer questions during a hearing.

TRIBUNAL DECISIONS

Any decisions arrived at by the tribunal should be based only on relevant evidence provided and should not be influenced by rumour, speculation or gossip. Decisions should also be arrived at on the reasonable satisfaction of the tribunal members or on the 'balance of probabilities' (i.e. more probable than not). The tribunal rules should also indicate if a unanimous or majority decision is required by the tribunal members. Any penalty imposed must also be appropriate to the seriousness or significance of the charge.

The accused person must be promptly notified of the outcome of the tribunal hearing including any disciplinary action that may be applicable. It is considered good practice that the reasons for a decision are made available as this ensures:

- The decision is rational – all relevant information is noted, understood and appropriately considered;
- The decision is transparent – it shows that there is nothing to hide or something 'improper' has contributed to the outcome. People can see proper process has been followed; and
- The decision is consistent – similar and/or previous decisions can be compared to ensure that a 'fair and just' result has been reached.

PENALTIES

Natural justice requires that a person be given the opportunity to address the tribunal panel when the question of penalty is to be determined. The penalty options that a tribunal can impose must be specifically outlined in the organisation's disciplinary by-laws. Any discretionary penalty imposed on someone found guilty by a tribunal must be reasonable in relation to the circumstances of the issue.

If an Association wishes to suspend a player for a longer period than four weeks, as a result of gross misdemeanour, the approval of Netball SA Board is required.

Appeals

It is considered good practice for sporting organisations to provide an internal process to appeal against any decisions or disciplinary sanctions imposed. The reasons allowable for an appeal can be limited by the organisation to such aspects as a denial of natural justice or an unfair or unreasonable penalty. The grounds and procedures for lodging an appeal must be outlined in the Constitution, by-laws and/or relevant policy. Appeals should not be heard by anyone involved in the initial decision and in smaller organisations, appeals may be heard by persons on the Committee of Management or Board.

The above information is to be read in conjunction with the Netball SA Member Protection Policy and is intended as a general guide and is not to be taken as professional advice. Netball SA recommends you seek professional advice if a specific situation arises involving harassment or discrimination. Reference: Australian Sports Commission Tribunal Hearing procedures