



Hearing Tribunal Guidelines

Introduction

Netball Tasmania, as well as its member Associations and Clubs, adopt the Netball Australia Netball Integrity Policy Framework, Conduct and Disciplinary Policy ('the Policy', see <https://netball.com.au/integrity-policies>). The Policy allows for Hearing Tribunals in certain circumstances. As such, should a Hearing Tribunal be required under the Policy, that Hearing Tribunal may make guidelines in respect of practice and procedure at a hearing.

The following information is a summary of information in the Policy, with further advice should a Hearing Tribunal be required.

Where there are conflicts between the Policy and this document, the Policy takes precedence. For definitions of capitalised words, refer to the Policy. References in square brackets [] refer to clauses in the Policy.

Use of Hearing Tribunals

Under the Policy, a Hearing Tribunal can be formed:

- a) if the Complaints Manager has determined a Hearing Tribunal is the most appropriate Process [clause 12.5]; or
- b) if a Respondent disputes the Alleged Breach and/or proposed Sanction in a Breach Offer [clause 12.4.4.2]; or
- c) to determine whether Provisional Action imposed is disproportionate [clauses 11.6.3 and 14.3.1.1].

In cases a) and b), the purpose of the Hearing Tribunal is to arbitrate an alleged Breach, determine whether a Sanction be imposed, and if so, what Sanction [clause 14.3.12]

Formation of Hearing Tribunals

A Hearing Tribunal can be:

- a) the National Sports Tribunal General Division (with the consent of Netball Australia);
- b) an Alternative Dispute Resolution Body approved by Netball Tasmania, referred to in the Policy as an ADR Body; or
- c) an internal tribunal established by Netball Tasmania; or
- d) an internal tribunal established by an Association, subject to the prior written endorsement of Netball Tasmania, referred to in the Policy as an ADR Body.

Where the National Sports Tribunal or approved external ADR Body are used, these will have their own processes and guidelines.

This document provides guidance to Associations forming their own Hearing Tribunal, in accordance with the Policy.

Where an Association wishes to use their own Hearing Tribunal, they must first write to Netball Tasmania outlining who the Tribunal members would be and their experience and/or qualifications. It would be sufficient to provide a list of potential members forming a pool who could be drawn from, with those who might act as Chair identified, rather than needing to seek approval for each individual Hearing Tribunal panel.

It is preferable that anyone who is required to be a member of a Hearing Tribunal panel possesses relevant skills, knowledge and/or experience that would be beneficial to the process. The Hearing Tribunal panel should consist of people that do not have any actual or perceived conflict of interest in relation to the alleged Breach. Associations will need to decide on the number of members that will form a Hearing Tribunal panel and, if relevant, how the members will be selected from the pool. A Hearing Tribunal Chair, who preferably has some legal qualifications or experience, will also need to be appointed.

Parties to a Hearing Tribunal

The parties to the Hearing Tribunal are the Relevant Organisation (i.e. the Club or Association managing the Alleged Breach) and the Respondent [clause 14.1].

Standard of proof

The standard of proof that applies to all decisions made by a Hearing Tribunal is “balance of probabilities”. The Hearing Tribunal must be satisfied that on the evidence put before them whether the alleged fact or matter is more probable or not. In reaching this conclusion, the Hearing Tribunal must take into account all relevant factors including the impact of the potential sanctions if the allegations are proven. This means that the standard of proof requires greater certainty for a more serious allegation compared with a less serious allegation [clause 9.7].

Hearing Procedures

Tribunal hearings do not need to follow any specific legal formalities or processes. However, the basic principles of natural justice must be followed. These include:

Notification of the Alleged Breach

The Respondent should receive written notification of the allegation made against them, including both the specifics of what they are alleged to have done and the rule that they are alleged to have breached.

This should include providing the Respondent with all material given to the tribunal in sufficient time for the Respondent to consider it.

Opportunity to respond

The Respondent should be given reasonable opportunity to prepare and state their case, which includes giving them reasonable notification of the time and place of the hearing.

The Respondent should have the right to be heard and the right to provide conflicting evidence or witness statements.

The Tribunal must not be biased

Care should be taken to ensure that there are no real or perceived conflicts of interest, personal involvement or prejudgments made. Any panel member with a conflict of interest or any prior involvement in the matter, must not sit on any hearing of that particular matter.

A Hearing Tribunal is not a court of law and is therefore not bound by rules of evidence, but may inform itself as to any matter in any manner as it sees fit, noting the standard of proof that applies to Hearing Tribunals.

Without limiting the above, a Hearing Tribunal may:

- i. permit individuals and clubs to attend the hearing in person, by telephone or by video link;
- ii. require the attendance of any person under the jurisdiction of the Policy as a witness for the purpose of asking questions relevant to the alleged Breach;
- iii. admit and request the production of documents, reports from umpires, statements from the parties and witnesses, expert opinion and video or audio recordings and may require documents and statements to be submitted prior to any hearing; and
- iv. hear and determine a matter in the Respondent's absence if they fail to attend a hearing, including determining a Breach and/or Sanction.

Requirement to attend and cooperate

All Persons bound by the Policy must cooperate fully with the Hearing Tribunal [clause 9.9.1].

The Hearing Tribunal may draw an inference adverse to the Respondent based on the Respondent's failure or refusal to answer any relevant question and/or participate in the Hearing Tribunal, after a request has been made a reasonable time in advance. The Respondent must be made aware of such an inference being drawn [clause 9.9.2].

Representation

An individual may invite a support person or advisor, who must not be qualified as a lawyer or barrister, to accompany them throughout a Hearing Tribunal [clause 9.11.1].

Where a Complainant or Respondent is a Vulnerable Person (which is defined in the Policy and includes Persons under the age of 18 as well as persons 18 or over, based on their personal circumstances), the parent/guardian of the Vulnerable Person may act on their behalf and accompany them throughout the Hearing Tribunal [clause 9.10.1].

Conducting the Hearing

The Hearing Tribunal should proceed as follows:

1. the Hearing Tribunal Chair will explain the procedure for the hearing;
2. the Hearing Tribunal will review the relevant Complaint;
3. the Respondent will be asked to confirm their position in respect of the Breach and/or Sanction;
4. any relevant footage or images will be viewed;
5. any other reports or evidence relating to the relevant incident will be received;
6. evidence from the Respondent, the Relevant Organisation, if they elect to give evidence, and from any witnesses called by any of them, will be heard;
7. final submissions, if any, will be heard;
8. the Hearing Tribunal will consider the reports, evidence and submissions and make a Determination based on the facts as to the Breach and Sanction; and
9. the Participant will be advised of their right of appeal in accordance with the Policy.

Witnesses

Any party that intends to provide evidence of a person as a witness to the relevant incident or an expert witness shall, at the time of responding to the Breach, lodge with the Hearing Tribunal a written statement containing:

1. the name and address of the witness;
2. if an expert witness, the qualifications and experience of the witness; and
3. the substance of the evidence it is proposed to adduce from the witness.

Where the Tribunal Chair allows a person in their discretion to adduce evidence from an expert witness or on any other occasion, the Hearing Tribunal may hear any other expert evidence in relation to the matters requiring its determination.

Adjournment

The Hearing Tribunal may, upon request by a party, adjourn a hearing if it is satisfied that circumstances warrant such an adjournment.

An adjournment may also occur where the Hearing Tribunal considers that further evidence or submissions are necessary or further time is necessary to consider the evidence which has been presented at a hearing.

Notification and recording

The Hearing Tribunal will notify the parties of the decision in accordance with its relevant procedures [clause 14.5].

Relevant Organisations should include both the time frames and form for this notification in their bylaws or policies.

The Complaint Manager must notify the Complainant (if any) of the outcome (noting that the Hearing Tribunal will have notified the Respondent) and also Netball Tasmania [clauses 16.2.1, 16.2.2.1].

The Relevant Organisation (Club or Association) must keep records of the Alleged Breach, the Process, the outcome of the hearing and any Sanctions imposed [clause 16.3].