



# Netball NSW

## Member Protection Policy, Attachment B

Complaint Handling Procedures

**Adopted by New South Wales Netball Association Ltd at its Board Meeting and effective as at 2 January 2019**

Last Reviewed: December 2018

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## **1 Overview**

### **1.1 Guideline Principles**

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

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. Given the different circumstances that can arise, the process of managing an individual complaint may change.

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.

### **1.2 Scope of These Procedures**

These Procedures have been developed in accordance with the Complaints Procedure in clause 15 of this Policy to assist with the management of complaints involving a breach of this Policy as set out in clause 16 “What is a Breach of this Policy?”

Complaints that do not involve a breach of this Policy do not fall within in the scope of these Procedures.

Therefore, the following complaints will not be managed by these Procedures:

- a) Complaints in relation to personal grievances and disputes, please refer to the Netball NSW Grievance and Dispute Policy
- b) Complaints in relation to “on- court offences”, please refer to the Netball NSW Disciplinary Policy
- c) Complaints in which the last incident occurred more than 6 months ago; or
- d) Frivolous and/or vexatious complaints

### **1.3 Complaints Involving Children/Young Persons**

Where a complaint involves a person who is under the age of 18 years of age:

- a) The parent or guardian may represent the interest of the child/young person; and
- b) The parent of guardian may support the child/young person to manage the complaint.

*Serious incidents such as harm to a child or young person should be reported to the police.  
Refer to appendix 1*

#### 1.4 External Procedures

Nothing in this Policy or these Procedures will prevent an individual or organisation from pursuing a complaint externally.

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

#### 1.5 Untrue, Vexatious or Malicious Complaints

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 are to 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.

#### 1.6 Disclosure

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.

#### 1.7 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 as to who is informed of the outcome.

#### 1.8 Confidentiality

All actions taken in relation to this Policy and these Procedures are to remain confidential and privacy should be maintained, unless otherwise specified.

#### 1.9 Applying Natural Justice

Natural justice, also known as procedural fairness, is a requirement of a fair disciplinary process. Failure to provide natural justice may provide the person who is the subject of the disciplinary proceedings with a reason to challenge the findings of a Tribunal.

Natural justice (or procedural fairness), involves three rules or principles:

- a) Ensuring that the person has the right to be heard and that they are provided with and have the right to respond to, any information presented or considered in reaching a decision;
- b) Ensuring that any decision made is free from bias, and;
- c) Ensuring that any decision is made after a reasonable investigation into the issue has been conducted and relevant evidence considered.

## 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, a company limited by guarantee, 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. 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.

**Discipline offences** are those that are identified in the Netball NSW Disciplinary Policy. There are five levels of offences which can be reported either by way of formal complaint or by submission of an Incident Report Form.

**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.

**Individual Member (Member)** means a natural person who is a registered financial member of Netball NSW.

**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 clause 5 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. A MPIO does not act on behalf of a Complainant, handle or investigate complaints. MPIOs provide information and options available to members under this Procedure and the Netball NSW Member Protection Policy.

**Participant** means a person who participates, including but not only as official, coaches, players or umpires, parents, guardians and spectators in a Netball Competition organised, controlled or sanctioned by Netball NSW or an Affiliate.

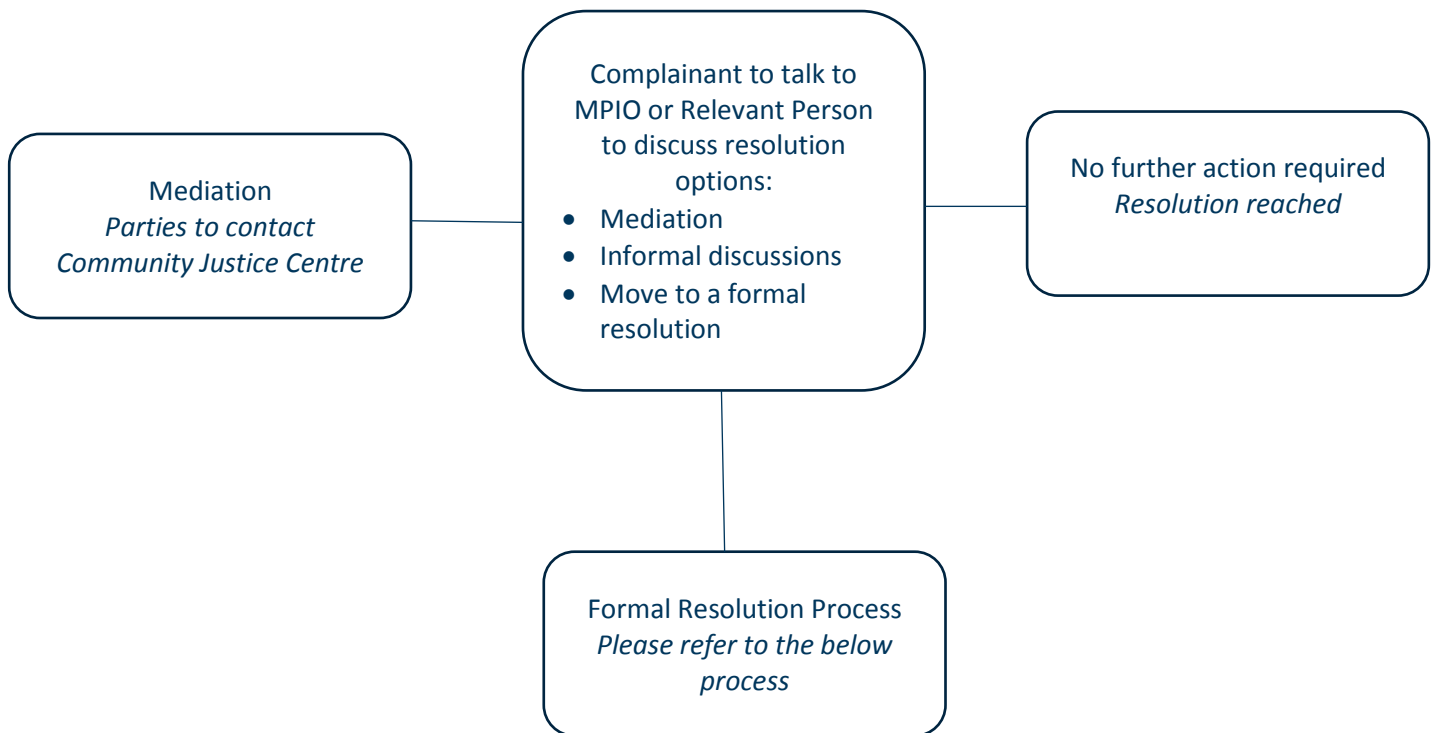
**Policy** means the Netball NSW Member Protection Policy (MPP).

**Procedures** means the Netball NSW – Attachment B – Complaint Handling Procedures.

**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 Member Protection Policy and the management of complaints.

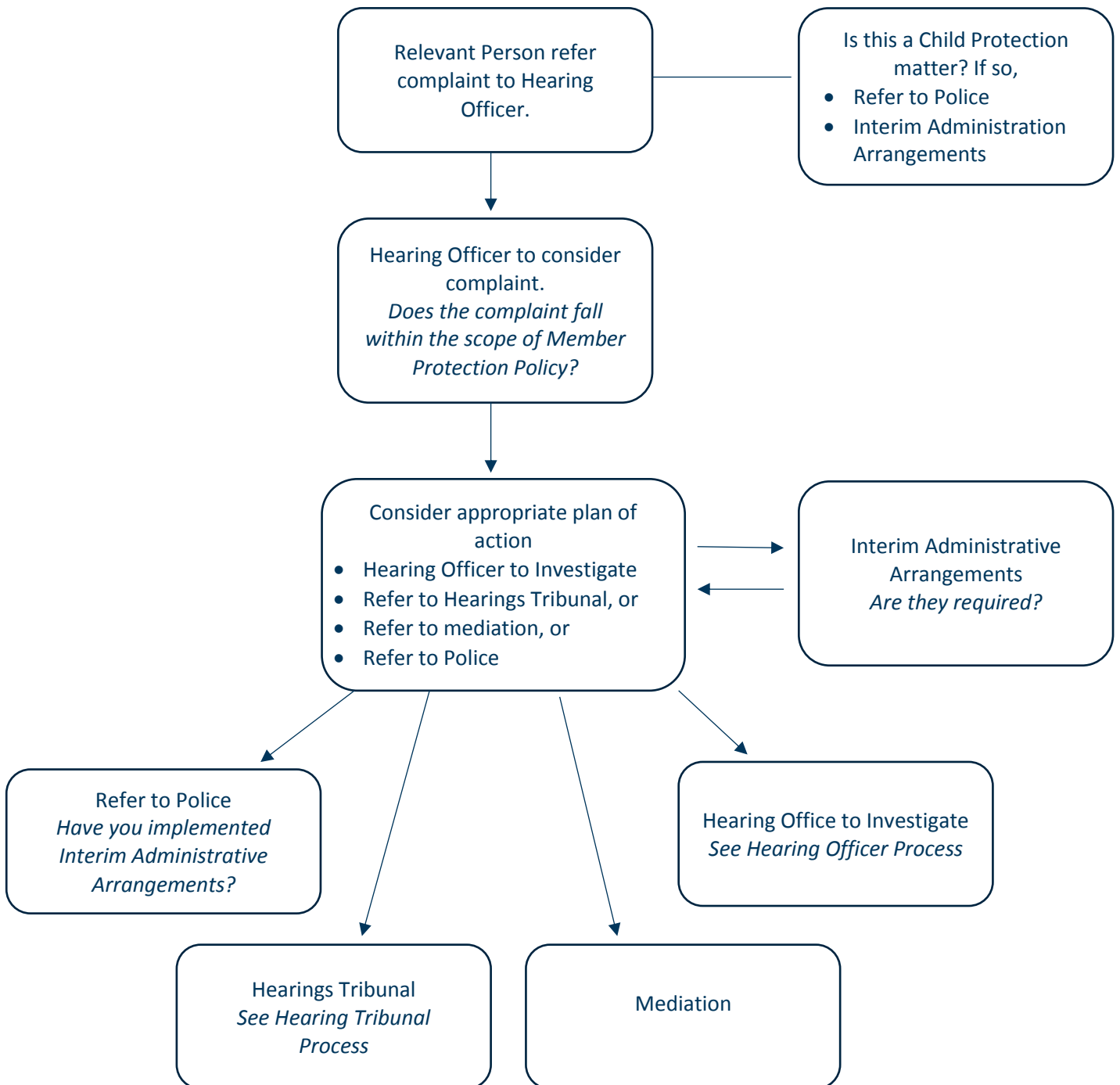
## MEMBER PROTECTION POLICY – Informal Complaint Process

*Serious incidents such as harm to a child or young person should be reported to police.*

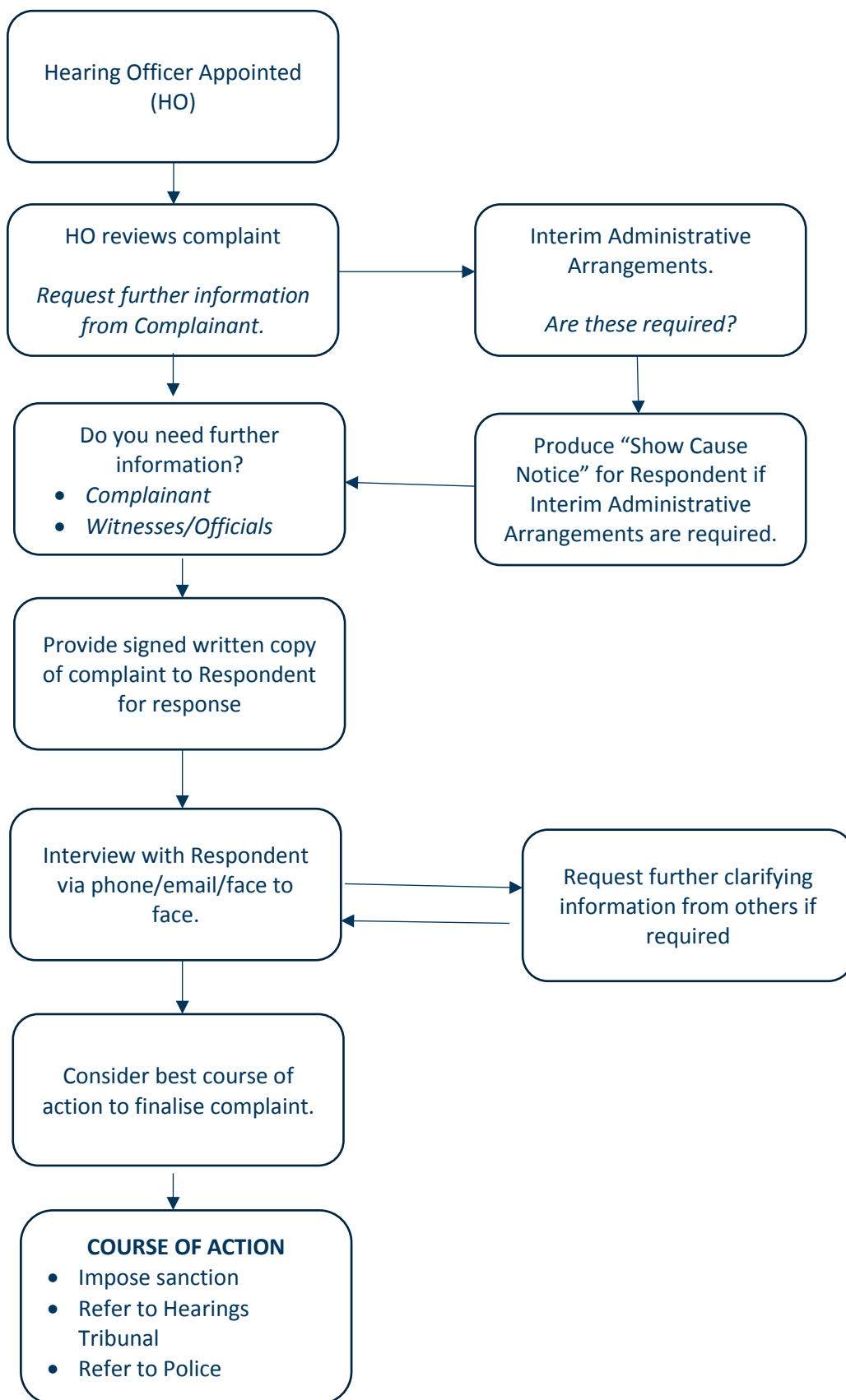




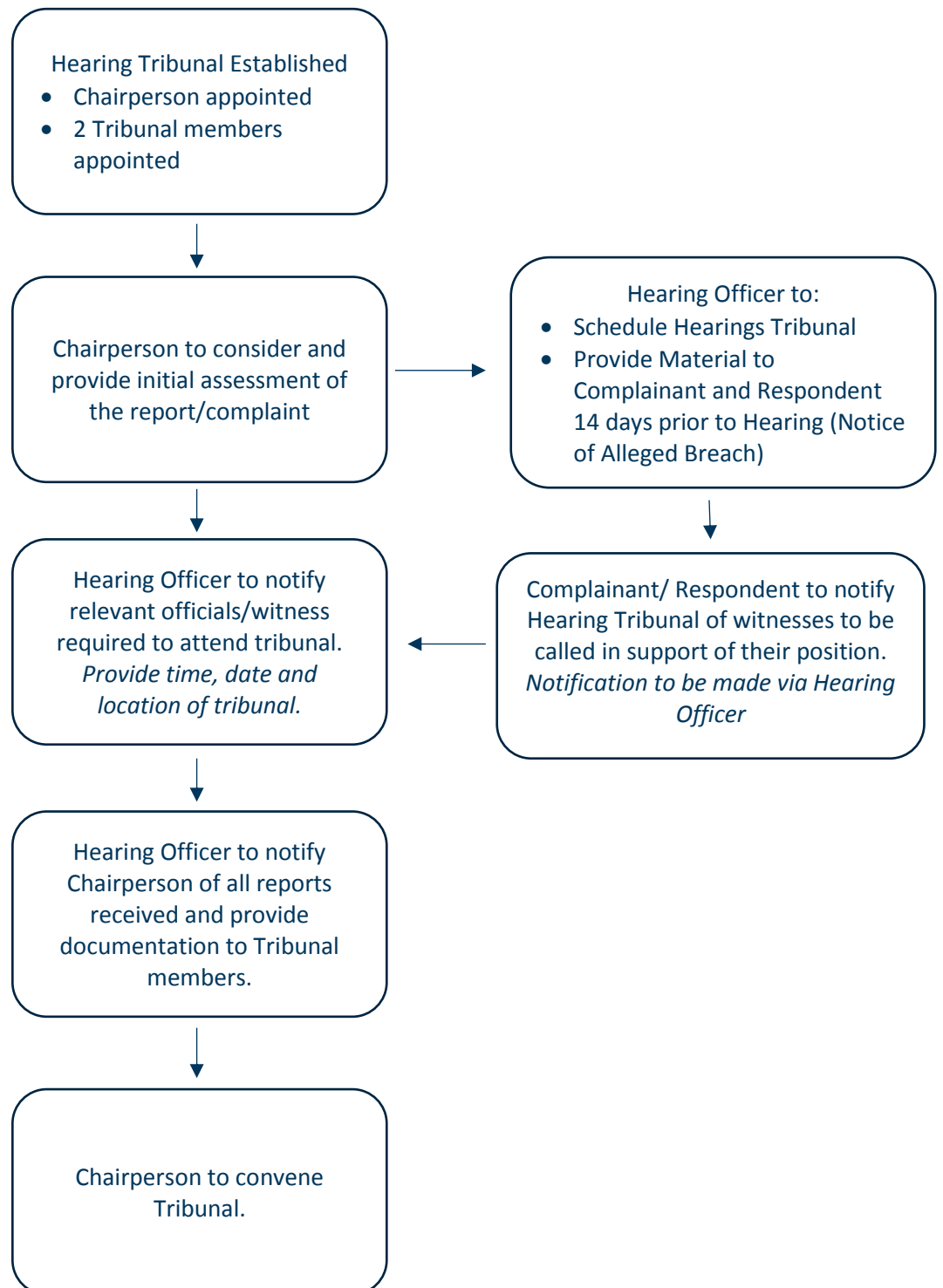
**MEMBER PROTECTION POLICY – Formal Resolution Process**



**MEMBER PROTECTION POLICY – Hearing Officer Process**



## MEMBER PROTECTION POLICY - Hearing Tribunal Process



### 3 Complaints Procedure

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 whom the allegation is made may admit to the allegations or emphatically deny them.

#### 3.1 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)**

3.1.1 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)**

3.1.2 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; or
- b) A Relevant Person within the organisation (e.g. Affiliate President/Secretary or a team manager or coach)

3.1.3 **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. No interference from Executives is permitted.

##### Relevant Person

3.1.4 Where a Relevant Person has been contacted, the relevant person is 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.

3.1.5 If it is determined that the Relevant Person is the appropriate person to deal with the complaint, the process to be followed is at 3.1.6 (a) – (g) below.

#### MPIO

3.1.6 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 in clause 3.1.4 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) Ask what outcome/how the Complainant wants the problem resolved and if they need support;
- b) Provide possible options for the Complainant to resolve the problem;
- c) Explain how the complaints procedure works;
- d) Act as a support person if the Complainant so wishes;
- e) Refer the Complainant to an appropriate person to help them resolve the problem, if necessary;
- f) Inform the relevant government authorities and/or police if required by law to do so;
- g) Maintain strict confidentiality.

At no time is the MPIO to undertake any form of inquiry or investigation. This is to ensure the integrity of any further investigative proceedings.

### **Step 3 Outcomes from Initial Contact**

3.1.7 After talking with the MPIO or other relevant persons, 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.
- f) If the matter does go to mediation, the Complainant is to report back to the MPIO or the relevant person as to the outcome.

3.1.8 If the Complainant wishes to remain anonymous, Netball NSW and/or Affiliates cannot assist the Complainant to resolve the complaint. Affiliates 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.

- 3.1.9 Each complaint that takes an informal approach is to be formally documented, marked with the appropriate privacy marking and stored in a secure location.

## 3.2 Formal Approaches

### Step 4 Making a Formal Complaint

- 3.2.1 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.
- 3.2.2 To avoid any doubt, any complaint relating to:
- a) A Netball NSW program or event shall be referred to the Hearing Officer of Netball NSW;
  - b) An Affiliate program or event shall be referred to the Hearing Officer of the Affiliate. If the Affiliate has not appointed a Hearing Officer, it is the responsibility of the Affiliate to appoint a suitable person to manage the complaints procedure.
- 3.2.3 Upon receipt of a formal complaint, the relevant Affiliate will appoint a Hearing Officer to handle the complaint. The Complainant will be informed by the Secretary of the Affiliate, or the Policy and Support Manager or the Policy and Support Coordinator of Netball NSW, the identity of the appointed Hearing Officer.
- 3.2.4 A Complainant also has the option of approaching a relevant external agency such as NSW Police, the Australian Human Rights Commission and/or the Anti-Discrimination Board of NSW for advice.

### Step 5 Hearing Officer Process

- 3.2.5 If the Complainant decides to make a formal complaint in writing, the Complainant is to address the complaint to the Relevant Person within the relevant Affiliate. On receiving the formal complaint and based on the material they have been provided, the Relevant Person will identify a suitable Hearing Officer.
- 3.2.6 The Hearing Officer will consider the complaint; the material supporting the complaint and consider whether:
- a) The complaint is properly made and falls within the scope of this Policy;
  - b) They are the most appropriate person to receive and handle the complaint; and
  - c) The nature and seriousness of the complaint warrants a formal resolution procedure which could be one of the following:
    - Appointing a person to investigate the complaint,
    - Referring the complaint to mediation session,
    - Referring the complaint to a Hearings Tribunal,
    - Referring the complaint to the police or other appropriate authority.
- 3.2.7 In certain circumstances, consideration may also be given to the implementation of interim administrative arrangements that will apply until the complaint process set

out in the Complaint Handling Procedure is completed. The procedure to be adopted to put in place such arrangements is identified in clause 7.

- 3.2.8 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 may determine that the complaint does not warrant a formal resolution procedure.

#### **Step 6: Resolution Process**

- 3.2.9 **Formal Investigation** - If a Hearing Officer or any other person is appointed to investigate the complaint under **Formal Approaches Step 3.2.6 (c)** above, that person will conduct the investigation in accordance with the scope of the written appointment and the procedures established in Clause 5.
- 3.2.10 **Mediation** - If the complaint is referred to mediation under **Informal Approaches – Step 3 clause 3.1.7 (d)** or under **Formal Approaches – Step 5 clause 3.2.6 (c)**, the mediation session will be conducted in accordance with clause 4 or as otherwise agreed by the Complainant and the Respondent(s).
- 3.2.11 **Hearings Tribunal** - If the complaint is referred to a Hearings Tribunal in accordance with **Formal Approaches – Step 5 clause 3.2.6 (c)** the hearing will be conducted in accordance with clause 8.
- 3.2.12 **External Reporting** - If the complaint is referred to the police or other appropriate authority under **Informal Approaches – Step 2 clause 3.1.6 (f)** or under **Formal Approaches – Step 5 clause 3.2.6 (c)**, Netball NSW and/or Affiliates will use its best endeavours to provide all reasonable assistance lawfully required by the police or other appropriate authority.
- 3.2.13 Any reasonable costs relating to the complaint process set out in this Procedure (e.g. investigation and/or mediation and/or tribunal processes) are to be met by the relevant jurisdiction undertaking the procedure.

#### **Step 7: Reconsideration of initial outcome, investigation or appeal**

- 3.2.14 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 reconsider the complaint in accordance with **Step 5** *within 14 days of the outcome of the mediation*.
- 3.2.15 The grounds for appeal and the process for appeals under this Policy are set out in clause 9.
- 3.2.16 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 to assist with a resolution.

#### **Step 8: Documenting the Resolution**

- 3.2.17 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*.
- 3.2.18 The Hearing Officer is to document the complaint, the process followed and the outcome immediately upon completion of the process.
- 3.2.19 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.
- 3.2.20 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.

## **4 Mediation Procedure**

### **What is mediation?**

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.

### **What is the role of a mediator?**

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.

### **Community Justice Centres (CJCs) provide free mediation services throughout NSW.**

- a) CJC mediation is run by impartial, trained mediators. The mediators don't take sides, or make a decision about a dispute. Their role is to make sure each person has a chance to have their say, keep the discussion on track, and help you come to an agreement wherever possible.
- b) Community Justice Centre mediation:
- i. Is free.
  - ii. Has no waiting lists.
  - iii. Is held in a venue near you.
  - iv. Let's everyone have their say.
  - v. Is confidential.
  - vi. Is more likely to preserve the relationships of the people involved in the conflict.
- c) Community Justice Centres can be found and/or contacted on the below details:



w: [www.cjc.justice.nsw.gov.au](http://www.cjc.justice.nsw.gov.au)  
e: [cjc@justice.nsw.gov.au](mailto:cjc@justice.nsw.gov.au)  
p: 1800 990 777

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

- 4.1 The people involved in a complaint (Complainant and Respondent(s)) may seek the assistance of a neutral third person or a mediator by contacting the Community Justice Centre.
- 4.2 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 on their own; and
  - b) The Hearings Officer 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).
- 4.3 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.
- 4.4 If mediation is chosen to try and resolve the complaint, the Hearing Officer will, under the direction of Netball NSW and/or Affiliates and in consultation with the Complainant and the Respondent(s), refer the matter to the Community Justice Centre
- 4.5 If a resolution is reached at mediation, no further action may be taken under this Policy, except by agreement between the parties.
- 4.6 If the complaint is not resolved by mediation, the Complainant may:
  - a) Write to the Hearing Officer **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 5 or

- b) Approach an external agency such as an anti-discrimination commission or equal opportunity commission to resolve the matter.

4.7 The Hearing Officer is to provide a report to the relevant Affiliate in relation to the mediation referral, retain the original in a secure place and forward a copy to the relevant person of the Affiliate or Netball NSW.

## 5 Investigation Procedures

5.1 The steps to be undertaken when engaging in a basic investigation 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 and any other person from whom information is required provide such within 7 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 within 7 calendar days.

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 the appropriate time frame. 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.
- d) **Step Four:** The Hearing Officer is to make a determination on 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 determination 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.

**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.

## 5.2 Causes of Action

The Hearing Officer may direct:

- i. That consideration be given to imposing a sanction (refer to Appendix B);
- ii. That the complaint be referred to a Hearings Tribunal (this option should only really be considered in the event the investigation was hindered in some way); and/or
- iii. That the complaint be referred to the police or other appropriate authority.

5.3 **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).

## 6 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 are as follows:

6.1 **Step One:** A written document providing the following information is to be provided to the Respondent:

- a) The proposed sanction that is being considered. The sanction must be reasonable, appropriate and relevant to the identified wrongdoing/shortcomings (Please refer Appendix B);
- b) An outline of the allegations and/or shortcomings;
- c) Evidence in support of the allegations and/or shortcomings;
- d) The alleged breaches of this Policy, citing specific paragraphs and clauses relevant to the identified allegations and/or shortcomings;
- e) Allow an opportunity for the Respondent 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 Respondent the opportunity to propose another sanction and provide reasons to justify such action; and
- g) Allow the Respondent to provide his/her own information and evidence in support.

6.2 **Step Two:** Upon receipt of the Respondent's response, the Hearing Officer is to review the response, information and evidence provided by the Respondent 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 this Policy and determine whether the proposed sanction, another sanction or no sanction is relevant and appropriate.

6.3 **Step Three:** Provide a written document to the Respondent 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 Respondent of his/her option to appeal the decision to the Appeals Tribunal, identifying timeframes and other pertinent information required to be complied with to grant an appeal. Refer to Clause 9.

## 7 Interim Administrative Arrangements

### What is an interim Administrative Arrangement?

An interim Administrative Arrangement is a temporary suspension from all roles and responsibilities within Netball NSW and/or an Affiliate which includes but is not limited to the below:

- a) Netball NSW and its members
- b) Affiliates and their members
- c) Individuals sitting on Boards, committees and sub committees of Netball NSW and/or Affiliates
- d) All employees, volunteers, individual contractors and other participants in Netball in NSW, including:
  - i. Support personnel (e.g. managers, physiotherapists, psychologist, masseurs, sports trainers etc.)
  - ii. Coaches and assistant coaches
  - iii. Athletes and players
  - iv. Umpires, bench officials and other officials; and
  - v. Administrators
- e) Any other person or organisation that is an individual member of or affiliated with Netball NSW

- f) Parents, guardians, spectators and sponsors and other persons or organisations to the fullest extent possible
- g) Any other person who has agreed to be bound by this Policy.

## 7.1 Procedure for Actioning a Proposed Arrangement

**Allegations relating to harm of a child or young person will incur an immediate suspension until the completion of police proceedings and/or a Netball NSW investigation.**

- 7.1.1 In determining the type of arrangement that is proposed to be put into place, the Hearing Officer is to follow the steps outlined in this document.
- 7.1.2 **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 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.
- 7.1.3 After consideration of the above factors, if the Hearing Officer 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 in clause 7.1.2 (above).
- 7.1.4 **Step Two:** The Hearing Officer 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 – 5 to 7 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.

7.1.5 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.

7.1.6 **Step Three:** Upon receipt of the response, the Hearing Officer 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 must consider the points stated at **Step One**, clause 7.1.2 (above).

The suspension determined 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. A suspension that is more severe than justified by the type and seriousness of the allegations may be challenged and determined to be excessive.

7.1.7 Once a decision is made, the Hearings Officer is to formally advise in writing the Respondent as to the decision that has been made, clearly identifying:

- h) The term of the suspension to be put in place.
- i) The conditions associated with the suspension.
- j) A brief outline as to why the suspension has been put in place.
- k) That a review of the suspension will take place every fortnightly/monthly from the date of the determination, whichever is deemed appropriate.
- l) That the Respondent can make submissions for consideration at each review.

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

7.1.8 **Step Four:** All documentation pertaining to this process is to be marked with the appropriate privacy markings and securely stored.

7.1.9 **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 suspension is excessive or unreasonable;
- b) Provide all documentation pertaining to the process;

- c) Identify his/her proposed suspension or course of action;
- d) Provide justification as to why his/her proposed suspension or course of action is more appropriate and/or reasonable and/or relevant.

This documentation is to be provided to an independent Hearing Officer 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 of the decision on the Respondent's proposal.

**There is no provisions for appeal for a person suspended on allegations of harming a child or young person.**

7.1.10 **Review of Imposed Arrangement:** The Hearing Officer who has put the arrangement into place is to review the suspension 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 suspension. 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.

## 8 Hearing Tribunal

### 8.1 Authority of Hearing Tribunal

8.1.1 Netball NSW and/or its Affiliates have the right to delegate the power of investigating or determining charges against a Participant for a breach of this Policy (a Member Protection breach) to its Hearings Tribunal which is established by this Member Protection Policy.

8.1.2 It is an offence for any person to:

- a) Breach, fail, refuse or neglect to comply with a provision of:
  - i. The Constitution (as amended from time to time);
  - ii. This Policy (as amended from time to time);
  - iii. The Netball NSW Codes of Conduct (as amended from time to time);
  - iv. Any other resolution or determination of the Board or duly authorised commission or committee;
- b) Act in a manner unbecoming of a Member or prejudicial to the Objects or the interests of Netball NSW and/or Affiliates; or
- c) Prejudice Netball NSW and/or Affiliates or bring any of them into disrepute.

8.1.3 Where a matter arises for determination by a Hearings Tribunal it shall be dealt with at first instance by the Hearings Tribunal of the relevant Affiliate in which the alleged offence occurred. Where an Affiliate has not convened a Hearings Tribunal in accordance with this Member Protection Policy, the matter may be considered by

Netball NSW which may choose to deal with the matter itself or refer it back to the Affiliate (including any relevant Association of the Affiliate) for action.

- 8.1.4 A Hearings Tribunal shall have power to suspend, disqualify, reprimand, ban or otherwise deal with any Participant (including, but not limited to, teams, clubs, players, coaches, parents, guardians, spectators, team/club officials and association officials) in accordance with this Member Protection Policy, regarding any Member Protection breaches.

A Hearings Tribunal is also empowered to deal with any other matter arising out of the Member Protection breach the subject of the Hearings Tribunal including any disciplinary issue under the Netball NSW Disciplinary Policy.

- 8.1.5 A Hearings Tribunal must at all times act independently and impartially in carrying out its duties in accordance with this Procedure.

## **8.2 Membership of Hearings Tribunal**

- 8.2.1 A Hearings Tribunal shall be appointed by Netball NSW and/or its Affiliates from time to time and shall comprise the following persons:

- a) A Chairperson who shall be a person of experience and skills suitable to the function of chairing a Hearings Tribunal and discharging the responsibilities set out under clause 8.3; and
- b) Two additional Hearings Tribunal members.

- 8.2.2 A Hearings Tribunal member may hold another position within Netball NSW and/or its Affiliates, or a club or team affiliated with Netball NSW and/or its Affiliates.

- 8.2.3 No Hearings Tribunal decision shall be invalidated by any irregularity in the appointment of a Hearings Tribunal member.

## **8.3 Responsibilities of Hearings Tribunal Chairperson**

Without limiting the duties of a Hearings Tribunal Chairperson as set out under this Member Protection Policy, a person appointed to the position of Hearings Tribunal Chairperson shall have the following responsibilities to:

- (a) Consider and provide an initial assessment of the complaint;
- (b) Ensure accurate records are kept of all of the Hearings Tribunal's proceedings and decisions;
- (c) Communicate to the relevant person at Netball NSW or the Executive Committee of the relevant Affiliate the results of hearing of the Hearings Tribunal and provide a copy



of the record to Netball NSW and the Affiliate within 3 days of the hearing; (Appendix C)

- (d) Chair hearings of the Hearings Tribunal, and
- (e) Raise with any proposed Hearings Tribunal member any potential or possible conflict of interest which may arise.

The Chairperson of the Hearings Tribunal should, if possible, have a form of legal background or be a lawyer or be experienced in chairing tribunals.

#### **8.4 Records of Hearings Tribunal Proceedings**

A Hearings Tribunal Chairperson must use the form set out in Appendix C to keep a record of the Hearing Tribunal proceedings and decisions.

#### **8.5 Duties of the Hearing Officer**

The Hearing Officer shall have the following duties:

- a) Schedule the venue, time and date to be set aside for a hearing of a Hearings Tribunal;
- b) Convene a hearing of a Hearings Tribunal to deal with matters referred to it as soon as possible;
- c) Ensure that 3 members of a Hearings Tribunal are present to deal with any matters referred to it for determination;
- d) Receive and refer to a Hearings Tribunal all material relating to any complaints made under this Member Protection Policy;
- e) Ensure the availability of all forms required to be used in any proceedings of a Hearings Tribunal;
- f) Notify the Respondent of the complaint, as well as any other person involved in the complaint as soon as possible after the complaint has been made;
- g) Notify the Complainant and the Respondent of the date, time and place of a hearing of the alleged breach which shall be as soon as reasonably practicable after receipt of the complaint or information. However, the date assigned must be at least 14 calendar days prior to the date of the Hearings Tribunal to allow for sufficient time for the Respondent to prepare;
- h) If the Tribunal involves a person who is under the age of 18 years, or otherwise unable to represent him or herself, he/she is to be advised that he/she has the right to have an adult (not acting as a legal practitioner) with him/her at a Hearings Tribunal hearing as an adviser and that the adviser shall be allowed to ask questions;

If a person is under the age of 18 years, they are also able to have available to them a support person of their choice. This is regardless of whether they are the Complainant or Respondent.

These factors will also be considered:

In the instance that the child/young person is the Complainant and/or the Respondent, the child/young person is to be given the option of providing evidence in the form of:

- i. A recording undertaken with an investigating officer or other relevant person,
  - ii. A transcript of the recording certified by the investigator or other relevant person,
  - iii. Orally in the Tribunal hearing room,
  - iv. Via closed circuit television or other similar technology, or
  - v. Utilising alternative arrangements such as the use of screens, planned seating arrangements to reduce exposure or in premises other than the Tribunal hearing room (with necessary adjournment implemented).
- i) Any Complainant or Respondent is entitled to bring a support person with them to the hearing but that person is not entitled to act as an adviser or as a legal practitioner;
- j) Provide the Complainant and the Respondent with a copy of the complaint, including all evidence and information upon which reliance has been placed to support of the complaint (referred to as “Notice of Alleged Breach” – see Appendix D) at least 14 calendar days prior to the date of the Hearings Tribunal. It is the responsibility of the Hearing Officer to complete the Notice of Alleged Breach.
- k) Notify the Complainant(s) and Respondent:
- i. That they can make either verbal or written submissions to the Hearings Tribunal; which is at the discretion of the Chairperson.
  - ii. That they may arrange for witnesses to attend the Hearings Tribunal in support of their position (the names of such witnesses to be notified to the Tribunal Chairperson prior to the Hearings Tribunal;
  - iii. That if the Complainant is considered to be under the age of 18 years, they are able to rely on clause 8.5(h).
  - iv. That the Complainant can bring a support person under clause 8.5(i).
- l) Notify the Respondent in addition:
- i. In the case of the Respondent, any possible penalties that may be imposed if the complaint is found to be true;
  - ii. That, in the case of the Respondent, when they appear at the Hearings Tribunal, they have the right to provide any evidence or witnesses to respond to the proposed penalties;
  - iii. That, in the case of the Respondent, that they have the right to present evidence in mitigation, whether it be documentary or via a witness;

- m) Notify any other officials or witnesses required to be in attendance, of the date, time and place of a Hearings Tribunal hearing. Where such official or witness is under 18 years of age, he/she is to be advised that he/she has the right to have an adult with him/her at a Hearings Tribunal hearing (not acting as a legal practitioner) as an adviser and that the adviser shall be allowed to ask questions;
- n) Notify each of the above persons of the consequences of non-attendance at a Hearings Tribunal hearing, and the procedure to be followed in each case;
- o) Notify the Chairperson (or his/her delegate) of a Hearings Tribunal that a complaint has been received, and to deliver to the Chairperson (or his/her delegate) of a Hearings Tribunal the complaint and any other information relevant to the case.

## **8.6 Improper, Vexatious or Malicious Complaints**

- 8.6.1 If within 48 hours of sending the Notice of Alleged Breach (Appendix D), the Respondent alleges in writing to the Hearings Officer that the complaint is improper, vexatious or malicious, the Chairperson shall as a preliminary issue, determine whether or not such complaint is improper, vexatious or malicious and shall advise the parties of his or her determination.
- 8.6.2 The Hearing Officer shall provide to the other parties to the hearing a copy of the written allegation made by the Respondent, that the complaint is improper, vexatious or malicious.
- 8.6.3 The Chairperson shall determine such preliminary issues as soon as practicable and in whatever manner the Chairperson considers appropriate in the circumstances provided that she/he does so in accordance with the principles of natural justice.

## **8.7 Conduct of Hearing Tribunal**

### **8.7.1 Attendance at Hearing Tribunal**

- a) The following persons shall be required to attend a Hearings Tribunal hearing conducted under this Member Protection Policy:
  - i. The Respondent
  - ii. The Complainant(s)
  - iii. Witnesses as indicated by the Complainant or Respondent and as authorised by the Chairperson; and
  - iv. Any other witness required by the Chairperson.
- b) The following persons shall be entitled to attend a Hearings Tribunal hearing as conducted under this Member Protection Policy:
  - i. Where a team or club has been charged with an offence, any player of that charged team or club;
  - ii. Witnesses called to give evidence before the Tribunal

- iii. Where the Respondent or Complainant is under the age of 18 years, an adult adviser; as referred to in clause 8.5(h) above; and
- iv. A support person as referred to in clause 8.5(i) above.

Any witnesses attending the Hearings Tribunal hearing shall not be permitted to attend until after they have given evidence before the Tribunal.

- c) The following persons shall be entitled to attend a Hearings Tribunal hearing with the permission of the Chairperson.
  - i. Representatives of Netball NSW and/or its Affiliates;
  - ii. And any other person.
- d) Legal representatives or legal advocates are not permitted to appear before a Hearings Tribunal unless in exceptional circumstances and where leave to appear has been granted by a Hearings Tribunal Chairperson.
- e) The Chairperson may invite any other person he/she believes will assist a Hearings Tribunal.

#### 8.7.2 Non-Attendance at Hearing Tribunal

- a) If the Respondent fails to attend a Hearings Tribunal without reasonable cause, the hearing may proceed and a determination may be made by the Hearings Tribunal in the absence of the Respondent provided that the Hearings Tribunal is satisfied that all notification procedures under this Member Protection Policy have been carried out.
- b) A Respondent may apply to the Hearing Officer (or the Hearings Tribunal Chairperson if already convened) to have a Hearing Tribunal hearing:
  - i. Adjourned; or
  - ii. Convened in another way (e.g. teleconference, video conference and other suitable methods of communication).

If there are compelling circumstances which the Respondent considers warrant such steps being taken to avoid costs, hardship or significant inconvenience to the Respondent. This decision will be solely at the discretion of the Hearing Officer (or the Hearings Tribunal Chairperson if already convened).

- c) If any witness fails to attend a Hearings Tribunal hearing, the hearing may continue in his/her absence at the discretion of the Hearings Tribunal. However, if such witness has been notified by the Hearings Officer as being a required person at a Hearings Tribunal hearing, such witness may be liable to penalty by a Hearings Tribunal for obstructing the Hearings Tribunal process.
- d) If the Complainant fails to attend a Hearings Tribunal hearing without reasonable cause, the hearing may proceed and a determination made by the Hearings Tribunal in the absence of the Complainant, provided that the Hearings Tribunal is satisfied that all notification procedures under this Member Protection Policy have been carried out.

- e) If the Complainant or any witness of Netball NSW and/or its Affiliate inadvertently fails to carry out any duties listed above, the allegations shall not be dismissed for this reason, but may be adjourned to allow the omission to be rectified. Where appropriate, a Hearings Tribunal shall take the failure into account and make suitable allowance. The Chairperson will inform the Hearing Officer of the need to reschedule, and the Hearing Officer will organise for the Hearings Tribunal to be reconvened.

### 8.7.3 Procedures of a Hearings Tribunal

- a) For the purpose of this clause 8.7.3, a reference to a Respondent includes a reference to the representative(s) of the Respondent.
- b) At the commencement of a hearing, the Chairperson shall identify the members of the Hearings Tribunal and determine whether the Respondent is present.
- c) The Complainant(s) and Respondent shall be notified of their right to remain in the hearing until all evidence is presented but not to be present whilst the Hearings Tribunal considers its findings and determines appropriate disciplinary measures (if any).
- d) Witnesses may be asked to wait outside the Hearing Tribunal until required.
- e) The complaint and allegations(s) shall be read out in the presence of all persons eligible to be present.
- f) The Respondent shall be asked whether the allegations are understood and the Complainant asked whether the charge correctly represents his/her intention.
- g) The Respondent shall be asked whether or not they agree or disagree with the complaint.
- h) If the Respondent does not contest the charge(s), the Chairperson may read a short summary of the facts, admit the Complainant's evidence (written/verbal) and no witnesses need be called to give evidence unless the Hearings Tribunal requires it.
- i) If the Respondent disagrees with the complaint, the Complainant will be asked to describe the circumstances that lead to the complaint being made:
  - i. Brief notes may be referred to,
  - ii. The Complainant will be allowed to call witnesses, subject to the approval of the number of witnesses to be called by the Hearings Tribunal in its discretion,
  - iii. The Respondent may be allowed to question the Complainant and their witnesses.
- j) Each witness shall be entitled to leave the Hearings Tribunal hearing after giving evidence unless otherwise directed by the Hearings Tribunal.

- k) The Respondent will then be asked to respond to the Complainant:
  - i. Brief notes may be referred to
  - ii. The Respondent will be allowed to call witnesses, subject to the approval of the number of witnesses to be called by the Hearings Tribunal in its discretion
  - iii. The Complainant may be allowed to question the Respondent and their witnesses.
  
- l) The Hearings Tribunal is empowered to;
  - i. Consider any evidence, and in any form, that it deems relevant,
  - ii. Question any person giving evidence,
  - iii. 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,
  - iv. If it considers that at any time during the Hearings Tribunal 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.
  
- m) Where a person under the age of 18 exercises his/her right to have an adult observer or adviser present in accordance with this Member Protection Policy, a reasonable opportunity for consultation between the child/ young person and the observer/adviser shall be provided by the Hearings Tribunal.
  
- n) Where the Respondent and/or Complainant makes video evidence available to the Hearings Tribunal, it may, at the discretion of the Hearings Tribunal, be presented. The onus of providing suitable viewing equipment such as a DVD player or television set shall lie with the person requesting that the evidence be presented before the hearing.
  
- o) If the Hearings Tribunal is not satisfied that the particular allegation has been proved, but is satisfied that a lesser allegation has been established, then the Hearings Tribunal may find such lesser allegation established and shall apply the penalty applicable to the lesser allegation.
  
- p) Subject to clause 8.7.3 (q), where it appears to the Hearings Tribunal that the Complainant has made an error which has resulted in laying the wrong allegations or omitted allegations that should have been laid, the Hearings Tribunal may amend the allegations(s) and proceed to make a finding. Further, the Hearings Tribunal has the right to direct that a person other than the Respondent be charged with an offence under this Policy on the basis of evidence presented before it during the course of conducting a hearing.
  
- q) Where the allegations have been amended or another person charged under clause 8.7.3 (p) above, the Hearings Tribunal shall adjourn the hearing unless the Respondent consents to it proceeding at that time.

- r) Subject to clause 8.7.3 (o) above, if the Hearings Tribunal is satisfied that an allegation has been established on the balance of probabilities (i.e. more probable than not) it shall find the allegation proved. Otherwise the charge shall be dismissed.
- s) If an allegation has been admitted or found proven by the Hearings Tribunal, the Respondent shall be informed of the finding. Any previous offences against the Respondent should then be laid before the Hearings Tribunal, if known, via the Hearing Officer or Relevant Person of Netball NSW or its Affiliate.
- t) The Respondent should then be given the right to make a final statement in relation to previous allegations or other mitigating circumstances before being asked to leave the room (again).

From this point the Hearings Tribunal will deliberate on the allegation findings and provide the decision verbally to the Complainant and Respondent at the conclusion unless other mitigating circumstances prevent this from occurring.

- u) The Chairperson must provide the Hearing Officer with the Notification of Findings of the Hearing Tribunal (Appendix F) within 14 days.
- v) The Hearing officer will deliver the Notification of Findings of the Hearing Tribunal (Appendix F) within 24 hours of receiving it to:
  - i. The Complainant
  - ii. The Respondent
  - iii. Any other party represented in the hearing.
- w) The Notification of Findings of the Hearing Tribunal (Appendix F) is to include:
  - i. An outline of the allegations;
  - ii. The evidence in support of the allegations, including any admissions;
  - iii. The evidence which does not support the allegations, including possible defences and mitigating circumstances;
  - iv. An assessment of conflicting evidence including why one person's version of events was considered more reliable than another person's, if required;
  - v. The determination on each allegation;
  - vi. Mitigating factors taken into account;
  - vii. The sanctions imposed, if any (Please refer to Appendix B);
  - viii. The right to appeal to the Appeals Tribunal outlining the restrictions and requirements on such appeals, including time restrictions.
- x) A record of the hearing will be provided by the Chairperson to Netball NSW and the relevant Affiliate in accordance with clause 8.4 above in the form set out in Appendix C and it will be retained accordingly.

## 9 Appeals

### 9.1 Right of Appeal

- 9.1.1 There shall be two levels of appeal which may be available to a person who has been proved to have committed a breach and received a penalty under this Member Protection Policy. No other person may appeal a decision. The first level of appeal shall be an Appeal Tribunal convened by the same organisation which conducted the Hearings Tribunal.

The second level of appeal shall be a Netball NSW Appeal Tribunal convened by Netball NSW. A person must first exercise his/her rights to a hearing by an Appeal Tribunal (at the first level of appeal) before appealing to the Netball NSW Appeal Tribunal (at the second level of appeal). The decision of the Netball NSW Appeal Tribunal (the second level of appeal) shall be final and not subject to further appeal.

#### 9.1.2 **FIRST LEVEL OF APPEAL**

- a) There shall be no appeal from a decision of a Hearing Officer or Hearings Tribunal unless the person seeking to appeal ("Appellant") satisfies the Chairperson of the Appeal Tribunal (appointed in accordance with clause 8.2(a)(i), in the Chairperson's sole discretion, that the Appellant has evidence that proves:
- i. Significant new or additional evidence has become available; or
  - ii. He/she/it is challenging the severity of the penalties in regards to the breaches;
  - iii. There is a significant failure of natural justice.
- b) Subject to clause 9.1.2(c) Netball NSW and/or its Affiliate shall appoint an officer to be responsible for the receipt of appeals and to carry out the duties in connection with such appeals ("Appeals Officer"). The Appeals Officer may hold another position within Netball NSW and/or its Affiliate and may also be the Hearings Officer (unless the appeal involves a decision of the Hearing Officer). Unless another person is appointed to the role, the Appeals Officer shall be a relevant person of Netball NSW and/or its Affiliate.
- c) An Affiliate may request Netball NSW to conduct, hear and determine the first level of appeal. Where Netball NSW agrees to conduct, hear and determine the first level of appeal, all obligations and powers relating to the first level of appeal as set out in this Member Protection Policy will apply and bind Netball NSW. Netball NSW may choose (but is not obliged) to agree to conduct, hear and determine the first level of appeal.

#### 9.1.3 **SECOND LEVEL OF APPEAL**

- a) There shall be no appeal from a decision of an Appeal Tribunal (first level of appeal) unless the person seeking to appeal ("Appellant") satisfies the Chairperson of the Netball NSW Appeal Tribunal (second level of appeal) (appointed in accordance with clause 8.2 (a)(i)), in the Chairperson's sole discretion, that significant new or additional evidence has become available.



- b) Netball NSW shall appoint an officer to be responsible for the receipt of appeals arising from a decision of an Appeal Tribunal and to carry out the duties in connection with such appeals ("Appeals Officer"). The Appeals Officer may hold another position within Netball NSW and may also be the Hearings Officer (unless the appeal involves a decision of the Hearing Officer).
- c) All appeals heard by the Netball NSW Appeal Tribunal (second level of appeal) shall, with any necessary or incidental amendment follow the procedures for an Appeal Tribunal held by Netball NSW and/or Affiliates, as outlined in clause 9.2 to 9.4 below.

## 9.2 Notice of Appeal

### 9.2.1 The Appellant must:

- a) **Within 5 days** of the Hearings Tribunal delivering its written decision, advise, in writing, the Appeals Officer or relevant person of Netball NSW and/or the Affiliate of their intention to appeal ("Notice of Appeal"); or
- b) Lodge a notice stating full details of charges and results thereof and stating in full the grounds of appeal with the Appeals Officer **within 5 days** of the notification of a determination of a Hearings Tribunal hearing using the Notice of Appeal form ("Notice of Appeal – Appendix K"); and
- c) In the case of an appeal to the Netball NSW Appeal Tribunal (second level of appeal), pay the appeal fee to the Appeals Officer when lodging the Notice of Appeal, which shall be \$500.

The appeal fee may not apply in the case of appeals by a child/young person and may be waived (in any other case) in the discretion of the Appeals Officer.

- 9.2.2 An Appellant shall be notified by the Appeals Officer within 5 days of receipt of the Notice of Appeal as to whether an appeal hearing is to be granted (under clause 9.1) and the time, date and place of the appeal hearing, in the event that it is granted.

## 9.3 Appeal Tribunal

- 9.3.1 If an appeal hearing is granted under clause 9.1, the Appeals Officer shall convene an Appeal Tribunal to hear and determine the appeal in accordance with this Member Protection Policy. Subject to clause 9.3.2, any such appeal hearing should be held within 7 days of receipt of the Notice of Appeal.
- 9.3.2 Where an appeal hearing is not held within 7 days of receipt of the Notice of Appeal, any sanction imposed by the Hearings Tribunal shall be suspended and the Appellant may participate in any relevant competition until the appeal hearing is held.

This does not relate to allegation of harm toward children and young people.

- 9.3.3 An Appeal Tribunal shall consist of three (3) persons appointed by Netball NSW and/or its Affiliate from time to time to hear appeals as required by Netball NSW and/or its Affiliate.
- 9.3.4 Netball NSW and/or its Affiliate may not appoint any of the Hearings Tribunal members who were involved in the original hearing of a matter which is the subject of an appeal.
- 9.3.5 A Netball NSW and/or its Affiliates Appeal Tribunal Member:
- a) Is not permitted to be present at any part of a hearing where that member's Affiliate is subject of an appeal,
  - b) Shall not be present at any Tribunal Hearing where an individual member of the same Affiliate is the subject of an appeal,
  - c) Shall not be present at any part of a hearing where an individual member of the same Affiliate is the subject of an ancillary discussion or ruling.

#### **9.4 Serving of Appeals Tribunal Penalties**

- 9.4.1 Subject to clause 9.4.2(b) and 9.3.2, where a Hearings Tribunal imposes a penalty that prevents the Appellant from participating in a game, the Appellant shall serve that penalty pending the determination of the appeal.
- 9.4.2 Subject to clause 9.4.3, the Appeal Tribunal may of its own motion or upon application of any party to the appeal, order:
- a) That an appeal be adjourned; or
  - b) A suspension of the penalty imposed by the Hearings Tribunal pending the determination of the appeal.
- 9.4.3 The Appeal Tribunal shall make an order under clause 9.4(b) at its sole discretion where it is satisfied that there are exceptional and compelling circumstances. In determining that question, the Appeal Tribunal shall without limitation have regard to the:
- a) Merits of the appeal and the Appellant's prospects of success;
  - b) Interests of other teams, clubs and players; and
  - c) The effect on the results of the competition.

#### **9.5 Proceedings of Appeal Tribunal**

- 9.5.1 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.
- 9.5.2 The Appeals Officer shall forward records of the Hearings Tribunal hearing in which the matter the subject of the appeal was heard at first instance to the Chairperson of the Appeal Tribunal.
- 9.5.3 The Appeal Tribunal shall have the discretion to conduct the hearing as follows limiting the hearing to consideration of the ground(s) of appeal relied upon by the Appellant under clause 9.1.2(a) or 9.1.3(a) (as applicable) with the below considerations:
- a) During an Appeal Hearing, the Appeals Tribunal may make an order relating to the procedure to be followed in those proceedings.
  - b) 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.
  - c) May interview the Appellant depending on the type of appeal. A maximum of two representatives will be permitted in the hearing room at any one time.
  - d) Has the discretion to interview any other person as deemed appropriate.
- 9.5.4 Natural justice provisions are to apply to the conduct of appeals. The key principles of natural justice are:
- a) An Affiliate or an individual member must be given a reasonable opportunity to present their case before a decision is made which will affect them.
  - b) The individual 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.
- 9.5.5 Where the Appellant seeks leave for legal representation, it is mandatory that prior notification be made to the Chairperson of the Appeals Tribunal.

9.5.6 An Appeal Tribunal shall have the power to:

- a) Dismiss the appeal;
- b) Uphold the appeal;
- c) Impose any of the penalties set out in this Member Protection Policy; or
- d) Reduce, increase or otherwise vary any penalty imposed by the initial Hearings Tribunal, in such manner as it thinks fit.

9.5.7 The Appeal Tribunal is obliged to give written reasons for its decision.

9.5.8 At the conclusion of the appeal, the Chairperson of the Appeal Tribunal shall ensure that the Appellant are correctly informed of the determinations of the Appeal Tribunal. The Chairperson shall also notify the Appeals Officer of the decision of the Appeal Tribunal. The Appeals Officer shall also advise Netball NSW and the Affiliate.

9.5.9 The Appeals Tribunal and Evidence

- a) 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.
- b) 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.
- c) 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.

## **9.6 Refund of Appeal Fee**

The Appeal Fee shall be refunded if the appeal is upheld.

## **9.7 Costs**

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

## **9.8 Limited Rights of Appeal**

There are only two rights (or levels) of appeal following the decision of the initial Hearings Tribunal. Any appeal must first be made to the Appeal Tribunal and, if the charged person elects to do so, then to the Netball NSW Appeal Tribunal. The decision of the Netball NSW Appeal Tribunal is final and binding on the parties.

## **9.9 Exhaust Internal Appeal**

Subject to clause 9.10 below, a person shall exercise his right of appeal under this Member Protection Policy and have any appeal heard and determined by the Appeal Tribunal (first level of appeal) and Netball NSW Appeal Tribunal (second level of appeal) before commencing any proceedings or becoming a party to any proceedings in a court of law or the Court of Arbitration for Sport.

#### **9.10 Relationship with Criminal Matters**

If, during a Hearing or Appeal Tribunal hearing or an investigation under this Member Protection Policy, it becomes known that a criminal charge has been brought (as opposed to merely being the subject of police investigation) arising out of the actions the subject of the hearing, appeal or investigation, the Hearing or Appeals Tribunal and/or Netball NSW and/or its Affiliates may rule that further action be deferred until completion of the criminal charge.

## 10 Appendix

### Appendix A Procedure for Investigating Allegations of Child Abuse

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

If there is no immediate danger to the child/young person contact the Police Assistance Line 131 444.

Netball NSW and Affiliates treat allegations of harm to a child/young person 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 of harm or concern regarding child/young person at risk of harm

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

##### DO

###### Believe the child/young person

- Reassure the child/young person that they have done the right thing by reporting what has happened.
- Reassure the child/young person that what has occurred is not his or her fault.
- Explain that other people may need to be told in order to stop what is happening.
- Promptly and accurately record the discussion in writing.

##### DON'T

###### Dismiss their concerns or report

- Do not challenge or undermine the child.
- Do not seek detailed information, ask leading questions or offer an opinion
- Do not discuss the details with any person other than those detailed within these procedures.
- Do not contact the alleged offender.

#### 2 Report the allegation

- 2.1 **Immediately report any allegation of child or young person harm or abuse, or any situation involving a child or young 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 The NSW Police Assistant Line (ph: 131 444) 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 the relevant person of the affiliate **must** report the allegation to Netball NSW and the relevant Affiliate.
- 2.4 Netball NSW may choose to deal with the matter itself or refer it back to the affiliate (including any relevant Association of the affiliate) for action.

### **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 relevant person will contact Netball NSW. Netball NSW will assist the relevant person in assessing the immediate risks to the child and take interim steps to ensure the child and young person's safety and the safety of any other children and young people.  
\*If, for any reason, there are concerns for the safety of a child/young person seek immediate Police advice.
  - 3.1.2 This will include suspending the alleged offender as per Clause 7 (interim arrangements)
  - 3.1.3 The relevant person will consider what services may be most appropriate to support the child or young person and his or her parent/s.
  - 3.1.4 The relevant person will consider what support services may be appropriate for the alleged offender.
  - 3.1.5 The relevant person will seek to put in place measures to protect the child or young person 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 harm of a child or young person, the following steps may be taken:
- 4.1.1 After the completion of any police and/ or child protection agency investigation, the Hearing Officer may assess the allegations and information and determine whether further internal action can be taken by Netball NSW or the affiliate.
  - 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.**
  - 4.1.3 The Hearing Officer 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 may follow the procedures set out in the Member Protection Policy.
  - 4.1.5 The Hearing Officer may provide the relevant government agency with a report of any disciplinary action taken, where that is required.
  - 4.1.6 The Hearing Officer will complete the report form in Appendix I and retain the original in a secure place

## Appendix B 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 member or affiliate 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 an individual member or affiliate to whom this Policy applies, has breached this Policy, it may impose one or more of the following sanctions:
  - a) For breaches committed by an affiliate: If the Hearing Officer considers that Netball NSW, an Affiliate 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 warning;
    - iii. 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;
    - iv. 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;
    - v. Direct that Netball NSW and/or the Affiliate cease to sanction events held by or under the auspices of that affiliate; or



- vi. 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 members: If the Hearing Officer considers that an individual member 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 affiliate;
  - iii. Where there has been damage to property, direct that the offender pay reparation to the relevant affiliate which controls or has possession of the property;
  - iv. Impose a warning;
  - v. Withdraw any awards, placings, records won in any tournaments, activities or events held or sanctioned by Netball NSW or an Affiliate;
  - vi. 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 affiliate which has provided funding;
  - viii. De-register the individual member 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 Affiliate;
  - ix. Any other such sanction as the Hearing Officer considers appropriate in the circumstances, but it must be related to the wrongdoing.
- 5 If an Affiliate or individual 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 affiliates required to comply with this Policy, the Hearing Officer shall as soon as possible notify the relevant affiliates of the sanction.
- 7 Every affiliate 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 member or affiliate in the future may result in the imposition of a more serious form of sanction.

## Record of Hearings/ Appeals Tribunal

Held on the ...../...../.....

### Present:

*Provide details of all those present and how they are represented, include initials of each person.*

### Persons Charged:

*Particular details of the individual(s) participant, team or club*

### Allegation of Breach:

*As per Disciplinary clause 4.1.2 - Authority of a Disciplinary Tribunal – identify whether the alleged breach is (i), (ii) or (iii) below (delete if not applicable).*

It is alleged that the person charged has committed an offence as set out below:

- i. Breached, failed, refused or neglected to comply with a provision of the Constitution, Regulations, Netball NSW Codes of Conduct, Rules of Netball including the Competition Rules of Netball NSW and/or its Affiliates or other resolution or determination of the Netball NSW board or duly authorised commission or committee; or
- ii. Acted in a manner unbecoming of a Member or prejudicial to the Objects or the interests of Netball NSW or Netball; or
- iii. Prejudiced Netball NSW or Affiliates or brought Netball NSW or Affiliates into disrepute.

### Statement of the Complaint:

*Set out a statement of the complaint and refer (if relevant) to the allegations against the Respondent.*

### Summary Record of Proceedings:

*It is recommended that a written record of the tribunal is kept – this record can be a summary and is not required to be a detailed record of each statement during the Tribunal.*

### Tribunal Decision:

*Set out clear and concise decision of the Hearings Tribunal.*

### Sanctions Imposed:

*Remember each allegation needs to be judged on its own merits. Set out the sanctions imposed by Hearings Tribunal*

**Chairperson's Signature.....Date:...../...../...../**

### Notification Requirements

Within 3 business days of the hearing being conducted, provide records of hearing to Netball NSW and Affiliates Executives members. Please email minutes to Netball NSW's Member Protection Register at [policy@netballnsw.com](mailto:policy@netballnsw.com).

## Appendix D Notification of Alleged Breach and Hearing Tribunal

### Notification of alleged breach/ tribunal hearing tribunal

*Insert Date*

To: *Insert participant details and membership number.*

By E Mail - Hand Delivered

Of: *Team name.*

Dear *Insert name,*

We refer to the complaint received on *insert date* in regards to *give context of complaint.*

As a member and participant of Netball operated by an organisation affiliated with Netball NSW, *insert affiliate name*, you are subject to the Netball NSW Constitution and Member Protection Policy. A copy of all related documentation can be viewed at the Netball NSW website *<insert web address>* and you are encouraged to read this information and the Member Protection Policy.

#### Attendance at Tribunal Hearing

Your attendance at this hearing is required to hear the allegation of breaches and respond. If you are under 18, you should bring an adult representative (not acting as a legal practitioner) who may advise you or ask questions. Otherwise you are entitled to bring a support person.

#### Details of Hearing

Time: *Insert Time*

Date: *Insert Day and Date*

Location: *Insert Location*

#### Alleged Charge:

It is alleged that you have:

*Delete sections which are not relevant.*

- i. Breached, failed, refused or neglected to comply with a provision of the Constitution, Policy, Netball NSW Codes of Conduct, Rules of Netball including the Competition Rules of Netball NSW and/or its Affiliates or other relevant document - *[insert title of document]*; or
- ii. Acted in a manner unbecoming of a Member or prejudicial to the Objects or the interests of Netball NSW and or Netball; or
- iii. Prejudiced Netball NSW or Affiliates or brought Netball NSW or Affiliates into disrepute.

Attached is a copy of the Incident Report Form/Report lodged in respect of the incident referred to above.

#### Confirmation of Attendance

Please confirm your attendance with Hearings Officer, *insert name and contact details*. You are entitled to bring a support person.

### **Non-attendance at Hearing Tribunal**

If a charged person (or representative of a charged team or club) fails to attend a Hearing Tribunal hearing without reasonable cause, the hearing may proceed and a determination may be made by the Hearing Tribunal in the absence of the charged person, team or club, provided that the Hearing Tribunal is satisfied that all notification procedures under the Member Protection Policy, Attachment B – Complaint Handling Procedure have been carried out.

A charged person, team, club or reporting official may apply to the Hearings Officer to have a Disciplinary Tribunal hearing:

adjourned; or

convened in another way (e.g. teleconference)

if there are compelling circumstances which the applicant considers warrant such steps being taken to avoid costs, hardship or significant inconvenience to the charged person, team or club. This decision will be solely at the discretion of the Hearings Officer (or a Hearing Tribunal if already convened).

A charged person who is unable to attend a Hearing Tribunal hearing shall be entitled to appoint a representative (who is not acting as a legal practitioner) to appear in his/her place if that charged person does not intend to contest the charge, subject to a Hearing Tribunal receiving a letter of consent from the charged person containing the person's intention not to contest the charges contained in the report and any statement that person would have given to a Hearing Tribunal had he or she attended the hearing.

If any witness fails to attend a Hearing Tribunal hearing, the hearing may continue in his/her absence at the discretion of the Hearing Tribunal. However, if such witness has been notified by the Hearings Officer as being a required person at a Hearing Tribunal hearing, such witness may be liable to penalty by a Hearing Tribunal for obstructing the Hearing Tribunal procedures.

If a reporting official fails to attend a Hearing Tribunal hearing without reasonable cause, the hearing may proceed and a determination made by the Hearing Tribunal in the absence of the reporting official, provided that the Hearing Tribunal is satisfied that all notification procedures under these Hearing Regulations have been carried out.

### **Supporting Evidence and Attendance**

The following persons shall be required to attend a Hearing Tribunal hearing conducted under the Member Protection Policy Attachment B – Complaint Handling Procedure. These include the charged person or the president, secretary, manager or other delegate representing a charged team or club, the reporting official(s), any other person involved in the report, witnesses as indicated by the reporting official or charged person and as notified by the Hearings Officer, and any other witness required by a Hearing Tribunal.

Legal representatives or legal advocates are not permitted to appear before a Hearing Tribunal unless in exceptional circumstances and where leave to appear has been granted by a Hearing Tribunal chairperson.

The chairperson may invite any other person he/she believes will assist a Hearing Tribunal.

### **Right to Appeal**

There shall be no appeal from a decision of a Hearing Tribunal unless the person seeking to appeal (“Appellant”) satisfies the chairperson of the Appeal Tribunal, in the chairperson's sole discretion, that significant new or additional evidence has become available.

If prior to your attendance at the hearing you have any questions, you are encouraged to contact the Hearings Officer, insert name who will assist you as far as practicable. Again, the Member Protection Policy can be accessed in full at the Netball NSW website <insert web address>.

This Policy outlines the procedures to be followed during the hearing.

We look forward to receiving your confirmed attendance at the above hearing.

Yours sincerely,

*Insert name*

Hearings Officer

Netball NSW Authority *(adjust to be the affiliate name)*

P: *insert phone number*

E: *insert email*

## Notification of Appeal Tribunal Hearing

*Insert Date*

To: *Insert Name and Address*

*By E Mail – Hand delivered*

Of: *Insert Team Name*

Dear *Insert Name,*

### ATTENDANCE AT AN APPEAL TRIBUNAL HEARING

As a member and participant within a competition operated by an organisation affiliated with Netball NSW, *insert affiliate name*, you are subject to the Netball NSW Constitution and Member Protection Policy. A copy of all related documentation can be viewed at the Netball NSW website *<insert web address>* and you are encouraged to read this information and the Member Protection Policy.

You have been granted the right to be heard by an Appeal Tribunal in relation to the findings of the Hearing Tribunal (*held on insert date*) and your notice of appeal dated *insert date*. Attendance at this Appeal Tribunal hearing is required. If you are under 18, you should bring an adult representative (not being a legal practitioner) who may advise you or ask questions.

### Details of Hearing

Time: *Insert Time*

Date: *Insert Day and Date*

Location: *Insert Location*

### Statement of Appeal

The Appeal Tribunal shall alter to suit which will be heard at the hearing either conduct a complete re-hearing or may be limited to the consideration of the grounds of the appeal – this will need to be determined by the chairperson prior to this notice being issued.

### Confirmation of Attendance

Please confirm your attendance with the Hearing Officer, *insert name and contact details*.

If an Appellant fails to attend an Appeal Tribunal hearing without reasonable cause, the hearing may proceed and a determination may be made by the Appeal Tribunal in the absence of the Appellant provided that the Appeal Tribunal is satisfied that all notification procedures under the Member Protection Policy have been carried out. You are entitled to bring a support person.

### Right of Appeal

There are two levels of appeal following the decision of the Hearing Tribunal. Any appeal will be solely and exclusively resolved by the Appeal Tribunal at the first level appeal. *The second level appeal is to Netball NSW and the decision of the Appeal Tribunal is final and binding on the parties.*

We look forward to receiving your confirmed attendance at the above hearing.

Yours sincerely,

Insert name

Appeals Officer

Netball NSW Authority (*adjust to be the affiliate name*)

P: *insert phone number*

E: *insert email*

## Notification of Findings By Hearing/ Appeals Tribunal

Insert date

To: insert name, and address and membership number

By Hand Delivered /Emailed

Of: insert team name

Dear name,

### TRIBUNAL FINDINGS AND/OR DECISION

As a member and participant in netball operated by an organisation affiliated with Netball NSW insert affiliate name, you are subject to the Netball NSW Constitution and Member Protection Policy. A copy of all related documentation can be viewed at the Netball NSW website <insert web address> .

We refer to the Hearing Tribunal on insert date, time and venue. The tribunal found you guilty/not guilty of the allegations for the following reasons:

Include the information required in clause 8.7.3 (w). If the tribunal imposed the below sanctions due to mitigating circumstances (such as remorse and/or apology), the reasons should be set out here and the reduction (e.g. lesser amount of weeks suspension) explained.

This penalty will be taken into account in any subsequent Hearing Tribunal in which you are convicted of a breach.

### Further Recommendations

*This is dependent on the sanctions, if further notification needs to be actioned. Netball NSW will communicate with regional, state and national association to make nearby affiliates aware of the imposed sanction against you. You are not permitted to compete or participate in any competition conducted by Netball NSW and/or its Affiliates during the suspension period.*

### Right to Appeal

Please be advised that if you wish to appeal your Notice of Appeal must be lodged within 5 days.

Please find attached a Notice of Appeal, which is the form that must be used to request an appeal hearing.

### Names of Individuals who sat on this Tribunal

Insert name – Chairperson

Insert name – Panel Member

Insert name – Panel Member

Yours sincerely,

Insert name



Hearings Officer

Netball NSW Authority (*adjust to be the affiliate name*)

P: *insert phone number*

E: *insert email*



<p>What does the Complainant want to happen to resolve the issue?</p>	
<p>What other information has the Complainant provided?</p>	
<p>What is the Complainant going to do now?</p>	

**This record and any notes must be kept in a confidential and safe place.** Do not enter it on a computer system. If the issue becomes a formal complaint, this record is to be sent to the Hearings Officer of Netball NSW at [policy@netballnsw.com](mailto:policy@netballnsw.com) or the Affiliate (whatever level the complaint was made).

**Appendix H Confidential Record of Formal Complaint**

Complainant's Details:	Name:	<input type="checkbox"/> Over 18 <input type="checkbox"/> Under 18
	Phone:	
	Email:	
Date Formal Complaint Received:		
Complainant's role/position in netball	<input type="checkbox"/> Administrator (volunteer) <input type="checkbox"/> Parent <input type="checkbox"/> Athlete/player <input type="checkbox"/> Spectator <input type="checkbox"/> Coach/Assistant Coach <input type="checkbox"/> Support Personnel <input type="checkbox"/> Employee (paid) <input type="checkbox"/> Other <input type="checkbox"/> Official ..... .....	
Respondent's Details (person who the Complaint is being made against)	Name:	<input type="checkbox"/> Over 18 <input type="checkbox"/> Under 18
	Phone:	
	Email:	
Is the Respondent a financial member of Netball NSW?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Respondent's role/position in netball	<input type="checkbox"/> Administrator (volunteer) <input type="checkbox"/> Parent <input type="checkbox"/> Athlete/player <input type="checkbox"/> Spectator <input type="checkbox"/> Coach/Assistant Coach <input type="checkbox"/> Support Personnel <input type="checkbox"/> Employee (paid) <input type="checkbox"/> Other <input type="checkbox"/> Official ..... .....	
Date of alleged incident.		
Location/event of alleged incident.		

Description of alleged incident.	
Methods (if any) of attempted informal resolution.	
Support person (if any):	
Formal resolution procedures followed.  (outline)	
If investigated:	Finding –
If heard by Tribunal:	Decision -  Action recommended -
If mediated:	Date of mediation -  Both/all parties present -  Agreement -  Any other action taken –
Resolution:	<input type="checkbox"/> Less than 3 months to resolve <input type="checkbox"/> Between 3 – 8 months to resolve <input type="checkbox"/> More than 8 months to resolve
Completed by:	Name: Position in Netball NSW/ Affiliate: Signature: _____ Date: / /

**This record and any notes must be kept in a confidential and safe place.** If the complaint is of a serious nature, or is escalated to and/or dealt with at the next level, the original must be forwarded to the higher body (i.e. Netball NSW) and a copy kept at the Netball NSW or Affiliate level (whatever level the complaint was made). Please provide a copy to [policy@netballnsw.com](mailto:policy@netballnsw.com)

## Appendix I Confidential Record of Child Abuse Allegation

Before completing this form, please ensure that the steps outlined in Appendix A have been followed and advice has been sought from the relevant child protection agency and/or police.

Complainant's Name: (if other than the child)		Date Formal Complaint Received:
Role/status in netball:		
Child's name:		Age:
Child's address:		
Person's reason for suspecting abuse: (e.g. observation, injury, disclosure)		
Name of person complained about (Respondent):		
Is the Respondent a financial member of Netball NSW?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Role/status in netball:	<input type="checkbox"/> Administrator (volunteer) <input type="checkbox"/> Parent <input type="checkbox"/> Athlete/player <input type="checkbox"/> Spectator <input type="checkbox"/> Coach/Assistant Coach <input type="checkbox"/> Support Personnel <input type="checkbox"/> Employee (paid) <input type="checkbox"/> Other <input type="checkbox"/> Official .....	
Witnesses: (if more than 3 witnesses, attach details to this form)	Name (1): Contact details:	
	Name (2): Contact details:	
	Name (3): Contact details:	
Interim action (if any) taken: (to ensure child's safety and/or to support needs of the Respondent))		
Police contacted:	Who: When: Advice provided:	

Child Protection agency contacted.	Who: When: Advice provided:
CEO or Affiliate President or Secretary contacted.	Who: When:
Police investigation (if any).	Finding:
Child Protection agency investigation (if any).	Finding:
Internal investigation: (if any)	Finding:
Action taken:	
Completed by:	Name: Position in Netball NSW/ Affiliate: Signature: <span style="float: right;">Date:    /    /</span>
Signed by:	Complainant: (if not a child)

**This record and any notes must be kept in a confidential place and safe place.** If required, the form should be provided to the police and/or relevant child protection agency. Please provide a copy to [policy@netballnsw.com](mailto:policy@netballnsw.com)

**Appendix J Record of Mediation**

Present at Mediation:	
Date of mediation:	
Venue of mediation:	
Mediator:	
Summary of mediation: (minutes attached)	
Outcome of mediation:	
Follow-up to occur: (if required)	
Mediation record completed by:	
Signed by:	Complainant: (signature)
	Respondent: (signature)

**This record and any notes must be kept in a confidential and safe place.** A copy should be retained by Netball NSW and/or Affiliate (whatever level the complaint was made).



**NOTICE OF APPEAL**

Notice of appeal is to be lodged within 5 days of notification of determination. Any notice of appeal must comply with clause 9.1 of Netball NSW Member Protection Attachment B: Complaint Handling Procedure. All documentation relevant to appeal, including initial tribunal documentation and appeal bond should be included.

Netball NSW Member Protection Policy is available [www.netballnsw.com](http://www.netballnsw.com)

**FIRST LEVEL OF APPEAL**  
Netball NSW Appeals Officer  
  
Refer to Netball NSW Affiliate

**SECOND LEVEL OF APPEAL**  
Netball NSW Appeals Officer  
E: [policy@netballnsw.com](mailto:policy@netballnsw.com)  
Post: PO Box 369, Lidcombe, NSW 1825  
Fax: 02 9951 5099

I hereby appeal against the findings and/or decisions of the disciplinary tribunal made on the following date:

		-			-				
dd			mm			yyyy			

**Applicant**

PLEASE USE CAPITAL LETTERS

FIRST NAME
------------

SURNAME
---------

DATE OF BIRTH: DAY/MONTH/YEAR
-------------------------------

CLUB / TEAM
-------------

AFFILIATES NAME
-----------------

I understand there are only two rights (or levels) of appeal following the decision of the initial Hearing Tribunal. Any appeal must first be made to Netball NSW and/or Affiliate Appeal Tribunal and then to the Netball NSW Appeal Tribunal. The decision of the Netball NSW Appeal Tribunal is final and binding on the parties.

SIGNATURE
-----------

SIGNATURE

**ACTION SOUGHT (FIRST LEVEL OF APPEAL)**  
APPEAL TO NETBALL NSE AFFILIATE APPEAL TRIBUNAL

- Significant new evidence
- Variation of penalty imposed by Hearing Tribunal
- Natural Justice
- All of the above

**ACTION SOUGHT (SECOND LEVEL OF APPEAL)**  
APPEAL TO NETBALL NSW APPEAL TRIBUNAL

- Significant new evidence
- Variation of penalty imposed by Hearing Tribunal
- Both

**Grounds of Appeal**

Grounds of Appeal
-------------------

**Evidence Called/ Submitted**

**Office Use Only**

report received by

<input type="text"/>	<input type="text"/>	—	<input type="text"/>	<input type="text"/>	—	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	:	<input type="text"/>	<input type="text"/>
dd		mm		yyyy		hh		mm				

(signature)

**Appeal Fee**

Received       Processed

**Appeal Tribunal Chairperson**

(first name)

(surname)

(chair signature)

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**Appeal Outcome**

Appeal Denied  
 Appeal Granted

**Penalty**

## Appendix L Rights and Obligations of Complainants, Respondents and Witnesses

1. This document sets out the rights and obligations of persons directly involved in the complaint handling process as a complainant, respondent and/or witness. The rights and obligations are based upon the basic standards and codes of behaviour established under the Netball New South Wales Constitution and Member Protection Policy framework (the governing framework).
2. The standards of behaviour and traits required to be complied with by the Netball New South Wales governing framework establishes a commitment to develop and maintain high standards of conduct and professionalism by showing:
  - a) Respect
  - b) Fair and equitable treatment
  - c) Courtesy
  - d) Ethical treatment and conduct
  - e) Honesty and Integrity
  - f) Safety
  - g) Consideration of others
  - h) Professional conduct
  - i) Acceptance of Responsibility
3. Each person involved in the complaint process must act in a manner that conforms to the traits established by the Netball NSW governing framework, as identified in clause 2 above. With this in mind, each participant is to co-operate fully with the complaint management process. This includes the obligation to provide full and frank information and evidence, including relevant photos and documentation, and to be honest, truthful and fair when interviewed and/or responding to an Investigation Officer or other person appointed to deal with a complaint.
4. Each person must be afforded certain rights during the complaint handling process. In particular:
  - a) To be advised of the allegations against them (if any and where applicable);
  - b) To be provided with relevant evidence and information pertaining to the complaint that is relevant to them;
  - c) To have a support person made available;
  - d) To be given the opportunity to provide their information and/or evidence after the opportunity to consider the information provided at (a) and (b), if applicable;
  - e) Where deemed necessary, an opportunity to respond to any inconsistency that may have arisen that is pivotal to the complaint.

The rights and obligations are provided to ensure that procedural fairness is entrenched in the process and afforded to each affected person appropriately.

5. **Release of reports.** All persons are to be aware that any report drafted by the MPIO or Hearings Officer, including supporting evidence, may be made available to the complainant and/or respondent at the end of the process. It is Netball NSW's policy to support a request for release of such information directly to the complainant and respondent in order to ensure that the process is both transparent and fair, with relevant privacy redactions undertaken. In providing information to a complaint handling process, all persons are to be made aware of the potential for the information they have provided to be made available to others, either for comment and appraisal or as part of the report established to assist with the complaint handling process. All persons are to acknowledge, in writing, that such use of the information they provide will be used in such a manner.

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Name

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Signature

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Date

## Appendix M Confidentiality Notice

This document outlines the responsibility associated with the confidentiality of information provided during the course of an investigation.

As a participant, you are not to engage in any discussion about the interview process, the discussions undertaken at the interview nor any information given and received during the interview process.

As the Hearing Officer, the information obtained will only be utilised as part of the investigation process to ensure that all steps have been taken to enable procedural fairness to take place. This may mean that information provided by you will be provided to a person to whom the information relates, if it is deemed necessary to do so. This has been outlined in the Privacy Notice document.

By signing this document, you agree that you will not discuss or divulge any information discussed during the interview and investigation process and nor will you discuss any aspect of the interview with any other party.

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Name

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Signature

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Date

## Appendix N Privacy Notice

This document is provided to outline the application of the Netball NSW Privacy Policy to matters that are investigated under the Netball NSW Member Protection Policy. Complaint handling is a key activity of Netball NSW to maintain standards and codes of conduct across NSW and its Affiliates.

Any information that is provided as a complainant, witness and/or respondent that is personal information is protected by the law. Personal information is defined under the Commonwealth *Privacy Act* as follows:

**Personal information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) Whether the information or opinion is true or not; and
- (b) Whether the information or opinion is recorded in a material form or not.

NNSW's policy is that complaints made by persons who wish to remain anonymous are not looked into as this precludes the respondent from being afforded procedural fairness. Generally, a person has the right to know who has said what about them to enable them an opportunity to have access to the complete circumstances surrounding allegations and incidents. This accords with Australian Privacy Principle 2.2—*anonymity and pseudonymity*- which provides that persons having the option of anonymity or the use of a pseudonym in relation to a particular matter does not have to be enforced where:

- (a) It is impracticable for the APP entity to deal with individuals who have not identified themselves or who have used a pseudonym.

The investigation process requires information to be collected to enable all persons involved to be presented with the relevant information and evidence to enable persons to have the ability to provide input as required. Thus the primary purpose is to ensure all evidence pertaining to the complaint is collected and presented to the relevant persons during the process. This means that any information that you provide is going to be advised to those persons who are directly affected and/or implicated by the information that you provide. However, any information pertaining to your personal information such as your address, contact details and date of birth are not going to be disclosed to any other person. All information provided will remain confidential and treated as such and will only be utilised as part of the investigation process.

At the completion of the investigation process, a report will be drafted and delivered to the Hearing Officer who directed that the investigation take place. The information will be utilised to enable the Hearing Officer to determine how to proceed with the matter; nonetheless, the information will remain confidential and kept securely within Netball NSW premises. However, if it is deemed appropriate that the outcome be made available to the relevant Affiliate/s that you are involved in to ensure consistency of actions.

Any person who is part of the investigation has the right to seek a copy of the report however, in such an instance, privacy deletions will be undertaken to ensure that only that information that is relevant to the requester is provided.

By signing this document, you acknowledge the purpose of the investigation process and grant permission for the information you provide to be utilised during the investigation process in a manner deemed appropriate. You further acknowledge that confidentiality will be afforded you and your information at all stages, as required and appropriate.

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Name

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Signature

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Date

**Appendix O Parent/Guardian Authority to Allow Child/Young Person to Participate on Record Of Interview**

I, \_\_\_\_\_, parent/guardian of \_\_\_\_\_, after having discussed the interview request with my daughter/son and my daughter/son having agreed to undertake such, hereby give permission for my daughter/son, \_\_\_\_\_ to participate in a record of interview with *insert name*, Hearing Officer appointed on **insert date** by **insert name**, Netball NSW/ Affiliates name, to look into the allegations raised in the Appointment documentation.

I have also discussed with my daughter/son that she is to be accompanied by an adult or guardian during the interview and she/he is happy for \_\_\_\_\_ to be present.

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Date