# BASKETBALL AUSTRALIA COMPLAINTS POLICY

National Framework for Ethical Behaviour and Integrity in Basketball – Appendix 7

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## 1. Purpose

The Complaints Policy applies to matters arising under the Member Protection Policy and Child Safeguarding Policy.

## 2. Scope and limitations

<The scope and limitations cover what the policy will and won't include, who it is meant for and which specific actions and interventions are the focus of the policy.>

## 3. Preliminary Matters

**What is a Complaint?**

3.1 A Complaint means a complaint lodged with Basketball Australia, a Member Organisation or an Authorised Provider in accordance with Clause 4 of this Policy, including matters initiated by Basketball Australia, a Member Organisation or an Authorised Provider, in which case Basketball Australia, the relevant Member Organisation or the relevant Authorised Provider will be the Complainant for the purposes of this Policy.

**What is an Alleged Breach?**

3.2 An Alleged Breach is an allegation or information that a Participant may have engaged in Prohibited Conduct under the Member Protection Policy or the Child Safeguarding Policy but does not include a Complaint that falls under clause 3.3.

**What is not an Alleged Breach?**

3.3 An Alleged Breach does not include an allegation or information:

- 3.3.1 that does not relate to Prohibited Conduct under the Member Protection Policy or the Child Safeguarding Policy;
- 3.3.2 that constitutes a Protected Disclosure;
- 3.3.3 that is solely a Personal Grievance;
- 3.3.4 that is mischievous, vexatious, or knowingly untrue;
- 3.3.5 that has been the subject of a previous complaint to Basketball Australia, a Member Organisation or an Authorised Provider; or
- 3.3.6 where the Respondent is excluded by clause 3.9.

3.4 A Complaint is not excluded from being an Alleged Breach by clause 3.3.5 if the Complaint contains additional information and evidence that was not known at the time of the original Complaint.

**Who can be a Complainant?**

3.5 A Complainant can be any person or organisation, including Basketball Australia, a Member Organisation or an Authorised Provider, who has information that an Alleged Breach of the Member Protection Policy or the Child Safeguarding Policy may have occurred.

**Who can be a Respondent?**

3.6 A Respondent must be a Participant or Club who is bound by the Member Protection Policy or the Child Safeguarding Policy they are alleged to have breached.

3.7 A Participant or Club who was bound by the Member Protection Policy or the Child Safeguarding Policy that they are alleged to have breached at the time they allegedly committed the breach who would otherwise cease to have been bound by that policy may still be a Respondent if they were bound by the policy at the time when they became aware that a complaint may be made against them.

3.8 Once a Complaint has been made under this Policy, the Respondent will continue to be bound by this Policy and the relevant Member Protection Policy or Child Safeguarding Policy in respect of that Complaint and any related complaint until the Complaints Process has been finalised.

3.9 A Respondent cannot be a person or organisation that Basketball Australia, a Member Organisation or an Authorised Provider has no jurisdiction over.

**Standard of Proof**

3.10 Unless otherwise specified, the standard of proof that applies to all decisions made under this Policy (including by a Tribunal) is "balance of probabilities".

3.11 Where a Respondent has been convicted or found guilty on the balance of probabilities in a criminal, disciplinary or professional proceeding of engaging in conduct which would be a breach of the Member Protection Policy or the Child Safeguarding Policy, the Respondent is deemed under this Policy to have committed Prohibited Conduct without requiring further investigation.

3.12 Where a Respondent has been investigated but not charged, convicted or disciplined as part of a criminal, disciplinary or professional proceeding for conduct which would be a breach of the Member Protection Policy or Child Safeguarding Policy, Basketball Australia, a Member Organisation or an Authorised Provider may take action in accordance with this Policy.

**Confidentiality**

3.13 All Complaints (and all information, materials and documents disclosed in relation to them), including all evidence and the outcomes of any Resolution Process, will be kept confidential by the Respondent, Basketball Australia, the relevant Member Organisation or relevant Authorised Provider, and will not be disclosed to any third parties, except as provided in this clause.

3.14 A Respondent may only disclose details of the Complaint (including all information, materials and documents) to their lawyer for the purposes of responding to the allegations or as otherwise required by law.

3.15 Basketball Australia, a Member Organisation or an Authorised Provider may make the following disclosures:

3.15.1 to Basketball Australia, a Member Organisation or an Authorised Provider in accordance with this Policy;

3.15.2 to the parties to a Complaint (Respondent and the Complainant) to ensure a fair process;

3.15.3 to any person to facilitate the proper handling of the Complaint under this Policy;

3.15.4 in accordance with clause 5, where a Complaint is determined to not be an Alleged Breach under this Policy;

3.15.5 to external agencies so they can deal with the alleged conduct (e.g., law enforcement agencies, government or regulatory authorities, a child protection agency);

3.15.6 to Basketball Australia, a relevant Member Organisation or a relevant Authorised Provider to inform them of relevant Sanctions or Provisional Actions imposed;

3.15.7 in accordance with clause 3.16, where a Sanction is to be publicly disclosed;

3.15.8 to any third party, including foreign sporting bodies, law enforcement agencies and government or regulatory authorities, for the primary purpose of:

3.15.8.1 preventing or lessening a risk to the safety, health, or wellbeing of a person; or

3.15.8.2 protecting children participating in a sport; or

3.15.8.3 protecting the safety of participants in a sport; and

3.15.9 as required by law, any court or the National Sport Tribunal (NST).

**Public disclosure of Sanctions**

3.16 Where an Alleged Breach is found to have been substantiated and Sanctions are imposed, Basketball Australia, a Member Organisation or an Authorised Provider may publicly disclose the Sanctions where it is reasonably necessary to give full effect to the Sanctions, taking into account the seriousness of the offence and potential impact of public disclosure on the parties involved.

3.17 Sanctions that may be subject to public disclosure include, but are not limited to:

3.17.1 Suspension of membership or from certain activities;

3.17.2 Removal of accreditation; and

3.17.3 Expulsion.

**Failure to cooperate**

3.18 Subject to clause 3.20, persons bound by this Policy must cooperate fully with a Complaints Process they are involved in, including any Resolution Process chosen to resolve an Alleged Breach.

3.19 Subject to clause 3.20, a Tribunal or an Appeals Tribunal may draw an inference adverse to the Respondent based on a Respondent's failure or refusal, after a request has been made in a reasonable time in advance, to answer any relevant question, provide relevant documentation, and/or participate in the Complaints Process. The Respondent must be made aware of such an inference being drawn in relation to any particular allegation forming part of an Alleged Breach.

3.20 No individual or organisation bound by this Policy is required to answer a question or provide information where to do so would be a breach of any applicable law, and no adverse inference (such as those in clause 3.19) may be drawn where that individual or organisation discloses the relevant law.

**Vulnerable Persons**

3.21 Where a Complainant or Respondent is a Vulnerable Person, the parent or guardian of the Vulnerable Person may act on behalf of the Vulnerable Person and accompany them throughout the Complaints Process, including at any interview, Alternative Dispute Resolution process, or Hearings Tribunal or Appeals Tribunal.

3.22 Basketball Australia, Member Organisations and Authorised Providers will have regard to the guide entitled “Complaint Handling Guide: Upholding the rights of children and young people” issued by the National Office for Child Safety in managing Complaints made on behalf of or involving Vulnerable Persons or such other guide that may replace it.

3.23 This clause is at all times subject to clauses 8.2 and 8.4 of this Policy and clause 15 of Schedule 1.

**Appointment of Complaints Managers**

3.24 Basketball Australia, each Member Organisation and each Authorised Provider will appoint a person or persons to be the Basketball Australia, the relevant Member Organisation or the relevant Authorised Provider Complaints Manager(s), who will be the person or persons within Basketball Australia, each Member Organisation or each Authorised Provider with primary responsibility for managing Basketball Australia's, each Member Organisation's and each Authorised Provider's obligations under this Policy.

3.25 The Basketball Australia, Member Organisation or Authorised Provider Complaints Manager(s), as applicable, will, subject to clause 3.26, be responsible for managing Complaints arising in relation to the Member Protection Policy and Child Safeguarding Policy within their organisation or jurisdiction, as follows:

3.25.1 Matters arising in relation to Prohibited Conduct at the national level must be dealt with by the Basketball Australia Complaints Manager(s) or a relevant Authorised Provider Complaints Manager;

3.25.2 Matters arising in relation to Prohibited Conduct at the state level must be dealt with by the relevant Member Organisation Complaints Manager(s); and

3.25.3 Matters arising in relation to Prohibited Conduct at the local level must be dealt with by a relevant Member Organisation or Authorised Provider Complaints Manager(s).

3.26 Notwithstanding clause 3.25, Basketball Australia may, in exceptional circumstances and at its sole discretion, determine to manage Complaints at the state or local level relating to a Member Organisation or an Authorised Provider, where.

**Time limits**

3.27 Where there is a time limit imposed by this Policy (other than a time limit relating to a Hearing Tribunal or Appeals Tribunal before the NST) and a person requests an extension to that time limit, the Complaints Manager may at their discretion grant the extension, having regard to any relevant circumstances.

**Management of Complaints**

3.28 A Complaints Manager may, in managing any part of the Complaints Process, seek any assistance from an Independent Investigator or an external organisation.

3.29 Complaints must be managed by the Complaints Manager(s) appointed for the relevant organisation, unless they are conflicted or possess actual or perceived bias.

3.30 Notwithstanding clause 3.29, and subject to clauses 3.25 and 3.26, a Complaint may be managed by Basketball Australia where:

3.30.1 a Complaints Manager for a Member Organisation or an Authorised Provider identifies that the relevant Member Organisation or relevant Authorised Provider is unable to manage the Complaint and Basketball Australia agrees to manage the Complaint on their behalf;

3.30.2 a Complaint relates to the CEO or equivalent of a Member Organisation or Authorised Provider; or

3.30.3 the Respondent requests for Basketball Australia to manage the Complaint and the Basketball Australia Complaints Manager(s), in their absolute discretion, determines

that Basketball Australia should manage the Complaint on behalf of the relevant Member Organisation or the relevant Authorised Provider.

## 4. How to Make a Complaint

**Submitting a Complaint**

4.1 A person or organisation may submit a Complaint by completing a Complaint Form and submitting it to Complaints Manager(s) as soon as reasonably possible following the Alleged Breach.

4.2 A Complaint may only be submitted on behalf of an organisation where it is submitted or authorised by the CEO or equivalent of the organisation.

4.3 A Complaint may be submitted by a parent or guardian on behalf of a Vulnerable Person.

4.4 A Complaint may be submitted anonymously via the Independent Reporting Hotline where the Complainant holds genuine concerns associated with making the Complaint.

4.5 Prior to making a Complaint, a prospective Complainant may make informal inquiries to a Complaint Manager to discuss the nature of the Complaint and Complaints Process.

**Withdrawing a Complaint**

4.6 A Complainant may withdraw their Complaint at any time before Basketball Australia, a Member Organisation or an Authorised Provider (as applicable) makes a finding under clause 6.

4.7 Withdrawing a Complaint must be done in writing to the Complaints Manager(s) of Basketball Australia, the relevant Member Organisation or the relevant Authorised Provider (as applicable).

4.8 Withdrawal of a Complaint does not preclude Basketball Australia, the relevant Member Organisation or the relevant Authorised Provider (as applicable) from dealing with the matter.

**Complaints Manager(s) may initiate a Complaint**

4.9 Where Basketball Australia, a Member Organisation or an Authorised Provider has grounds to suspect a Participant may have engaged in Prohibited Conduct under the Member Protection Policy or the Child Safeguarding, the Complaints Manager(s) appointed by the relevant organisation may initiate a Complaint on behalf Basketball Australia, a Member Organisation or an Authorised Provider (as applicable).

## 5. Complaint Assessment

**Initial Threshold Questions / Determining whether the Complaint is in-scope**

5.1 Upon receipt of a Complaint, the relevant Complaints Manager(s) must initially determine whether:

5.1.1 the Complaint is a Protected Disclosure, in which case it must be dealt with under the Whistleblower Policy;

5.1.2 the Complaint is solely a Personal Grievance;

5.1.3 the Complaint is not an Alleged Breach of the Member Protection Policy or the Child Safeguarding Policy;

5.1.4 the Complaint is mischievous, vexatious, or knowingly untrue;

5.1.5 the Respondent is not an eligible Respondent as outlined in clause 3.9;

5.1.6 the Complaint is primarily an Employment Matter;

5.1.7 the Complaint relates to Prohibited Conduct under the Member Protection Policy or the Child Safeguarding Policy which also falls under another Basketball Australia, Member Organisation or Authorised Provider policy and the Basketball Australia Integrity Unit determine, in their sole discretion, to take action under the other policy; or

5.1.8 the Complaint requires mandatory reporting to occur under Australian Child Protection Legislation or other laws, in which case Basketball Australia, the relevant Member Organisation or the relevant Authorised Provider (as applicable) must do so in accordance with the Child Safeguarding Policy[1].

5.2 If the Complaint falls within any of the circumstances set out in clause 5.1.1 to 5.1.7, the process under this Policy is permanently discontinued.

5.3 If a Complaint falls within the circumstances set out in clause 5.1.8, it will be handled in accordance with clauses 5.10 to 5.13.

**Notification to Parties**

5.4 The Complaint Manager will communicate with the Complainant and the Respondent at appropriate intervals throughout the Complaints Process to keep them informed about the process until a Resolution Process has been chosen or the Complaints Process is otherwise discontinued, including:

5.4.1 notifying the Complainant of whether the Complaint satisfies the Initial Threshold Questions;

5.4.2 notifying the Complainant of whether the Complaint has been referred to an external organisation;

5.4.3 after a Complaint is determined to have satisfied the Initial Threshold Questions and when the Complaint Manager considers that it is appropriate to do so, notifying the Respondent that a Complaint has been made against them;

5.4.4 notifying the Respondent of any Provisional Actions to be put in place;

5.4.5 notifying both the Complainant and the Respondent if the Complaint is referred to Alternative Dispute Resolution under clause 5.14;

5.4.6 notifying both the Complainant and the Respondent of the Resolution Process chosen; and

5.4.7 providing a Breach Notice to the Respondent.

5.5 The Respondent will not be entitled to a copy of the Complaint Form as submitted by the Complainant but will be provided with a summary of the Alleged Breach(es) and sufficient details of the Complaint to allow them to respond. Both the Complainant and the Respondent will be informed of any relevant additional information that becomes known as part of the assessment process and provided with a reasonable opportunity to respond.

5.6 The Complaint Manager will be responsible for communicating with the Respondent throughout the Resolution Process and will notify both the Complainant and the Respondent of the outcome of the Complaints Process when it has been finalised in accordance with clause 10.

[1] Refer to the "Responding to Child Abuse Allegations" attachment to the Child Safeguarding Policy.

5.7 The Respondent may need to be informed of the Complainant's identity. Not sharing the Complainant's identity may limit Basketball Australia's ability to manage the Complaint.

**Assessment**

5.8 If a Complaint is found to have met the Initial Threshold Questions and is not permanently discontinued, the Complaint Manager will undertake an assessment and may collect further information to determine:

5.8.1 if the Complaint is an Alleged Breach; and

5.8.2 if so, the most appropriate Resolution Process to deal with the Complaint.

5.9 An assessment may be conducted in such manner as determined by the Complaint Manager. in their absolute discretion.

5.10 The Complaint Manager may, on the basis of the assessment, make findings as to whether the Standard of Proof has been met in respect of the Alleged Breach.

5.11 This assessment may or may not involve formal interviews and collection of additional evidence at the Complaints Manager(s)' discretion.

5.12 In conducting assessments, the Complaints Manager will comply with the rules of procedural fairness and will provide both the Complainant and the Respondent a reasonable opportunity to be heard.

**External Referral**

5.13 The Complaint Manager may, at any time before or while dealing with a Complaint under this Policy, refer the Complaint to a relevant external organisation (this may include a law enforcement agency, government or regulatory authority or child protection agency).

5.14 If an external referral is made, the Complaint Manager may suspend the Complaints Process pending external resolution. The Complaint Manager shall inform the Complainant of any such decision unless directed not to do so by the external referral organisation.

5.15 If the Resolution Process is suspended due to an external referral, the Complaints Manager(s) must determine whether any Provisional Action should be taken against the Respondent under clause 5.25.

5.16 If the Complaint is not resolved by the external referral organisation and is referred back to Basketball Australia, a Member Organisation or an Authorised Provider (as applicable), the Complaint Manager may resume the Complaints Process.

**Referral to Alternative Dispute Resolution**

5.17 At any time after determining that the Complaint satisfies the Initial Threshold Questions but before making a finding in accordance with clause 6.1, the Complaint Manager may, where it considers it appropriate to do so, refer the Complainant and the Respondent to Alternative Dispute Resolution.

5.18 An Alternative Dispute Resolution process may include:

5.18.1 The application of non-punitive measures to address the Complaint;

5.18.2 Mediation;

5.18.3 Conciliation; or

5.18.4 Case Appraisal (only at the NST).

5.19 The Alternative Dispute Resolution process may be facilitated by:

5.19.1 the NST if the Alternative Dispute Resolution process can be facilitated by the NST;

5.19.2 Basketball Australia, a Member Organisation or an Authorised Provider; or

5.19.3 an independent third-party provider.

5.20 In order to implement the Alternative Dispute Resolution process, the Complaint Manager will:

5.20.1 if the matter is to be referred to the NST and is an NST Eligible Matter, make an application, via the Basketball Australia Complaints Manager(s), to the NST for mediation, conciliation, or case appraisal of the Alleged Breach;

5.20.2 if the matter is to be referred to the NST and is neither an NST Eligible or NST Excluded Matter, apply, via the Basketball Australia Complaints Manager(s), to the NST CEO for approval of the dispute to be referred to the NST for Alternative Dispute Resolution; or

5.20.3 refer the Complaint to Alternative Dispute Resolution facilitated by Basketball Australia, Member Organisation or Authorised Provider (as applicable) or a third-party provider.

5.21 The parties to an Alternative Dispute Resolution process will be the Complainant, the Respondent, and Basketball Australia, a Member Organisation or an Authorised Provider (as applicable). Additional persons may participate in exceptional circumstances and only if the facilitator of the Alternative Dispute Resolution process deems it appropriate.

5.22 The Parties are required to participate in the Alternative Dispute Resolution process in good faith.

5.23 Where the Alternative Dispute Resolution process is facilitated by the NST:

5.23.1 The Complainant is responsible for making the application and paying the application fee, unless otherwise agreed; and

5.23.2 The procedure will be in accordance with the NST Legislation.

5.24 Where the Alternative Dispute Resolution process is facilitated by Basketball Australia, a Member Organisation, an Authorised Provider (as applicable) or a third-party provider:

5.24.1 The Complainant is responsible for paying the appointed facilitator's fee, if any, unless otherwise agreed; and

5.24.2 The procedure will be in accordance with the rules prescribed by those bodies, as the case may be.

5.25 An Alleged Breach will be finalised through Alternative Dispute Resolution where Basketball Australia, a Member Organisation or an Authorised Provider (as applicable), the Complainant and the Respondent execute a written agreement as to an outcome.

5.26 If the Complaint of an Alleged Breach is resolved through Alternative Dispute Resolution, the Complaint Manager must proceed to finalise the complaint in accordance with clause 10.

5.27 If:

5.27.1 either the Complainant or the Respondent fails and/or refuses to participate in the Alternative Dispute Resolution Process; or

5.27.2 Alternative Dispute Resolution does not resolve the Complaint,

5.27.3 the Complaint Manager may resume the Complaints Process.

**Provisional Action**

5.28 Where the Alleged Breach involves behaviour that:

5.28.1 may be "Prohibited Conduct" under the Child Safeguarding Policy; and/or

5.28.2 has or may result in, serious criminal charges being laid against the Respondent; and/or

5.28.3 suggests there is a further or ongoing risk of harm being suffered by one or more persons involved in the Sport,

Basketball Australia, a Member Organisation or an Authorised Provider (as applicable), in its absolute discretion, will determine whether any Provisional Action(s) will be taken.

5.29 Provisional Action includes, but is not limited to, suspension, restriction of duties or temporary redeployment, suspension or restriction of rights, privileges and benefits, or any other action(s) at the discretion of Basketball Australia, a Member Organisation or an Authorised Provider (as applicable).

5.30 In the event that Provisional Action is imposed a Respondent may seek to have that decision reviewed only by an expedited hearing convened in accordance with clause 8. An expedited hearing convened under this clause shall only consider the decision to impose the Provisional Action and will not consider the merits of the Complaint.

**Unreasonable demands / behaviours**

5.31 Where a Complainant makes unreasonable demands or exhibits unreasonable behaviour, such as:

5.31.1 raising the same issues, which have previously been reported, without presenting new evidence;

5.31.2 unreasonable persistence regarding outcomes;

5.31.3 unreasonable demands relating to timeframes for resolutions;

5.31.4 being rude, aggressive, or abusive towards Basketball Australia, Member Organisation or Authorised Provider Employees or Volunteers,

Complaints may not be acknowledged and Basketball Australia, a Member Organisation or an Authorised Provider (as applicable) may exercise discretion to minimise or control its dealings with the Complainant. The Complainant will be given clear advice and reasons why.

## 6. Assessment Findings and Determination

**Assessment and Recommendation of Complaints Manager(s)**

6.1 After conducting their Assessment of a Complaint under clause 5.7, the Complaints Manager(s) will:

6.1.1 make findings as to whether, to the requisite Standard of Proof, the Alleged Breach is substantiated unsubstantiated or unable to be substantiated; and

6.1.2 make a determination as to the Resolution Process to be applied, which will be No Further Action or an Alleged Breach.

6.2 The Complaints Manager(s) will notify the Complainant, Basketball Australia (where the matter has been managed by a Member Organisation or an Authorised Provider), and the Respondent of its findings and determination under this clause.

**Resolution Process**

6.3 Basketball Australia, a Member Organisation or an Authorised Provider (as applicable) will implement the Resolution Process as determined by the Complaints Manager(s).

## 7. Resolution Process

**No Further Action**

7.1 Where the Complaints Manager has made a determination of No Further Action and has notified the parties of this determination under clause 6.2, the Complaint Manager will:

7.1.1 notify the Parties of this outcome under clause 5.6; and

7.1.2 shall keep a record of the Complaint as per clause 10.4.

**Alleged Breach**

7.2 Where the Complaints Manager has made a determination of Alleged Breach and has notified the parties of this determination under clause 6.2, the Complaints Manager will refer the matter to a Hearings Tribunal.

7.3 In referring the matter to a Hearings Tribunal, the Complaints Manager will issue the Respondent with a Breach Notice setting out the Alleged Breach. The Breach Notice will:

7.3.1 notify the Respondent of the Alleged Breach, including the alleged conduct and relevant section(s) of the Member Protection Policy or the Child Safeguarding Policy;

7.3.2 state the proposed Sanction for the Alleged Breach, and if applicable, any proposed discounted Sanction;

7.3.3 state that the Sanction is to be publicly disclosed (if applicable);

7.3.4 state that the Respondent has a right to a hearing in relation to the Alleged Breach and/or the proposed Sanction;

7.3.5 state that the Respondent may admit the Alleged Breach, waive their right to a hearing before the Hearings Tribunal and accept the proposed Sanction or the proposed discounted Sanction (if applicable);

7.3.6 state that if the Respondent does not respond within 14 days of receipt of the Breach Notice, they will be deemed to have admitted the Alleged Breach, waived their right to a hearing and accepted the proposed Sanction;

7.3.7 state that any response to the Breach Notice must be made to the Complaint Manager.

7.4 In response to a Breach Notice, a Respondent may:

7.4.1 admit the Alleged Breach, waive their right to a hearing before the Tribunal and accept the proposed Sanction or proposed reduced Sanction (if applicable);

7.4.2 dispute the Alleged Breach and/or the proposed Sanction, in which case the Alleged Breach will be referred to a Tribunal under this Policy; or

7.4.3 not respond, in which case they will be deemed to have admitted the Alleged Breach, waived their right to a hearing and accepted the proposed Sanction.

7.4.4 A Respondent has 14 days from receipt of the Breach Notice to notify the Complaints Manager of their decision.

**Resolution without a hearing**

7.5 Where a Respondent admits the Alleged Breach (thereafter, a Breach), waives their right to a hearing before a Hearings Tribunal and accepts the Sanction, or is deemed to have done so, the Complaint Manager must take all necessary steps to impose and implement the Sanction (if applicable), and proceed to finalising the Complaint in accordance with clause 10.

**Referral to Alternative Dispute Resolution**

7.6 If the Respondent disputes the Alleged Breach and/or Sanction, the Complaints Manager may either and via the Basketball Australia Complaints Manager(s) for NST matters:

7.6.1 refer the Alleged Breach to the NST General Division for arbitration (if an NST Eligible Matter);

7.6.2 if neither an NST Eligible or NST Excluded Matter, apply to the NST CEO for approval for the matter to be arbitrated in the NST General Division, failing which it must be dealt with under (iii); or

7.6.3 refer the Alleged Breach to an Internal Tribunal, convened by Basketball Australia, a Member Organisation or an Authorised Provider (as applicable).

7.7 If Basketball Australia, a Member Organisation or an Authorised Provider is a Respondent, the Complaints Manager must in the first instance apply to the NST General Division for arbitration either under (i) or (ii), failing which an Internal Tribunal will be convened.

7.8 Where an application to the NST for arbitration is made, Basketball Australia, the relevant Member Organisation or the relevant Authorised Provider (as applicable) is responsible for making the application and paying any application and service fees to the NST. The charges may be apportioned in accordance with the NST Legislation.

**Sanctions**

7.9 Where a Respondent is found to have committed a Breach of the Member Protection Policy or the Child Safeguarding Policy, A Hearings Tribunal may determine to impose a Sanction on that Respondent.

7.10 The Sanction may include any of the following measures (but is not limited to these measures), or any combination of such:

7.10.1 a reprimand or warning;

7.10.2 direction to give a verbal or written apology;

7.10.3 direction to attend counselling or training to address their behaviour;

7.10.4 suspended Sanction and/or good behaviour period;

7.10.5 removal of accreditation;

7.10.6 removal or withdrawal of awards or achievements (such as life membership);

7.10.7 exclusion from a particular event or events, competition, or activity;

7.10.8 suspension of membership from Basketball Australia, a Member Organisation or an Authorised Provider and any other members or affiliates;

7.10.9 suspension from Basketball Activities or any part thereof;

7.10.10 suspension and/or termination of any rights, privileges and benefits provided by Basketball Australia, a Member Organisation or an Authorised Provider;

7.10.11 expulsion from Basketball Activities; and

7.10.12 any other form of discipline that is considered appropriate.

7.11 A Hearings Tribunal has absolute discretion to determine the appropriate Sanction, including as to whether a combination of measures is to be imposed, and the terms and the period of any measures, subject to clause 7.12.

7.12 The following factors will be considered when determining the appropriate Sanction:

7.12.1 the nature and seriousness of the behaviour or incidents;

7.12.2 the considerations (if any) of the Complainant;

7.12.3 the contrition, or lack thereof, of the Respondent;

7.12.4 any Provisional Action taken in relation to the Breach;

7.12.5 the effect of the Sanction on a Respondent including any personal, professional, or financial consequences;

7.12.6 if there have been relevant prior warnings or disciplinary action against the Respondent; and

7.12.7 any mitigating circumstances.

7.13 If there is more than one Breach of a Member Protection Policy or Child Safeguarding Policy, where appropriate, the Sanction may be imposed having regard to all of the Breaches considered together, and the seriousness of the overall conduct in question.

7.14 Sanctions imposed under this Policy shall commence from the date of the decision, unless otherwise directed.

## 8. Hearing Tribunals

**Arbitration in the National Sports Tribunal (NST)**

8.1 If arbitration is sought in the NST General Division, the NST will:

8.1.1 determine whether the Provisional Action imposed is disproportionate; or

8.1.2 arbitrate the Alleged Breach and determine whether a Sanction be imposed, and if so, what Sanction, in accordance with clauses 7.9 to 7.14.

8.2 The procedure for an arbitration in the NST will be in accordance with the NST Legislation.

**Internal Tribunal**

8.3 If an Internal Tribunal is required under clause 7.2, the Complaints Manager must convene an Internal Tribunal to:

8.3.1 determine whether the Provisional Action imposed is disproportionate; or

8.3.2 arbitrate the Alleged Breach and determine whether a Sanction be imposed, and if so, what Sanction, in accordance with clauses 7.9 to 7.14.

8.4 An Internal Tribunal convened under this clause will comply with the Tribunal Procedure in Schedule 1**.**

**Parties and right to attend hearings**

8.5 The parties to a proceeding will be:

8.5.1 Basketball Australia, the relevant Member Organisation or the relevant Authorised Provider; and

8.5.2 the Respondent.

8.6 If the Hearing Tribunal is the NST:

8.6.1 notwithstanding clause 8.5.1, Basketball Australia must be a party to the proceeding;

8.6.2 the NST Member may, at their discretion, allow any person who may have a relevant interest in the dispute to participate in the proceeding.

**Notification of Hearings Tribunal decision**

8.7 The Hearings Tribunal will notify the parties to the proceeding of the decision in accordance with its relevant procedures, after which the Complaints Manager will subject to any appeal under clause 9, proceed with finalising the Complaint in accordance with clause 10.

## 9. Appeals

**Notification of Hearings Tribunal decision**

9.1 A decision of a Hearings Tribunal under clauses 8.1.2 or 8.3.2 may be appealed as set out in this clause 9.

9.2 A decision of a Hearings Tribunal under clauses 8.1.1 or 8.3.1 is not subject to appeal.

**Persons entitled to appeal**

9.3 The following persons are entitled to appeal a decision of a Hearings Tribunal under clauses 8.1.2 and 8.3.2 of this Policy:

9.3.1 Basketball Australia;

9.3.2 the relevant Member Organisation or the relevant Authorised Provider; and

9.3.3 the Respondent,

(each an Appellant).

**Grounds of appeal**

9.4 The decision of a Hearings Tribunal can only be appealed on the following Grounds of Appeal:

9.4.1 the Hearings Tribunal failed to abide by this Policy or to properly apply the Member Protection Policy or the Child Safeguarding Policy (as relevant) and such failure resulted in a denial of natural justice; and/or

9.4.2 no reasonable decision maker in the position of the Hearings Tribunal, based on the material before them, could reasonably make such a decision.

**Notice of appeal**

9.5 To submit a valid Notice of Appeal, an Appellant must, within 14 days of the date of receipt of the decision made by the Hearing Tribunal:

9.5.1 if the Hearing Tribunal was the NST General Division:

9.5.1.1 lodge an 'Application for an Appeal' form with the NST, which must state in full their Grounds of Appeal;

9.5.1.2 pay the requisite application fee; and

9.5.1.3 serve, by email, by post, or physically, on the other party to the appeal a copy of the 'Application for an Appeal'; or

9.5.2 if the Hearings Tribunal was an Internal Tribunal:

9.5.2.1 if the Alleged Breach is an NST Excluded Matter:

i. lodge with the Complaints Manager the Notice of Appeal stating they wish to appeal, which states in full their Grounds of Appeal, including any relevant documents as annexures;

ii. pay the appeal fee as set from time to time by Basketball Australia, the relevant Member Organisation or the relevant Authorised Provider (as applicable); and

iii. serve, by email, by post, or physically, on the other party to the appeal a copy of the Notice of Appeal on the other parties; or

9.5.2.2 if the Alleged Breach is an NST Eligible Matter, or neither an NST Eligible Matter or NST Excluded Matter:

i. lodge an 'Application for an Appeal' form with the NST, which must state in full their Grounds of Appeal;

ii. pay the requisite application fee; and

iii. serve, by email, by post, or physically, on the other party to the appeal a copy of the 'Application for an Appeal',

(together, a Notice of Appeal)

9.6 If an appeal is lodged under:

9.6.1 Clause 9.5.2.1, the matter must be dealt with by an Internal Appeals Tribunal; or

9.6.2 clause 9.5.2.2 and it is neither an NST Eligible or NST Excluded Matter, Basketball Australia, a Member Organisation or an Authorised Provider (as applicable) may apply to the NST CEO for approval, and if the NST CEO does not approve the matter, it must be dealt with by an Internal Appeals Tribunal; or

9.6.3 clause 9.5.2.2 and it is an NST Eligible Matter, it must be dealt with by the NST Appeals Division.

**Appeals in the NST Appeals Divisions**

9.7 If an Appellant lodges a valid Notice of Appeal in the NST Appeals Division, the NST will determine the matter.

9.8 The procedure for an appeal in the NST Appeals Divisions will be in accordance with clause 9.5 and the NST Legislation.

**Internal Appeals Tribunal**

9.9 If an Appellant lodges a valid Notice of Appeal to be dealt with by an Internal Appeals Tribunal, the Internal Appeals Tribunal will determine the matter.

9.10 The procedure for an appeal in an Internal Appeals Tribunal will be in accordance with clause 9.5.2 and Schedule 2.

**Determination for Appeal Tribunal**

9.11 The Appeals Tribunal's arbitration of the appeal:

9.11.1 must determine, to the Standard of Proof, whether one or both Grounds of Appeal (as applicable) are proven, and must not rehear the matter or the facts of the Alleged Breach; and

9.11.2 may result in the Appeals Tribunal removing, or altering the Sanction imposed on a Respondent, in accordance with clause 7.9 to 7.14.

**Notification of Appeal Tribunal decision**

9.12 The Appeal Tribunal will notify the parties to the proceeding of the decision in accordance with its relevant procedures, after which the Complaints Manager will proceed to finalising the Complaint in accordance with clause 10.

## 10. Finalising Complaints

### Finalisation of Resolution Process

10.1 A Resolution Process will be finalised, and an outcome reached when:

10.1.1 No Further Action – when the Complaint Manager notifies the relevant parties of its determination under clause 7.1;

10.1.2 Breach Notice – where the Respondent admits the Alleged Breach, waives their right to a hearing and accepts the Sanction, or is deemed to have done so under clause 7.5;

10.1.3 Hearing Tribunal - where the parties to the proceeding are notified of the decision and no appeal has been filed; or

10.1.4 Appeal Tribunal - where the parties to the proceeding are notified of the decision.

10.2 Once the applicable Resolution Process (including any appeal) under this Policy has concluded, the decision is final and binding on all parties involved and there is no further right of appeal to any external body or tribunal.

### Notification of outcome and implementation of Sanction

10.3 When a Resolution Process is finalised, the Complaint(s) Manager will:

10.3.1 notify the Complainant and Respondent of the outcome in writing, unless otherwise provided for in this Policy;

10.3.2 take all necessary steps to implement any Sanction imposed (if applicable); and

10.3.3 ensure Basketball Australia publicly discloses the matters referred to in clause 3.16 and 3.17 (if applicable).

### Recording Decisions and Outcomes

10.4 Basketball Australia, each Member Organisation and each Authorised Provider shall keep records of all Complaints for a minimum of 7 years from the date the Resolution Process is finalised, which will include at a minimum a record (including dates, where relevant) of:

10.4.1 the Alleged Breach;

10.4.2 the Complainant;

10.4.3 the Respondent;

10.4.4 the Resolution Process;

10.4.5 the Outcome; and

10.4.6 any Sanctions and/or Provisional Action imposed.

10.4.7 Records must be maintained in a secure and confidential place, which may be electronically.

## 11. Associated policies/resources

- National Integrity Framework for Ethical Behaviour and Integrity in Basketball (NIF)
- Code of Conduct for the Good Administration of Basketball (NIF Appendix 1)
- Code of Conduct for Elite Level Participants (NIF Appendix 1a)
- Member Protection Policy (NIF Appendix 5)
- BA Whistleblower Policy

## 12. Definitions

| Term | Definition |
|---|---|
| Alleged Breach | has the meaning given in clause 3.2 |
| Alternative Dispute Resolution | is a collective term for processes, such as mediation, to resolve disputes without the need for litigation that will be applied to resolve the alleged breach in accordance with clause 5.15 |
| Appeals Tribunal | means the appeals tribunal established under clause 9, being either the NST Appeals Division or an Internal Tribunal as provided in this Policy |
| Arbitration | means the hearing and binding determination of a dispute conducted by a Hearings Tribunal or Appeals Tribunal |
| Complaint | means a formal notification of a complaint relating to Prohibited Conduct by a Respondent of the Member Protection Policy or the Child Safeguarding Policy |
| Complaints Process | means the process of handling and resolving a Complaint under this Policy from the point where the Complaint is received to the finalisation of the Resolution Process |
| Complainant | means a person who or an organisation which makes a Complaint about an Alleged Breach by a Respondent in accordance with this Policy |
| Complaints Manager | means the person appointed by Basketball Australia, a Member Organisation or an Authorised Provider under clause 3.24 to manage Complaints under this Policy |
| Disciplinary Action | means disciplinary action as set out in the Resolution Process |
| Employment Matter | means a Complaint relating to an Employee in the course of their employment duties |
| Hearings Tribunal | means the first instance tribunal established under clause 8, being either the NST General Division or an Internal Tribunal as provided in this Policy |
| Legal Practitioner | is a person holding a current practising certificate as a lawyer or barrister in any Australian jurisdiction |
| NST Eligible Matter | means an Alleged Breach that is a kind of dispute that falls within the jurisdiction of the NST |

| | |
|---|---|
| NST Excluded Matter | means an Alleged Breach that is a kind of dispute that is expressly excluded from the NST's jurisdiction |
| NST Legislation | means the National Sports Tribunal Act 2019 (Cth) (NST Act) and all legislative and notifiable instruments adopted under the NST Act[2] |
| Personal Grievance | means any form of grievance between two or more people (including individuals and bodies corporate) that does not concern or allege a breach of the Member Protection Policy or the Child Safeguarding Policy |
| Policy | means this Complaints Policy, including any schedules and annexures |
| Prohibited Conduct | means conduct described as such in the Member Protection Policy or Child Safeguarding Policy |
| Provisional Action | has the meaning given in clause 5.26 |
| Protected Disclosure | means, where a Sport Organisation is a "regulated entity"[3] under the whistleblower laws[4] in the Corporations Act 2001 (Cth), a disclosure of information to the Sport Organisation that qualifies for protection under those laws[5] |
| Resolution Process | means the chosen process for resolving an Alleged Breach under this Policy, including a Breach Offer |
| Respondent | means the person/s or organisation/s against whom a Complaint has been made |
| Sanction | means a sanction imposed on a Respondent for breaching the Member Protection Policy or Child Safeguarding Policy in accordance with clause 7.10 |
| Vulnerable Person | means a person who is (a) under the age of 18; or (b) aged 18 or over, but is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation, by reason of age, illness, trauma or disability, or any other reason |
| Whistleblower Policy | means a policy which is compliant with the requirements of section 1317AI (1) of the Corporations Act 2001 (Cth) |

[2] Such as the National Sports Tribunal Rule 2020 (Cth), National Sports Tribunal (Practice and Procedure) Determination 2020 (Cth), National Sports Tribunal Act 2019 - Principles for Allocating a Member to a Dispute 2020 (Cth), or such other legislative instruments issued under the NST Act from time to time.

[3] Refer to section 1317AAB of the Corporations Act 2001 (Cth).

[4] As above, Part 9.4AAA.

[5] As above, s 1317AA.

## 13. Schedule 1 – Internal Hearing Tribunal Procedure

**INTERPRETATION**

1. In this Schedule:

   **Chair** means the chair of a particular Hearings Tribunal in accordance with this Schedule.

   **Legal Practitioner** is a person holding a current practising certificate as a lawyer or barrister in any Australian jurisdiction.

   **Sports Administrator** means a person who currently, or within the previous five years, is or has been employed in the field of sports administration.

   **Tribunal Member** means an individual person sitting on a Tribunal.

2. Defined terms not otherwise defined in this Schedule have the meaning given to them in the Policy.

3. All clause references refer to this Schedule unless otherwise provided.

**COVENING TRIBUNAL**

4. As required under clause 8 of the Policy, the Complaints Manager will convene a Tribunal in accordance with this Schedule.

5. The Tribunal shall be convened as soon as reasonably practicable in the circumstances, and shall endeavour to convene a hearing:

   (a) For a referral under clause 8.3.1 (provisional action) of the Policy, no later than one week after notification by the Complaints Manager;

   (b) For a referral under clause 8.3.2 (breach/sanction) of the Policy, no later than three weeks after notification by the Complaints Manager.

**COMPOSITION OF TRIBUNAL**

6. Subject to clauses 7 and 9 each Tribunal shall:

   (a) comprise three Tribunal Members with appropriate skills and experience appointed by the Complaints Manager; and

   (b) be chaired by the Chair, who shall be appointed by the Basketball Australia, Member Organisation or Authorised Provider Complaint Manager and shall be:

      (i) a Legal Practitioner; and

      (ii) a person of experience and skills suitable to the function of chairing a tribunal.

7. A Tribunal convened to hear a matter referred under clause 8.3.1 (Provisional Action) of the Policy will comprise of a single Tribunal Member appointed by the Complaints Manager who is a person of suitable experience and skills, independent of Basketball Australia, the relevant Member Organisation or the relevant Authorised Provider.

8. The Complaints Manager shall use reasonable endeavours to ensure that the Tribunal Members selected do not have any actual or perceived conflict of interest in relation to the Alleged Breach that might reasonably call into question the impartiality of the Tribunal.

9. Should a Tribunal Member become unable to sit on a Tribunal following the convening of the Tribunal for whatever reason, the Complaints Manager shall appoint a replacement Tribunal Member.

10. Should a party challenge the impartiality of a Tribunal Member, the challenge will be determined by the Chair sitting alone, unless that challenge relates to the Chair in which case it will be determined by:
    (a) the Complaints Manager; or
    (b) if the Complaints Manager is unavailable or unable to act, the other members of the Tribunal.
11. There shall be no right of appeal from a decision made under clause 10.
12. No Tribunal decision shall be invalidated by any irregularity in the appointment of a Tribunal Member.

**RESPONSIBIILITIES OF CHAIR**

13. Without limiting any other duties of the Chair set out under this Schedule, the person appointed as Chair of the Tribunal shall have the following responsibilities:
    (a) to chair hearings of the Tribunal;
    (b) to ensure accurate records are kept of all of the Internal Tribunal's proceedings and decisions, including at a minimum:
        (i) particulars of the hearing, including date, time, and location;
        (ii) the names of each Tribunal Member, Respondent, witnesses called, and any other parties permitted to attend by the Internal Tribunal;
        (iii) the decision of the Tribunal, including any Sanction imposed, whether given to the parties orally, in writing or a combination of both, and the date(s) of communication;
    (c) to ensure that the hearing is conducted in accordance with the principles of procedural fairness; and
    (d) to communicate to all parties of a Tribunal the results of such Tribunal and provide a copy of the record of result to the Complaints Manager within seven days of the hearing.

**ATTENDANCE AT INTERNAL HEARING TRIBUNAL**

14. The following persons shall be required to attend the Tribunal hearing conducted under this Schedule:
    (a) the Respondent; and
    (b) the Complaints Manager.
15. The following persons shall be entitled to attend a Tribunal hearing:
    (a) any person that the Chair in their absolute discretion believes will assist the Tribunal and invites to attend the Tribunal for that purpose;
    (b) a Complainant; and
    (c) where a Respondent or a witness is a Vulnerable Person, an adult adviser, who will, unless unavailable or other extraordinary circumstance, be such person's parent or guardian.
16. Each party appearing at or before the Tribunal shall bear their own costs.

**NON-ATTENDANCE BY RESPONDENTS(S)**

17. If a Respondent fails to attend the Tribunal hearing without reasonable excuse, the hearing may proceed and a determination may be made by the Tribunal in the absence of the Respondent, provided that the Tribunal is satisfied that this Schedule has been complied with.

18. If the Complaints Manager fails to attend a Tribunal hearing without reasonable cause, the hearing may proceed and a determination may be made by the Tribunal in the absence of that person, provided that the Tribunal is satisfied that all notification procedures under this Schedule have been carried out.

**ADJOURNMENTS**

19. A Respondent or the Complaints Manager may apply to the Chair to have an Internal Tribunal Hearing adjourned if there are compelling circumstances that warrant such steps being taken to avoid costs, hardship, or significant inconvenience to one or more parties. The Tribunal has sole discretion on whether or not to grant the application.

**PROCEDURE OF TRIBUNAL**

20. The Tribunal shall conduct the hearing in such manner as it sees fit, subject to and in accordance with principles of procedural fairness, and may in its absolute discretion:
    (a) convene the hearing by way of video or teleconference if the circumstances warrant;
    (b) consider any evidence, and in any form that it deems relevant;
    (c) question any person giving evidence;
    (d) limit the number of witnesses presented to those who provide any new evidence; and
    (e) act in an inquisitorial manner in order to establish the truth of the issue/case before it.

21. Without limiting the Tribunal's power to regulate its own procedure as it sees fit, subject to and in accordance with principles of procedural fairness, the Tribunal shall ordinarily proceed in accordance with the following steps:
    (a) If a body corporate, Basketball Australia, a Member Organisation or an Authorised Provider is a party to a Tribunal hearing, one member of that body corporate, Basketball Australia, that Member Organisation or that Authorised Provider shall be appointed by the body corporate, Basketball Australia, the Member Organisation or the Authorised Provider to act as spokesperson for such body at the Tribunal.
    (b) Basketball Australia, a Member Organisation of an Authorised Provider (as applicable) may also appoint Counsel to assist the Tribunal.
    (c) At the commencement of a hearing, the Chair will identify the Tribunal Members and determine whether the Respondent is present to answer the allegation(s) in the Alleged Breach.
    (d) The parties will be notified of their right to remain in the hearing until all evidence is presented but not to be present while the Tribunal considers its findings and determines an appropriate Sanction (if any).
    (e) The Chair shall advise all those persons present of the method of recording the hearing (if any).
    (f) The Alleged Breach shall be read out in the presence of all persons eligible to be present.

(g) The Respondent shall be asked whether or not they intend to dispute the Alleged Breach and the Sanction (if any).

(h) If the Respondent does not dispute the Alleged Breach, the Chair will provide the parties with an opportunity to make submissions as to the appropriate Sanction (if any) to be imposed.

(i) If the Respondent does dispute the Alleged Breach, the Chair will invite Basketball Australia, the relevant Member Organisation or the relevant Authorised Provider (as applicable) to give evidence and witnesses (if any) shall be called upon to give their evidence in turn, subject to the approval of the number of witnesses to be called by the Tribunal in its discretion. The Respondent has a right to cross examine any witness called. Basketball Australia, the relevant Member Organisation or the relevant Authorised Provider (as applicable) may summon the Respondent to give evidence and cross examine them.

(j) Each witness shall be entitled to leave the Tribunal hearing after giving evidence unless otherwise directed by the Tribunal. Witnesses shall be entitled to remain in the hearing room after giving evidence with the permission of the Tribunal.

(k) The Respondent shall then be entitled to present their defence. Witnesses may be called subject to the approval of the number of witnesses to be called by the Tribunal in its discretion. Basketball Australia, the relevant Member Organisation or the relevant Authorised Provider (as applicable) has a right to cross examine the Respondent or any witness called.

(l) Where a Vulnerable Person exercises their right to have an adult adviser present in accordance with this Schedule, a reasonable opportunity for consultation between the minor and the adviser shall be provided by the Tribunal.

(m) Where a party makes video evidence available to the Tribunal, it may, at the discretion of the Tribunal, be presented. Where possible, such evidence should be provided the Tribunal and other parties prior to the Tribunal hearing and the onus of providing suitable viewing equipment shall lie with the person requesting that the evidence be presented.

(n) The Tribunal may, so as to limit inconvenience to witnesses, allow evidence to be given by telephone or videoconference.

22. At the conclusion of all of the evidence and submissions the Chair shall ask all person's present to leave the hearing room while the Tribunal considers its findings.

23. If the Tribunal is satisfied that a breach of the Member Protection Policy or the Child Safeguarding Policy has been proven using the Standard of Proof, it shall find the breach proven. Otherwise, the Complaint of the Alleged Breach shall be dismissed.

24. If the Tribunal is not satisfied that the particular alleged breach has been proved but is satisfied that a lesser breach of the Member Protection Policy or the Child Safeguarding Policy has been proven, then the Internal Tribunal may find such lesser breach proven.

25. Where it appears to the Tribunal that the Complaints Manager has made an error in identifying the correct alleged breach of the Member Protection Policy or the Child Safeguarding Policy, or omitted alleged breaches that should have been made, the Tribunal may amend the allegation(s), subject always to the requirement that the Respondent must be informed of the new allegations and given an opportunity to respond to such allegations.

26. Where the Tribunal finds that one or more alleged breaches of the Member Protection Policy or the Child Safeguarding Policy have been proven, it shall inform the parties of its decision and provide Basketball Australia, the relevant Member Organisation or the relevant Authorised Provider (as applicable) and the Respondent with an opportunity to make submissions as to

Sanction (if the parties have not already had an opportunity to make such submissions). The Tribunal may, in its absolute discretion, decide that it is appropriate to:

(a) receive oral submissions as to Sanction immediately after delivering its decision as to the Alleged Breach; or

(b) adjourn the hearing to allow the parties to make submissions as to Sanction on some later date, in which case, the Tribunal shall direct whether submissions should be made orally or in writing.

27. After considering the parties' submissions as to Sanction, the Tribunal shall determine the Sanction to be imposed (if any) in accordance with clauses 7.9 to 7.14 of the Policy and shall advise the parties of its decision.

28. The decision of the Tribunal shall be given by the Chair. The Chair may either:

(a) give its decision as to the Alleged Breach and/or Sanction orally at the close of the hearing, with or without short- form oral reasons; or

(b) reserve its decision as to the Alleged Breach and/or Sanction but if it does so, it will provide its decision within 14 days of the hearing.

29. The Chair must provide written reasons for its decision within 14 days of the hearing.

30. Notwithstanding clauses 28-29 of this Schedule if the Tribunal has directed the parties to make submissions as to Sanction as per clause 26 above, the Chair will provide its decision and written reasons as to Sanction within 14 days of receipt of the submissions, or as otherwise directed by the Tribunal.

31. The Chair will notify the Complaints Manager of the decision of the Tribunal and provide a copy of the written reasons. The Complaints Manager will notify the parties of the decision and provide them with a copy of the written reasons.

32. For the Tribunal to find something has been proven on the balance of probabilities, it must be satisfied that on the evidence put before it the alleged fact or matter is more probable than not. In reaching this conclusion, the Hearings Tribunal must take into account all relevant factors including the:

(a) nature and seriousness of the allegations; and

(b) impact of the potential sanctions that may be imposed if the allegations are proven.

33. The standard of proof requires greater certainty for a more serious allegation compared with a less serious allegation.

## 14. Schedule 2 – Internal Appeals Tribunal Procedure

**INTERPRETATION**

1. In this Schedule:

   **Appeal Chair** means the chair of a particular Appeals Tribunal in accordance with this Schedule.

   **Tribunal Member** means an individual person sitting on an Appeals Tribunal.

2. Defined terms not otherwise defined in this Schedule have the meaning given to them in the Policy or SCHEDULE 1.

3. All clause references refer to this Schedule unless otherwise provided.

**CONVENING APPEALS TRIBUNAL**

4. As required under clause 9.10 of the Policy, the Complaints Manager will convene an Appeals Tribunal in accordance with this Schedule.

5. The Appeals Tribunal shall be convened as soon as reasonably practicable after a referral under clause 9.9 of the Policy and shall endeavour to convene no later than two weeks after notification by the Complaints Manager.

**COMPOSITION OF APPEALS TRIBUNAL**

6. Subject to clause 7 of this Schedule, each Appeals Tribunal shall:

   (a) comprise three Tribunal Members selected by the Complaints Manager; and

   (b) be chaired by the Appeal Chair who shall be appointed by the Complaints Manager and shall be:

      (i) a Legal Practitioner; and

      (ii) a person of experience and skills suitable to the function of chairing an Appeals Tribunal,

   none of whom sat on or was involved in the original Hearings Tribunal for the Alleged Breach subject of the appeal.

7. Clauses 9 - 11 (inclusive) of SCHEDULE 1 apply to an Appeals Tribunal with any necessary amendments.

**PROCEDURE OF APPEALS TRIBUNAL**

8. Subject to this Schedule, the Appeals Tribunal and persons appearing before it are bound by the same procedures under this Policy as if the Appeals Tribunal was the Tribunal hearing a matter at first instance.

9. The Appeals Tribunal must limit its hearing to consideration of the Ground(s) of Appeal relied upon by the Appellant under clause 9.4 of the Policy.

10. The Respondent to an Appeals Tribunal will be given the opportunity to file a written submission in response to the Notice of Appeal.

11. The parties to an Appeal Tribunal may not call witnesses unless given leave to do so by the Appeals Tribunal. The Appeals Tribunal will not allow a party to call a witness to give evidence in relation to any matter outside of the Ground(s) of Appeal relied upon by the Appellant.

12. An Appeals Tribunal has the power to:
    (a) dismiss the appeal;
    (b) uphold the appeal;
    (c) impose any of the Sanctions set out in the Policy; or
    (d) reduce, increase, or otherwise vary any Sanction imposed by the Hearing Tribunal under the Policy,

    in accordance with clause 9.11 of the Policy but otherwise in such manner as it thinks fit.
13. At the conclusion of the appeal, the Appeal Chair shall ensure that the Appellant, Respondent and Basketball Australia, the relevant Member Organisation or the relevant Authorised Provider (as applicable) are informed of the determinations of the Appeals Tribunal. The Appeal Chair shall also notify the Complaints Manager of the decision of the Internal Appeals Tribunal.
14. The Appeals Tribunal will give oral and/or written reasons for its decision.
15. The Appeals Tribunal has discretion to order the refund of the appeal fee and shall do so where the appeal results in the breach being dismissed or the Sanction reduced.