

NETBALL AUSTRALIA MEMBER PROTECTION POLICY

ATTACHMENT C: NATIONAL COMPLAINT HANDLING REGULATION

Netball Australia, Member Organisations and Affiliates will deal with all complaints in a fair, timely and transparent manner. All complaints will be treated seriously.

Netball Australia, Member Organisations and Affiliates will provide individuals with an informal and informal process to resolve the matter, along with access to an external complaint handling body, based on their preferences and the nature of the complaint.

Netball Australia, Member Organisations and Affiliates will also provide an appeals process for those matters where it is required.

Netball Australia, Member Organisations and Affiliates will maintain confidentiality as far as possible and ensure that no one is victimised for making, supporting or providing information about a complaint.

To ensure due process, consistency and that the principles of natural justice are followed in all aspects of handling or conducting complaints, allegations, investigations, tribunals and disciplinary measures, Netball Australia, Member Organisations and Affiliates will follow and implement the following procedures:

ATTACHMENTS:

ATTACHMENT C1: COMPLAINTS PROCEDURE

ATTACHMENT C2: MEDIATION PROCEDURE

ATTACHMENT C3: INVESTIGATION PROCEDURE

ATTACHMENT C4: PROCEDURE FOR HANDLING ALLEGATIONS OF CHILD ABUSE

ATTACHMENT C5: HEARINGS AND APPEALS TRIBUNAL PROCEDURE

ATTACHMENT C6: DISCIPLINARY MEASURES

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ATTACHMENT C1: COMPLAINTS PROCEDURE

Netball aims to support people associated with our sport to make and resolve any complaints they may have in a fair, timely and effective way.

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

Given all of the variables that can arise, Netball Australia provides informal and formal step-by-step complaint procedures that people may use/enter at any stage. Individuals and organisations to which this Policy applies may also pursue their complaint externally under anti-discrimination, child-protection or other relevant legislation.

If at any point in the complaint process a Hearings Officer considers 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 will be kept confidential 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.

To ensure fairness for everyone involved, netball will provide full details of the complaint to the person or people against whom the complaint has been made and ask for their response. As a result, it may be difficult for netball to resolve complaints made anonymously.

INFORMAL APPROACHES

Step 1: Talk with the other person (if safe, reasonable and appropriate)

- 1.1 As a first step you (the complainant) should try to sort out the problem with the person or people involved if you feel confident to do so.

Step 2: Contact a Member Protection Information Officer (MPIO or similar)

- 2.1 If the first step is not possible or reasonable; if you are not sure how to handle the problem by yourself; if you want to talk confidentially with someone and find out what options are available to resolve the problem; or the problem continues after you approached the other person, netball encourages you to contact:
 - (a) a MPIO;
 - (b) the Hearing Officer (or in their absence their nominee) of Netball Australia, Member Organisation or the Affiliate; or
 - (c) another appropriate person within the organisation (eg administrator, team manager, coach etc).
- 2.2 If the person approached is a MPIO, they may:
 - (a) take notes about your complaint (which the MPIO will keep in a secure and confidential place);
 - (b) try to find out the facts of your complaint;

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- (c) ask what outcome/how you want the problem resolved and if you need support;
- (d) provide possible options for you to resolve the problem;
- (e) explain how our complaints procedure works;
- (f) act as a support person if you so wish;
- (g) refer you to an appropriate person to help you resolve the problem, if necessary;
- (h) inform the relevant government authorities and/or police if required by law to do so; and
- (i) maintain strict confidentiality.

Step 3: Outcomes from Initial Contact

- 3.1 After talking with the MPIO you may decide
- (a) there is no problem;
 - (b) the problem is minor and you do not wish to take the matter forward;
 - (c) to try and resolve the problem on your own, with or without a support person such as a MPIO;
 - (d) to resolve the problem with the help of someone impartial, such as a mediator; or
 - (e) to resolve the matter through a formal process.
- 3.2 If you wish to remain anonymous, Netball Australia, the Member Organisation or the Affiliate can't assist you to resolve your complaint. Netball has to follow the principles of natural justice and be fair to both sides. This means that Netball Australia, the Member Organisation, the Affiliate or you may be required to provide the person/people you have complained about with full details of the complaint so they have a fair chance to respond to all the allegations.

FORMAL APPROACHES

Step 4: Making a Formal Complaint

- 4.1 If your complaint is not resolved to your satisfaction, you may make a formal complaint in writing to the relevant body or approach a relevant external agency, such as an anti-discrimination or equal opportunity commission, for advice.
- 4.2 To avoid any doubt, any complaint relating to:
- (a) a Netball Australia program or event shall be referred to the MPIO and/ or Hearings Officer of Netball Australia;
 - (b) a Member Organisation program or event shall be referred to the MPIO and/ or Hearings Officer of the Member Organisation.
 - (c) an Affiliate program or event shall be referred to the MPIO and/ or Hearings Officer of the Affiliate. If an Affiliate has not appointed at least one MPIO and a Hearings Officer, the complaint shall be referred to the MPIO and/ or Hearings Officer of the Member Organisation.

Step 5: Making a Formal Complaint: Hearing Officer Process

- 5.1 If you decide to make a formal complaint in writing under Step 4, the Hearing Officer will, on receiving the formal complaint and based on the material you have provided, decide whether:

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- (a) they are the most appropriate person to receive and handle the complaint;
- (b) the nature and seriousness of the complaint requires a formal resolution procedure. Some complaints may be of a minor and/or purely personal nature with no connection to the activities of Netball Australia, the Member Organisation or the Affiliate. In these cases, the Hearing Officer may determine that the complaint does not warrant a formal resolution procedure;
- (c) to appoint a person to investigate the complaint;
- (d) to refer the complaint to an informal or formal mediation session;
- (e) to refer the complaint to a hearings tribunal;
- (f) to refer the matter to the police or other appropriate authority; and/or
- (g) to implement any interim administrative or other arrangements that will apply until the complaint process set out in the National Complaint Handling Regulation is completed.

5.2 In making the decision(s) outlined above, the Hearing Officer will take into account:

- (a) whether they have had any personal involvement in the circumstances giving rise to the complaint and, if so, whether their ability to impartially manage the complaint is compromised or may appear to be compromised;
- (b) whether, due to the nature of the complaint, specific expertise or experience may be required to manage the complaint;
- (c) your wishes, and the wishes of the respondent, regarding the manner in which the complaint should be handled;
- (d) whether, due to the nature of the complaint, the relationship between you and the respondent and any other relevant factors, the complaint should be referred (or should not be referred) to informal or formal mediation or to a hearings tribunal. Relevant factors may include an actual or perceived power imbalance between you and the respondent, the nature of any ongoing working relationship between you and the respondent, and the personal attributes of you and the respondent (for example, if one party does not speak English fluently, some of the possible complaints resolution mechanisms may not be appropriate);
- (e) the nature and sensitivity of any information or other material that must be provided by you, the respondent, and any of the other people involved in the complaint;
- (f) whether the facts of the complaint are in dispute; and
- (g) the urgency of the complaint, including the likelihood and the consequences (if the complaint is ultimately proven) that you will be subject to further unacceptable behaviour while the complaint process set out in these procedures is being conducted.

5.3 If the Hearing Officer is the appropriate person to handle the complaint they will, to the extent that these steps are necessary:

- (a) get full information from you (the complainant) about your complaint and how you want it resolved (if this information has not already been obtained through earlier steps);
- (b) put the information they've received from you to the person/people you're complaining about and ask them to provide their side of the story;
- (c) decide whether they have enough information to determine whether the matter alleged in your complaint did or didn't happen; and/or

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- (d) determine what, if any, further action to take. This action may include disciplinary action in accordance with Attachment C6, appointing a person to investigate the complaint, referring the complaint to an informal or a formal mediation session or a hearings tribunal and/or referring the complaint to the police or other appropriate authority.

Step 6: Resolution Process

- 6.1 in some cases, an investigation may be required to determine the facts surrounding the complaint.
- 6.2 If a person is appointed to investigate the complaint under Step 5, the investigator will conduct the investigation and provide a written report to the Hearing Officer who will determine what, if any, further action to take. This action may include a direction to the investigator to make further enquiries and obtain additional information, disciplinary action, referring the complaint to an informal or a formal mediation session, a hearings tribunal and/or the police or other appropriate authority.
- 6.3 If the complaint is referred to an informal or a formal mediation session under Step 5, the mediation session will be conducted in accordance with Attachment C2 or as otherwise agreed by you and the respondent.
- 6.4 If the complaint is referred to a hearings tribunal under Step 5, the hearing will be conducted in accordance with Attachment C5.
- 6.5 If the complaint is referred to the police or other appropriate authority under Step 5, Netball Australia, the Member Organisation or Affiliate will use its best endeavours to provide all reasonable assistance lawfully required by the police or other appropriate authority.
- 6.6 If interim administrative or other arrangements are implemented under Step 5, Netball Australia, the Member Organisation or the Affiliate will periodically review these arrangements to ensure that they are effective.
- 6.7 Any reasonable costs relating to the complaint process set out in this Policy (e.g. investigation and/or mediation and/or hearings tribunal) are to be met by Netball Australia, the Member Organisations and the Affiliates.

Step 7: Reconsideration of initial outcome, investigation or appeal

- 7.1 If, under Step 6, an informal or formal mediation session is conducted, and you and the respondent(s) can not reach a mutually acceptable mediated solution to the complaint, you may request that the Hearing Officer reconsider the complaint in accordance with Step 5 within 14 days of the initial decision.
- 7.2 You or the respondent(s) may be entitled to appeal where:
- (a) under Step 5, a decision was made by the Hearing Officer:
- (i) not to take any action; or
 - (ii) to take disciplinary action; or
- (b) under Step 6, a decision was made by Hearing Officer or a hearings tribunal:
- (i) not to take any action; or
 - (ii) to take disciplinary action.
- 7.3 The grounds for appeal and the process for appeals under this Policy are set out in Attachment C5.

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- 7.4 If the internal complaints processes set out in this Policy do not achieve a satisfactory resolution/outcome for you, or if you believe it would be impossible to get an impartial resolution within Netball Australia, the Member Organisation or the Affiliate, you may choose to approach an external agency such as an equal opportunity commission to assist with a resolution.

Step 8: Documenting the Resolution

- 8.1 The Hearing Officer will document the complaint, the process followed and the outcome. This document will be stored in a confidential and secure place.
- 8.2 All documentation related to the complaint will be confidentially stored by the relevant body (the group that handled the complaint process).
- 8.3 If the matter is of a serious nature, or if the matter was escalated to and/or dealt with at the national level, the original document will be stored at the national office with a copy stored at the State and/or association office.

External Procedure

If you feel that you have been harassed or discriminated against, you can seek advice from your State or Territory anti-discrimination or equal opportunity commission. There is no obligation to make a formal complaint. However, if the commission advises you that the issues appear to be within its jurisdiction, you may choose to lodge a formal complaint with the commission.

Once a complaint is received by the commission, it will investigate the matter. If it appears that unlawful harassment or discrimination has occurred, the commission will attempt to conciliate the complaint on a confidential basis. If this fails, or if it is not appropriate, the complaint may go to a formal hearing. The tribunal will make a finding and decide what action, if any, will be taken. This could include an apology or financial compensation for distress, lost earnings or medical and counselling expenses incurred.

If you do lodge a complaint with the commission, an appropriate person from our organisation (e.g. an MPIO) may be available to support you during the process. It is also common to have a legal representation, particularly if the complaint goes to a formal hearing.

Contact details for the state and territory anti-discrimination and equal opportunity commissions are available on the Play by the Rules website:
<http://www.playbytherules.net.au/resources/quick-reference-guide>.

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

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ATTACHMENT C2: MEDIATION

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

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

This attachment outlines the general procedure of mediation that will be followed by Netball Australia, the Member Organisations and the Affiliates.

1. The people involved in a formal complaint (complainant and respondent(s) may work out their own resolution of the complaint or seek the assistance of a neutral third person or a mediator. Mediation may occur either before or after an investigation of the complaint.
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 MPIO or Hearing Officer on their own; and
 - (b) The Hearing 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).
3. Mediation will **not** be recommended if:
 - (a) The respondent has a completely different version of the events and they won't deviate from these;
 - (b) The complainant or respondent are unwilling to attempt mediation;
 - (c) When the issues raised are sensitive in nature;
 - (d) When there is a real or perceived power imbalance between the people involved;
 - (e) Matters that involve serious, proven allegations;
 - (f) Due to the nature of the complaint, the relationship between you and the respondent(s) and any other relevant factors, the complaint is not suitable for mediation.
4. If mediation is chosen to try and resolve the complaint, the Hearing Officer will, under the direction of Netball Australia, the Member Organisation or the Affiliate and in consultation with the complainant and the respondent(s), arrange for a mediator to mediate the complaint.
5. The Hearing Officer will notify the respondent(s) that a formal complaint has been made, provide them with details of the complaint and notify Netball Australia, the Member Organisation or the Affiliate that it has decided to refer the matter to mediation to resolve the complaint.
6. The mediator's role is to assist the complainant and respondent(s) reach an agreement on how to resolve the problem. The mediator, in consultation with the complainant and respondent(s), will choose the procedures to be followed during the mediation. At a minimum, an agenda of issues for discussion will be prepared by the mediator.

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7. The mediation will be conducted confidentially and without prejudice to the rights of the complainant and the respondent(s) to pursue an alternative process if the complaint is not resolved.
8. At the end of a successful mediation the mediator will prepare a document that sets out the agreement reached between the complainant and respondent(s) and it will be signed by them as their agreement.
9. If the formal complaint is not resolved by mediation, the complainant may:
 - (a) Write to the Hearing Officer within 14 days of the mediation to request that they reconsider the complaint in accordance with Step 5; or
 - (b) Approach an external agency such as an anti-discrimination or equal opportunity commission to resolve the matter.

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ATTACHMENT C3: INVESTIGATION PROCESS

There will be times when a complaint will need to be investigated and evidence gathered.

An investigation helps determine the facts relating to the incident, as well as possible findings and recommendations.

Any investigation that netball conducts will be fair to all people involved.

If Netball Australia, a Member Organisation to Affiliate decides that a complaint should be investigated, the following steps are to be followed:

1. A written brief will be provided to the investigator to ensure the terms of engagement and scope of the investigator's role and responsibilities are clear.
2. The complainant will be interviewed and the complaint documented in writing.
3. The details of the complaint will be conveyed to the person/people complained about (respondent(s)) in full. The respondent(s) must be given sufficient information to enable them to properly respond to the complaint.
4. The respondent(s) will be interviewed and given the opportunity to respond. The respondent(s) response to the complaint will be documented in writing.
5. If there is a dispute over the facts, then statements from witnesses and other relevant evidence will be obtained to assist in a determination.
6. The investigator will make a finding as to whether the complaint is:
 - (a) substantiated (there is sufficient evidence to support the complaint);
 - (b) inconclusive (there is insufficient evidence either way);
 - (c) unsubstantiated (there is sufficient evidence to show that the complaint is unfounded); and/or
 - (d) mischievous, vexatious or knowingly untrue.
7. A report documenting the complaint, investigation process, evidence, finding and, if requested, recommendations, will be given to the Hearing Officer.
8. A report documenting the complaint and summarising the investigation process and key points that were found to be substantiated, inconclusive, unsubstantiated and/or mischievous will be provided to the complainant and the respondent(s).
9. Both the complainant and the respondent(s) are entitled to support throughout this process from their chosen support person/adviser (e.g. MPIO or other person).
10. The complainant and the respondent(s) may have the right to appeal against any decision based on the investigation. Information on our appeals process is in Attachment C5.

More detailed information on conducting internal investigations can be found at www.ausport.gov.au/ethics/policy.asp

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ATTACHMENT C4: PROCEDURE FOR HANDLING ALLEGATIONS OF CHILD ABUSE

If you believe a child is in immediate danger or a life-threatening situation, contact the Police immediately on 000.

Fact sheets on reporting allegations of child abuse in different states and territories are available at www.playbytherules.net.au.

Netball Australia, Member Organisations and Affiliates will treat any allegation of child abuse or neglect promptly, seriously and with a high degree of sensitivity.

All people working with Netball Australia, Member Organisations and Affiliates in a paid or unpaid capacity have a duty to report any concerns to the appropriate authorities, following the steps outlined below.

Step 1: Receive the allegation

If a child or young person raises with you an allegation of child abuse or neglect that relates to them or to another child, it is important that you listen, stay calm and be supportive.

| Do | Don't |
|---|---|
| Make sure you are clear about what the child has told you | Do not challenge or undermine the child |
| Reassure the child that what has occurred is not his or her fault | Do not seek detailed information, ask leading questions or offer an opinion. |
| Explain that other people may need to be told in order to stop what is happening. | Do not discuss the details with any person other than those detailed in these procedures. |
| Promptly and accurately record the discussion in writing. | Do not contact the alleged offender. |

Step 2: Report the allegation

- Immediately report any allegation of child abuse or neglect, or any situation involving a child at risk of harm, to the police and/or the relevant child protection agency. You may need to make a report to both.
- Contact the relevant child protection agency or police for advice if there is **any** doubt about whether the allegation should be reported.
- If the allegation involves a person to whom this policy applies, then also report the allegation to the Netball Australia, Member Organisations or Affiliate so that s/he can manage the situation.

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Step 3: Protect the child and manage the situation

- The appropriate person from Netball Australia, Member Organisations or Affiliate will assess the immediate risks to the child and take interim steps to ensure the child's safety and the safety of any other children. This may include redeploying the alleged offender to a position where there is no unsupervised contact with children, supervising the alleged offender or removing/suspending him or her until any investigations have been concluded. Legal advice should be sought before any interim steps are made if the person is in paid employment with Netball Australia, Member Organisations or Affiliates.
- The appropriate person from Netball Australia, Member Organisations or Affiliate will consider what services may be most appropriate to support the child and his or her parent/s.
- The appropriate person from Netball Australia, Member Organisations or Affiliate will consider what support services may be appropriate for the alleged offender.
- The appropriate person from Netball Australia, Member Organisations or Affiliate will put in place measures to protect the child and the alleged offender from possible victimisation and gossip.

Step 4: Take internal action

- Up to three different investigations could be undertaken to examine allegations that are made against a person to whom this policy applies, including:
 - a criminal investigation (conducted by the police)
 - a child protection investigation (conducted by the relevant child protection agency)
 - a disciplinary or misconduct inquiry/investigation (conducted by Netball Australia, Member Organisations or Affiliate)
- Regardless of the findings of the police and/or child protection agency investigations, the appropriate person from Netball Australia, Member Organisations or Affiliate will assess the allegations to decide whether the alleged offender should return to his or her position, be dismissed, be banned or face any other disciplinary action.
- The appropriate person from Netball Australia, Member Organisations or Affiliate will consider all information relevant to the matter – including any findings made by the police, the child protection authority and/or court – and then set out a finding, recommend actions and the rationale for those actions.
- If disciplinary action is recommended, the appropriate person from Netball Australia, Member Organisations or Affiliate will follow the procedures set out in the Member Protection Policy.
- The appropriate person from Netball Australia, Member Organisations or Affiliate will provide the relevant government agency with a report of any disciplinary action we take, where this is required.

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Contact details for advice or to report an allegation of child abuse

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| <p>ACT Police Non-urgent police assistance Ph: 131 444 www.afp.gov.au</p> | <p>Office for Children, Youth and Family Services www.dhcs.act.gov.au/ocyfs/services/care_and_protection Ph: 1300 556 729</p> |
| <p>New South Wales Police Non-urgent police assistance Ph: 131 444 www.police.nsw.gov.au</p> | <p>Department of Community Services www.community.nsw.gov.au Ph: 132 111</p> |
| <p>Northern Territory Police Non-urgent police assistance Ph: 131 444 www.pfes.nt.gov.au</p> | <p>Department of Children and Families www.childrenandfamilies.nt.gov.au Ph: 1800 700 250</p> |
| <p>Queensland Police Non-urgent police assistance Ph: 131 444 www.police.qld.gov.au</p> | <p>Department of Communities www.communities.qld.gov.au/childsafety Ph: 1800 811 810</p> |
| <p>South Australia Police Non-urgent police assistance Ph: 131 444 www.sapolice.sa.gov.au</p> | <p>Department for Communities and Social Inclusion www.dcsi.sa.gov.au Ph: 131 478</p> |
| <p>Tasmania Police Non-urgent police assistance Ph: 131 444 www.police.tas.gov.au</p> | <p>Department of Health and Human Services www.dhhs.tas.gov.au/children Ph: 1300 737 639</p> |
| <p>Victoria Police Non-urgent police assistance Ph: (03) 9247 6666 www.police.vic.gov.au</p> | <p>Department of Human Services www.dhs.vic.gov.au Ph: 131 278</p> |
| <p>Western Australia Police Non-urgent police assistance Ph: 131 444 www.police.wa.gov.au</p> | <p>Department for Child Protection www.dcp.wa.gov.au Ph: (08) 9222 2555 or 1800 622 258</p> |

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ATTACHMENT C5: HEARINGS & APPEALS TRIBUNAL PROCEDURE

The following hearing procedure will be followed by hearings tribunals established by Netball Australia, the Member Organisations and the Affiliates.

1. HEARINGS

- 1.1 Where the Hearings Officer at Netball Australia, a Member Organisation or an Affiliate (if applicable) receives a Complaint referred to it under the Policy he or she shall follow the procedures set out below.
- 1.2 Upon receipt of the Complaint, the Hearings Officer shall as soon as possible do the following:
 - (a) determine the composition of the hearings tribunal, as detailed in clause 1.3;
 - (b) send to the respondent:
 - (i) a notice setting out the alleged breach including details of when/where it is alleged to have occurred; and
 - (ii) a notice setting out the date, time and place for the hearing of the alleged breach which shall be as soon as reasonably practicable after receipt of the Complaint or information;
 - (iii) a copy of the Complaint; (“referred to as Notice of Alleged Breach”);
 - (iv) send to the complainant(s) and the chairperson of the hearings tribunal a copy of the Notice of Alleged Breach.
- 1.3 The hearings tribunal for each hearing shall be appointed by the board (however described) of Netball Australia, the relevant Member Organisation or the relevant Affiliate (if applicable) and shall comprise of the following persons:
 - (a) a barrister or solicitor (who shall be the chairperson) or, if after reasonable attempts have been made to obtain one without success, then a person with considerable previous experience in the legal aspects of a disciplinary/hearings tribunal;
 - (b) a person with a thorough knowledge of the sport;
 - (c) one other person of experience and skills suitable to the function of the hearings tribunal, provided that such persons do not include:
 - (i) a person who is a member of the board (however described) of the organisation which appoints the hearings tribunal; or
 - (ii) a person, who would, by reason of their relationship with the complainant or the respondent, be reasonably considered to be other than impartial.
- 1.4 Frivolous, vexatious or malicious Complaints

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- (a) If within 48 hours of sending the Notice of Alleged Breach, the respondent alleges in writing to the Hearings Officer that the Complaint is frivolous, vexatious or malicious, the chairperson shall as a preliminary issue, determine whether or not such Complaint is frivolous, vexatious or malicious and shall advise the parties of his or her determination.
 - (b) The Hearings Officer shall provide to the other parties to the hearing (see clause 1.6) a copy of the written allegation made by the respondent, that the Complaint is frivolous, vexatious or malicious.
 - (c) The chairperson shall determine such preliminary issue as soon as practicable and in whatever manner the chairperson considers appropriate in the circumstances provided that he or she does so in accordance with the principles of natural justice.
 - (d) The decision of the chairperson under this clause 1.4 may be appealed within 48 hours of the determination to the relevant appeal body under clause 2.
- 1.5 The hearings tribunal shall hear and determine the alleged breach in whatever manner it considers appropriate in the circumstances (including by way of teleconference, video conference or otherwise) provided that it does so in accordance with the principles of natural justice. The purpose of the hearing shall be to determine whether the respondent has committed a breach of the Policy. If the hearings tribunal considers that the respondent has committed a breach of this Policy, it may impose any one or more of the penalties set out in Attachment C6.
- 1.6 The parties to the hearing shall include the complainant, the respondent, the relevant organisation (being Netball Australia, the relevant Member Organisation, the relevant Affiliate) and any witnesses which the hearings tribunal considers necessary to participate in the hearing.
- 1.7 If upon receipt of the Notice of Alleged Breach, the hearings tribunal considers that pending the determination of the matter the respondent may put at risk the safety and welfare of the complainant or others, it may order that the respondent be:
 - (a) suspended from any role they hold with Netball Australia, the relevant Member Organisation or the relevant Affiliate; and/or
 - (b) banned from any event or activities held by or sanctioned by Netball Australia, the relevant Member Organisation or the relevant Affiliate; and/or
 - (c) required not to contact or in any way associate with the complainant or other person about whom the alleged breach relates, pending the determination of the hearing.
- 1.8 There is no right of appeal of the decision by a hearings tribunal under clause 1.7.
- 1.9 No party to the hearing may be represented by a barrister or solicitor. However the chairperson of the hearings tribunal may grant leave for a party to the hearing to be represented by a barrister or solicitor where their livelihood or proprietary is at risk. A party may be represented by an advocate who is not a barrister or solicitor at the hearing.
- 1.10 Each party to the hearing shall bear their own costs in relation to the hearing.
- 1.11 The hearings tribunal shall give its decision as soon as practicable after the hearing and the Hearings Officer will deliver to the following a statement of the written reasons:
 - (a) the complainant;
 - (b) the respondent ; and
 - (c) any other party represented in the hearing.
- 1.14 Each member of each hearings tribunal established under this Policy shall be indemnified by the organisation which appointed them, from any claim or action for loss, damages, or costs made

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against them arising out of, or in connection with, their function as a member of the hearings tribunal under this Policy.

- 1.13 Except as otherwise provided in this Policy, all members of the hearings tribunal shall keep all matters relating to the hearing (including but not limited to the nature of the Complaint, information obtained before and during the hearing and the decision of the hearings tribunal) confidential.
- 1.14 To the extent of any inconsistency between the hearing procedure set out in the constitution of Netball Australia, the Member Organisations or the Affiliates (if applicable) and the hearing procedure set out in this Policy, this Policy shall prevail in relation to all Complaints under this Policy.

2. APPEALS

- 2.1 The party represented at a hearings tribunal may appeal a decision of a hearings tribunal on the grounds that natural justice has not been provided.
- 2.2 An appeal shall be made to the following appeal body:
- (a) an appeal against a decision of a hearings tribunal established by an Affiliate, shall be made to the hearings tribunal of the relevant Member Organisation. Subject to the discretion of the chairperson of the hearings tribunal, all appeals to Member Organisations shall be heard at the principal place of business of the Member Organisation;
 - (b) an appeal against a decision of a hearings tribunal established by a Member Organisation, shall be made to the hearings tribunal of Netball Australia. Subject to the discretion of the chairperson of the hearings tribunal, all appeals to Netball Australia shall be heard at the principal place of business of Netball Australia;
 - (c) an appeal against a decision of a hearings tribunal established by Netball Australia, shall be made to the appeal division of the Court of Arbitration for Sport (Oceania Registry) ("CAS") (referred to as the "appeal body").
- 2.3 There is only one right of appeal following the decision of the initial hearings tribunal. Any appeal must be solely and exclusively resolved by the appeal body and the decision of such appeal body is final and binding on the parties. It is agreed that no party to such appeal may institute or maintain proceedings in any court or tribunal other than the relevant appeal body. Note: This provision does not prevent any person or organisation taking action under State or Federal legislation.
- 2.4 The process for such appeal is as follows:
- (a) the party wishing to appeal ("the Appellant") shall within 72 hours of the hearings tribunal delivering its decision:
 - (i) advise, in writing, the Hearings Officer of Netball Australia or the Member Organisation (as the case may be) of their intention to appeal ("Notice of Intention to Appeal"); or
 - (ii) in the case of an appeal to CAS from a decision of a hearings tribunal established by Netball Australia, complete and file an application to appeal with CAS in accordance with the Code of Sports Related Arbitration; and
 - (iii) for an appeal to Netball Australia or a Member Organisation, as soon as possible after receipt of the Notice of Intention to Appeal, the Hearings Officer of Netball Australia or the Member Organisation shall appoint a hearings tribunal to hear and determine the appeal, which shall comprise of persons in accordance with clause 1.3; and

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- (iv) within 5 days of lodging the Notice of Intention to Appeal, (or such shorter time as determined by the appeal body if there is urgency) the Appellant shall:
- a. pay the appeal fee to the Hearings Officer of Netball Australia or the Member Organisation, which shall be \$550.00 (including GST) which is non-refundable, or in the case of an appeal to CAS, the fee as per the Code of Sports-Related Arbitration applicable to CAS; and
 - b. submit to the Hearings Officer of Netball Australia, the Member Organisation or CAS (as the case may be), four written copies of the grounds of appeal. The Hearings Officer of Netball Australia or the Member Organisation shall provide a copy of the grounds of appeal to the other party, to the Hearings Officer of the organisation which established the hearings tribunal who made the decision which is the subject of the appeal and the chairperson of the appeal body.

If either of the requirements in this sub-clause are not met by the due time the appeal shall be deemed to be withdrawn;

- (v) on completion of the procedures in (i) to (iv), the Hearings Officer of Netball Australia or the Member Organisation or the chairperson of CAS (as the case may be) shall determine a place, time and date for the hearing of the appeal and as soon as possible thereafter notify all parties to the appeal in writing of such details; and
- (vi) the procedure for the appeal shall be the same as the procedure for the hearings tribunal set out in clause 1 except where the appeal body is CAS, in which case the Code of Sports-Related Arbitration shall apply.

2.5 The appeal body may reject an appeal on the basis that the grounds of appeal are not satisfied.

2.6 Upon hearing the appeal, the appeal body may do any one or more of the following:

- (a) dismiss the appeal;
- (b) uphold the appeal;
- (c) impose any of the penalties set out in Attachment C6;
- (d) reduce, increase or otherwise vary any penalty imposed by the initial hearings tribunal.

2.7 If the penalty imposed by the appeal body affects other organisations required to comply with this Policy, the Hearings Officer of Netball Australia or the Member Organisation shall as soon as possible notify in writing the relevant organisation of the penalty. Notification of such penalty to a Member Organisation shall be deemed to be notification to all Affiliates which are members of the Member Organisation and notification of such penalty to an Affiliate shall be deemed to be notification to all members of the Affiliate. Every organisation to which this Policy applies shall recognise and enforce any decision and penalty imposed by an appeal body under this Policy.

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

2.9 To the extent of any inconsistency between the hearing appeal procedure set out in the constitution of Netball Australia, a Member Organisation or the Affiliates (if applicable) and the hearing appeal procedure set out in this Policy, this Policy shall prevail in relation to all Complaints under this Policy.

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ATTACHMENT C6: DISCIPLINARY MEASURES

1. Any disciplinary measure imposed by Netball Australia, the Member Organisations or the Affiliates under this Policy must:
 - (a) Observe any contractual and employment rules and requirements;
 - (b) Conform to the principles of natural justice;
 - (c) Be fair and reasonable;
 - (d) Be based on the evidence and information presented;
 - (e) Be within the powers of the hearings tribunal and appeals body to impose the disciplinary measure.

2. WHAT PENALTIES MAY BE IMPOSED?

- 2.1 If the hearings tribunal considers that a person or organisation, to whom this Policy applies, has breached this Policy, it may impose any one or more of the following penalties:
 - (a) For breaches committed by organisations: If the hearings tribunal considers that Netball Australia, a Member Organisation, an Affiliate or any other organisation has breached this Policy, it may impose any one or more of the following penalties on such organisation:
 - (i) direct that any funding granted or given to it by Netball Australia, a Member Organisation or an Affiliate cease from a specified date;
 - (ii) impose a monetary fine for an amount determined by the hearings tribunal;
 - (iii) impose a warning;
 - (iv) recommend to Netball Australia and/or the relevant Member Organisation and/or the relevant Affiliate that its membership of such organisation be suspended or terminated in accordance with their applicable constitution;
 - (v) direct that any rights, privileges and benefits provided to that organisation by Netball Australia, a Member Organisation or an Affiliate be suspended for a specified period and/or terminated;
 - (vi) direct that Netball Australia and/or a Member Organisation and/or an Affiliate cease to sanction events held by or under the auspices of that organisation;
 - (vii) any other such penalty as the hearings tribunal considers appropriate.
 - (b) For breaches committed by individual persons: If the hearings tribunal considers that an individual person to whom this Policy applies has breached this Policy, it may impose any one or more of the following penalties on such person:
 - (i) direct that the offender attend counselling to address their conduct;
 - (ii) recommend that Netball Australia, the relevant Member Organisation or the relevant Affiliate terminate the appointment of the role which the offender holds with such organisation;
 - (iii) where there has been damage to property, direct that the offender pay compensation to the relevant organisation which controls or has possession of the property;

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- (iv) impose a monetary fine for an amount determined by the hearings tribunal;
 - (v) impose a warning;
 - (vi) in the case of a coach, direct the relevant organisation to de-register the accreditation of the coach for a period or indefinitely;
 - (vii) withdraw any awards, placings, records won in any tournaments, activities or events held or sanctioned by Netball Australia, a Member Organisation or an Affiliate;
 - (viii) direct the offender to repay all or part of any financial assistance (excluding any fee for service, wages or expenses) given to them by any Federal or State funding agency, Netball Australia, a Member Organisation, an Affiliate or any other organisation which has provided funding;
 - (ix) any other such penalty as the hearings tribunal considers appropriate.
- 2.2 If an organisation or individual commits a second or subsequent breach under this Policy, then the hearings tribunal shall have regard to the previous breach, the penalty imposed and any other relevant factors, in imposing a penalty for the second or subsequent breach.
- 2.3 If the penalty imposed by the hearings tribunal affects other organisations required to comply with this Policy, the Hearings Officer of the organisation from which the hearings tribunal is established shall as soon as possible notify the relevant organisations of the penalty. Notification of such penalty to a Member Organisation shall be deemed to be notification to all Affiliates which are members of the Member Organisation and notification of such penalty to an Affiliate shall be deemed to be notification to all members of the Affiliate.
- 2.4 Every organisation to which this Policy applies shall recognise and enforce any decision and penalty imposed by a hearings tribunal under this Policy.
- 2.5 When imposing any form of discipline, it will be accompanied by a warning that a similar breach of policy by that individual in the future may result in the imposition of a more serious form of discipline.

3. Factors to consider when imposing discipline

- 3.1 The form of discipline to be imposed on an individual or organisation will depend on factors such as:
- (a) jurisdiction over the individual or organisation;
 - (b) nature and seriousness of the behaviour or incidents;
 - (c) in a case where action is taken concurrently with or in lieu of a resolution of a formal complaint, the wishes of the complainant;
 - (d) if the individual concerned knew or should have known that the behaviour was a breach of the Policy;
 - (e) level of contrition of the respondent(s);
 - (f) the effect of the proposed disciplinary measures on the respondent(s) including any personal, professional or financial consequences;
 - (g) if there have been relevant prior warnings or disciplinary action; and/or
 - (h) if there are any mitigating circumstances such that the respondent(s) shouldn't be disciplined at all or not disciplined so seriously?