



## **DISCIPLINARY TRIBUNALS BY-LAWS**

**Adopted: March 2004**

**Basketball New South Wales**

**AMENDED July 2005**



# INDEX

<u>Section 1</u>	-Interpretations	3-5
<u>Section 2</u>	-Responsibilities & Jurisdiction Of Various Tribunals	7-8
<u>Section 3</u>	-Membership of Tribunals	9-11
<u>Section 4</u>	-Responsibilities of Tribunal Personnel	13-15
<u>Section 5</u>	-Tribunal Proceedings	17
	- Domestic Competitions	18
	- State/Territory League	18-19
	- League Competitions	19
	- Schools	19
<u>Section 6</u>	-Tribunal Procedures and Hearings	21-26
<u>Section 7</u>	-Appeals	27-29
<u>Section 8</u>	-Schedules	31-41
<u>Section 9</u>	-Case Studies	43-49
<u>Section 10</u>	-Adoption of Tribunal By-Laws	51-52
<u>Section 11</u>	-Tribunals and Recognition Of Other Authorities	53-54
	Referees Tribunal Kit	55-63





## SECTION 1

# INTERPRETATIONS



3



with the By-Laws and having jurisdiction in accordance with these By-Laws

## **1. INTERPRETATION:**

**1.1** In this document unless the context indicates or requires the following words shall have the respective meanings attributed to them as follows:

**1.1.1** BNSW means Basketball NSW or New South Wales Basketball Association Limited (NSWBAL).

**1.1.2** "Organisation" means a company, incorporated body, or Recognised Body that has been set up specifically to run the sport of basketball in a locality determined by BNSW, and includes Member, Associate, Associate Organisation and Recognised Group.

**1.1.3** "Registered Participant" means a participant who is registered with BNSW and agrees to abide by BNSW's Registration and Tribunal By-Laws.

**1.1.4** "Official" means any person involved in the officiating, control, or administration of a basketball fixture conducted under the auspices of BNSW or an Organisation, including but without limiting the generality thereof referees, scorebench personnel, fixture supervisors, door keepers, operations personnel for that competition.

**1.1.5** "Registered Player" means a Registered Participant who has registered to play in a competition conducted under the auspices of BNSW, and/or an Organisation.

**1.1.6** "Organisation Tribunal" means the disciplinary tribunal appointed by the Organisation having jurisdiction in accordance with these By-Laws.

**1.1.7** "BNSW Tribunal" means the disciplinary tribunal appointed by BNSW having jurisdiction in accordance with these BY-LAWS.

**1.1.8** "BNSW Appeals Tribunal" means the person appointed by the Board of BNSW or its delegated authority sitting as a disciplinary tribunal appointed in accordance

**1.1.9** "Offence" means the one or more of the offences in Schedule 1 here of in respect of which a complaint may be made, heard and determined by the relevant disciplinary tribunals in accordance with these By-Laws

**1.1.10** "Charged Person" means an Official, Coach, a Registered Participant in relation to whom a complaint is brought in accordance with these By-Laws alleging the commission of an Offence to be heard by the relevant disciplinary tribunal.

**1.1.11** "A Minor Charged person" means any Charged person less than eighteen (18) years of age. Could be an Official, Coach, a Registered Participant in relation to whom a complaint is brought in accordance with these By-Laws alleging the commission of an Offence to be heard by the relevant disciplinary tribunal.

**1.1.12** "Complainant" means an official who has instituted a complaint in accordance with these By-Laws alleging the commission of an Offence by a Charged person to be heard by the relevant disciplinary tribunal.

**1.1.13** "Period of Suspension" means the period of time for which the relevant Tribunal suspends a charged person pursuant to Article 6.17 and shall be construed as meaning that the charged person cannot during the relevant period:

- a) Play basketball
- b) Referee
- c) Coach during games
- d) Table officiate
- e) Officiate in game statistics

**1.1.14** "Natural person" means a human being as opposed to an artificial person, e.g. a company.

**1.1.15** "Organisation Competition Administrator" means the person delegated by the Organisation for this purpose.



**1.1.16** "Working Business days" means Monday to Friday (inclusive), but excluding public holidays that fall on those days.

**1.2** In the interpretation of this document the following shall apply:

**1.2.1** references to the singular shall include the plural and vice versa;

**1.2.2** references to one gender shall include a reference to other genders;

**1.2.3** Headings are inserted only for convenience and shall not in any way vary or affect the interpretation of the clauses of this document.





## SECTION 2

# RESPONSIBILITIES JURISDICTION OF TRIBUNALS



6



## **2. RESPONSIBILITIES OF VARIOUS TRIBUNALS:**

### **2.1.1 Administrative Tribunal**

To decide and determine in accordance with these By-Laws, complaints against a charged person alleged to have committed an offence (s) at competitions conducted under the auspices of

- i. Organisations and
- ii. BNSW

### **2.1.2 Organisation Tribunal**

To hear and determine in accordance with these By-Laws complaints against a Charged Person alleged to have committed an Offence at competitions conducted by an Organisation.

### **2.1.3 BNSW Tribunal**

- a) To hear and determine in accordance with these By-Laws complaints against a Charged person alleged to have committed an Offence at competitions conducted by BNSW.
- b) To hear and determine appeals from decisions of Organisation Tribunals and other appeal tribunals in accordance with these By-Laws

### **2.1.4 BNSW Appeals Tribunal**

To hear and determine appeals from decisions of BNSW Tribunal or any other designated body in accordance with these By-Laws

## **2.2 JURISDICTION AND COMPOSITION OF VARIOUS TRIBUNALS**

### **2.2.1 Organisation Tribunals**

Appointed by Organisations to deal with offences at games conducted by Organisations.

### **2.2.2 BNSW Tribunal**

Appointed by BNSW to deal with offences at State Competitions

### **2.2.3 BNSW Appeals Tribunal**

Appointed by the Board of BNSW or its delegated authority to hear appeals of BNSW Tribunal. and to hear appeals from decisions of Organisation Tribunals.

The decision of the BNSW Appeals Tribunal shall be the final avenue of appeal.





## SECTION 3

# MEMBERSHIP OF TRIBUNALS



### **3. MEMBERSHIP OF TRIBUNALS:**

#### **3.1 Administrative Tribunal**

Shall consist of two members:

- Appointed chairman for the relevant competition or delegated person
- Competition Administrator for the relevant competition
- The Chairman is not to be the Chairman or a Member of a Disciplinary Tribunal should the matter progress to a Disciplinary Tribunal.

#### **3.2 Organisation Tribunal**

**3.2.1** Each year at a meeting following the Annual General Meeting, the Board of Management of the Organisation shall appoint a chairman of their Organisation Tribunal.

**3.2.2** As soon as possible after the Annual Meeting of the respective body, the chairman shall be appointed by the Organisation. No less than a further 3 Members shall then be appointed by the Organisation or Chairman after consultation has taken place regarding the members.

**3.2.3** Members of any Organisation Tribunal shall hold office from the date of their appointment, until the appointment of a new Tribunal, following the next Annual General Meeting of their particular Organisation when they shall retire, but they shall be eligible for re-appointment.

**3.2.4** In the event that the Chairman of any Organisation Tribunal resigns or is dismissed by the Board of Management of any Organisation such as to create a vacancy, a new Chairman is to be appointed within fourteen days by such Board to fill the vacancy.

**3.2.5** In the event that a member of any Organisation Tribunal resigns or is dismissed by its Chairman such as to create a vacancy a new member is to be appointed by such Chairman within fourteen days to fill the vacancy.

**3.2.6** Matters referred to an Organisation Tribunal for determination shall be dealt

with by at least three members of such an Organisation Tribunal.

#### **3.3 BNSW Tribunal**

**3.3.1** Each year at its first meeting immediately following the Annual General Meeting, the NSWBAL Board or its delegated authority shall appoint a Chairman of the BNSW Tribunal.

**3.3.2** Within fourteen days of appointment as chairman, the chairman shall appoint the remaining members of the BNSW Tribunal, which shall number not less than three persons.

**3.3.3** The members of the BNSW Tribunal shall hold office from the date of their appointment until the next Annual General Meeting of the State/Territory when they shall retire but they shall be eligible for re-appointment.

**3.3.4** In the event that the Chairman of the BNSW Tribunal resigns or is dismissed by the Board of BNSW such as to create a vacancy a new Chairman is to be appointed within fourteen days by such Board or its delegated authority to fill the vacancy.

**3.3.5** In the event that a member of the BNSW Tribunal resigns or is dismissed by its Chairman such as to create a vacancy a new member is to be appointed by the Chairman within fourteen days to fill the vacancy.

**3.3.6** Matters referred to the BNSW Tribunal for determination shall be dealt with by a three member BNSW Tribunal. Special circumstances to provide: that where the charged person consents, the Tribunal may proceed with two (2) persons.

**3.3.7** No member of the BNSW Tribunal shall be appointed to hear an appeal from a decision of an Organisation Tribunal if such person was a member of the Organisation Tribunal, which heard the particular matter, which is the subject of the appeal.



### **3.4 BNSW Appeals Tribunal**

**3.4.1** Each year at its first meeting immediately following the Annual General Meeting of BNSWBAL, the Board or its delegated authority shall appoint a Chairman of the BNSW Appeals Tribunal.

**3.4.2** The BNSW Appeals Tribunal shall hear particular matters. It is upon to here from time to time by State/Territory or individuals.

**3.4.3** The Appeals Tribunal shall consist of at least the Chairman but may also include two (2) other members appointed on an ad hoc basis, depending upon the matter being decided.

**3.4.4** No Member of the appeals Tribunal shall be appointed to hear an appeal from a decision of the BNSW Tribunal if such person was a member of the BNSW Tribunal, which heard the particular matter, which is the subject of the appeal.



## SECTION 4

### RESPONSIBILITIES TRIBUNAL PERSONNEL

- Chairman
- Secretary
- Officials of games



**4. RESPONSIBILITIES OF CHAIRMAN OF TRIBUNALS:**

**4.1** The Chairman of each Organisation Tribunal, the BNSW Tribunal, BNSW Appeals Tribunal shall have the following responsibilities:

**4.1.1** To recommend to the Board of Management of their particular organisation the venue, time and day of the week to be set aside for hearings of the particular tribunal of which they have been appointed as chairman.

**4.1.2** To convene meetings of their particular Tribunal to deal with matters referred to it.

**4.1.3** To ensure that three members of their particular Tribunal are present to deal with any matters referred to it for determination.

**4.1.4** To receive and refer to their particular Tribunal all material relating to any,

- (a) complaints against Officials, Registered Participants or;
- (b) appeals lodged in relation to any tribunals

**4.1.5** To ensure accurate records are kept of all hearings of their particular Tribunal.

**4.1.6** To report to the Board of Management of their organisation the results of hearings or appeals as the case may be of their particular Tribunal.

**4.1.7** To chair hearings or appeals as the case may be of their particular Tribunal or to ensure that such task is delegated to a member of their Tribunal.

**4.1.8** To ensure the availability of all forms required to be used in any proceedings of their particular Tribunal.

**4.1.9** To raise with any proposed Tribunal member any potential or possible conflict of interest

**4.2 APPOINTMENT AND RESPONSIBILITY OF SECRETARIES OF TRIBUNALS:**

**4.2.1** The Chairman of each Organisation Tribunal, BNSW Tribunal and the BNSW Appeals Tribunal shall appoint a member of their particular Tribunal who shall have the following responsibilities:

**4.2.2** To keep an accurate record of the proceedings of the Tribunal.

**4.2.3** To cause a transcript of the proceedings of the Tribunal to be made. Refer to Section 8.

**4.2.4** To report details of all complaints which have been established including details of the penalty imposed to NSWBAL



#### **4.3 RESPONSIBILITIES OF OFFICIALS OF GAMES:**

**4.3.1** An official shall be entitled to report any Charged person who in the opinion of any such official has whilst within the precincts of the venue of any basketball competition;

- a) Committed an Offence
- b) Acted in a manner, which is detrimental to the proper and efficient conduct, control or administration of basketball.

**4.3.2** A report of misconduct made pursuant to Clause 4.3.1 shall be prepared in duplicate in the form set forth in Section 8/Schedule 1 hereof, and shall be handed or placed to the person in charge of the game venue within two hours of completion of the basketball game during which the offences is alleged to have been committed; is alleged to have occurred; or prior to leaving the venue if circumstances warrant.

**4.3.3** Upon receipt of a report of misconduct, the person in charge of a basketball game shall hand the copy of such form to the Charged person, but if the Charged person has already left the particular venue or is not readily accessible, then the report set out in Section 8/Schedule 2 hereof shall be sent to him or his home by Registered Mail, within forty eight (48) hours, after the date of the alleged offence or the first working postal day (whichever is the longer period), and pass on the original of such form to the Chairman of the relevant tribunal. The Organisation will receive confirmation via a Delivery Confirmation – Advice Receipted Notice from Australia Post. N.B. It is the obligation of the Organisation to inform the player if this is the case.

**4.3.4** The Charged person who is the subject of a report of misconduct shall be entitled to play, coach, and score or to officiate as the case may be until the appropriate tribunal has heard and determined the complaint.

**4.3.5** Apart from the conduct of appeals in relation to the same organisation, A Tribunal may choose, in its absolute discretion, if it is presented with evidence of un-reasonable cost or dislocation, to conduct any hearing by telephone conference call. If such a decision is made, the Tribunal shall organise for the presence of a neutral official at the distant location to assist the Tribunal in the conduct of the hearing. In all other respects the procedure of the hearing shall be in accordance with these By-Laws

**4.3.6** Reports indicating “no further action” are not acceptable.

**4.3.7** A report is always required for a dismissal.



## SECTION 5

### TRIBUNAL PROCEEDINGS

- i) Domestic Competitions, State/Territory Junior Championships, Junior Leagues, Metropolitan competitions, Country Tournaments, Regional Championships, Social Carnivals, National Championships.
- ii) State/Territory League
- iii) League Competitions
- iv) School Competition



**5.1 DOMESTIC COMPETITIONS, NATIONAL AND STATE JUNIOR CHAMPIONSHIPS, JUNIOR LEAGUES, METROPOLITAN COMPETITIONS COUNTRY TOURNAMENTS, SOCIAL CARNIVAL, REGIONAL CARNIVALS**

**5.1.1** The charged person is reported as set out in Section 4, Clauses 4.3.1, 4.3.2, 4.3.3, 4.3.4.

**5.1.2** The Tribunal hearing is conducted as set out in Section Six (6) of this document.

Please note: State Junior Championships, Junior Leagues (where run on a central venue basis), Country Tournament, Regional Championships, Social Carnivals - the tribunal is to be heard at the venue and as soon as possible after the report is received.

**5.1.3** Where a charged person is the subject of a report of misconduct at State Junior Championships, Junior Leagues that are played Tournament style, e.g.– a tribunal is to be convened at the venue and as soon as possible after the report is received. The event coordinator shall be responsible for constituting a neutral Tribunal if one has not been appointed as per the event rules.

**5.1.4** At weekend or mid week State events where it is not possible to conduct a Tribunal at the venue a Tribunal will be heard by the BNSW Tribunal or delegated authority.

**5.1.5** Events listed 5.1.3, 5.1.4 are recognised State/Territory events and Tribunals conducted on reports are heard by the BNSW Tribunal or delegated authority.

**5.1.6** Appeals from Tribunals conducted in accordance with 5.1.3, 5.1.4 areas are to BNSW Appeals Tribunal.

**5.2. BNSW COMPETITIONS**

**5.2.1** When a disqualifying foul is imposed on any player, coach or official, a report must be submitted on the incident by the referee or game official within two (2)

hours of the completion of the game, or as soon as practicable thereafter, but before the reporting official(s) leave the venue.

The report is to be forwarded with the scoresheet to the appropriate BNSW Officer.

**5.2.2** Any player, coach, official or person associated with any team or Organisation may be reported by an official of an Organisation participating in the Competition/League for actions which would bring the Competition / League or Basketball into disrepute.

**5.2.3** When a person is reported by an official, it is the responsibility of the Host Organisation Supervisor to ensure that the Charged Person or his organisation are presented with a copy of the charge sheet. The Host Organisation is required to contact the BNSW office by phone or fax with the details of the charge as soon as possible.

**5.2.4** Officials may not at the conclusion of the match where a person has been reported, mark the Report Form "No Further Action Required". The reporting Official shall complete the Report Form and hand it to the appropriate authority.

**5.2.5** If the Charged person is not available for service of the report within 2 hours of the completion of the game, a copy of the report shall be made available to a representative of the Organisation whom the Charged person represents within 48 hours of the completion of the game. Presentation to the representative shall be deemed as service upon the charged person.

**5.2.6** Any penalty imposed by the Tribunal is subject to appeal to the BNSW Appeals Tribunal provided that the correct Appeals procedure is followed.

**5.2.7** Suspension by the Tribunal may be imposed in games and/or weeks.

**5.2.8** A suspended person cannot participate at any level of basketball as set in these By-Laws.



**5.2.9** Where a person is suspended, notification to the player and/or his Organisation, whether it be by the authorised officer of BNSW or his delegated person, it is deemed as official whether it be verbal or in writing.

**5.2.10** Organisations who fail to abide by this decision and allow the offender to remain active, shall together with the offender concerned be subject to immediate action by the BNSW Tribunal.

**5.2.11** Any player, coach, official or person associated with any team or Organisation who has been reported in accordance with the above regulations may be subject to the Disciplinary Tribunal Rules and procedures of BNSW By-Laws.

### **5.3 LEAGUE COMPETITION**

**5.3.1** Any competitions conducted by BNSW or designated body where applicable are subject to these Tribunal By-Laws.

**5.3.2** If the charged person appeals, the appeal will be heard by the BNSW Appeals Tribunal. The matter will be dealt with as set out in Section Seven (7) of these By-Laws.

### **5.4 NSW SECONDARY SCHOOLS COMPETITIONS**

School competitions conducted under the control of the NSW Schools Association or its individual members, and/or organisations shall be subjected to these By-Laws.

**5.4.1** Penalties imposed on persons in these competitions shall be recognised by BNSW.

**5.4.2** Penalties imposed by Organisations, Regions, or BNSW on persons playing in school competitions will likewise be recognised.

**5.4.3** In all cases Tribunals conducted by the NSW Schools Association are required to adhere to these By-Laws.

**5.4.4** All persons affected by penalties shall have the same right of appeal as set out in these By-Laws with the first line appeal to the NSW Schools Appeals Tribunal.

**5.4.5** The next line of appeal is the NSW Appeals Tribunal.

**5.4.6** These rules do not cover primary school activities.



## SECTION 6

# TRIBUNAL PROCEDURES AND HEARINGS



# TRIBUNAL PATHWAYS

OFFENCE OCCURS AT	HEARD BY	APPEAL TO
1) Domestic Competitions, Social Carnivals	Local Organisations Tribunal	Member Tribunal ↓ BNSW Tribunal
2) Regional Competitions	Member Tribunal	BNSW Tribunal ↓ BNSW Appeals Tribunal
3) State Competitions State Leagues Junior/Senior State Junior Championships Country Cup State Schools 15 Years	Appointed Competitions Tribunal	BNSW Tribunal or Delegated Authority ↓ BNSW Tribunal
4) NSW Secondary Schools Competitions	Schools Tribunal	Schools Appeals Tribunal ↓ BNSW Tribunal
5) NSW Wheelchair Competitions	Appointed Wheelchair Tribunal	Wheelchair Appeals Tribunal ↓ BNSW Tribunal

## 6. TRIBUNAL HEARINGS:

Hearings at first instance conducted by an Organisation Tribunal and the BNSW Tribunal can be conducted depending on the category of the offence the participant is cited with.

Not for Further Action (NFA) by officials is not acceptable. Disqualified persons must be reported.

There are two types of Tribunal Hearings:  
Administrative Tribunals  
Disciplinary Tribunals

### 6.1 Administrative Tribunals – see Schedule One (For Outline of Administrative Penalties Regime)

#### 6.1.1

- a) Only involve offences with maximum penalties ten weeks or less.
- b) Cannot be used for minors
- c) Can only be used for persons who have not been found guilty of any offence under these Disciplinary By-Laws within the last twelve- (12) months prior to the date of being cited for offences.

6.1.2 The Administrative tribunal shall consist of two (2) persons

- a) Appointed chairman for the relevant competition or delegated person. The chairman is not to be the chairman or a member of a Disciplinary Tribunal should the matter progress to a Disciplinary Tribunal.
- b) Competition Administrator for the relevant competition.

6.1.3 The Administrative Tribunal can only deal with ten- (10) week or less offences.

It cannot be used if: -

6.1.1 (b) occurs

6.1.1 (c) cannot be applied

The charge sheet also involves Category B.

### 6.2 The Process

6.2.1 The player is charged by an official using a ten week or less offence

6.2.1 The reporting official is required to follow the procedures set out in

5.2.1

5.2.2

5.2.3 in respect of the charge sheet and the charged person.

6.2.3 The Administrative Tribunal shall meet as soon as possible but no later than five (5) days after a report is received.

6.2.4 When the Administrative Tribunal convenes it shall review the charge report and decide if the A Category charges are applicable.

If the charges are considered applicable and the case is made, the Tribunal will determine the penalty in respect of the charges.

N.B The Tribunal has the power to upgrade or downgrade the charges.

6.2.5 The charged person is then to be advised of the determined penalty and also of the maximum penalty.

6.2.6 The charged person has five (5) working business days to accept or reject the penalty.

6.2.7 If the charged person fails to respond within seven (7) working business days the determined penalty shall stand. This allows a period for the charged person to notify Organisation of decision.

6.2.8 If the charged person accepts the determined penalty, the suspension shall commence immediately and shall end at midnight on the day calculated by the Administrative Tribunal.

6.2.9 If the charged person fails to respond within seven (7) working days the determined penalty shall be deemed to have been accepted and shall be calculated from the fifth (5) working business day and conclude at midnight on the day calculated by the Administrative Tribunal.

6.2.10 When a determined penalty is accepted or imposed, the offender shall be notified in writing of the penalty and the suspension period.

**6.2.11** There are no appeals for an Administrative Tribunal decision by either the charged person or the reporting official.

**6.2.12** If the charged person rejects the Administrative Tribunal penalty, notice must be given to the Organisation Secretary, within five (5) working business days, thus causing the matter to go before a Disciplinary Tribunal (the members of who have not been involved in the Administrative Tribunal)

### **6.3 Disciplinary Tribunals – see schedule one**

#### **6.3.1** Areas of Concern

- Persons charged with offences under Category A and/or B.
- Persons charged with offences under Category A who elected for a Disciplinary Tribunal
- Persons charged with offences in Category A and/or B who are a minor
- Hearing appeals from decisions made by BNSW in regard to a disqualification issued under a specific competition policy or guideline

**6.3.2** The following persons shall be entitled to be in attendance:

- a) Members of the relevant tribunal
- b) The Charged person
- c) The Complainant;
- d) Witnesses to be called to give evidence by either the charged person or the Complainant
- e) In the case of a Minor Charged person, an adult who shall be entitled to represent the Minor Charged person
- f) Any other person summoned by the relevant tribunal hearing the complaint and
- g) Any legal representative or advocate of the charged person and or Complainant

### **6.4 The Chairman of the tribunal shall:**

**6.4.1** Identify the members of the tribunal;

**6.4.2** Establish that the charged person is present to answer the Charged against him/her.

**6.4.3** Raise with Members of the Tribunal in the presence of all interested parties as set out in 6.1 where a conflict of interest by any participant in the Tribunal panel and then determine any such allegation.

**6.4.4** Give the charged person or complainant the opportunity to object to any Tribunal Member, on the grounds of bias or perceived bias and then determine any such objection.

**6.4.5** Inform the Charged person and the complainant that they are entitled to remain in the hearing until all evidence is presented but not entitled to be present whilst the tribunal considers its findings and determines his appropriate penalty (if any)

**6.4.6** To advise all participants at the commencement of the proceedings before their particular Tribunal of the method of recording the hearing.

**6.4.7** read the complaint;

**6.4.8** Ask the charged person whether the allegations in the complaint are admitted or denied.

**6.5** If the allegations in the complaint are admitted, the Chairman may read a short summary of the facts, admit the referee's evidence (written/verbal) and no witnesses need be called to give evidence, or allow all witnesses to give evidence and both the Charged person and complainant may question witnesses.

**6.6** If the allegations are denied then the Chairman shall ask all witnesses except the Complainant and the Charged person or Minor Charged person as the case may be and his representative to leave the room and to wait to be called to give their

evidence. N.B The charged person and an acting Official remain in the Tribunal while evidence is being given.

- 6.7** The Chairman of the tribunal will then call upon the Complainant and any witnesses of the Complainant to give his evidence in turn. The Charged person shall be entitled to question each witness called. On completion of such evidence the charged person shall be advised by the Chairman of their entitlement to make an initial statement.
- 6.8** After each witness has given evidence such witness shall be asked to leave the room.
- 6.9** The Chairman shall then permit the charged person to adduce any additional evidence by way of witnesses or to make a statement in his defense. The Complainant shall be entitled to question each witness called by the charged person.
- 6.10** The Chairman of the tribunal shall afford members of the tribunal the opportunity to ask questions of any witnesses called at the hearing.
- 6.11** At the conclusion of all of the evidence and of addresses the Chairman then asks the charged person and the Complainant to leave the room while the tribunal considers its findings.
- 6.11.1** In the event that a Charged person in relation to whom a complaint has been made fails to appear without reasonable cause the hearing may proceed and a determination may be made by the tribunal in the absence of the charged person.
- 6.11.2** In the event that a Complainant fails to appear without reasonable cause the hearing may proceed and a determination may be made in his absence. A report shall be lodged with the executive of the Board of Management of such Complainant's Organisation.
- 6.12** If the tribunal is not satisfied that the particular complaint has been proved but is satisfied that a lesser complaint has been established then the tribunal may find such lesser complaint established and shall

apply the penalty applicable to such lesser charge.

- 6.13** In arriving at a decision as to whether a complaint has been established the tribunal must be satisfied on the balance of probabilities that the particular misconduct has occurred. It is not necessary for the tribunal to be satisfied "beyond all reasonable doubt that the incident occurred" before arriving at a finding that the complaint has been established. Refer to Case Notes - Balance of Probability. (Question 10, Section 9).
- 6.14** If the tribunal is not satisfied that a complaint has been established it shall dismiss such complaint.
- 6.15** If a complaint has been found established by the tribunal the charged person shall be informed of the determination. Any previous established complaints against the charged person should then be laid before the tribunal.
- 6.16** The Charged person should then be given the right to make a final statement in relation to previous established complaints or other mitigating circumstances before being asked to leave the room a second time.
- 6.17** The tribunal shall then determine the penalty (if any) and recalls the charged person to advise of the penalty.
- 6.18** The tribunal may either:
- 6.18.1** (a) Impose a penalty consisting of a period of suspension or;
- (b) Alternatively record that the complaint has been established but having regard to the nature of the complaint and/or the prior good conduct of the subject Charged person not impose a penalty;
- 6.18.2** The penalties imposed by the tribunal for particular Offence shall not exceed those set on the reverse of Schedules 1 or 2.



**6.18.3** Any suspension shall be calculated in weeks or years and/or a number of matches played or to be played in any competition organised by a Local Basketball Organisation, a Regional Basketball Organisation or the State/Territory or National League during the duration of the suspension whichever is the greater.

**6.18.4** A tribunal shall not impose a suspended sentence.

**6.18.5** A tribunal shall take into account the prior established Offences of the charged person when assessing the severity of the penalty.

**6.18.6** Where the Charged person is found guilty of more than one offence, it is procedure that the penalties are served concurrently, with the most severe penalty being the maximum time suspended. However, Tribunals do have the prerogative to vary from this procedure.

**6.19** After a penalty has been imposed the tribunal Chairman shall inform the Complainant and the charged person of their right of appeal including;

**6.19.1** The time and date by which the appeal must be lodged

**6.19.2** The place of lodgement of the appeal.

**6.19.3** The results of the Tribunal are sent to BNSW



## SECTION 7

## APPEALS



## 7. APPEALS:

Appeals conducted by an Organisation Tribunal, the BNSW Tribunal and the BNSW Appeals Tribunal shall be conducted on the following basis (appeals are made to the next highest authority after the initial Tribunal):

### 7.1 An appeal made by:

**7.1.1** A Charged person who has had an Offence established against him may be on all grounds or to contest the severity of the penalty only, and

**7.1.2** A complainant only on the basis that the penalty imposed on a Charged person by a relevant tribunal was too lenient.

**7.1.3** A person disqualified under a competition policy or guideline issued for their guidance.

**7.2** Any appeal lodged to a relevant tribunal shall be made in writing (typed wherever possible) and shall be known as the Notice of Appeal and shall be in the form set forth in Schedule 6 hereof.

**7.3** Any appeal shall be lodged with the relevant tribunal to which the appeal is being brought within fourteen (14) days of the decision appealed against.

**7.4** Appeals shall be processed as expeditiously as possible.

**7.5** Upon receipt of any appeal the Chairman of the relevant tribunal shall:

- (a) Check that the appeal complies with the rules concerning time of lodgement and completeness of information provided.
- (b) Arrange for a copy of the transcript of the previous hearing to be obtained.

**7.6** An appellant lodging an appeal against the findings of a tribunal must establish in the Notice of Appeal that they have been treated unjustly or unfairly. Reasons for this can be many and varied but some typical reasons for appeal are:

**7.6.1** Not being correctly informed of the hearing before the tribunal whose decision is the subject of the appeal

**7.6.2** Prejudice by any member of the tribunal whose decision is the subject of the appeal;

**7.6.3** Incorrect procedures used by the tribunal whose decision is the subject of the appeal;

**7.6.4** New evidence which was not available at the time of the hearing by the tribunal whose decision is the subject of the appeal.

**7.6.5** Incorrect information presented to Tribunal.

**7.7** The relevant Appeals Chairman before whom the appeal is sought to be heard shall check the transcript of evidence and any other documents filed with it to determine whether in its view grounds for the appeal such as to warrant a full hearing of the appeal. The relevant tribunal shall have absolute discretion to decide whether to hear an appeal and in the event that it declines so to do it shall not be obliged to assign any reasons for such refusal.

**7.8** If a relevant tribunal decides to hear an appeal then the Chairman of such tribunal shall;

- (a) Make arrangements for the hearing of the appeal;
- (b) Notify all parties concerned of the time, date and place of the hearing;
- (c) No fee is charged to hear an appeal but the applicant is responsible for all appeal costs, e.g. transport of witness, room hire, etc.)

**7.9** The tribunal hearing the appeal may request further information prior to determining the appeal but has the discretion whether to allow new evidence to be adduced.

**7.10** In a tribunal hearing, the appeal should confine its deliberations specifically to the



matters raised in the appeal but has the discretion whether to allow new evidence to be adduced.

**7.11** The tribunal hearing the appeal shall have the authority to stay any order of a tribunal whose decision is being appealed and to re-instate an appellant pending the determination of the appeal.

**7.12** The following persons shall be entitled to be in attendance at an appeal:

**7.12.1** Members of the relevant tribunal;

**7.12.2** The Charged person (or their representatives);

**7.12.3** The Complainant;

**7.12.4** Witnesses, if any, to be called to give evidence;

**7.12.5** In the case of a Minor charged person that person shall be entitled to be accompanied by an adult;

**7.12.6** Any other person summoned by the tribunal hearing the appeal;

**7.12.7** Legal representatives of either the Charged person or the Complainant.

**7.13** In considering the evidence before it a tribunal hearing an appeal shall not set aside a determination of a tribunal which is the subject of the appeal on technical or procedural grounds but shall do so only if there has been a substantive error made.

**7.14** At the hearing of the appeal the tribunal hearing the appeal shall determine the appeal on the basis of;

**7.14.1** Transcript of the proceedings of the hearing before the tribunal whose decision is the subject of the appeal;

**7.14.2** The material contained in the Notice of Appeal;

**7.14.3** New evidence, if any, heard by it;

**7.14.4** Oral submissions, if any, made on behalf of the Charged person and the Complainant.

**7.15** In the event that new evidence is sought to be adduced on behalf of the Charged person or the Complainant then tribunal hearing the appeal shall first determine whether such evidence should be permitted.

**7.16** In the event that new evidence is permitted by the tribunal hearing the appeal then such tribunal shall follow the procedure for taking evidence as outlined in clauses 6.4 to 6.10 inclusive.

**7.17** A tribunal hearing an appeal shall have the power to;

**7.17.1** Confirm the decision of the previous tribunal hearing;

**7.17.2** Waive, increase or decrease penalties awarded by previous tribunal hearings;

**7.17.3** Conduct a new tribunal hearing itself upon the appeal and quash the findings of the previous tribunal hearing;

**7.17.4** Make orders that either the Complainant or the charged person pay the costs and expenses of the conduct of appeal.

**7.18** After the finalisation of an appeal the Chairman of the tribunal hearing the appeal shall inform the Charged person and the Complainant of their right of further appeal including;

**7.18.1** That the appeal must be lodged within fourteen days and,

**7.18.2** The place of lodgment of the appeal.