



Case number: NST-E25-155774

Case Title: Jason Chatfield v Netball New South Wales (with Netball Australia)

Determination

National Sports Tribunal

General Division

sitting in the following composition:

Member Brooke Bowman

in the arbitration between

Jason Chatfield

(Applicant)

Represented by Tully Anders, Counsel

And

Netball New South Wales

(Respondent)

Represented by Lucy Sayers, General Manager – Governance, Integrity & Special Projects at Netball New South Wales

And

Netball Australia

(Applicant National Sporting Organisation)

Represented by Natasha Currao, Legal Counsel at Netball Australia



PARTIES

1. The Applicant, Jason Chatfield (the **Applicant**), is a Wiradjuri man and the head coach of X-Cellerate Netball Club in Dubbo. The X-Cellerate Netball Club aims to encourage young Aboriginal people to play sport and get involved in the local community. The Applicant lives with Post Traumatic Stress Disorder having been diagnosed in October 2023.
2. The Respondent, Netball New South Wales (**NNSW**), is the State Sporting Organisation responsible for the management and delivery of the sport within NSW.
3. Netball Australia is the official National Sporting Organisation responsible for the management and delivery of the sport within Australia.

INTRODUCTION

4. On 6 February 2025, a NNSW Internal Hearing Tribunal (**NNSW Tribunal**) held that the Applicant had breached clause 2.1 of Netball Australia's Member Protection Policy dated 1 February 2025 (**MP Policy**), via online posts made by his social media account.
5. The following sanctions were applied by the NNSW Tribunal, that the Applicant:
 - (a) be suspended for a period of 18 months from engagement in all Activities as defined within Netball Australia's Conduct and Disciplinary Policy dated 1 February 2025 (**Conduct and Disciplinary Policy**);
 - (b) be mandated to remove the online posts; and
 - (c) complete a 'Play by the Rules' online harassment and discrimination module.
6. The Applicant appeals the decision of the NNSW Tribunal pursuant to clause 15.4.1 of the Conduct and Disciplinary Policy. NNSW seeks to uphold the decision of the NNSW Tribunal.

NST JURISDICTION

7. The jurisdiction of the National Sports Tribunal (**NST**) is engaged by section 24(1) of the *National Sports Tribunal Act 2019* (Cth) (**NST Act**), and clause 15.5.1.3(A) of the Conduct and Disciplinary Policy.

FACTUAL BACKGROUND

8. NNSW received a complaint from the Dubbo Netball Association relating to several alleged breaches of the Netball Australia Integrity Policy Framework. The complaint involved allegations of online abuse, bullying and harassment of other adults in netball. The allegations relate to several online social media posts published by the Applicant primarily to his own Facebook page.
9. On 13 November 2024, NNSW sent the Applicant a Conduct and Disciplinary Policy Breach Offer. The Breach Offer relevantly outlined:
 - (a) the complaint was referred for resolution under the Breach Offer Process;
 - (b) the Applicant's response in writing was sought by close of business on 27 November 2024;



- (c) NNSW had decided, in its absolute discretion, to investigate the alleged breaches;
 - (d) NNSW considered that the number of online posts over a sustained period of time, from in or about September 2023 to October 2024, indicated a very concerning pattern of behaviour that warranted significant sanction;
 - (e) if the Applicant accepted the alleged breaches occurred without a hearing, NNSW offered a suspension of 1 year from participation in any netball Activity, removal of all posts from social media, and a requirement that he undertake the Play by the Rules Harassment and Discrimination online module; and
 - (f) if the alleged breaches and/or sanction were disputed, the matter will be referred to a Hearing Tribunal for determination under the Conduct and Disciplinary Policy.
10. Annexed to the Breach Offer was an appendix containing 22 screenshots of social media posts received by NNSW, alleged to have been posted by the Applicant, between September 2023 and October 2024.
11. The Applicant was not aware of any complaint made by Dubbo Netball Association until he received the Breach Offer. He did not participate in any investigation by NNSW.
12. On 18 November 2024, the Applicant confirmed in writing to NNSW that he wished to have the matter dealt with by a Hearing Tribunal under the Conduct and Disciplinary Policy.
13. On 6 February 2025, the matter was heard by the NNSW Tribunal.
14. Between November 2024 and February 2025, there was correspondence between the Applicant and NNSW in preparation for the NNSW Tribunal. Two previous listings of the hearing at the NNSW Tribunal were adjourned following adjournment applications made by the applicant.. Relevantly in an email dated 22 January 2025, Ms Gaudry from NNSW stated as follows:
- “Please note that all evidence will be exchanged between the parties by close of business Wednesday 29 January 2025 to which you will have an opportunity to respond by close of business 31 January 2025. No further evidence from either party will be accepted after that date.”*
15. The Applicant attended the NNSW Tribunal on 6 February 2025 with his support person. During the NNSW Tribunal hearing, the Applicant was informed that the President of Dubbo Netball Association, Kristen McWhirter, would also be attending. Kristen McWhirter had prepared a written statement that was read out by the Chair of the NNSW Tribunal. The Applicant was not aware that Kristen McWhirter has prepared a written statement. The Applicant reportedly had a panic attack and was unable to properly present his case.
16. The NNSW Tribunal resulted in the findings and sanctions stated in paragraph [5] above.
17. With respect to reasons of the NNSW Tribunal's decision, the Record of Tribunal dated 13 February 2025, outlines that the panel considered the following:
- (a) that the posts were made on the personal Facebook page of the Applicant;
 - (b) that users of social media are aware that any posts made, even on personal pages, are open to be seen and observed by others;
 - (c) that the complainant committee is made up of volunteers who freely give of their time and hold other roles within their work and social lives that these Facebook posts may impact; and



- (d) that the number of posts over a sustained period of time, between March 2024 and November 2024, indicates a concerning pattern of behaviour that warrants a significant sanction.
18. While the NST Member has considered all the facts, allegations, legal arguments and evidence submitted by the parties she refers in her Determination only to the submissions and evidence she considers necessary to explain her reasoning.

PROCEEDINGS BEFORE THE NST

19. On 3 April 2025, the NST received an application referred by Netball Australia, the Applicant National Sporting Organisation (**NST Application**).
20. On 9 April 2025, the NST Application was validated, subject to compliance with section 37 of the NST Act. The NST Registry has confirmed that the parties have subsequently complied with those requirements, and as at the time of this determination.
21. On 17 April 2025, the Parties attended a Preliminary Conference, convened by the NST.
22. The Parties agreed to the following timetable of evidence:
1. *The Applicant to file with the NST Registry and serve on the other Parties by 12:00pm AEST Monday, 12 May 2025:*
 - (a) *written submissions;*
 - (b) *any statements of evidence upon which he intends to rely; and*
 - (c) *bundle of documents upon which he intends to rely.*
 2. *The Respondent and Applicant NSO to file with the NST Registry and serve on the Applicant by 12:00pm AEST Monday, 26 May 2025:*
 - (a) *written submissions;*
 - (b) *any statements of evidence upon which they intend to rely;*
 - (c) *bundle of documents upon which they intend to rely;*
 - (d) *a list of authorities on which they intend to rely (if any); and*
 - (e) *a list of the witnesses they require to be called (if any).*
 3. *The Applicant to file with and serve on the other Parties by 12:00pm AEST Monday, 2 June 2025:*
 - (a) *written submissions in reply; and*
 - (b) *any statements of evidence in reply;*
 - (c) *a list of authorities on which he intends to rely (if any); and*
 - (d) *a list of the witnesses he requires to be called (if any).*
23. On 9 May 2025, the Parties executed an Arbitration Agreement, which amongst other things confirmed their agreement to the procedural timetable.



24. The Applicant filed his submissions in reply on 4 June 2025, having obtained the consent of the other parties prior to the extension of time.
25. The matter was listed for hearing on 27 June 2025.
26. No objection was made at the outset of the hearing to the NST Member appointed and at its conclusion the Parties confirmed that their procedural rights had been fully respected.

APPLICABLE RULES

27. In accordance with clause 15.4.1 of the Conduct and Disciplinary Policy, the decision of the NNSW Tribunal may only be appealed on the following grounds **(the Grounds of Appeal)**:
 - a. *where the Tribunal failed to abide by the Conduct and Disciplinary Policy and/or the NST Legislation (as the case may be) and such failure resulted in a denial of natural justice; and/or*
 - b. *no reasonable decision maker in the position of the Tribunal, based on the material before them, could reasonably make such a decision.*
28. In accordance with clause 15.9.1 the Appeals Tribunal's arbitration of the appeal, being the NST General Division, was to determine:
 - (a) in application of the Standard of Proof, whether one or both Grounds of Appeal (as applicable) were proven, and was not to rehear the matter or the facts of the Alleged Breach; and,
 - (b) if the Ground(s) of Appeal were proven, it may result in the Appeals Tribunal:
 - i. dismissing the appeal;
 - ii. upholding the appeal;
 - iii. imposing any of the Sanctions set out in clause 12.7.2; or
 - iv. reducing, increasing or otherwise varying any Sanction imposed by the Hearing Tribunal under the Conduct and Disciplinary Policy,in accordance with clause 15.9.1.1, but otherwise in such manner as it thinks fit.
29. Clause 9.9.2 of the Conduct and Disciplinary Policy relevantly provides that for a Decision Maker, investigator and a Hearing 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 Decision Maker, investigator and Hearing Tribunal must take into account all relevant factors including the impact of the potential sanctions that may be imposed if the allegations are proven. For the avoidance of doubt, the standard of proof requires greater certainty for a more serious allegation compared with a less serious allegation.
30. Clause 12.7.1 of the Conduct and Disciplinary Policy provides that where a Respondent is found to have committed a breach of an Eligible Policy, the Decision Maker, NST and Hearing Tribunal have absolute discretion to determine the appropriate Sanction imposed on a Respondent, including as to whether a combination of measures is to be imposed, and the terms and period of any measures. The Decision Maker, NST or Hearing Tribunal (as the case



may be) may refer to the Sport Integrity Australia Case Categorisation & Guidance for Sanctions booklet in determining an appropriate Sanction.

31. Clause 12.7.3 of the Conduct and Disciplinary Policy provides that without limiting the discretion afforded in clause 12.7.1, the person imposing the sanction may, but is not required to, consider the following factors: the nature and seriousness of the behaviour or incidents; the considerations (if any) of the Complainant; the contrition, or lack thereof, of the Respondent; any Provisional Action taken in relation to the Alleged Breach; the effect of the Sanction on the Respondent including any personal, professional or financial consequences; if there have been relevant prior warnings or disciplinary action against the Respondent; and if there are any aggravating or mitigating circumstances.
32. Clause 14.3.1 of the Conduct and Disciplinary Policy provides that if arbitration is sought through an ADR Body, the ADR Body:
 - (a) at 14.3.1.1, will determine whether the Provisional Action imposed is disproportionate; or
 - (b) at 14.3.1.2, will arbitrate the Alleged Breach, determine whether a Sanction be imposed and, if so, what Sanction in accordance with clause 12.7.
33. Clause 14.3.2 of the Conduct and Disciplinary Policy provides that if arbitration is sought from an ADR Body, the ADR Body will determine the procedure for arbitration, subject to clause 9.12.3.

MAIN SUBMISSIONS OF THE PARTIES

34. Accordingly, the questions for the NST Member in this arbitration were:
 - (a) Did the NNSW Tribunal fail to abide by the Conduct and Disciplinary Policy and such failure resulted in a denial of natural justice?
 - (b) Was the decision of the NNSW Tribunal so unreasonable that no reasonable decision maker in the NNSW Tribunal's position could reasonably have made it having regard to the material before it?

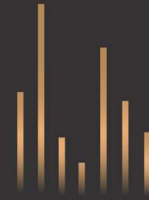
Did the NNSW Tribunal fail to abide by the Conduct and Disciplinary Policy and such failure resulted in a denial of natural justice?

35. The Applicant submitted, in summary, that:
 - (a) A literal interpretation of sub-clause 15.4.1 could not have been the intention of the drafters because there are very few terms of the Conduct and Disciplinary Policy that a 'Hearing Tribunal' is obliged to observe.
 - (b) there are three obligations or functions in sub-clause 14.3 that would be caught by a 'Hearing Tribunal's' obligation to 'abide by' the Conduct and Disciplinary Policy:
 - i. determining whether 'Provisional Action' is disproportionate;
 - ii. arbitrating an 'Alleged Breach'; and
 - iii. determining the procedure for an arbitration.



- (c) So long as the relevant function is performed, it cannot be said that the NNSW Tribunal failed to abide by the Conduct and Disciplinary Policy.
- (d) A similar issue arises with respect to sub-clause 12.7, which in paragraph 1 confers a discretion upon a 'Hearing Tribunal' to impose a sanction on a person the 'Hearing Tribunal' has previously found to have contravened an 'Eligible Policy'. The discretion conferred by sub-clause 12.7.1 is absolute; whether or not the 'Hearing Tribunal' resolves to exercise the discretion would not amount to a failure to 'abide by' the Conduct and Disciplinary Policy.
- (e) If the 'Hearing Tribunal' determines not to take into account one or any of the factors listed in sub-clause 12.7.3 then it cannot be said that the 'Hearing Tribunal' failed to 'abide by' the Conduct and Disciplinary Policy, because it was entitled by the very language of the provision not to take those considerations into account.
- (f) Beyond the three functions in sub-clause 14.3, there is only one other provision of the Conduct and Disciplinary Policy which creates a function or obligation which a 'Hearing Tribunal' must abide by: sub-clause 9.7.
- (g) Sub-clause 9.7.1 provides that: the standard of proof that applies to all decisions made under this Policy (including by an investigation or Hearing Tribunal) is "balance of probabilities".
- (h) It cannot be the case that the drafters of the Conduct and Disciplinary Policy intended to exclude or vary an affected person's right to natural justice. The Conduct and Disciplinary Policy contemplates that an affected person does have a right to natural justice.
- (i) There was a denial of natural justice in that:
 - i. the Applicant was first notified of allegations only upon receiving a 'Breach Notice', which breached the requirement to timely inform him of and provide the complaint details, limiting his opportunity to respond;
 - ii. the Applicant was not informed he was under investigation, nor given a chance to be heard during the investigation phase, undermining the application of the required standard of proof ("balance of probabilities");
 - iii. during the NNSW Tribunal process, the Applicant was denied the opportunity to present character witnesses or evidence he had prepared, and was not notified of all evidence against him, including a statement from the Association's president, Ms. Kristen McWhirter; and
 - iv. these failures collectively struck at the heart of natural justice and could not be remedied by later proceedings.
- (j) The reliance on Kristen McWhirter's statement by the NNSW Tribunal represented both a denial of natural justice and a contravention of the procedure seemingly adopted by the NNSW Tribunal with respect to the conduct of the hearing.
- (k) The NST Member should therefore find that there was a denial of procedural fairness and accordingly find that appeal ground 1 made and uphold the appeal.

36. NNSW submitted, in summary, that:



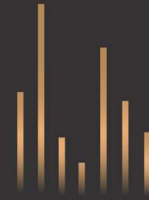
- (a) Clause 15.4.1.1 of the Conduct and Disciplinary Policy plainly sets out a threshold whereby to meet this Ground for Appeal, the Applicant must demonstrate both a failure of the NSW Tribunal to abide by the Conduct and Disciplinary Policy and that this failure resulted in a denial of natural justice. A literal interpretation is both permissible and appropriate.
- (b) The Applicant failed to prove the NSW Tribunal breached the Conduct and Disciplinary Policy or denied natural justice, emphasizing that appeal rights are limited to specific grounds and that the tribunal conducted a de novo hearing ensuring fairness.
- (c) The NSW Tribunal was not bound by strict evidence rules, had discretion over procedures, and the Applicant was given opportunities to present evidence and respond, including the option to call witnesses, which he declined. The NSW Tribunal's handling of oral evidence and reasons was consistent with policy and natural justice.
- (d) The Applicant was afforded natural justice throughout, including adequate notice and opportunity to be heard, and that alleged procedural shortcomings do not amount to denial of justice.

37. Netball Australia submitted, in summary, that:

- (a) It is not the intention of the Conduct and Disciplinary Policy, nor the responsibility of the Relevant Organisation tasked with managing a dispute under the Conduct and Disciplinary Policy, to apply strict rules of evidence and procedure similar to that of the judicial system.
- (b) Netball Australia and its Member Organisations seek to manage all complaints, reports and disputes under the Conduct and Disciplinary Policy with as little formality and technicality as possible, and at the least cost to all parties involved as proper consideration of the matters permit.
- (c) The Applicant has been afforded procedural fairness and natural justice throughout all processes, and by virtue of being before the NST to appeal the determination of the NSW Tribunal.

Findings and conclusions

38. The NST Member was not satisfied that it should depart from a literal interpretation of Clause 15.4.1.1 of the Conduct and Disciplinary Policy. That is, the NST Member finds that to meet this Ground for Appeal, the Applicant must demonstrate both a failure of the NSW Tribunal to abide by the Conduct and Disciplinary Policy and that this failure resulted in a denial of natural justice. The NST Member was persuaded by the position advanced by NSW that the drafters of the Conduct and Disciplinary Policy intended to provide for an appeal right that will apply only in limited circumstances. The NST Member notes, however, that this is a very narrow ground of appeal and potentially an “illusory right”.
39. The NST Member was not satisfied on the available evidence that there had been a failure of the NSW Tribunal to abide by the Conduct and Disciplinary Policy. The NST Member was satisfied that the NSW Tribunal had performed its obligations or functions outlined in sub-clauses 14.3, 12.7 and 9.7. Having made this finding it was unnecessary for the NST Member to consider whether there was a denial of procedural fairness.



Was the decision of the NNSW Tribunal so unreasonable that no reasonable decision maker in the NNSW Tribunal's position could reasonably have made it having regard to the material before it?

40. The Applicant submitted, in summary, that:

- (a) The NNSW Tribunal's findings and sanction were unreasonable, exceeding what a reasonable decision-maker could have imposed given the evidence.
- (b) The NNSW Tribunal misapplied the MP Policy by treating all Facebook posts collectively as breaches of abuse, bullying, and harassment without analysing each post individually, contrary to proper legal interpretation.
- (c) The definitions of 'Abuse', 'Bullying', and 'Harassment' require specific criteria and examples to be met, which the NNSW Tribunal did not properly evaluate. For instance, no evidence showed the Applicant intended to cause distress or risk wellbeing, and the posts did not meet the threshold for verbal abuse or harassment as defined.
- (d) That Ms McWhirter's statement was not proper evidence against him and should not have been considered by the NNSW Tribunal, making the decision unreasonable. Without the complainant's evidence, the NNSW Tribunal could not fairly conclude that Bullying occurred as defined by the MP Policy.
- (e) The absence of evidence regarding distress or risk caused by the alleged bullying, which undermines the NNSW Tribunal's finding and the severity of the sanction imposed. The NNSW Tribunal's speculation about potential effects on committee members is seen as unreasonable and indicative of bad faith.
- (f) Excessive weight was placed on the evidence from Ms. McWhirter, who was not the complainant, and whose testimony was irrelevant or of limited weight regarding the Association's experience.
- (g) The NNSW Tribunal's finding that the posts were made over a "sustained period" was unsupported by evidence, as posts clustered in two separate periods rather than continuously. Further, there was no time stamp on the screenshots before the NNSW Tribunal to indicate when they had been posted.
- (h) Of the 22 screenshots: 1-3 were disregarded by the NNSW Tribunal (because they predated the policy); 5-6, 11 – 14 and 16 do not identify Dubbo Netball Association; 19, 20, 21 and 22 do not appear to be directed at Dubbo Netball Association; 4, 7, 8, 9, 10, 15, 17 and 18 appear to be directed at Dubbo Netball Association. Except for screenshots 7 and 8, the posts were made over two discrete periods being April 2024 and September – October 2024.
- (i) The NNSW Tribunal neglected guidance from Sports Integrity Australia, which recommends educational and constructive approaches over punitive measures for managing poor behaviour in sport.
- (j) With reference to the Sport Integrity Australia guidelines: category 1 behaviours include low risk prohibited conduct such as low-level swearing, derogatory or disrespectful comments, verbal abuse, aggressive tone, disrespectful comments, or a heated altercation, in the absence of malice, vilification or bullying or other prohibited behaviour. Category 1 matters can be appropriately addressed through education and a reminder of obligation. Category 2 matters which might warrant a temporary suspension include



bullying, discrimination, repeatedly mocking an athlete's appearance or body shape, abuse of position of trust or power and harassing behaviours, including unwanted sexual interest. Category 3 matters often clearly involve allegations of criminal behaviour and/or present immediate risk of harm.

- (k) The sanction of an 18-month suspension was disproportionate, with the NNSW Tribunal failing to consider mitigating factors such as the Applicant's heritage, community involvement, PTSD diagnosis, and character evidence.
- (l) The proportionality of the sanction that was in fact imposed, invites an inference of unreasonableness in the sense contemplated in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 (*Wednesbury*).

41. NSW submitted, in summary, that:

- (a) NSW rejects claims of misinterpretation of the MP Policy and asserts the NSW Tribunal's findings on abuse, bullying, and harassment were reasonable based on the evidence, including social media posts.
- (b) The NSW Tribunal properly applied broad definitions of abuse, bullying, and harassment, recognizing online conduct as falling within these categories without requiring interaction or exhaustive classification.
- (c) The sanction, including removal of posts, an educational course, and suspension, was balanced, neither excessive nor punitive, aligning with Sport Integrity Australia guidelines emphasizing education and constructive measures.
- (d) There is nothing in the NSW Tribunal's reasons that evidence, expressly or impliedly, that Ms McWhirter's evidence was given any particular weight and the Applicant has not evidenced how it may have been given any more than the little weight requested by the Applicant, or that the level of weight it was given was in all the circumstances improper.
- (e) The Sports Integrity Australia Guidelines are nothing more than illustrative of what Sport Integrity Australia considers appropriate and therefore have no direct bearing on the NSW Tribunal's decision or what constitutes a reasonable sanction.
- (f) Even so, the Applicant's conduct cannot correctly be categorised as Category 1 conduct. It is more serious than that and could be categorised as Category 2 conduct or even Category 3 conduct, being Category 2 conduct of a more serious nature.
- (g) The NSW Tribunal's decision and sanction are reasonable in all the circumstances and the Applicant has failed to evidence any indicia of unreasonableness such that the 15.4.1.2 Ground of Appeal has not been made out and the appeal should be dismissed.

42. Netball Australia submitted, in summary, that:

- (a) Netball Australia's Integrity Policies establish rights, responsibilities, and behavioural standards to protect all participants, aligning with Sport Integrity Australia's mandatory and recommended components. The MP Policy further safeguards against abuse and discrimination.
- (b) Netball Australia referred this matter to the NST to ensure that an independent, transparent and fair resolution is reached. Additionally, to ensure that the Netball Integrity Policies are discharged in a manner that is appropriate and just.



- (c) Netball Australia refers the NST Member to the Sports Integrity Australia – Guidance for Complaint Management and Sanctioning for further consultation in making its determination.

Consideration of legal issues/interpretation of policies or rules

43. The Applicant made written submissions about how sub-clause 15.4.1.2 of the Conduct and Disciplinary Policy should be interpreted having regard to the law in relation to unreasonableness. The NST Member adopts those submissions and they are extracted below:

- (a) The language of sub-clause 15.4.1.2 echoes Lord Greene MR's judgment in *Wednesbury*, which has been the subject of considerable debate insofar as it does not provide guidance on what is and is not reasonable.
- (b) More recently, a majority of the *High Court in Minister for Immigration and Citizenship v Li (Li)* has said that:

The legal standard of unreasonableness should not be considered as limited to what is in effect an irrational, if not bizarre, decision – which is to say on that is so unreasonable that no reasonable person could have arrived at it – nor should Lord Greene MR be taken to have limited unreasonableness in this way in his judgment in Wednesbury.

- (c) The majority in *Li* went on to equate Lord Greene MR's characterisation of unreasonableness with the principles governing appellate review of judicial discretion as set out in *House v The King* (1949) 78 CLR 353 (*House*) when their Honours said:

This aspect of his Lordships' judgment may more sensibly be taken to recognise that an inference of unreasonableness may in some cases be objectively drawn even where a particular error in reasoning cannot be identified.

- (d) Aside from what may be called a '*House v The King*' inferential finding of unreasonableness, there are other indicia of unreasonableness that will engage sub-clause 15.4.1.2 of the Conduct and Disciplinary Policy. Bad faith, dishonesty, consideration of extraneous circumstances, engaging in illogical or irrational reasoning, misdirection as to the operation of the constituent document, failing to consider relevant circumstances and according too much weight to one consideration all indicate that a decision is not reasonable.
- (e) The last indicum – the according of too much weight to one consideration – can manifest in a disproportionate response by the decision-maker. By way of example, in *Li*, the majority suggested that the decision-maker may have afforded too much weight to the fact that the respondent had been given an opportunity to present her case when it determined not to grant her an adjournment.

44. In *Li*, the High Court explained that legal unreasonableness arises where a decision lacks an evident and intelligible justification and is outside the bounds of what a reasonable decision-maker could decide having regard to the scope, subject matter and purpose of the statute (*Li* at [76] per Hayne, Kiefel and Bell JJ; [26] per French CJ).

45. As confirmed in *Minister for Immigration and Border Protection v SZVFW* (2018) 264 CLR 541 at [10]–[11], the concept of legal unreasonableness is contextual, and may arise where a decision is manifestly disproportionate to the matters required to be considered under the legislative scheme.



The NNSW Tribunal's decision in relation to the alleged breach

46. In the present case, the NST Member was not satisfied that the NNSW Tribunal's decision in finding that the Applicant had breached clause 2.1 of Netball Australia's MP Policy via online posts made by his social media account was so unreasonable that no reasonable decision maker could reasonably have made it.
47. The NST Member accepted the position advanced by Netball Australia that it was not the intention of the Conduct and Disciplinary Policy to apply strict rules of evidence and procedure similar to that of the judicial system. The Conduct and Disciplinary Policy seeks to provide a framework for the management of all complaints, reports and disputes with as little formality and technicality as possible.
48. Further, the NST Member was persuaded by the Respondent's submissions that:
- (a) nothing in the MP Policy, Conduct and Disciplinary Policy or requirements of natural justice required the Hearing Tribunal to identify in its reasons or otherwise, which 'class' of Abuse, Bullying and Harassment the screenshots constitute.
 - (b) nothing in the MP Policy or Conduct and Disciplinary Policy required the Hearing Tribunal to analyse the conduct in the same vein as criminal charges on a charge sheet or indictment.
 - (c) there was no misdirection as to the proper construction of the MP Policy and consequently no illogical or irrational reasoning.
49. The NST Member considers that it was open to the NNSW Tribunal to reasonably find that:
- (a) The Applicant had made the posts on social media.
 - (b) Some of the posts were directed towards the complainant.
 - (c) Some of the comments constituted a breach of 2.1 of the MPP in that they could reasonably be found to be abuse (either verbal or emotional).

The NNSW Tribunal's decision in relation to the sanction

50. However, the NST Member finds that the NNSW Tribunal's decision in relation to the sanction was so unreasonable that no reasonable decision maker in the NNSW Tribunal's position could reasonably have made it.
51. The NNSW Tribunal found that "the number of posts over a sustained period of time indicates a concerning pattern of behaviour that warrants a significant sanction". It is unclear how the NNSW Tribunal arrived at this finding when there was no time stamp on the screenshots and therefore no evidence about the timing of the posts (save for what is alleged in the Breach Offer). The evidence from the Applicant discloses that he made a series of posts which largely occurred in a narrow timeframe, namely two episodes: the first being April 2024 and the second being September to October 2024.
52. The finding that the Applicant made several posts over a sustained period of time which indicates a concerning pattern of behaviour, in this NST Member's view, was not supported by the evidence. The NNSW Tribunal's reliance on that factor as the predominant justification for a significant sanction amounts to an irrational and excessive weighting of a factual assertion that was not established.



53. Furthermore, the NNSW Tribunal gave inadequate or no weight to compelling and relevant mitigating factors, including:
- (a) the Applicant's Aboriginal heritage and cultural context;
 - (b) the Applicant's community involvement and service; or
 - (c) numerous character references attesting to the Applicant's integrity.
54. Despite the absolute discretion afforded to the decision-maker in Clause 12.7.1 of the Conduct and Disciplinary Policy, the NST Member finds that the combination of:
- (a) an unsupported factual foundation for aggravation;
 - (b) failure to meaningfully engage with mitigating considerations, and
 - (c) imposition of a severe sanction out of proportion to the nature of the conduct,
- leads to the conclusion that the decision is manifestly disproportionate and legally unreasonable in the *Li* sense. The result is one which no reasonable decision-maker, properly directing themselves to the Conduct and Disciplinary Policy and relevant facts, could have arrived at.

THE NATIONAL SPORTS TRIBUNAL THEREFORE DETERMINES:

55. In accordance with Clause 15.9.1.2 of the Conduct and Disciplinary Policy, the appeal is upheld.
56. For the reasons set out in this determination and having regard to the factors set out in clause 12.7 of the Conduct and Disciplinary Policy and the guidance provided by Sports Integrity Australia, the NST Member determines to reduce the sanction imposed on the Applicant as follows:
- (a) the Applicant be suspended from engagement in all Activities as defined within the Policy for six (6) months, apart from attendance as a spectator at netball events from 6 February 2025;
 - (b) the Applicant be mandated to remove the online posts; and
 - (c) the Applicant complete a 'Play by the Rules' online harassment and discrimination module.

Date: 25 July 2025

Brooke Bowman

Signature

Brooke Bowman