

Case number: NST-E25-124664

Case Title: Arlene Ooi v Ice Hockey WA (with Ice Hockey Australia)

## Determination

### National Sports Tribunal Appeals Division

sitting in the following composition:

Ms Venetia Bennett, Chair

Mr Scott Ellis, Member

Ms Rossana Panetta, Member

in the arbitration between

**Ms Arlene Ooi**

*(Appellant)*

Represented by Mr Marco Tomasello, Legal Representative

and

**Western Australian Ice-Hockey Association Inc**

*(Respondent)*

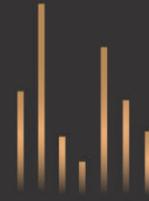
Represented by Mr Benjamin Tomasi, Counsel

and

**Ice Hockey Australia**

*(Sporting Body)*

Represented by Ms Catherine Arlove, National Integrity Manager

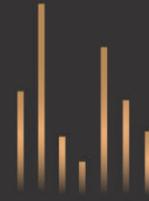


1. *Carter v NSW Netball Association*<sup>1</sup> marked a notable point in Australian sports' understanding of the standards expected for internal disciplinary processes. Since that decision over 20 years ago, education and training has been made available to sports around Australia by national and State-based organisations<sup>2</sup> regarding the need to provide procedural fairness to an individual (usually a member of the sport) against whom a complaint has been lodged. As a result, sports disciplinary processes and the individuals involved with them have evolved – including within small, entirely volunteer-based State sporting associations – to recognise the need for and to ensure procedural fairness to participants. Providing procedural fairness in sports tribunals includes, at least, informing the individual with sufficient particularity of what they are accused of and by whom, providing the individual a reasonable opportunity to consider the specific allegations in advance of an interview or hearing, separating investigatory and decision-making or hearing processes, providing the individual with an opportunity to put their case, and affording a fair hearing and unbiased decision.
2. This matter before the National Sports Tribunal (**NST**) arises out of disciplinary proceedings taken by the Respondent against the Appellant. An internal tribunal convened by the Respondent determined that the Appellant had breached various of its policies in relation to two “incidents” and imposed sanctions on the Appellant.
3. The process adopted by the Respondent in this matter stands out for being out of step with current industry practices for disciplinary processes. An experienced tribunal panel appointed by the Respondent failed to provide procedural fairness to the Appellant in a number of key respects. Its failures were then compounded by the response and actions of the Respondent in dealing with the Appellant's attempts to appeal the first instance decision, such that the matter was referred by the sport's national body to the NST.
4. It is unsurprising that the Appellant has been deeply affected by, and has suffered as a result of, the process to which she has been subject. The Panel sympathises with the Appellant in this respect, noting that its jurisdiction – and the passage of time – does not allow it to fully reverse or overcome the impact of the Respondent's decisions and actions.
5. The appeal is upheld in respect of each “incident” determined by the Respondent's tribunal, for the reasons that follow.

---

<sup>1</sup> [2004] NSWSC 737.

<sup>2</sup> In Western Australia, training has periodically been offered by the Department of Sport (under its various names) and SportWest (formerly known as WA Sports Federation Inc, or WASF).



## PARTIES AND BACKGROUND

6. The Appellant, Ms Arlene Ooi, is a member and official of the Respondent, Western Australian Ice-Hockey Association Inc, also known as Ice Hockey WA (**IHWA**).<sup>3</sup> The Appellant is also a coach of Cockburn Hawks Ice Hockey Club, an affiliate club registered with IHWA.
7. The Respondent is the State Member for Western Australia of Ice Hockey Australia and the controlling body responsible for ensuring the efficient administration of the sport of ice hockey in Western Australia.
8. The applicant Sporting Body and referring party in this appeal is Ice Hockey Australia, formally titled Australian Ice Hockey Federation Limited (**IHA**). IHA is recognised by the International Ice Hockey Federation<sup>4</sup> and Australian Sports Commission<sup>5</sup> as the national governing body in Australia and national sporting organisation, respectively, for the sport of ice hockey. IHA is responsible for conducting, encouraging, promoting, advancing, controlling and managing all levels of the sport of ice hockey in Australia, including issuing regulations for the control and conduct of the sport and promulgating and enforcing such rules as may be necessary or appropriate for the management and regulation of ice hockey.<sup>6</sup>
9. The Appellant appeals to the NST against findings and sanctions imposed by an internal hearing tribunal convened by the Respondent in 2024 (**IHWA Tribunal**) in respect of alleged breaches by the Appellant of IHWA's Coaches and Managers Code of Conduct (**Coaches Code of Conduct**), Members Code of Behaviour and Ethics (**Code of Behaviour**) and Social Media Policy.
10. Following a hearing held on 6 August 2024, at times also referred to by IHWA as an investigation, on 10 August 2024 the IHWA Tribunal found the Appellant "guilty in respect of [two] incidents"<sup>7</sup> and determined that she had breached the Coaches Code of Conduct, Code of Behaviour and Social Media Policy as alleged. The IHWA Tribunal imposed sanctions on the Appellant referable to her alleged breaches of the Codes and Social Media Policy in respect of each "incident".
11. The Appellant sought to appeal the findings and sanctions to IHWA. The Respondent refused to hear the appeal.
12. The Appellant then sought to appeal the IHWA Tribunal's findings and sanctions to IHA, which

---

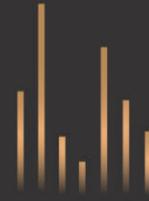
<sup>3</sup> The Respondent is also known, and more commonly referred to, as Ice Hockey WA. In this Determination, the Respondent is referred to interchangeably as the Respondent and IHWA.

<sup>4</sup> IHA Constitution, s 2(a).

<sup>5</sup> Australian Sports Directory, Australian Sports Commission.

<sup>6</sup> IHA Constitution, sub-ss 2(b), (c) and (p).

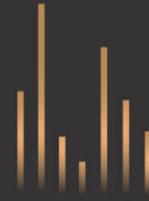
<sup>7</sup> IHWA Tribunal Outcome dated 10 August 2024.



referred the dispute to the NST. The Appellant appeals pursuant to clause 8.8 of the IHA Complaints, Disputes and Discipline Policy dated 1 February 2024 (**CDDP**).

## **NST JURISDICTION**

13. IHA filed its application to refer the Appellant's appeal to the NST on 7 March 2025. On 12 March 2025, IHA's application was accepted by the NST's CEO as meeting the requirements of section 37 of the *National Sports Tribunal Act 2019* (**NST Act**), and validated it to be heard in the NST Appeals Division.
14. In May 2025, the parties executed an arbitration agreement in respect of this appeal (**arbitration agreement**), in which they agreed that the NST's jurisdiction is engaged by section 35(1) of the NST Act, clause 8.8(b) of the CDDP and clause 17.1 of the IHWA Competition Disciplinary, Tribunal & Suspension Regulations (**IHA Tribunal Regulations**).
15. The appeal has been referred to the NST, and agreed by the parties in their arbitration agreement, as an appeal to the Appeals Division. The relevant jurisdiction provisions are found in section 35 of the NST Act. In contrast to disputes before the General Division, which may include disputes between two or more persons bound by one or more constituent documents by which a sporting body (ie, IHA) is constituted (ie, the Appellant and IHWA), matters in the Appeals Division require a dispute between a person bound by constituent documents *and the sporting body*: in this case, either (or both) the Appellant or IHWA *and* IHA.
16. Whilst the parties collectively agreed that the NST has jurisdiction to accept and determine the appeal and did not object to its jurisdiction, the Panel questioned the statutory and/or contractual mechanism by which jurisdiction is conferred on the NST, given that there is no dispute directly between IHA and either the Appellant or Respondent. At the hearing on 18 June 2025, the Panel requested the parties to address it with respect to jurisdiction, and subsequently made directions for supplementary written submissions on the matter. The parties' submissions did not address the NST's jurisdiction under section 35 of the NST Act, however, no party contended that the NST did not have jurisdiction.
17. Whilst there is no dispute directly between IHA and either the Appellant or the Respondent, the IHWA Tribunal is a tribunal established by IHWA under the auspices of the IHA Tribunal Regulations. Under those regulations, IHA is ultimately responsible for, and administers, the Respondent's tribunal processes. Whilst the substantive dispute is between the Appellant and the Respondent, IHA is recognised as the "sporting body" in this appeal.
18. A further complication (addressed below) is that whilst all parties are bound by the CDDP, the



CDDP itself does not apply to the policies that the Appellant is alleged to have breached.<sup>8</sup>

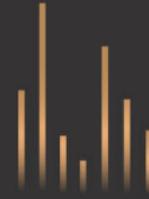
19. Clause 8.8 of the CDDP applies to appeals, and clause 8.8(b) contemplates appeals to the NST. Appeals under the CDDP are limited to appeals from hearings conducted by Hearing Tribunals established to conduct a hearing under the CDDP. Whilst the IHWA Tribunal ought to have proceeded against the Appellant under the CDDP, the IHWA Tribunal hearing was conducted under the IHA Tribunal Regulations to determine whether the Appellant had breached IHWA policies – none of which is recognised as a Relevant Policy under the CDDP. Whilst the parties have agreed to conduct this appeal under the framework of the CDDP, it does not itself confer jurisdiction on the NST in the relevant circumstances.
20. The IHA Tribunal Regulations, dated prior to both the operation of the NIF and the opening of the NST, do not expressly provide for or “permit” an appeal to the Appeals Division of the NST from the IHWA Tribunal’s decision.
21. As clause 8.8 of the CDDP does not confer jurisdiction in this dispute, and the IHA Tribunal Regulations do not permit an appeal to the NST, section 35(1) of the NST Act does not apply. However, section 35(2) provides that where none of the constituent documents permits an appeal to the Appeals Division of the NST from the sporting tribunal decision, and the person (the Appellant and(or) IHWA) and sporting body (IHA) have agreed in writing that an appeal is able to be made to the Appeals Division of the NST, the decision may be appealed to the NST.
22. The arbitration agreement, executed by each of the Appellant, IHWA and IHA, is an agreement in writing that the appeal from the IHWA tribunal’s decision is able to be made to the Appeals Division of the NST.
23. The Panel is satisfied that the NST has jurisdiction pursuant to section 35(2) of the NST Act and the agreement of the parties evidenced by the arbitration agreement.

#### **PROCEEDINGS BEFORE THE NST**

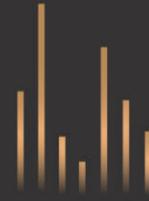
24. After IHA’s application was accepted by the NST, the parties attended a Preliminary Conference with NST Registry personnel on 2 April 2025. At the time of the Preliminary Conference, all parties were self-represented and agreed a procedural timetable to be included in an arbitration agreement.
25. The arbitration agreement was executed by the parties between 9 and 12 May 2025.
26. Ms Venetia Bennett (Chair), Mr Scott Ellis and Ms Rossana Panetta were allocated as Panel

---

<sup>8</sup> The CDDP applies to “Relevant Policies”, defined in its cl 3 as the six policies within the NIF, as well as IHA’s Code of Conduct, IHA’s Social Media Policy and any other by-laws, rules, regulations or policies of IHA that are stated to be subject to the CDDP.



- Members (the **Panel**) to hear the appeal. No objections to their appointment were raised.
27. The Appellant filed materials on 15 and 22 April 2025. IHA provided copies of relevant policy documents on 22 April 2025. The Respondent filed submissions and evidence on 6 May 2025.
  28. The Panel held a Pre-Hearing Conference on 14 May 2025, following which directions were made that required:
    - a. the Respondent to file copies of the materials that were before the IHWA Tribunal panel in August 2024;
    - b. the Appellant to file an appeal brief;
    - c. the Respondent and IHA each to file their responses to the Appellant's appeal brief and any other materials upon which they intended to rely; and
    - d. the Appellant to file any reply.
  29. The parties each complied with the Panel's directions.
  30. The parties attended the Hearing of the appeal before the Panel on 18 June 2025. The Appellant and Respondent were each represented by counsel. Following the hearing, the Panel made further directions that the parties file submissions with respect to certain matters.
  31. The Respondent and Appellant each complied with the directions given on 18 June 2025. IHA filed written submissions in line with the Panel's directions, but did so in September 2025 rather than July. The Respondent sought, and was granted, leave to file submissions in response to IHA's written submissions, and did so in line with the directions made by the Panel.
  32. The parties have each engaged productively and in apparent good faith in the process before the NST, and have complied (substantively) with all reasonable requests made by the Panel.
  33. As a preliminary matter during the hearing on 18 June 2025, the Appellant sought to rely on material that was not before the IHWA Tribunal. The admission of certain documents was not opposed by the Respondent or IHA, and these were admitted by the Panel. The Respondent objected to the admission into evidence of character references for the Appellant, and a statement from the Appellant's co-coach at the relevant game, [REDACTED]. IHA did not take a position in relation to these documents.
  34. The Respondent objected to the admission of character references on the basis that they were irrelevant to the matters in issue before the Panel, except insofar as the Panel may re-sentence the Appellant. This was conceded by the Appellant at the hearing, and their admission was not otherwise pressed.



35. The Panel declined to admit [REDACTED]'s statement. It considered, on balance, that his evidence was available at the time of the hearing and that he had declined to give evidence to the IHWA Tribunal at that time. The Panel was not satisfied that, as required by rule 95(6) of the *National Sports Tribunal (Practice and Procedure) Determination 2024*, appropriate circumstances warrant the admission of new evidence.

## FACTUAL BACKGROUND

36. A substantive ground of appeal relied upon by the Appellant is that she was not afforded procedural fairness by the Respondent. Consequently, it is necessary to set out the procedural history in detail.
37. The Panel have considered all the facts, allegations, legal arguments and evidence submitted by the parties over the course of these NST proceedings, however, they refer in this Determination only to the submissions and evidence they consider necessary to explain their reasoning.
38. On 30 July 2024, the Appellant was provided with a letter from the Respondent, by an email from her affiliated club, notifying the Appellant that the Respondent would convene a tribunal in respect of allegations that she had breached IHWA's Coaches Code of Conduct, Code of Behaviour and Social Media Policy (**Notice**). The Respondent relied on the Notice, in part, as notice to the Appellant of the charges against her.
39. The Notice provided as follows:

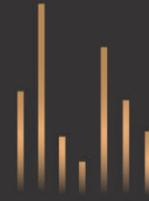
*Dear Ms Ooi,*

*You are hereby advised that Ice Hockey Western Australia (IHWA) will convene a Tribunal to investigate the following incidents:*

- 1. 20 July 2024 at Perth Ice Arena, during a U11 game in IHWA Junior League – U11, in which it was alleged you were involved as a Coach.*
- 2. 22 July 2024 on social media (Facebook) on the IHWA Page, Hawks Members Only Facebook Page and your personal Facebook Page.*

*Specifically, the Tribunal will be hearing the following charges against you regarding the 2024 IHWA Code of Conduct. Specifically:*

[The Notice then set out extracts of IHWA's Coaches Code of Conduct (3 extracted sections), Social Media Policy (clauses 3.1(a), 3.1(c), 3.3, 3.8, 3.9 and 3.10) and Code of Behaviour (10 extracted sections).]



## **TRIBUNAL**

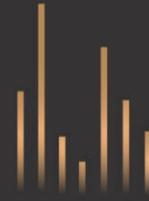
*Until such time as the Tribunal has heard your case, you will not be allowed to participate in any IHA sanctioned games, this includes AIHL, and IIHF Tournaments. This suspension does not prevent you from continuing to training with your team.*

*When the Tribunal is confirmed, we will notify you of the date and time the hearing will take place. This will take place as soon as possible.*

[signed etc]

*For your information, you are advised of the following:*

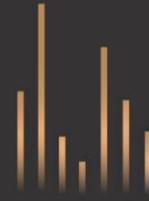
- a. *You are required to appear at this Tribunal. Failure to appear will result in your continued suspension and the matter will be determined in your absence. If you do not appear at the Tribunal, you will forgo the right to be represented by any advisor or to have any witnesses there on your behalf;*
- b. *If, because of some serious and urgent reason, you are unable to attend the Tribunal as scheduled, you must contact the Tribunal Chairperson with your for [sic] deferment. The Chairperson's decision on whether or not to agree to defer your Tribunal hearing will be final. If a deferment is granted, you continue to remain suspended from playing in any game organised by, or under the control of the IHA until the conclusion of your Tribunal;*
- c. *In appearing before the Tribunal you may be represented by an Advocate (adviser, club official or parent if you are under 18 years of age);*
- d. *At the Tribunal you are entitled to bring two (2) witnesses to substantiate your version of the incident;*
- e. *At the Tribunal you will be fully apprised of the complaint against you, and you will be given the opportunity to give your version of the incident. You will also be required to answer any direct questions the Tribunal may ask you in relation to the incident;*
- f. *The Tribunal will consist of three persons, the Tribunal Chairperson and two other members who may or not be members of IHA. The Tribunal will be conducted in accordance with the IHA's Competition Tribunal & Automatic Suspension Regulations, a copy of which is enclosed with this letter for your further information;*



- g. [...]
  - h. [...]
  - i. *The decision of the Tribunal will be advised as soon as possible after the hearing. Your IHA member organisation and/or Club will also be advised of the decision of the Tribunal; and*
  - j. *Pending the decision of the Tribunal, you may continue training with your team, subject to your Club's direction.*
40. The Notice did not set out the basis on which it was necessary to suspend the Appellant from participation in games sanctioned by the Respondent.
41. The parties, both in their submissions in this appeal proceeding and in communications with each other prior to commencing proceedings before the NST, have referred to the findings made and sanctions imposed by the IHWA Tribunal by reference to the two incidents described in the Notice. For the parties' convenience, the Panel adopts the same terminology in this Determination: "Incident One" is the incident alleged to have occurred on 20 July 2024 as described in the Notice, and "Incident Two" is the alleged incident on 22 July 2024.
42. On an unknown date prior to the IHWA Tribunal hearing,<sup>9</sup> IHWA provided six documents to the Appellant including the CDDP, IHA Tribunal Regulations and Social Media Policy. Copies of the Coaches Code of Conduct and Code of Behaviour were not provided.
43. On 30 July 2024, the Appellant's club sought additional information from IHWA concerning the first incident detailed in the Notice. The Club noted that the Notice explicitly states that the Appellant was allegedly a coach during the incident, but that this fact does not contravene any known club or IHWA regulations.
44. The Respondent replied on 31 July 2024. That email said:
- It has been alleged that before the start of Game 296, [the Appellant], as Coach of the U11 Whitehawks abused an official who is a minor.*
- Hawks have been notified by the Parent of the official (a Hawks member) and through IHWA via the RiC.*
45. The email from the Respondent also indicated that the Respondent had been awaiting an investigation by the club, but that as no investigation appeared to have progressed, the

---

<sup>9</sup> The "Chronology" (in a form that appears to be an unsigned witness statement) provided by Ms Binetti of IHWA states at paragraph 6 that the Appellant was provided with the documents listed in that paragraph, but does not disclose the date on which the documents were provided. The assertion that the documents were provided was not disputed by the Appellant.



Respondent had “set a Tribunal to investigate the alleged offences as outlined” in the Notice the previous day, and that the tribunal would “hear the case and determine if the code was breached”. The Respondent referred to “Child Safeguarding Policies as set out by IHA and Sport Integrity Australia”<sup>10</sup> on account of the incident involving a minor. The official to whom the Appellant was alleged to have directed abuse is referred to in this Determination as the **minor official**.

46. The Appellant’s club responded by email the following day, noting that the club was in the process of drafting a formal warning to the Appellant for “the social media comments”, and noted that the minor official’s father had advised the club that he was not putting in a formal complaint to the club and that “Shaun was dealing with it”<sup>11</sup>.
47. No other materials were provided to the Appellant in advance of the IHWA Tribunal hearing.
48. It is not clear to the Panel that a formal complaint was ever made.
49. On 1 August 2024, the Respondent emailed the father of the minor official. The Respondent informed him of the time and date of the IHWA Tribunal hearing. The Respondent said that it would like to provide the minor official with “the opportunity to provide her own statement of the events along with any other evidence you may have about the incident or would be able to provide context”. The email went on to say that the minor official would not be required to attend, “however if she would like to, she can, with an advocate”.
50. The minor official’s father replied to the Respondent by email on 4 August 2024, as follows:

*Here is [minor official’s] statement:*

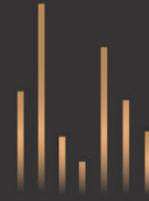
*I and [redacted] went over to the Whitehawk’s bench to speak to the coaches. [redacted], [redacted], [the Appellant] and I were all standing less than one metre apart from one another. [redacted] was across from me and standing on the benches, [redacted] was to my right and [the Appellant] was across from [redacted]. [The Appellant] said, quietly, , “Hi, [minor official’s name]. Fuck you.” She was within earshot of [redacted] and [redacted], but they gave no sign of hearing it. I didn’t say anything to her, and the conversation continued and [the Appellant] acted friendly. I was really confused, and didn’t understand why she said it but didn’t want to read too much into it.*

51. The Appellant was not provided with a copy of the minor official’s statement prior to or during

---

<sup>10</sup> “Child Safeguarding Policies” is a reference to IHA’s Child Safeguarding Policy within its NIF. See paragraphs 71 to 75 of this Determination in relation to the NIF.

<sup>11</sup> The Panel understands this to be a reference to [redacted], IHWA’s Referee-in-Chief.

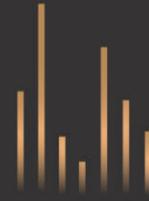


the IHWA Tribunal hearing.

52. The IHWA Tribunal hearing was convened at 7pm on 6 August 2024. The tribunal panel was experienced – each member of the IHWA Tribunal had been a member of IHWA’s pool of tribunal members for more than 5 years, and two members of the tribunal had been members of IHWA’s pool of tribunal chairs for more than 5 years.
53. The Appellant represented herself, and was not accompanied at the hearing by any other person.
54. IHWA provided the Panel with its notes of the IHWA Tribunal hearing (**tribunal notes** or **notes**). The notes appear to have been prepared partly in advance of the hearing, and partly during the hearing, presumably by the Chair.
55. The notes record that a member of the Tribunal asked (or intended to ask) the Appellant whether she understood the “charges in respect to the code of conduct breaches”, but does not record the Appellant’s response.
56. The tribunal notes then record that the Appellant was asked “How do you plead?” and that the Appellant pleaded not guilty in relation to Incident One, and guilty in relation to Incident Two.
57. The Appellant appears to have then been asked to “talk [the tribunal] through the incident”, and the following notes are recorded:
  - *Pretty sure she didn’t say it to her*
  - *Worked next day with [minor official]*
  - *██████ [██████] introduced the lines [“the lines” is the minor official]*
  - *No memory of it at all*
  - *Coaching*
  - *might have jokingly said to ████████ [██████] not to [minor official]*
  - *No abuse of officials*
  - *1 game each played illegal players of 2 kids*
58. The Panel infers from the recorded responses that at some time prior to this point of the hearing, the Appellant was provided with information about the allegations against her,<sup>12</sup> in addition to the details that had been provided in the Notice and the Respondent’s email to the

---

<sup>12</sup> The Respondent submitted that the Panel could draw this inference during the hearing on 18 June 2025; the Panel agrees and does so.



Whitehawks club on 31 July 2024.

59. It is not apparent from the notes the extent to which the detail of the allegation was conveyed to the Appellant during the IHWA Tribunal hearing.

60. If the notes accurately record the questions asked of the Appellant, it is apparent that she was asked only three to four questions in relation to Incident One, recorded in the notes as follows:

What is your position / responsibilities coach / officials or otherwise?

*[No response from the Appellant is recorded in the notes]*

1 – If that isn't what you said, why would [minor official] claim you did?

No idea, came out of the blue, [minor official] didn't say anything.

2 – Do you understand the code of conduct that you sign as a coach when you register?

Do you know why IHWA gets members to sign these codes of conduct?

*[No response from the Appellant is recorded in the notes]*

3 – Do you know why it is hard to encourage new officials + retain existing officials? *[No response from the Appellant is recorded in the notes]*

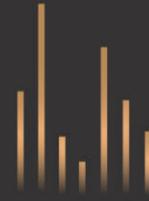
61. In respect of Incident Two, the tribunal notes record a similar open question (“talk us through the incident”) and four questions that do not record a response from the Appellant. None of the questions recorded in the tribunal notes pertain to the question of sanction, and the notes do not acknowledge the Appellant's guilty plea on the page dedicated to Incident Two. Given that the Appellant pleaded guilty to the charges in relation to Incident Two, it is not evident that the recorded questions were asked.

62. On 7 and 8 August 2025, the IHWA Tribunal panel met with and heard oral evidence from two other individuals – IHWA's Referee-in-Chief (██████████) and the other referee for the relevant game (██████████). The Appellant was not present for those hearings, and was not provided with a summary of the evidence that they each gave to the IHWA Tribunal until it was provided to the Panel in this appeal.

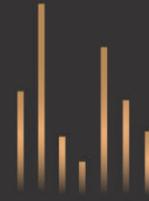
63. The IHWA Tribunal delivered its decision in writing on 10 August 2025 (**Tribunal Outcome**). The Tribunal Outcome records that:

a. The IHWA Tribunal was “convened with the purposes of investigating two incidents of which it was alleged that [the Appellant] contravened the 2024 [IHWA] Codes of Conduct”.

b. The Applicant “confirmed she understood the charges for what they were, although she had some confusion over the allegation on the 20<sup>th</sup> July at the u11 game”. That is, the

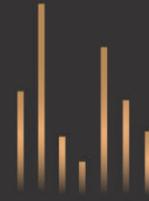


- Appellant had indicated to the IHWA Tribunal some confusion relating to Incident One. The Tribunal Outcome does not disclose the nature of the Appellant's "confusion".
- c. "The [IHWA Tribunal] decided to separately consider the two issues". The "two issues" are not then stated, but the Panel assumes that this is a reference to Incident One and Incident Two.
  - d. The Appellant pleaded not guilty "for the first alleged code of conduct breach" and pleaded guilty "on the second alleged code of conduct breach".
  - e. The "Tribunal panel further discussed [Incident One] and decided that they would further discuss the matter with the IHWA Referee in Chief (IHWA RIC) who was aware of the incident (having raised it with IHWA), and [REDACTED], the senior referee official on the game where the incident was alleged to occur. These meetings took place separately" to the discussion with the Appellant.
  - f. In respect of its discussion of Incident One with the Referee-in-Chief, the IHWA Tribunal recorded that the Referee-in-Chief had said that "such an incident appeared to be out of character. He raised this with IHWA as well as speaking to [the Appellant] who advised [the Referee-in-Chief] that she didn't say anything of the like as alleged to the officials".
  - g. In respect of its discussion with [REDACTED], the IHWA Tribunal recorded that he had noted that there was a point where the minor official was briefly left talking to the Appellant for about "20-30 seconds" after [REDACTED] had completed introductions; that he had not heard any of the conversation that the Appellant had with the minor official as he was focussed on his immediate surroundings; and the minor official "did not say anything to him about the alleged incident during or after the game, but [he] didn't expect her to as she is quite shy".
  - h. Given the statement received from the [minor] official, their age, their nature, and the seriousness and broader context of the allegation, the Tribunal decided there was likely to be no further additional material evidence that hearing from the minor official would contribute to the Tribunal's final decision. The Tribunal Outcome does not state what is meant by the "nature" of the minor official, or the "broader context of the allegation".
  - i. "The tribunal members...after much deliberation, further investigation and discussion" found the Appellant "guilty of both alleged incidents breaching the IHWA Codes of Conduct".
  - j. In respect of Incident One, the IHWA Tribunal concluded, on the balance of probability, that the Appellant "had the opportunity to say what was alleged to be said and in the



manner described in the evidence, and is found guilty of contravening the IHWA [Coaches Code of Conduct] and [Code of Behaviour]”.

64. The IHWA Tribunal did not make findings of fact with respect to Incident Two, as the Appellant pleaded guilty and admitted posting the relevant comments on Facebook. The Tribunal Outcome records the Appellant’s explanation as to why she posted what she did and concluded “This does not excuse her behaviour”.
65. The Tribunal Outcome does not disclose which specific provisions of either the Coaches Code of Conduct or Code of Behaviour the Appellant was found to have breached with respect to Incident One. In respect of Incident Two, whilst it is evident that the charge at least related to the Social Media Policy, the decision does not disclose the specific provisions of the Social Media Policy, Coaches Code of Conduct or Code of Behaviour that the Appellant was found to have contravened.
66. In relation to sanction, the IHWA Tribunal commented “the decision that has been made was not taken lightly, as abuse of officials and using social media in the way that [the Appellant] did, is not acceptable for any reason”, and imposed the following sanctions on the Appellant:
- a. “Incident 1”
    - i. *Ms Ooi is suspended as a Coach for the remainder of the 2024 IHWA Winter season. She is not permitted to be on the bench in any capacity. The suspension to act as a Coach is extended to any other junior or senior team playing in the 2024 IHWA season. This suspension does not stop Ms Ooi training with the Whitehawks team or officiating any junior or senior games.*
    - ii. *2. Due to Ms Ooi being of a higher IHWA member standing, being a Junior Coach, one of IHWA’s senior officials as well as the Referee Co-ordinator for the Hawks Ice Hockey Club, she is also given a suspended sentence as a junior or senior team coach for the whole of the 2025 IHWA Winter season. If Ms Ooi appears at a Tribunal for another breach of the IHWA Codes of Conduct, she will be required to sit whatever penalty she receives in relation to any Tribunal finding(s) as well as then being suspended as a junior or senior team coach for the 2025 IHWA Winter season or part thereof.*
  - b. “Incident 2”
    - i. *Ms Ooi is unable to represent Ice Hockey Western Australia (IHWA) **IN ANY CAPACITY** until 31 December 2027. This includes as a player, off-ice team official eg Coach, Team Manager etc, or on-ice official. This covers IHA National*



*Championships, IHA National camps, IHA Development camps, or any other situation she would be considered to attend and represent IHWA.*

- ii. Ms Ooi is also unable to nominate for **ANY** IHWA Board, Council, Committee, Sub-Committee or similar such position within IHWA until 31 December 2027.*
- iii. Ms Ooi is not to post **ANY** derogatory or inflammatory comments in relation to IHWA, the Tribunal panel and its members, IHWA and IHWA Member Club coaches or officials on **ANY** Social Media platforms or accounts. This also includes encouraging others to post on her behalf. Should Ms Ooi be found to have breached this requirement, then Ms Ooi will be required to stand before an IHWA convened Tribunal to rule on the consequences of the breach.*

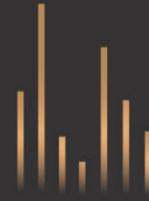
[emphasis as in original]

- 67. On 15 August 2024, the Applicant lodged an appeal by email to IHWA, under the IHA Tribunal Regulations. In her appeal notice, the Appellant sought to appeal the IHWA Tribunal's decision with respect to its findings and sanctions. On 17 August 2025, the Appellant provided IHWA with further information, video footage and a witness statement relating to Incident One. The Appellant asserted that the video footage exonerated her, and showed that both officials arrived to speak with the coaches and departed together, and there was no instance where the Appellant was alone with the minor official.
- 68. On 18 August 2025, IHWA rejected the Applicant's appeal on the basis that the information that the Appellant sought to raise in the course of an appeal "does not constitute new evidence", and additionally, cited clause 17.2 of the IHA Tribunal Regulations: "video evidence is not permissible unless all parties are in agreement". IHWA returned to the Appellant the appeal fee that she had paid.
- 69. The Appellant subsequently appealed by undated letter to IHA. The grounds of appeal raised in her letter replicate the grounds of appeal in this appeal proceeding – that natural justice was denied, and that no reasonable decision maker in the position of the IHWA Tribunal, based on the material before them, could reasonably reach the decision made by the Tribunal. IHA referred the Appellant's appeal to the NST.

## **APPLICABLE RULES**

### **Procedural rules**

- 70. The IHA Tribunal Regulations applied by the IHWA Tribunal are dated February 2020.
- 71. IHA adopted the National Integrity Framework (**NIF**), and policies within the NIF, in October



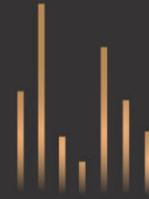
2022. It adopted revised NIF policies from 1 February 2024. IHA's adoption of the NIF was communicated to IHA's State Members, including IHWA, in October 2022 and February 2024 in respect of each iteration of IHA's NIF documents. IHA's (and IHWA's) adoption of the NIF was again notified by IHA to its State Members in June 2024. The NIF provides that IHWA is bound by the NIF and NIF policies from the date of its adoption by IHA.<sup>13</sup> The policies comprising IHA's NIF include the CDDP and IHA's Social Media Policy.

72. As a State Member of IHA, IHWA is bound by IHA's Constitution and "Regulations".<sup>14</sup> In the absence of evidence from IHA or IHWA that the IHA Tribunal Regulations had been rescinded by IHA and replaced by the CDDP, IHA's "Regulations" applying to disciplinary processes include both the CDDP and IHA Tribunal Regulations. IHWA and the Appellant were therefore bound by both policies at the time of the complaint brought against the Appellant.
73. The Respondent and IHA appear to disagree about the extent to which the NIF has been – or should have been – applied by IHWA. IHA submits that IHWA "adopted" IHA's NIF and NIF policies (including the CDDP) from the time that IHA communicated its adoption to its State Members. It submits that IHWA "operationalised" the NIF policies by publishing the policies for its members, maintaining live access and links to IHA's policies, and applying the NIF policies in disciplinary processes. This concept of "operationalisation" or effective implementation of the NIF is not accepted by IHWA, although IHWA acknowledges that the NIF and its policies were adopted by IHA.<sup>15</sup> IHWA draws a distinction between adoption by the Board of IHA and the operation of the NIF, and says that the NIF was not effectively implemented and operational across ice hockey, with the implication being that IHA is responsible for ineffectively rolling out the NIF.
74. Ultimately, this is a distinction without difference. By clauses 10.1 and 10.3 of the arbitration agreement, and confirmed in oral submissions during the hearing on 18 June 2025, the parties agreed to conduct this appeal in accordance with the CDDP. Whilst the IHWA Tribunal and internal appeal were conducted under the IHA Tribunal Regulations, this appeal is conducted, by the parties' agreement, under the CDDP.
75. It may be said that IHWA should have implemented the NIF policies within its own governance structure, and updated its complaint management and disciplinary processes in line with the

<sup>13</sup> IHA National Integrity Framework dated 4 October 2022, cl 8.1(b)(iii).

<sup>14</sup> IHA Constitution, cls 5.3(d)(vi)(A) and 20.2(d). It is also required by cl 5.3(e) to take all steps necessary to ensure its constituent documents conform with the IHA Constitution and the Regulations. With respect to disciplinary processes within the sport of ice hockey, the IHA Constitution requires State Members (IHWA) and Individual Members (the Appellant) to submit to IHA's jurisdiction, procedures, penalties and appeal mechanisms whether under the Regulations or the Constitution. Clause 7.3 allows IHA to make Regulations for the discipline of Members.

<sup>15</sup> Respondent's submissions in reply dated 26 September 2025.

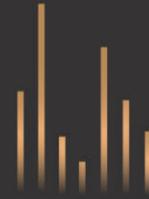


CDDP. To the extent that sufficient support and information was not provided to IHA's State Members, this was a failure of both IHWA and IHA. The complexity of the existing policies within the sport of ice hockey at national and State levels, and the limited definition of "Relevant Policies" in the CDDP<sup>16</sup> may also indicate a failure of IHA and Sport Integrity Australia to engage with IHA's State Members to ensure that:

- a. State Members – who are bound by NIF policies as a consequence of IHA's constituent documents – understand the NIF and are assisted in implementing NIF policies at a State level in a coherent and consistent way; and
  - b. NIF policies are tailored to ice hockey and its operations (including where policies may be enacted at a State level as well as a national level) and are fit for purpose.
76. The only person who bears no responsibility for the confusion about policies in force within the sport of ice hockey, and which have been applied by IHWA in relation to this matter, is the person who has been most negatively impacted by the complaint and disciplinary process – the Appellant. The Panel has been conscious of this reality, as well as the NST's objects under section 3(1) of the NST Act, in reconciling the various policies in this matter.
77. The relevant provisions of the CDDP are predominantly found in clause 8.8 – Appeals. Clause 8.8(c) limits the applicable grounds of appeal to:
- a. the IHWA Tribunal failed to abide by the CDDP or to properly apply the relevant Policy and such failure resulted in a denial of natural justice; or
  - b. no reasonable decision maker in the position of the IHWA Tribunal, based on the material before them, could reasonably make such a decision.
78. The Appellant advanced both grounds in this appeal.
79. The IHA Tribunal Regulations were applied by the IHWA Tribunal and IHWA on appeal, and their relevant provisions follow.
80. Clause 4.2 of the IHA Tribunal Regulations provides that IHA member organisations, including IHWA, are responsible for the establishment and operation of tribunal processes for matters arising from their sanctioned games. The IHWA Tribunal was established on this basis.
81. A tribunal established by IHWA has the power to investigate any recorded misconduct to

---

<sup>16</sup> Whilst the CDDP sets out the process and parameters for how allegations of Prohibited Conduct<sup>16</sup> are managed and resolved by IHA (and IHWA), the Relevant Policies under the CDDP do not include IHWA's Coaches Code of Conduct, Code of Behaviour and Social Media Policy: Prohibited Conduct means conduct proscribed in each of the Relevant Policies, which includes IHA's NIF policies, Code of Conduct, Social Media Policy and any other by-laws, rules, regulations or policies of IHA that are stated to be subject to the CDDP (CDDP, cl 3).



determine if the charges require a tribunal,<sup>17</sup> or to determine all reports and charges arising out of the conduct of ice hockey, both on and off the ice.<sup>18</sup>

82. Hearings before an IHWA tribunal are to be of an informal nature, but all affected parties must be afforded the opportunity to state their case and bring forward appropriate evidence,<sup>19</sup> and given a reasonable opportunity to be heard.<sup>20</sup> Tribunal proceedings may be conducted according to the chairperson's discretion, but in accordance with the IHWA Tribunal Regulations and provided that the rights and interests of the parties are to be safeguarded at all times and on the basis of full equality, in order that natural justice should occur.<sup>21</sup> The tribunal must also satisfy itself that the person reported has had due notice and they understand the charge against them by reading out each charge.<sup>22</sup> The defendant in tribunal proceedings shall remain present for the complete duration of the tribunal hearing, and shall only be required to leave when the tribunal panel deliberates the evidence.<sup>23</sup>
83. The IHA Tribunal Regulations sets out a sequence of procedures in its clause 14.3. These procedures provide for the charged person entering a plea, the presentation of evidence, cross-examination and the right to make submissions.
84. A tribunal's determination is to be reached on the balance of probabilities, and the tribunal is not required to give reasons for its decision.<sup>24</sup>
85. The provisions of clause 17 of the IHA Tribunal Regulations were applied to the Appellant's first appeal to IHWA.

### **Substantive rules**

86. The Appellant is alleged (and was found by the IHWA Tribunal) to have breached three IHWA policies in respect of Incidents One and Two: the Coaches Code of Conduct, Code of Behaviour, and Social Media Policy.
87. The Coaches Code of Conduct and Code of Behaviour are short documents within a suite of codes of conduct shown to and acknowledged by the Appellant during her online registration with IHWA as a coach. They were not subsequently sent, published or otherwise provided to her.

<sup>17</sup> IHA Tribunal Regulations, cl 9.1.

<sup>18</sup> IHA Tribunal Regulations, cl 5.1.

<sup>19</sup> IHA Tribunal Regulations, cl 13.1. See also, IHA Tribunal Regulations, cl 14.1.2.

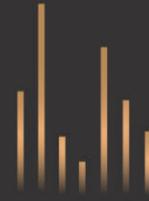
<sup>20</sup> IHA Tribunal Regulations, cl 14.1.1.

<sup>21</sup> IHA Tribunal Regulations, cl 13.3.

<sup>22</sup> IHA Tribunal Regulations, cl 14.3.1.

<sup>23</sup> IHA Tribunal Regulations, cl 14.3.5.

<sup>24</sup> IHA Tribunal Regulations, cl 14.3.13.



88. Neither the Notice nor Tribunal Outcome specifically named the provisions of the Coaches Code of Conduct and Code of Behaviour that the Appellant was alleged to have contravened and (or) found by the IHWA Tribunal to have breached. The following provisions of the Coaches Code of Conduct and Code of Behaviour were extracted in the Notice:

Coaches Code of Conduct

*Accept decisions of the Referees as being fair and called to the best of their ability. Do not abuse or ridicule the Referees and Officials.*

*Develop team respect for opponents, spectators and officials. Do not criticise other teams, supporters or officials by words or gestures.*

*Set a good example in personal appearance and behaviour.*

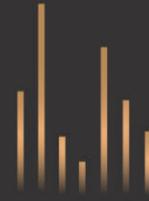
Code of Behaviour

*A participant undertakes to:*

- *Respect the rights, dignity and worth of others;*
- *Accept responsibility for their actions;*
- *Demonstrate a high degree of individual responsibility, especially when dealing with persons under 18 years of age, as words and actions serve as examples;*
- *Be aware of and maintain an uncompromising adherence to IHWA Constitution, By-Laws and policies;*
- *Operate within the rules of Ice Hockey Australia and IHWA;*
- *Understand their responsibility if they breach or are aware of any breaches of this Code of Behaviour & Ethics;*
- *Refrain from any form of abuse towards others;*
- *Refrain from any form of harassment towards or discrimination of others;*
- *Provide a safe environment for the conduct of the activity;*
- *Be a positive role model at all times.*

89. The Panel accepts that the above are the provisions of the Coaches Code of Conduct and Code of Behaviour considered by IHWA to be relevant for the IHWA Tribunal process and this appeal, with some clearly more relevant to the proceedings than others.

90. IHWA's Social Media Policy applies to IHWA members, staff or any individual representing



themselves as being a member of IHWA.<sup>25</sup> The Notice referred to the following provisions of the Social Media Policy, which the Panel accepts are the relevant parts of that policy that the IHWA Tribunal applied to the Appellant:

3.1 *For IHWA members and staff using social media, such use:*

(a) *Must not contain, or link to, libelous, defamatory or harassing content. This also applies to the use of illustrations or nicknames;*

(c) *Must not bring the organisation or the sport into disrepute.*

3.3 *Furthermore, IHWA members and staff may not use the IHWA brand to endorse or promote any product, opinion, cause or political candidate; and it must be abundantly clear to in all communications as individuals, that all opinions shared are those of the individual, and do not represent or reflect the views of IHWA.*

3.8 *Detected breaches of this policy should be reported to IHWA.*

3.9 *If detected, a breach of this policy may result in disciplinary action against the involved parties. A breach of this policy may also amount to breaches of other IHWA policies.*

3.10 *Parties to which this policy applies to may be disciplined in accordance with IHWA and the applicable IHWA disciplinary regulations, policies and procedures as created and amended from time-to-time.<sup>26</sup>*

### **Rules as to penalty**

91. Whilst acknowledging that they do not apply to the allegations raised against her,<sup>27</sup> the Appellant referred to IHA 2023-2024 Suspension Guidelines in her submissions as to sanction. Any relevance of the Guidelines to this appeal is limited to the provision within the Guidelines for a specified sanction for abuse of an official.

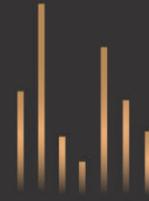
92. The IHA 2023-2024 Suspension Guidelines provide for a penalty of a one game suspension for “Abuse of Officials” classified as a “Game Misconduct Penalty”. This applies when any coach or non-playing team personnel uses obscene, profane or abusive language or gesture directed at

---

<sup>25</sup> Social Media Policy, cl 2.

<sup>26</sup> The Respondent also referred during the hearing on 18 June 2025 to section 5 of the Social Media Policy, which identifies the CDDP as a “related document”.

<sup>27</sup> The IHA 2023-2024 Suspension Guidelines apply to offences arising from incidents on the field of play.



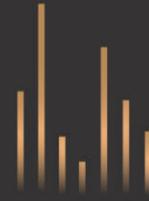
any on or off-ice official or uses the name of any official coupled with any vociferous remarks.<sup>28</sup>

## MAIN SUBMISSIONS OF THE PARTIES

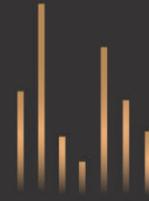
93. The Appellant appeals the IHWA Tribunal's findings and sanctions on two grounds:
- a. she has been denied natural justice, pursuant to clause 8.8(c)(i)(A) of the CDDP; and
  - b. no reasonable decision-maker in the position of the IHWA Tribunal, based on the material before them, could reasonably have made such a decision, pursuant to clause 8.8(c)(i)(B).
94. With respect to the first ground of appeal asserting that the Appellant was denied natural justice (referred to in this Determination as procedural fairness), the Appellant submitted that:
- a. the Notice did not particularise or identify with specificity the Appellant's alleged breach or what parts of IHWA's policies were allegedly breached, and that the extracts of certain policies that were set out in the Notice amounted to no more than an inference that those are the policies that the Appellant is alleged to have breached;
  - b. the Notice did not reproduce the relevant policies, and in circumstances where the policies were not publicly available and were only viewable to the Appellant at the time of registration, it would be unreasonable for the Appellant to be expected to recall the specific points of a document that she agreed to as part of a registration process; and
  - c. the IHWA Tribunal considered evidence not presented to the Appellant and did not afford the Appellant the opportunity to test that evidence or be heard in relation to it.
95. More specifically, the Appellant submitted that in respect of Incident One:
- a. the Notice did not identify the alleged conduct or the nature of the conduct;
  - b. IHWA's response to the Appellant's request for particulars did not identify the relevant conduct, and did not identify which specific part(s) of the IHWA policy(ies) the Appellant was alleged to have breached;
  - c. the complaint and statement that gave rise to the allegations against the Appellant was not provided to the Appellant – either prior to or at the IHWA Tribunal hearing;
  - d. it was incumbent on IHWA to reproduce the entirety of the relevant policies for the Appellant prior to the hearing, in circumstances where the policies were not publicly

---

<sup>28</sup> See IHA 2023-2024 Suspension Guidelines, Table of Suspensions, "Rule 39 Abuse of Officials" and International Ice Hockey Federation Official Rulebook 2024/25, Rule 39 – Abuse of Officials, and particularly Rule 39.5 – Game Misconduct Penalty.

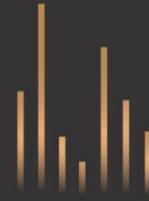


- available;
- e. the IHWA Tribunal made a decision based on evidence that was not presented to the Appellant (including the complainant's statement and from two referee witnesses who gave evidence after the hearing on 6 August 2024), and the Appellant was not given the opportunity to hear or test that evidence;
  - f. the Appellant was not given an opportunity to question or cross-examine witnesses;
  - g. in not providing the Appellant with the opportunity to cross-examine witnesses, the IHWA Tribunal had not only denied the Appellant natural justice, but it had also failed to follow its own procedures as set out in clause 14.3 of the IHA Tribunal Regulations; and
  - h. the Appellant was not given the opportunity to know the relevant issues put against her.
96. The Appellant made similar submissions with respect to Incident Two: that IHWA did not indicate what policy had been breached or what the "prohibited conduct" is alleged to have been.
97. As to the question of unreasonableness of the IHWA Tribunal's decision with respect to Incident One, the Appellant submitted that:
- a. the IHWA Tribunal had before it only the complainant's statement and email from the Referee-in-Chief in support of the allegations;
  - b. the decision that the Appellant had engaged in conduct in breach of IHWA policies was not based on any other evidence or information before the IHWA Tribunal which the IHWA Tribunal panel could be satisfied was truthful;
  - c. during the hearing on 6 August 2024, the Appellant had stated with a degree of certainty that she did not engage in the alleged conduct, and speculated that she may have jokingly sworn at the other referee, her friend [REDACTED];
  - d. the notes of the IHWA Tribunal's hearings of evidence from [REDACTED] and [REDACTED] do not support an allegation that the Appellant engaged in the alleged conduct;
  - e. a reasonable decision maker could not accept the evidence of a complainant without something further as evidence of the conduct complained about, and to do so is inconsistent with the presumption of innocence and principles of natural justice;
  - f. some matters recorded in the IHWA Tribunal's notes suggest that the Appellant in fact did not engage in any alleged conduct – [REDACTED] did not hear any swearing at him or at the minor official;

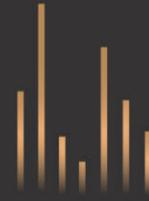


- g. as a result of the IHWA Tribunal's failure to provide natural justice, or (and) the unreasonableness of its decision with respect to breach, the sanction imposed by the IHWA Tribunal should fall away;
  - h. in any event, the sanction imposed is so excessive as to be unreasonable, in that it is considerably greater than as provided for in the analogous offence specified in the Guidelines for "abuse of official" (an automatic one game suspension), which Guidelines indicate the subjective standards of the sport of ice hockey in Australia with respect to breaches of the rules of the game regarding abuse of officials;
  - i. even if the Appellant's alleged conduct is considered to be particularly egregious, the sanction imposed by the IHWA Tribunal remains disproportionate to the Guidelines (even accounting for aggravating factors), particularly as there is little difference between the field of play and moments before the game; and
  - j. the sanction imposed is so excessive that no reasonable decision maker in the position of the IHWA Tribunal could reasonably impose such a sanction.
98. In respect of Incident Two, the Appellant submitted that:
- a. contrary to its duty to act in good faith,<sup>29</sup> the IHWA Tribunal exercised its power to impose a sanction on a purely punitive basis;
  - b. the wide discretion afforded to the IHWA Tribunal to impose a sanction (under clause 15.4 of the IHA Tribunal Regulations) does not override its obligation to act in good faith when imposing sanctions;
  - c. the sanction imposed by the IHWA Tribunal prevents the Appellant from representing IHWA in any capacity, including participating in ice hockey at the national level as a coach, player or referee, until 31 December 2027 (a period of almost 3½ years), but does not prevent the Appellant from participating at the local level;
  - d. in the way that the sanction is imposed, IHWA retains the benefit of the Appellant's participation as a coach and referee in WA, but does not allow her to progress beyond that level;
  - e. the sanction is disproportionate to the nature of the alleged conduct;
  - f. the nature of the Appellant's relevant social media post was such that it was published to a limited audience and was not posted on a public or broad-reaching website, did not identify an individual, and the level of any harm caused would be reasonably considered

<sup>29</sup> *Australian Football League v Carlton Football Club* (1998) 2 VR 546 at 552.

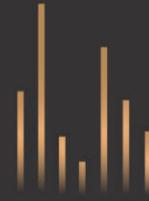


- to be minimal;
- g. there are no readily available decisions of IHWA as to breaches of its Social Media Policy, and the IHWA Tribunal ought therefore have considered comparable published decisions in other sports relating to breaches of social media policies;
  - h. the range of sanctions imposed in NST decisions in relation to individuals' comparable breaches of other sports' social media policies is a period of suspension for between two and three months; and
  - i. no reasonable decision maker in the position of the IHWA Tribunal and acting in good faith could reasonably impose such a punitive and disproportionate sanction.
99. The Respondent's position is that the appeal should be dismissed, and that the Appellant has demonstrated no error in the finding of liability with respect to Incident One, nor any error with respect to sanction for either incident.
100. In its substantive written submissions, the Respondent emphasised that the IHWA tribunal process is characterised by informality, and that a charged person must be given a fair, though not unlimited, opportunity to address the case against them.
101. It submitted that, in substance, the charges against the Appellant were that, in breach of the Coaches Code of Conduct, Code of Behaviour and the Social Media Policy, the Appellant:
- a. used abusive language to a junior umpire on 20 July 2024; and
  - b. made public social media posts critical of IHWA.
102. The Respondent submitted that as the Coaches Code of Conduct (and, the Panel assumes, the Code of Behaviour, as the two are contained within the same document) is a document which the Appellant signed upon her registration as a coach, she can be taken to be familiar with its terms, in particular, the injunction against abusing or ridiculing referees and officials.
103. As to the Appellant's assertion that the IHWA Tribunal denied the Appellant natural justice, the Respondent submitted that:
- a. considerations of natural justice are relevant only to Incident One, as the Appellant pleaded guilty to the charges relating to Incident Two;
  - b. the requirements of natural justice are shaped by the nature of the hearing, the body exercising jurisdiction, and the seriousness of the allegations;
  - c. IHWA is an entirely voluntary organisation, with tribunal members drawn from the WA ice hockey community;

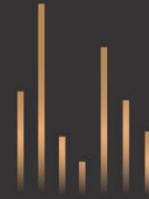


- d. the allegations against the Appellant were serious code of conduct breaches and did not carry the prospect of criminal sanction;
- e. the IHA Tribunal Regulations do not require IHWA to demonstrate perfection in setting out and particularising with precision the allegations against a charged party;
- f. the Notice, and subsequent email communication from IHWA to the Appellant's club, provided sufficient particulars of the allegations against the Appellant as the clarification identifies the game in question, the time relative to the game that the incident occurred, and the nature of the incident as that Appellant having "abused an official who is a minor";
- g. the Appellant's club's response to IHWA's email communications indicated that the club was aware of the relevant incident, and the Appellant's suggestion that she did not know the relevant issues prior to the hearing is not credible;
- h. a fair reading of the tribunal's decision and notes indicate that the complaint was put to the Appellant at the hearing, and that the Panel can infer that this involved putting to the Appellant at least the substance of the complaint;
- i. whilst the IHWA Tribunal heard from the Appellant, she did not present any other evidence;
- j. the Appellant's decision not to call ██████████ to give evidence in support of her case was a forensic choice that she should be held to now, and in any event, ██████████ was not willing to give evidence to the IHWA Tribunal at the time that it made efforts to contact him;
- k. the IHWA Tribunal was warranted in taking into account the evidence of officials and, where there were inconsistencies in the evidence, preferring the evidence of the officials over that of the Appellant;
- l. the IHWA Tribunal formed the view that it would be inappropriate to seek oral evidence from the minor official or ask her to submit to cross-examination;
- m. the IHA Tribunal Regulations do not give a right to cross-examine, and in circumstances where the complainant is a minor, it is entirely understandable and appropriate that the Appellant was not provided an opportunity to cross-examine the complainant;
- n. as an IHWA tribunal is entitled to determine a matter in the absence of the parties, the Appellant's complaint that she was not given an opportunity to cross-examine ██████████ and ██████████ cannot be sustained;

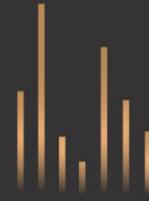




- c. the IHWA Tribunal formed the view that the seriousness of the Appellant’s breaches of the Social Media Policy warranted the imposition of a penalty which prevents the Appellant from representing IHWA on the national stage; and
  - d. as the Appellant’s conduct reflected poorly on the public image of IHWA, it was within the IHWA Tribunal’s jurisdiction to prevent the Appellant from representing the organisation for a period of time.
107. With respect to its rejection of the Appellant’s appeal to IHWA, the Respondent submitted that appeals pursuant to IHA’s Tribunal Regulations are only permissible if there has been a denial of natural justice or new evidence is made available, and that IHWA was entitled to refuse to hear the appeal because the Appellant had not demonstrated that she was entitled to appeal.
108. In addition to her written submissions, at the hearing on 18 June 2025, the Appellant addressed some of the matters raised in the Respondent’s written submissions. She submitted that:
- a. the Respondent had suggested in its submissions that during the IHWA Tribunal hearing she had admitted to swearing at the minor official and had glossed over the breach as a joke, but that this was not the case at all, and that when the details of the complaint were put to her during the IHWA Tribunal hearing, she wondered whether she *may* have jokingly sworn at her friend the other referee, because she had no recollection of swearing at anyone;
  - b. clause 14.1.4 of the IHA Tribunal Regulations does not give the IHWA Tribunal the ability to proceed to a decision without giving the Appellant the opportunity to respond to the evidence given by further witnesses, and it must be read in the context of clause 14.1.1 which requires that all parties affected are given a reasonable opportunity to be heard;
  - c. the IHWA Tribunal should have found that the alleged conduct did not occur, because the burden of proof was with the complainant, and there was insufficient evidence that the Appellant engaged in the conduct as alleged; and
  - d. the sanctions imposed by the IHWA Tribunal can be appealed in this appeal, pursuant to clause 8.8(c) of the CDDP; appeals under the CDDP are not limited to the substantive findings of the IHWA Tribunal.
109. In its oral submissions before the Panel, the Respondent emphasised that it is a community sporting association whose tribunal and administration are run by volunteers, and also supplemented its written submissions as follows:
- a. whilst the particularisation of charges in the Notice was light, the reference to “abuse” meant that the Appellant was capable of knowing what the nature of the allegation was,



- and this was then clarified sufficiently by email;
- b. the Appellant was entitled to call and could have called witnesses to give evidence that there was no physical or verbal abuse prior to the relevant game;
  - c. the relevant provisions of the policies which the Appellant was alleged to have breached were set out in the Notice, and it ought therefore not be said that the Coaches Code of Conduct and Code of Behaviour were not provided to the Appellant;
  - d. it does not much matter whether the IHWA Tribunal was acting as an investigative body or a hearing body at the time of the hearing on 6 August 2024, given that the tribunal panel was entitled to first conduct an investigation or go direct to a tribunal hearing in any manner as they saw fit;
  - e. the informality of the IHWA Tribunal proceeding is extremely important to bear in mind;
  - f. in the context of its informal processes and its power to inform itself as to any matter and in such manner it deems appropriate, the IHWA Tribunal was entitled to speak with further witnesses (██████████ and ██████████) after the hearing attended by the Appellant;
  - g. in a hearing before an IHWA tribunal, a charged person is required only to be provided an opportunity to be heard and present their side of the story and call evidence if they wish to do so, and the tribunal panel otherwise has a wide discretion under clause 14.1 to conduct the hearing as it considers appropriate;
  - h. there was no right for the Appellant to respond to the evidence presented by ██████████ and ██████████ after the hearing on 6 August 2024 or make closing submissions, because clause 14.1.4 allowed the IHWA Tribunal at its sole discretion to determine a matter before it in the absence of any parties, and the evidence from ██████████ and ██████████ was not probative of the charge against the Appellant;
  - i. the Guidelines are of little assistance in considering the appropriate sanction for Incident One, as they pertain to charges arising from incidents on the field of play;
  - j. the tribunal notes do not appear to make reference to the Appellant being given an opportunity to make submissions to the IHWA Tribunal on the matter of sanction;
  - k. in the absence of evidence, the Appellant's submissions that the IHWA Tribunal did not act in good faith should be withdrawn;
  - l. the sanction for Incident Two was cast in the way that it was in recognition of the principle that IHWA could not permit those who had disparaged the State body to represent it at a national level, but to ensure that the Appellant was not shut out of



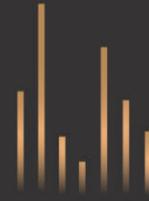
- participating in ice hockey;
- m. the sanction imposed on the Appellant for Incident Two is not comparable to the cases identified by the Appellant because those cases involved wholly excluding the relevant individuals from the sport, whereas the Appellant was permitted to continue in a restricted capacity; and
  - n. clause 15.4 provided the IHWA Tribunal with absolute discretion to impose a penalty, which can only be displaced by a decision that lacks an evident and intelligible justification in line with the High Court's decision in *Minister for Immigration and Citizenship v Li & Anor*,<sup>30</sup> and this is the standard that is to be applied to considerations of reasonableness under cl 8.8(c)(i)(B) of the CDDP.
110. IHA made limited submissions in these NST proceedings. Prior to the hearing on 18 June 2025, IHA confirmed that it held no other documents relevant to the matter that had not already been produced by the Appellant or Respondent, and with respect to new evidence that the Appellant sought to admit in the proceedings, where admission was opposed by the Respondent, IHA took the position that it would abide by the Panel's decision.
111. The submissions filed by IHA in September 2025 were of some assistance to the Panel in considering the question of jurisdiction for the NST.

### Relief sought

112. The Appellant seeks the following orders in this appeal:
- a. the IHWA Tribunal's decision in respect of Incident One is quashed;
  - b. the sanction imposed with respect to Incident One is lifted (revoked); and
  - c. the sanction imposed with respect to Incident Two is reduced to time served.
113. In written submissions filed after the hearing on 18 June 2025, the Respondent:
- a. confirmed that the Appellant had no disciplinary record that the IHWA Tribunal ought to have taken into account or did take into account when reaching its decisions as to sanction;
  - b. submitted that if the Panel finds that the Appellant was denied natural justice, the appropriate order would be to allow the appeal, and it would then be a matter for IHWA as to whether to convene a further tribunal process to hear the charges in a manner which affords the Appellant procedural fairness; and

---

<sup>30</sup> (2013) 249 CLR 332.



- c. if the Panel finds that the sentences were excessive (or unreasonable within the meaning of clause 8.8(c)(i)(B) of the CDDP), it would be entitled to substitute its own sentences.

114. IHA did not take a position as to the appropriate orders in the appeal.

## MERITS

### Appeal Ground 1 – denial of natural justice (Incident One)

115. It is uncontroversial that a sport’s internal tribunal – no matter the sport’s size or resources – must provide its members with procedural fairness (or natural justice) in its investigation and decision-making processes. In the context of disciplinary matters, including alleged breaches of codes of conduct or a sport’s policies, procedural fairness requires, at least:

- a. informing the individual with sufficient particularity of the nature of the proceeding, what they are accused of and by whom;
- b. providing the individual a reasonable opportunity to consider the specific allegations in advance of a hearing;
- c. conducting a hearing at which the individual has an opportunity to put their case (including presenting evidence and making submissions); and
- d. affording a fair hearing by which the decision-maker will make a finding after hearing evidence and submissions from both sides,<sup>31</sup> and a decision-maker who acts without bias.<sup>32</sup>

116. What is necessary to provide procedural fairness and avoid practical injustice to parties before a particular tribunal will depend upon the circumstances, and will require an examination of the tribunal’s procedures and the rules that govern it,<sup>33</sup> as well as the nature of the hearing and seriousness of the allegations.

117. The Respondent’s own policies, including the IHA Tribunal Regulations and CDDP, acknowledge that the rights and interests of parties to a disciplinary proceeding are to be safeguarded, and natural justice (procedural fairness) afforded to them.<sup>34</sup> This is the case whether proceedings involved a “hearing” or were in the nature of an “investigation”.

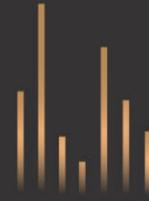
118. For the reasons that follow, the Panel finds that the IHWA Tribunal failed to provide the Appellant with procedural fairness in the manner in which it dealt with the allegations against

<sup>31</sup> *Carter v NSW Netball Association* [2004] NSWSC 737 at [117]-[127].

<sup>32</sup> The Appellant did not advance an argument in this appeal that the IHWA Tribunal’s decision was affected by bias, and this aspect of natural justice is not considered in this Determination.

<sup>33</sup> [2023] WASCA 103 at [40].

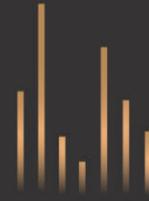
<sup>34</sup> IHA Tribunal Regulations, cl 13.3; CDDP, cls 2, 7.5(b) and 8.8(c)(i)(A).



her in respect of Incident One.

***Notice of the case against the Appellant***

119. A primary argument advanced by the Appellant was that she was not adequately informed of the case against her. The Panel accepts this contention.
120. The Notice did not sufficiently particularise the allegations against the Appellant, or the provisions of IHWA’s policies that she was alleged to have breached. Deficiencies in the Notice include the following:
- a. It did not identify the other person or persons who were alleged to have been involved in the incident.
  - b. The description of Incident One suggests that the incident occurred during the course of the game, rather than before it started.
  - c. The passages of the Notice which cite the Coaches Code of Conduct identify qualities of a good manager or coach, but give no information about the ways in which the Appellant was alleged to have fallen short of those standards.
  - d. Although there were more extensive quotes in the Notice from the Code of Behaviour, this did not explain or identify what it was that the Appellant was alleged to have actually done, or identify the specific provisions that she was alleged to have breached.
121. The Notice was supplemented by the Respondent by email to the Appellant’s club on 31 July 2024. However, the information provided remained woefully inadequate about the nature of the allegations against the Appellant. The Respondent’s assertion that the Appellant was alleged to have “abused an official who is a minor” before the start of the game did not provide sufficient detail of the complaint, and particularly the nature of the alleged “abuse” and what the Appellant was alleged to have said, to enable the Appellant to prepare her response.
122. As noted at paragraph 58 above, the Panel accepts that the Appellant was informed of some further details of the allegations against her during the IHWA Tribunal hearing. However, she was not provided with a copy of the original complaint, and she was only provided with this information after the hearing was underway. At the time she was informed of the relevant details, the Appellant did not have a reasonable opportunity to prepare her case for the hearing, including to consider and arrange to present the evidence that she would be required to bring to the IHWA Tribunal’s attention.
123. The Respondent asserted that it was not credible for the Appellant to say that she did not know the charges against her before the IHWA Tribunal hearing. The Panel disagrees. Whilst it is

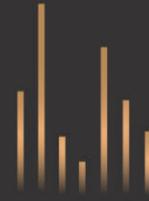


evident that the club had been made aware of a complaint by the parent of the minor official, the club understood that no formal complaint would be made and the matter would be dealt with by the Referee-In-Charge (██████████). The Appellant's club is not the Appellant. It is feasible that the detail of the complaint was not provided to the Appellant herself.

124. It is also clear from the tribunal notes (limited as they are) and the Tribunal Outcome that the Appellant was confused at the hearing as to the charges against her for Incident One, which lends itself to a conclusion that she did not in fact know the detail of the allegations against her prior to the IHWA Tribunal hearing.
125. Compounding the lack of clarity around the allegations, the Appellant was provided only with extracts of the policies which she was alleged to have breached, and the Notice did not specify which charges she was facing. The Respondent accepted that it had not provided the Appellant with copies of the Coaches Code of Conduct or Code of Behaviour after issuing the Notice and prior to the IHWA Tribunal hearing on 6 August 2024, and it did not provide evidence that the policies were publicly available and available at all times to the Appellant. Its failure to provide the Appellant with access to the relevant policies had the effect that the Appellant could not consider those policies in full prior to the hearing, and as a result, could not properly prepare her case in advance of the hearing. The Respondent's failure to provide copies of the policies that the Appellant was alleged to have breached was procedurally unfair to the Appellant.
126. The consequence of the Respondent's failure to give the Appellant proper notice of the case against her is that the Appellant was prevented from understanding, properly preparing and articulating her case.
127. The Panel does not accept the Respondent's submission that the Appellant made an admission that she used the words complained of and did so with the gloss of it being a joke, and that her evidence therefore aligned with that of the complainant, ██████████ and ██████████.<sup>35</sup> The Panel considers it likely that this statement was made by the Appellant as speculation, in an attempt to try to explain the complainant's recollection of events. In any event, this is not a reasonable excuse for failing to provide the Appellant with procedural fairness. It is possible, or indeed, likely, that the Appellant would have articulated her denial more effectively had she been given proper notice of the case against her.
128. In failing to provide the Appellant with sufficient particulars of the allegations in advance of the hearing, the Respondent failed to provide her with procedural fairness in the tribunal process.

---

<sup>35</sup> In addition to its findings in this paragraph, the Tribunal also notes that the argument that the Appellant admitted that she was guilty of the charge is also inconsistent with the IHWA Tribunal's decision to obtain further evidence from ██████████ and ██████████: if the Appellant had in fact pleaded guilty to the conduct in Incident One, there would have been no need to investigate further.



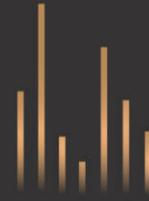
### ***Conduct of the hearing***

129. The hearing process itself was also procedurally unfair to the Appellant in at least three material respects:
- a. the IHWA Tribunal did not inform her of the evidence that would be relied upon by the Tribunal panel to determine the allegations nor provide her with an opportunity to respond;
  - b. it did not permit her to ask questions of (cross-examine) the adult witnesses; and
  - c. it did not provide the Appellant with an opportunity to address the Tribunal panel specifically on the matter of sanction.
130. Moreover, the IHWA Tribunal panel appears to have conflated the investigative and hearing powers it holds under the IHA Tribunal Regulations.<sup>36</sup>
131. Each of these matters in the Tribunal's process is addressed briefly below.
132. There is no dispute between the parties that after the hearing on 6 August 2024, the Tribunal proceeded to hear evidence from two further witnesses in the absence of the Appellant, and it did not permit the Appellant to ask questions of the adult witnesses. There is similarly no dispute that the Tribunal panel did not inform the Appellant of the evidence upon which it would rely and provide her with an opportunity to respond. This was unfair to the Appellant.
133. Not only was this unfair, but the approach adopted by the Tribunal was contrary to the usual process set out in the IHA Tribunal Regulations. The IHA Tribunal Regulations provide that the defendant shall remain present for the duration of the Tribunal hearing and shall only be required to leave when the Tribunal panel deliberates the evidence,<sup>37</sup> and contemplate cross-examination of witnesses.<sup>38</sup>
134. No reason was advanced by the Respondent as to why this was not facilitated by the IHWA Tribunal, but its decision to adopt this approach was explained by reference to:
- a. the discretion afforded to the Tribunal in:
    - i. clause 14.1 of the IHA Tribunal Regulations (the tribunal panel may choose to first conduct an investigation, or go direct to a tribunal hearing in any manner as they see fit), which the Respondent submitted was so broad as to allow the panel to conduct the hearing however it saw fit; and

<sup>36</sup> IHA Tribunal Regulations, cl 14.1.

<sup>37</sup> IHA Tribunal Regulations, regs 14.3.5.

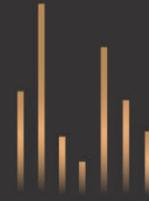
<sup>38</sup> IHA Tribunal Regulations, regs 14.3.7 to 14.3.11.



- ii. clause 14.1.4 of the IHA Tribunal Regulations (the investigation or tribunal at its sole discretion may determine a matter before it in the absence of any parties), which the Respondent submitted allowed the panel to proceed with hearing evidence from witnesses in the absence of the Appellant; and
  - b. the informal nature of the IHWA Tribunal, including the voluntary position of its members.
- 135. These arguments are not accepted by the Panel. The informality of the Respondent's tribunal processes, and the IHWA Tribunal's discretion to conduct a hearing in the manner it sees fit, do not override the tribunal's obligation under both clause 13.3 of the IHA Tribunal Regulations and at law to provide procedural fairness to the parties. In determining its procedures in the relevant matter, the Tribunal was – as a baseline – required to provide the Appellant with procedural fairness and allow her to know the case put against her. The provision in clause 14.1.4 which permits a tribunal to proceed to determine a matter before it in the absence of any parties is similarly subject to an overriding obligation to provide the parties with procedural fairness. It is also to be read in light of the express provision in clause 14.3.5 that the defendant shall remain present for the complete duration of the tribunal hearing except for the tribunal panel's deliberations.<sup>39</sup>
- 136. There was no reason for the Appellant to not be present as the additional witnesses gave evidence, nor was there any reason to prevent cross-examination of those witnesses. The Appellant ought to have been provided with an opportunity to hear the oral evidence of the additional witnesses, and to cross-examine them. In deciding not to do so, the Tribunal failed to provide the Appellant with procedural fairness.
- 137. Whilst the Panel finds that the Appellant ought to have been present and able to ask questions of the adult witnesses who gave evidence in the matter, the Panel acknowledges that it was a matter within the IHWA Tribunal's discretion to determine whether it would hear oral evidence from the minor official, and it was a decision available to them to decide not to do so and to not permit cross-examination of that individual. The IHWA Tribunal's decision to not require oral evidence from the minor official nor permit cross-examination was not procedurally unfair to the Appellant in the circumstances.<sup>40</sup>
- 138. Even if it could be accepted by the Panel that the IHWA Tribunal was not required to facilitate the Appellant's presence when it heard evidence from additional witnesses and to permit cross-

<sup>39</sup> Provisions similar to cl 14.1.4 are usually applied in sports disciplinary processes where a party does not engage in the process, so that the tribunal is not prevented from dealing with the matter. That was not the case for the Appellant.

<sup>40</sup> Whilst the IHWA Tribunal was justified in not requiring the minor official to give oral evidence, the Panel reiterates its finding that IHWA or the IHWA Tribunal ought to have provided the Appellant with a copy of her father's email to the Respondent which set out the detail of her complaint.



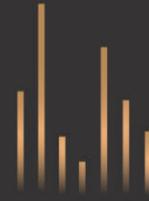
examination, the Tribunal failed to provide the Appellant with procedural fairness by not subsequently informing the Appellant of the substance of the evidence given by those witnesses against her and providing her with an opportunity to sum up her case in view of that evidence.<sup>41</sup>

139. The Respondent submitted that the IHWA Tribunal was not required by the IHA Tribunal Regulations to provide the Appellant with an opportunity to know and respond to the additional witnesses' evidence by reason of clause 14.1.4. It also suggested that [REDACTED] and [REDACTED]' evidence was not probative of the charge against her. Neither submission is accepted by the Panel.<sup>42</sup> Whilst [REDACTED]' evidence was hearsay and not probative of the allegations against the Appellant's, [REDACTED]'s evidence was. Furthermore, [REDACTED]'s evidence was referred to and relied upon by the Tribunal in reaching its findings against the Appellant. The IHWA Tribunal's failure to provide the Appellant with an opportunity to respond to [REDACTED] and [REDACTED]'s evidence was contrary to clause 14.3.12 of the IHA Tribunal Regulations. It was a clear failure to provide the Appellant with procedural fairness.
140. In extending the "hearing" to include hearing evidence from [REDACTED] and [REDACTED], the IHWA Tribunal failed to provide the Appellant with an opportunity to address the Tribunal panel in relation to sanction after all evidence and submissions had been heard. This was a further failure to provide procedural fairness to the Appellant.
141. The IHWA Tribunal's failure to provide the Appellant with procedural fairness appear to have stemmed – at least in part – from the Tribunal panel confusing its investigative and hearing powers under the IHA Tribunal Regulations.<sup>43</sup> Its misconception is evident in the Notice (which refers interchangeably with the tribunal being convened to "investigate" and also to "hear" the allegations, and notes that only at the hearing would the Appellant be "fully apprised of the complaint" against her and "given the opportunity to give [her] version of the incident"). It is also apparent in the Tribunal Outcome (which states that the Tribunal was convened on 6 August 2024 with the purposes of investigating two incidents, before setting out what the Tribunal "found" on the basis of the "evidence and information").
142. If on 6 August 2024 the IHWA Tribunal was acting in its investigative capacity, it was still required to provide the Appellant with procedural fairness. It ought to have put to the Appellant all of the evidence collected during the course of its investigation when its investigative process had concluded, and consistent with clause 14.3.12 of the IHA Tribunal Regulations, provided

<sup>41</sup> IHA Tribunal Regulations, regs 14.3.12. See also, *HT v The Queen* (2019) 269 CLR 403 at [17] – a party can only put their case if the party can test and respond to the evidence upon which a decision is sought to be made.

<sup>42</sup> Clause 14.1.4 is addressed at paragraph 135 above.

<sup>43</sup> IHA Tribunal Regulations, cl 14.1.



her with an opportunity to sum up her case, including making the tribunal aware of any mitigating circumstances which it ought take into consideration before reaching its decision. The IHWA Tribunal did not do so.

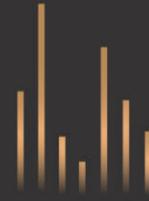
143. If the IHWA Tribunal had concluded an investigation and then provided the Appellant with the outcomes of its investigation and identified charges against her, then provided her with a fair hearing at which she had an opportunity to present her case (and a decision followed that hearing), it is possible that this appeal could have been avoided. This was not the process adopted by the Tribunal.
144. Finally, the IHWA Tribunal denied the Appellant procedural fairness in its “findings” against her. The Tribunal Outcome records the IHWA Tribunal’s finding in respect of Incident One to be that the Appellant had *an opportunity* to say what was alleged to have been said, not that she did in fact (on the balance of probabilities) say what was said. The Tribunal also neglected to make a finding as to which provisions of IHWA’s policies the Appellant was found to have breached, which had potential to make an appeal process more difficult. Whilst the Respondent is correct to note that the IHWA Tribunal process is intended to be informal, its failure to confirm its findings with respect to breach and the Appellant’s alleged actions compounded the procedurally unfair process adopted by the Tribunal panel.

### ***Effect of procedural unfairness***

145. Relief will only follow a finding of procedural unfairness if the affected person is able to establish that the denial of procedural fairness was material to the decision made, in that there was a realistic possibility that the outcome may have been different.<sup>44</sup> Whilst the Appellant bears the onus of establishing that the denial of procedural fairness was material, this is not an onerous requirement.<sup>45</sup>
146. It is evident from the Tribunal Outcome, and particularly from the Tribunal’s finding that the Appellant had the opportunity to say what was alleged, that the Tribunal placed weight on the evidence of ██████████, whose evidence was not able to be tested or interrogated by the Appellant. It follows that the Tribunal’s decision *could* have been different if the Appellant was provided with the opportunity to cross-examine ██████████ (and ██████████), or to address their evidence in summing up her case. Further, if the Appellant had been provided with adequate notice of the charges and allegations against her, it is reasonable to speculate that she *could* have prepared her case in advance of the hearing on 6 August 2024, including arranging for

<sup>44</sup> *LPDT v Minister for Immigration* [2024] HCA 12 at [7]; *Nathanson v Minister for Home Affairs* [2022] HCA 26 at [1]; *Owen v Warden Stephen Wilson* [2023] WASC 178 at [149].

<sup>45</sup> *LPDT v Minister for Immigration* [2024] HCA 12 at [7]; *Nathanson v Minister for Home Affairs* [2022] HCA 26 at [1]; *Owen v Warden Stephen Wilson* [2023] WASC 178 at [150], [152].



witnesses to attend the hearing and give evidence.

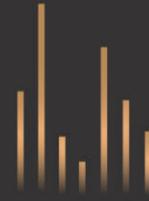
147. The Appellant has met the evidentiary burden of establishing that the IHWA Tribunal's denial of procedural fairness was material.
148. For the above reasons with respect to both the IHWA Tribunal process, as well as the subsequent appeal to IHWA, the Panel determines that the Appellant was denied natural justice by the IHWA Tribunal and IHWA. This ground of the appeal is upheld.

#### **Appeal Ground 2 – unreasonableness (Incident One)**

149. As a consequence of its decision with respect to procedural unfairness in relation to Incident One, the Panel does not need to determine whether the IHWA Tribunal's findings that the Appellant had breached the Coaches Code of Conduct and Code of Behaviour were unreasonable within the meaning of clause 8.8(c)(i)(B) of the CDDP.
150. Nor is the Panel required to consider the reasonableness of the sanction imposed. However, it makes the following observations in relation to the sanction imposed by the IHWA Tribunal in respect of Incident One:
- a. If the allegations against the Appellant were established to the requisite standard, the fact that the victim was a minor official working in only her third ice hockey game is an aggravating factor with respect to sanction.
  - b. The IIHF 2024-25 Official Rulebook and IHA 2023-24 Suspension Guidelines provide some guidance as to the usual sanction that may be imposed on participants in the sport of ice hockey in Australia who engage in abuse of officials. A one game suspension is the specified sanction provided for in the Guidelines for the most comparable field of play offence.
  - c. The timing of the alleged incident – being prior to the commencement of the game – may be an aggravating factor with respect to sanction, as any conduct could not be explained as being “in the heat of the moment” or otherwise tied to a reaction to circumstances in the field of play.
  - d. Even taking into account potentially aggravating circumstances, it is clear that the sanction imposed by the IHWA Tribunal is incomparable to, and inexplicably excessively higher than, the sanction for abuse of officials in the Guidelines.

#### **Appeal Ground 2 – unreasonableness of sanction (Incident Two)**

151. The Tribunal Outcome records that the Appellant pleaded guilty to “this incident” and admitted to putting up the post criticising both IHWA and the appointed coach for the 2024 IHWA



Ginsberg team. The Tribunal Outcome records that the Appellant breached the Coaches Code of Conduct, Code of Behaviour and Social Media Policy, although the specific provisions of those policies which the Tribunal found the Appellant to have breached are not identified in its decision.

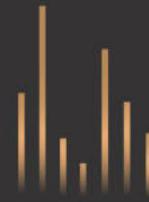
152. The Appellant's appeal before the NST focussed on the reasonableness of the sanction imposed by the IHWA Tribunal. That sanction appears in full at paragraph 66.b above, but in essence, its effect is that the Appellant is not permitted to represent IHWA in any capacity (including as a player, coach or referee) or nominate for a position on IHWA's board or committees, for a period of almost 3½ years to 31 December 2027.
153. Review of the reasonableness of a decision made by a tribunal is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process, but also with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.<sup>46</sup> Manifest unreasonableness may be discerned in a decision which is arbitrary, capricious, vague or fanciful,<sup>47</sup> or a decision which involves an error in reasoning, or illogical or irrational reasoning, or involves disproportionate weight being given to some factor.<sup>48</sup>
154. Clause 15.2 of the IHA Tribunal Regulations sets out the matters that an IHWA tribunal may take into consideration in reaching its decision on sanction:
  - a. the seriousness of the conduct;
  - b. any loss or damage sustained by any person howsoever arising from the conduct;
  - c. evidence of prior proven misconduct by the individual; and
  - d. the objectives of IHWA's Constitution.
155. In considering the seriousness of the relevant conduct, a tribunal would be expected to have regard to the risk of harm to others, as well as aggravating and mitigating factors. It would also be expected to consider whether the conduct was a one-off incident or a pattern of behaviour; whether the conduct involved an honest and reasonable mistake; and the impact of the conduct on integrity of the sport. Accepted considerations in sanctioning also include specific and general deterrence, punishment and accountability, denouncement of the relevant conduct, and rehabilitation.
156. It is not evident from the Tribunal Outcome which of the above considerations the IHWA

---

<sup>46</sup> *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 at [105].

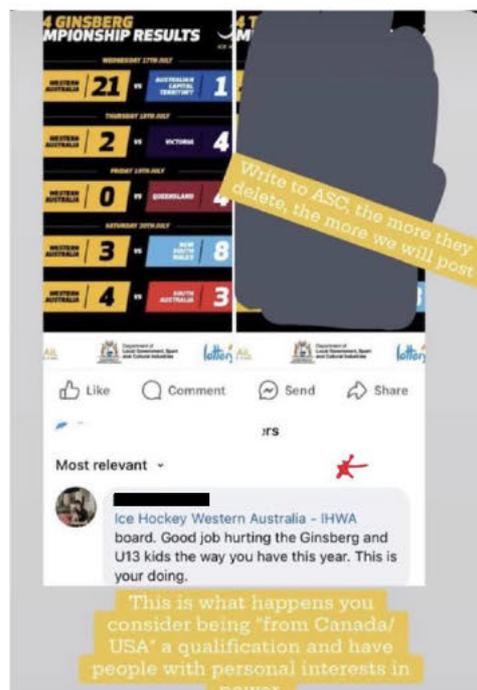
<sup>47</sup> *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 at [28], [65].

<sup>48</sup> *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 at [30], [72], [90].

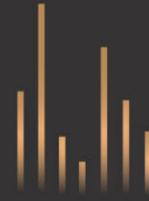


Tribunal took into account in deciding the sanction it imposed on the Appellant for Incident Two. The Tribunal's only comment was that the explanation given by the Appellant for why she made the post was not considered to excuse her behaviour.

157. The Appellant admitted making a Facebook post (depicted below), and posting it to three Facebook pages – her personal page, the IHWA page, and the Appellant's club's (Cockburn Hawks') members' only page. That is to say, the Appellant made a single post on social media, but published that post in three forums.

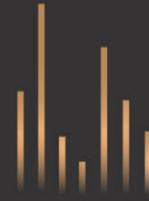


158. The Appellant submitted to the Panel that the publication was to a limited audience as it was not posted on a public or broad-reaching website (or social media feed). As a result of its limited publication and the fact that the post did not identify an individual, the Appellant submitted that the level of harm arising from the post would reasonably be considered to be minimal. Given the nature of the conduct, the Appellant submitted that the sanction was disproportionate and punitive (and as a result, contrary to the Respondent's duty of good faith).
159. In contrast, the Respondent contended that the Appellant's conduct was so serious as to warrant a sanction that prevented the Appellant from representing IHWA on the national stage, which it submitted was appropriate because the Appellant's conduct had poorly reflected IHWA's public image.
160. In supplementary written submissions after the hearing on 18 June 2025, the Respondent confirmed that the Appellant had no prior disciplinary record that the IHWA Tribunal ought to



have taken (or did take) into account. There was also evidence before the Panel that the Appellant had been involved in the sport for a period of some years and in a range of capacities, including as senior official, coach, referee and player.

161. There is no indication in the Tribunal Outcome that the IHWA Tribunal considered previous IHWA tribunal decisions relating to breaches of its Social Media Policy, or any other decisions relating to social media policy breaches in other sports. The Appellant drew the Panel's attention to decisions of the NST pertaining to social media use, and noted that the usual sanction in comparable matters was a period of suspension for two to three months.
162. Whilst the Appellant did not seek to rely on any particular decision or decisions, previous NST decisions are informative of sports industry norms for sanctioning members for conduct involving social media use, and are summarised below:
- a. In *Motorcycling Australia v Campaign* (NST-E25-172063), the sport barred its member from holding membership for a period of three years, with two years of the penalty suspended subject to good behaviour and a deed of release. The social media posts were critical of the national body's decisions relating to governance and process, referred to other individuals involved by name, and the individual also posted information (a letter) that was not publicly available. On appeal (heard de novo), the NST imposed a suspension of six months.
  - b. In *Reynders v Green (with Motorcycling Australia)* (NST-E23-338383), the NST imposed a fine of \$2,000 on a rider whose social media posts in June and October 2023 about another rider's conduct in races were determined to have breached the sport's social media policy.
  - c. In *Dorries v Australian Outrigger Canoe Racing Association* (NST-E23-118097), the sport had sought to impose a period of suspension for one year on the member for breaching the sport's code of conduct on account of discourteous, misrepresentative and defamatory social media posts that he had made. The NST found the sport's proposed sanction to be punitive in view of the evidence, and imposed a suspension of 60 days.
  - d. In *Australian Karting Association v Member* (NST-E23-103431), the sport imposed a six month suspension and two year good behaviour bond on an adolescent member who had circulated an inappropriate (racist, violent) video in a social media chat group that included persons associated with the sport. The NST found that the individual's conduct had breached the sport's social media policy, and imposed a suspension of three months (90 days) on the individual.
163. The Appellant's conduct and Facebook post is most analogous (but not identical) to the

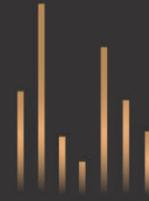


member's social media breach in *Dorries v Australian Outrigger Canoe Racing Association*, in which a 60 day period of suspension was imposed.

164. However, the Respondent's submission that sought to distinguish between a period of suspension from all benefits of membership (as applied in the NST cases referred to above) and the limited suspension imposed on the Appellant is acknowledged and accepted by the Panel. In circumstances where the Appellant's membership of IHWA was not wholly suspended and she was able to participate in some activities within the sport, it may have been reasonable for the IHWA Tribunal to impose a longer period of suspension to account for that fact.
165. In view of the above matters, the Panel makes the following observations:
- a. Although the relevant post was posted to three Facebook pages, the Appellant's act of posting the relevant comments comprised a single course of conduct.
  - b. Similarly, although the Appellant was alleged and found to have breached three policies (the Coaches Code of Conduct, Code of Behaviour and Social Media Policy), the allegations arose from a single course of conduct. Any sanction should reflect that reality.
  - c. As the NST Member commented in *Dorries v Australian Outrigger Canoe Racing Association*, conflict and free expression of opinion is an important part of any democratic society, and this includes members' opinions about decisions made by sporting organisations around how best to administer and govern their sport.<sup>49</sup> However, a sport may set parameters for how its members may raise concerns about its decisions, including by adopting a social media policy or code of conduct. A member whose conduct or comments fall outside the conduct required by a sport's policies may be found by a tribunal to have breached its policies.
  - d. The nature of the criticism directed by the Appellant towards the Respondent is fairly measured. It does not incorporate expletives, name an individual, or incite action against any person or group (other than encouraging others to post comments on the matter). However, the appointed coach of the Ginsberg team is identifiable in the post (and their identity would likely have been known to the relevant audience). The remarks clearly disparage IHWA and its decision-making. It is reasonable to assume that the post brought, or could have brought, IHWA and the sport of ice hockey into disrepute.
  - e. The IHWA Tribunal cannot reasonably have found that the Appellant breached clause

---

<sup>49</sup> *Dorries v Australian Outrigger Canoe Racing Association* (NST-E23-118097) at [34].

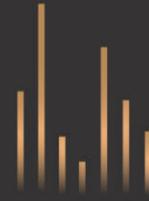


3.3 of IHWA's Social Media Policy,<sup>50</sup> as the post is clearly critical of IHWA and cannot sensibly be construed as purporting to represent or reflect IHWA's views. It follows then that the Tribunal must have found that the Appellant's conduct breached sub-clauses 3.1(a) and (c) of the Social Media Policy.

- f. Whilst the audience reached by the Appellant's Facebook posts is likely to have been relatively limited in comparison to other media or sports' pages, their publication was to an audience interested in the subject matter of ice hockey, who are more likely to have understood the context in which the comments were made and have taken an interest in them. This increased the likelihood of the posts resulting in harm to IHWA or (and) the appointed coach referred to.
- g. The limited, but interested, audience to which the posts were published is therefore both a mitigating (due to its size) and aggravating (due to its interest) factor with respect to sanction.
- h. The Appellant had no prior disciplinary record with IHWA notwithstanding a lengthy involvement in the sport in a number of capacities. In view of the relevant conduct, the Appellant's lack of disciplinary history ought to have been a factor considered by the Tribunal in favour of a lighter sanction.
- i. Whilst there was no evidence that the IHWA Tribunal had available to it previous IHWA decisions relating to social media policy breaches, comparable sanctions in other sports for their members breaching social media policies is information published by the NST which was available to the IHWA Tribunal panel if they had sought to find it.
- j. Any period of suspension (as opposed to a lesser penalty contemplated by the IHA Tribunal Regulations, such as reprimand or caution, attendance at a course of education or a suspended suspension) would serve the purpose of providing both specific and general deterrence with respect to the Appellant's and members' use of social media.
- k. Taking into account the above matters, the Panel is not convinced that nature of the conduct is so "serious", or unique to the sport of ice hockey, as to warrant a period of suspension that is out of step with the previous decisions of the NST.
- l. The sanction imposed by the IHWA Tribunal – being a period of suspension (albeit restricted to certain aspects of membership) for almost three and a half years – is severe on any analysis, but particularly in view of the nature of the Appellant's conduct, her

---

<sup>50</sup> The Tribunal Outcome does not disclose whether or not the IHWA Tribunal found that the Appellant breached each clause of the Social Media Policy that had been extracted in the Tribunal Notice, only that the Appellant was guilty in respect of Incident Two, and that she breached the IHWA Codes of Conduct and Social Media Policy.

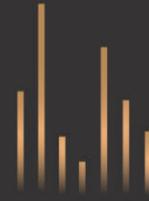


disciplinary history, her relative youth and her involvement with the sport.

- m. Having considered the nature of the Appellant's conduct and each of the matters above, the Panel considers that a period of suspension (from all benefits of membership) for two months would have been an appropriate sanction to have imposed on the Appellant, or a period of three months with the restrictions on membership imposed by the IHWA Tribunal.
166. The Tribunal Outcome does not detail the IHWA Tribunal's reasons for imposing the penalty that it did, other than to say that the Appellant's explanation as to why she posted what she did on Facebook did not excuse her behaviour. There was no evidence before the Panel to suggest that the IHWA Tribunal acted other than in good faith, however, taking into account the above analysis of the relevant considerations with respect to sanction – which, overall, weigh against a severe penalty of the nature imposed by the Tribunal – and in the absence of any explanation of the Tribunal's reasons for its decision, the Tribunal's decision is arbitrary and illogical, as well as disproportionately punitive.
167. The Panel determines that the IHWA Tribunal's decision with respect to penalty is so unreasonable that no reasonable tribunal panel could reasonably make such a decision based on the material before them. The appeal as to sanction in respect of Incident Two is upheld.
168. The Panel notes that it does not accept the Respondent's submission that the "denial of natural justice" appeal ground cannot be relevant to Incident Two because the Appellant pleaded guilty to the relevant conduct. If the Appellant had not been provided with an opportunity to make her case to the Tribunal panel before it reached its decision on sanction, this would likely have been procedurally unfair. Having upheld the appeal in relation to Incident Two on account of the unreasonableness of the decision, the Panel is not required to determine whether natural justice was afforded to her in this respect.

### ***Appropriate sanction***

169. It was common ground between the parties that if the Appellant's appeal as to sanction is upheld, the Panel may substitute its own sanction. The Panel does so.
170. In setting out the relevant provisions of the Social Media Policy that the Appellant was alleged to have breached, the Tribunal Notice referred to clauses 3.1(a) and (c) and 3.3, as well as various other provisions which pertain to reporting and disciplinary action arising under the policy.
171. The Appellant did not specify which clauses of the Social Media Policy she accepted that she had breached when she pleaded guilty to the allegations against her, but pleaded guilty to the



conduct underpinning the allegations - putting up the post criticising both IHWA and the appointed coach for the 2024 IHWA Ginsberg team.<sup>51</sup> That is, the Appellant pleaded guilty to breaching sub-clauses 3.1(a) and (c) of the Social Media Policy. It is not apparent that she pleaded guilty to breaching clause 3.3, and it is clear to the Panel that she did not, as her comments criticising IHWA cannot sensibly be alleged to have purported to be reflect IHWA's views.

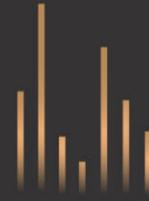
172. The effect of the above is that the Appellant breached clauses 3.1(a) and (c) of IHWA's Social Media Policy by making a post for Facebook that contained disparaging comments about IHWA and its appointment of a youth Ginsberg team coach, and posting it to the IHWA page, the Cockburn Hawks members' only page and the Appellant's personal page.
173. Whilst the IHWA Tribunal also found that the Appellant's conduct had also breached the Coaches Code of Conduct and Code of Behaviour, the additional but unspecified "charges" arising under these Codes pertain to the same conduct. The totality principle applies to any penalty imposed on the Appellant in relation to her conduct, such that in considering the appropriate sanction, the Panel does not need to identify which provisions of the Coaches Code of Conduct or Code of Behaviour the IHWA Tribunal found the Appellant to have breached.
174. As the Appellant has served a portion of the sanction imposed by the IHWA Tribunal, to avoid any potential confusion, the Panel considers it to be more convenient that any sanction be stated in the same terms as the "restricted suspension" imposed by the Tribunal on 10 August 2024 rather than a period of suspension with its usual meaning.
175. Taking into account its analysis of the various considerations with respect to sanction set out in paragraphs 154 to 166 above, the Panel considers that the following penalty is appropriate in the circumstances of Incident Two:

For a period of 3 months from 10 August 2024, the Appellant is not permitted to:

- (a) represent IHWA in any capacity, including as a player, off-ice team official (eg, coach, team manager etc) or on-ice official, at any event including IHA National Championships, IHA national camps, IHA development camps or similar; and
- (b) nominate for any IHWA Board, Council, committee, sub-committee or other similar position within IHWA.

---

<sup>51</sup> The Tribunal Outcome records that the Appellant pleaded guilty and "admitted to putting up the post criticising both IHWA and the appointed coach for the 2024 IHWA Ginsberg team".

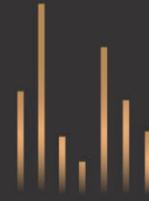


### Concluding comments and notes for IHWA and IHA

176. The effect of this Determination with respect to Incident One is that the decision of the IHWA Tribunal is set aside. The Respondent may see fit to consider whether it is appropriate to convene a further tribunal hearing to determine the allegations raised against the Appellant. That is a matter for the Respondent, however, in deciding how to proceed in response to this Determination, the Panel urges the Respondent to consider this Determination in full, as well as the impact that its disciplinary process has had on the Appellant to date (including a significant period of suspension served by the Appellant in circumstances where no sanction was warranted).
177. The Panel also suggests that IHA (like any sport that intends for its national-level policies to be implemented at State level) ought give detailed consideration to the wording of the NIF and CDDP (and any other policies) to ensure that its policies each operate in the manner in which they are intended to operate, by reference to the individual sport of ice hockey. Upon review, it may be appropriate to extend the application of the CDDP to policies that are enacted by State Members, including any codes of conduct or social media policies (if they are different to the IHA Social Media Policy referred to in the NIF and intended to apply to members in a particular State). In IHA and IHWA's case, it may also be of assistance to specifically rescind the operation of the IHA Tribunal Regulations in relation to off-field complaints, and to ensure that all State Members are informed of the process for dealing with complaints within their remit.
178. Whilst it was not raised as a ground of appeal, the Panel makes the following observations about the Appellant's request to appeal to IHWA dated 15 August 2024:
- a. the Appellant identified various concerns relating to procedural fairness, including "bias of the tribunal panel"<sup>52</sup>, "insufficient evidence" including failing to hear testimony from the Appellant's co-coach for Incident One, disproportionate penalties and insufficient notice of Incident One having been provided prior to the hearing. Presented with this document, the Respondent was on notice of the Appellant's concerns with respect to procedural fairness and ought to have itself provided the Appellant with procedural fairness in its consideration of the appeal, as well as considered whether the IHWA Tribunal had failed to provide procedural fairness in the first instance hearing. Notwithstanding that "a lack of natural justice" is recognised as grounds for an appeal under clause 17.2 of the IHA Tribunal Regulations, it did not appear to do so: the Appellant's concerns as to procedural fairness were not specifically addressed in IHWA's letter to the Appellant

---

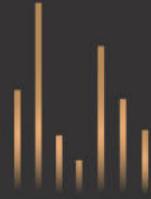
<sup>52</sup> This concern was not raised by the Appellant in her appeal before the NST.



rejecting her appeal.

- b. In rejecting the Appellant’s appeal request in August 2024, IHWA referred to video evidence of the relevant game for Incident One that the Appellant sought to adduce on appeal which had not been available to her or viewed during the IHWA Tribunal hearing. The video evidence that the Appellant sought to adduce before an IHWA appeal was initially provided to the Panel by the Appellant, but was ultimately not relied upon. The Panel does not take into account the video evidence itself, however – as a further procedural failure by the Respondent – notes that IHWA’s conclusion that video evidence was not permissible unless all parties were in agreement was procedurally unfair to the Appellant because it did not identify a process by which other parties’ agreement was sought (and then refused), nor identify who the other parties were who were required to agree. In this sense, IHWA was both the party empowered to agree whether to admit new evidence and the decision-maker in relation both to the admission of evidence and ultimately in the appeal. Counsel for the Respondent appropriately conceded during the NST hearing that as IHWA was itself the other party and the decision-maker, this was unfair to the Appellant.

179. As to its internal tribunal and appeal processes, IHWA may be able to assist its volunteer tribunal members and staff by preparing template charge sheets and decision notices which require IHWA and its tribunal members to:
  - a. identify the specific provisions of policies that a member is alleged (and found) to have breached;
  - b. identify the alleged facts supporting the charge (and determined by the tribunal to have been established); and
  - c. denote whether the tribunal is acting in an investigative or hearing capacity.
180. The templates would require IHWA and its tribunal members to turn their mind to articulating the specific allegations and charges against an individual and understanding their role at any time. Using templates may assist tribunal members to ensure that procedural fairness is provided to parties in any process before the tribunal.



**THE TRIBUNAL THEREFORE DETERMINES:**

1. *The appeal is upheld.*
2. *The decision of the IHWA Tribunal dated 10 August 2024 with respect to Incident One is set aside.*
3. *The decision as to sanction of the IHWA Tribunal dated 10 August 2024 with to Incident Two is set aside and replaced with the following:*  
  
*For a period of 3 months from 10 August 2024, the Appellant is not permitted to:*
  - (a) *represent IHWA in any capacity, including as a player, off-ice team official (eg, coach, team manager etc) or on-ice official, at any event including IHA National Championships, IHA national camps, IHA development camps or similar; and*
  - (b) *nominate for any IHWA Board, Council, committee, sub-committee or other similar position within IHWA.*
4. *The Panel determines that, with reference to clause 10.8 of the Arbitration Agreement, the parties have each complied (substantively) with all reasonable requests made by the Tribunal, and costs will be determined in accordance with clause 9.2 of the Arbitration Agreement.*

The Panel notes that pursuant and subject to clauses 10.11, 10.17 and 10.18 of the Arbitration Agreement, the Determination is binding and enforceable on the parties.

Date: 28 November 2025

Venetia Bennett

Scott Ellis

Rossana Panetta