

HEARING TRIBUNAL GUIDE

Under the National Integrity Framework, the template Complaints, Disputes and Discipline Policy provides mechanisms for sporting organisations to manage and convene internal hearing tribunals.

This Hearing Tribunal Guide (the **Guide**) is referred to in the template Complaints, Disputes and Discipline Policy (the **template Policy**). The Guide is designed to support the implementation of the National Integrity Framework, and to assist sporting bodies who elect to convene internal hearing tribunals, particularly for matters that are not NST Eligible Matters.

The Guide will be updated from time-to-time to ensure alignment with best practice. It is therefore the responsibility of each sporting organisation to consider the most recent version when it elects to convene an internal hearing tribunal.

Where an organisation is considering convening an internal hearing tribunal and it is not possible for them to meet the standards referred to in this guide, it should consider whether a referral can be made to the NST, or another appropriate organisation.

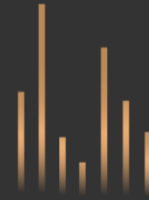
The Guide is not a substitute for independent professional advice and users should obtain any appropriate professional advice relevant to their particular circumstances.

Disclaimer:

This is a general guide only. It does not form part of the template Complaints, Disputes and Discipline Policy, which is the principal document setting out the template rules and requirements.

This Guide is not a suitable replacement for legal advice regarding the interpretation of the template Policy. The appropriate procedure for an internal hearing tribunal will depend on the circumstances of the matter and any other relevant policy in force and effect for the sporting body convening the tribunal hearing. The Guide is not intended to be an authority to be used in support in proceedings before the NST.

Precautions have been taken to ensure the information is accurate, but the Commonwealth does not guarantee, and accepts no legal liability whatsoever arising from or connected to, the accuracy, reliability, currency or completeness of any material contained in this bench book or on any linked site. The information provided, cases and commentary, are considered correct as of the date of publication. Any changes to legislation and case law will be reflected in updates to the Guide.



WHEN DOES A MATTER GO TO AN INTERNAL HEARING TRIBUNAL?

1. Circumstances giving rise to hearings

Following the investigation of a complaint, the relevant complaint manager may make a finding that a respondent breached a relevant policy. Consequently, the sporting body may decide to issue a breach notice under cl. 8.5 of the template Policy. In response to the breach notice, the respondent may:

- a) accept the findings in the breach notice and waive their right to a hearing; or
- b) dispute the findings in the breach notice.

If the respondent disputes the findings in the breach notice, the matter will be referred to a Hearing Tribunal.

2. What type of hearing tribunal will the dispute be referred to?

A dispute can be referred to the NST (if eligible), another suitable tribunal or arbitration body, or an internal hearing tribunal.

RECOMMENDED STANDARDS FOR INTERNAL HEARING TRIBUNALS

The NST recognise that sporting bodies across Australia will encounter a broad range of internal disputes and have different facilities and membership demographics at their disposal. To help sporting bodies set-up internal hearings that are procedurally fair and accessible, we provide the following recommendations (noting that what is 'procedurally fair' will depend on the relevant policy and circumstances of the matter).

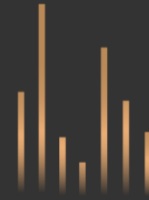
3. Appointment of panel members to the Hearing Tribunal

- a) Panel members should be agreed between all the parties to the dispute. They must not be appointed by one party to the dispute in isolation.
- b) Where the parties cannot agree on panel member(s), an independent third-party nominator should be used to appoint them. This third-party nominator should be designated in the relevant policy.
- c) Parties must have the opportunity to challenge the appointment of an arbitrator on the basis of bias.

4. Independence

Every panel member should be impartial and independent of the parties at the time of accepting an appointment to serve and shall remain so until the final decision has been communicated or the proceedings have otherwise terminated. Panel members:

- a) should not have been a legal representative of either party, nor an affiliate of either party (for example, an SSO where the dispute involves the NSO or a Club where the dispute



involves the SSO) in the past three years, nor be a member of a law firm that has been engaged by either party to provide legal services;

- b) should not have any prior involvement in the dispute;
- c) should not be an existing employee, contractor or board member of either party or an affiliate of either party, nor have been such employee, contractor or board member in the last three years;
- d) should not be a close family member or close friend of an employee, contractor or board member of either party (where this is not practicable, the conflict of interest should be declared and reasonable steps taken to mitigate the conflict);
- e) should not have been appointed as panel member or expert witness by either party more than three times in the past three years;
- f) should not have publicly advocated a position on the dispute (e.g. via social media); and
- g) should not have any financial interest in the dispute or its outcome, including in relation to any interested parties (e.g. a person that is not a party to the dispute who may be affected or benefit based on the outcome of the dispute).

5. Diversity

If there is more than one panel member, the panel should provide for diversity in relation to gender, age, geography, culture, ethnicity and professional background, so far as is practicable.

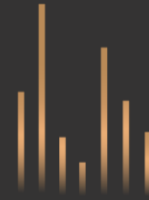
6. Qualifications

- a) Ideally, one panel member should have legal qualifications and dispute resolution experience.
- b) All panel members should have knowledge of, or the ability to quickly acquire knowledge of, the policies relevant to the dispute.
- c) Panel members should have:
 - i. the capacity to control, administer and efficiently manage the proceedings;
 - ii. the ability to communicate well with the parties while remaining calm and impartial; and
 - iii. the knowledge and ability to weigh and assess the evidence to reach a decision.

7. Confidentiality

While undertaking hearing work, panel members will come into contact with confidential and sensitive information provided in the context of the hearing by parties and others. Failing to keep such information confidential may itself be a breach of the relevant policy or a breach of law. A panel member should:

- a) inform themselves of the relevant laws and policies applying to the confidential information they are handling and in what circumstances it can be disclosed;
- b) ensure that any confidential material provided to them in the course of the hearing is kept confidential, and that any disclosures are handled according to the relevant policy and law.



8. Documented procedures¹

Hearing panels should have at least a minimum level of publicly accessible documented procedures that:

- a) ensure procedural fairness, providing both sides with the opportunity to be heard and precluding bias in decision making;
- b) allow for flexibility in how the tribunal informs itself and conducts the hearing;
- c) provide for efficiency by specifying time limits for making and communicating decisions;
- d) specify any constraints on parties' right to representation;
- e) are communicated to parties in advance of any hearing; and
- f) require the tribunal to give parties its decision in writing and/or with reasons within a designated timeframe.

9. Standard of proof

Under the template Policy, the standard of proof for all decisions made by internal hearing tribunals is the "balance of probabilities". This means the panel members should be satisfied that it is more likely than not that there has been a breach of a relevant policy.

MEDIATION / ALTERNATIVE DISPUTE RESOLUTION

10. Under the template Policy, a dispute may be referred by the sporting body for a resolution through mediation or other forms of alternative dispute resolution, or by agreement between the relevant persons or participants. For mediations and/or alternative dispute resolution:
11. If the sporting body itself is not a party to the dispute (e.g., the dispute is between two individual members), it can appoint the mediator. Otherwise, the same process outlined between (3) to (7) above should be followed.
12. Where possible, mediators should be appropriately trained and accredited under the Australian Mediator and Dispute Resolution Accreditation Standards (AMDRAS).

APPEALS

13. A decision of an internal hearing tribunal may be appealable by certain parties. Parties who are dissatisfied with the outcome of an internal hearing can review the template Policy to become familiar with any available appeals process.

¹ For further information on procedural fairness, disclosure of evidence, hearing functions and structure, record-keeping and sanctioning see [NST-E25-124664](#).