



COMPETITION REGULATION & DISPUTE RESOLUTION GUIDELINES



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1. Introduction:

Our society expects high standards of behaviour from all people involved in sport and it is vital these expectations are met and the integrity of our sport maintained. Participants in volleyball within Victoria range from juniors learning basic skills in Spikezone through to seniors and masters playing in various levels of competitions.

Regardless of the nature of a person's involvement in volleyball, *The Essence of Australian Sport* provides four guiding principles that lead to appropriate behaviour: **Fairness, Respect, Responsibility** and **Safety**.

Our sport caters for both male and females, all ages and abilities, across two disciplines: indoor and beach and from the social volleyballer to the elite athlete. People participate in Volleyball for many reasons including the competitive challenge, to be with friends, health and fitness, the satisfaction of volunteering and most importantly to have fun.

Volleyball is not immune to acts of discrimination, harassment and abuse and in fact shares the common features of most sporting environments where close physical and emotional relationships can develop and inappropriate or unlawful behaviour can take place.

Volleyball Victoria is committed to treating all people with respect, dignity and fairness. These values along with the basic right of all Volleyball members to participate in an environment that is enjoyable, safe and healthy, has resulted in Volleyball Victoria developing specific objectives to create a safer and more tolerant sporting environment.

The **Competition Regulation and Dispute Resolution Guidelines** (Guide) has been prepared to assist Volleyball Victoria members in dealing with disputes. Associations and clubs need to be able to respond to complaints about inappropriate behaviour, on and off the court as well as with complaints that may arise from their rules and decision making processes. Regardless of the type of dispute, all complaints and incidents must be treated seriously, dealt with promptly, investigated in a sensitive manner and kept confidential.

Broadly, the disputes have been categorised as follows:



1. Competition related disputes, which Volleyball Victoria suggests should be dealt with in accordance with Competition Regulation or a specific competition by-law (for example Victorian Volleyball League (VVL)).
2. Member Protection matters, which should be dealt with in accordance with the Australian Volleyball Federation Incorporated (AVF) Member Protection Policy.
3. Other grievances, which are not competition related or member protection related, which Volleyball Victoria suggests should be dealt with in accordance with the grievance procedure set out in your constitution.
4. Other disciplinary matters, which are not competition related or member protection related, which Volleyball Victoria suggests should be dealt with in accordance with the disciplinary procedure set out in your Constitution or the recommended Disciplinary and Judiciary Guidelines.

2. Definitions:

The following terms are commonly used in this Guide. The meanings of these terms are set out below:

"Bylaws" are additional rules that apply to members. The Bylaws generally deal with internal and administrative matters. The Bylaws are made under the Constitution. Accordingly, the Bylaws are subordinate to the Constitution and must not be inconsistent with the Constitution. An Association or Club should have a clause in the Constitution that provides the power to the Committee to make Bylaws.

"Committee" means the governing body of the Association or Club. It may also be referred to as the Board, the Committee of Management or Executive.

"Constitution" means the Constitution of an Association or Club. It may also be referred to as the Rules of Incorporation or Statement of Purposes and Rules. If an Incorporated Association does not have its own Constitution, the Model Rules will apply.

"Disciplinary Action" means taking action against an individual or organisation as a result of inappropriate conduct. Disciplinary action is commonly commenced for non-compliance with the Constitution and/or bringing the Association or Club into disrepute. A disciplinary matter may be competition related, member protection related or a breach of the Constitution. A disciplinary action should be distinguished from a grievance. The Association or Club commences disciplinary action against an individual or organisation, whereas a member may commence a grievance and involve another member of the Association or Club.

"Disputes" means an argument, disagreement or action taken for inappropriate conduct. For the purposes of this Guide, it may include a grievance or disciplinary action.



“Grievance” means a dispute between parties. A grievance may arise between members or a member and the Association or Club. It may include a competition-related grievance; a member protection related grievance or another form of grievance. A grievance should be distinguished from a disciplinary matter. A grievance may be commenced by a member and involve another member or the Association or Club, whereas disciplinary action is commenced by the Association or Club against an individual or organisation.



SECTION ONE

3. Competition Related Disputes:

It is preferable for tournament and competition related disputes to be resolved in accordance with the procedure set out in the Volleyball Victoria Competition Regulation or a specific competition by-law, for example the Victorian Volleyball League (VVL) Bylaws.

Your Committee is capable of solving everyday common problems, which are part and parcel of running a volleyball competition. You should continue using common sense, compromise, fairness and flexibility in order for the competition to be run smoothly for the enjoyment of all.

Some examples of competition or tournament related disputes:

- Discrepancies in relation to the game: *for example* score sheet, eligible players.
- Non-attendance at tournament/ competition meetings/events where competition points are deducted and/or fines imposed.
- Inappropriate conduct which occurs during competition (on-court) or off-court.
- Team selection issues.
- Official appointment issues: *for example* Referee, Coach, Team Manager etc.

Unlike contact sports like football, soccer and basketball, volleyball does not have a reporting provision within the FIVB Official Volleyball Rules for matters that occur off the volleyball court. Legally, the appropriate procedure for handling competition related incidents was via the Constitution – Discipline, Suspension and Expulsion of Members. This procedure requires 14 days notice of any tribunal.

Many Associations and Clubs have adopted a tribunal system; similar to football and basketball, however as this process is not supported by the rules of the game it is not legally binding. To alleviate this problem and to provide support to Associations and Clubs in dealing with game or general volleyball related incidents the Volleyball Victoria Competition Regulation has been developed.

What is the purpose of the Competition Regulation?

The purpose of the Competition Regulation is to deal with competition related offences and disputes which may arise in the conduct of volleyball programs, competitions and events throughout Victoria. The Regulation sets out the procedures to be followed in dealing with competition related offences and disputes in an effective, appropriate and timely manner.



Who does the Competition Regulation apply to?

The Competition Regulation applies to **all** Volleyball Victoria affiliated competitions, tournaments and events. All Volleyball Victoria members are bound by this Regulation.

Who can make a report?

Any reporting official may make a report under the Competition Regulation. A reporting official, as outlined in the Regulation, may be a match referee, a team official (coach, captain or team manager) or an official that has been so empowered by the relevant Organising Body.

How is a report dealt with?

- Each Organising Body shall appoint a Tribunal/Hearing Chairperson to be responsible for dealing with reports made under this Regulation. The appointment of a Tribunal/Hearing Chairperson shall be subject to approval by Volleyball Victoria.
- Organising Bodies shall require each team entered in competitions to designate on the entry form the telephone number of the team manager, to be used for notification of reports.
- The Tribunal/Hearing Chairperson shall have the following duties:
 - (a) to notify the charged person, team or club, through their team manager of the date, time and place of the hearing
 - (b) to provide the charged person, team or club with a copy of the report form
 - (c) to notify the reporting Official and any other officials or witnesses required to be in attendance, of the date, time and place of the hearing
 - (d) to hear and determine the report in whatever manner he or she considers appropriate in the circumstances (including by way of teleconference, video conference or otherwise) provided that he or she does so in accordance with the principles of natural justice.
- The purpose of the hearing by the Tribunal/Hearing Chairperson shall be to determine whether the charge has been established on the balance of probabilities (i.e. more probable than not). If the Tribunal/Hearing Chairperson is of the view that the charge has been proven a penalty or sanction may be imposed under Clause 8. Otherwise the charge will be dismissed.
- The Tribunal/Hearing Chairperson will hear charges arising from a match as soon as is practical, preferably within seven days and prior to the next round of matches occurring (if appropriate).
- No party to the hearing may be represented by a barrister or solicitor. A party may be represented by an advocate who is not a barrister or solicitor at the hearing.
- Each party to the hearing shall bear their own costs in relation to the hearing.
- If any charged person (or representative of a charged team or club) fails to attend a hearing without reasonable cause, the hearing may proceed and a determination made by the Tribunal/Hearing Chairperson in the absence of the charged person, team or club, provided



that the Tribunal/Hearing Chairperson is satisfied that all notification procedures under this Regulation have been carried out.

- If the Tribunal/Hearing Chairperson is not satisfied that the particular charge has been proved, but is satisfied that a lesser charge has been established, then the Tribunal/Hearing Chairperson may find such lesser charge established and shall apply the penalty/sanction applicable to the lesser charge.
- Where it appears to the Tribunal/Hearing Chairperson that the reporting Official has made an error in laying the wrong charge or omitted charges that should have been laid, the Tribunal/Hearing Chairperson may amend the charges and proceed to make a finding. Further, the Tribunal/Hearing Chairperson has the right to direct that a person other than the charged person be charged with an offence under this Regulation on the basis of evidence presented before it during the course of conducting the hearing.
- The Tribunal/Hearing Chairperson is **not** obliged to give oral or written reasons for any decision made by it under this Regulation.
- The Tribunal/Hearing Chairperson must notify the Organising Body and Volleyball Victoria of their decision, including any applicable penalty/sanction, within seven days.
- A charged person, team or club shall **not** be entitled to participate in volleyball competitions conducted by the Organising Body until such time as the Tribunal/Hearing Chairperson has heard and determined the report.
- To the extent of any inconsistency between the hearing procedure set out in the Constitution of the Organising Bodies and the hearing procedure set out in this Regulation, this Regulation shall prevail in relation to all competition related disputes.

What penalties/sanctions may be imposed?

If the Tribunal/Hearing Chairperson considers that a charge has been established, the Tribunal/Hearing Chairperson may impose any one or more of the following penalties/sanctions:

- (a) impose a monetary fine
- (b) impose a warning
- (c) suspend, disqualify, reprimand, bond, ban or otherwise deal with the person, team or club
- (d) any other such penalty as the Tribunal/Hearing Chairperson considers appropriate.

The range of penalties/sanctions set out in Clause 8.3 may be imposed in the discretion of the Tribunal/Hearing Chairperson. Clause 8.3 sets out the standard offences and maximum penalties/sanctions to be applied where a charge has been established by a Tribunal/Hearing Chairperson. Whether a penalty/sanction is to be imposed shall be in the discretion of the Tribunal/Hearing Chairperson.



Can a decision made via the Competition Regulation be appealed?

No, there is no right of appeal from a decision of the Tribunal/Hearing Chairperson. All decisions of the Tribunal/Hearing Chairperson are final and binding on the person, team or club charged and the Organising Body.

4. Competition By-laws:

Competition By-laws are the rules governing the internal affairs of an Association or Club. They are the operating procedures that determine the conduct and direction of the organisation. Apart from on court incidents of inappropriate behaviour, any competition, tournament or event related complaints should be dealt with via the Competition By-laws.

The procedure for resolving competition related disputes might include:

1. Committee decision – Executive or whole Committee depending on Committee structure. The Committee may discuss the issue at hand and make a decision regarding the dispute. The Committee should then inform the party/ies involved of their decision either verbally or in writing.
2. Informal meeting with the relevant party/ies in order to discuss and resolve the dispute.

Many issues and grievances in relation to the day – to – day operations of a volleyball competition can be avoided by having a transparent and appropriate competition by-laws. That is, the by-laws should clearly outline the requirements of all clubs, teams and individuals, as members of the Association or Club, along with the penalties for any breaches of these by-laws.

SECTION TWO

5. Member Protection Disputes:

The Volleyball Victoria Member Protection Policy ("MPP") came into effect in October, 2010. This is an update to include the new State Government requirements.

In summary, the MPP outlines the:

- Responsibilities of organisations and persons under the MPP.
- Screening of preferred applicants and existing appointees in certain roles.
- Obtaining a Working with Children Check (WWCC) and prohibited person declaration from preferred applicants and existing appointees in certain roles.
- Prohibiting harassment and other misconduct.
- Process for making a complaint.
- Process for hearing a complaint.
- Penalties/sanctions which can be imposed.



- Appeals process.

Under the MPP, harassment includes:

- Sexual harassment.
- Racial harassment.
- Sexuality/gender orientation harassment.
- Disability harassment.
- Abuse.
- Vilification.
- Discrimination.

The MPP includes an informal and formal complaints resolution procedure. If the complaint cannot be resolved between parties (whether informally or formally) the matter may be referred to the Tribunal/Hearing Chairperson. The Tribunal/Hearing Chairperson will then convene a Hearing Tribunal to hear and determine the matter.

Example Member Protection complaints:

- **Sexual harassment** – inappropriately touching a person in a sexual manner.
- **Racial harassment** – misconduct towards another person based on their ethnic or cultural background.
- **Sexuality/gender orientation harassment** – misconduct towards another person based on their sexual preference.
- **Disability harassment** – misconduct towards another person based on a mental or physical disability.
- **Abuse complaints** – bullying, verbal abuse or physical violence.
- **Vilification** – inciting hatred towards, serious contempt for, or severe ridicule of, a person or a group of persons by public act.
- **Discrimination** – to treat a person less favourably than someone else in certain areas of public life on the basis of an attribute or personal characteristic they have. The attributes are age, disability, marital status, parental/carer status, physical features, political belief/activity, pregnancy, race, religious beliefs/activity, sex or gender and sexual orientation.

SECTION THREE

6. Other Grievances:

If a grievance is not competition related or member protection related, it should be dealt with in accordance with the grievance procedure set out in your Constitution (if your Constitution is silent, the model rules will apply). Incorporated Associations must include a grievance procedure in the Constitution for dealing with disputes between members and between a member and the Association



or Club. Most Associations and Clubs correctly have these rules under the heading: "*Grievance procedures*".

Example of Grievances (not Competition or Member Protection related) include:

- Dispute in relation to amount rendered by Association or Club for equipment or uniforms.
- Dispute with coach in relation to dismissal.
- Dispute in relation to player clearance.
- Dispute between Club and Association in relation to grading of teams.

SECTION FOUR

7. Disciplinary Action:

If a disciplinary matter is not competition related or member protection related, it should be dealt with in accordance with the disciplinary procedure set out in your Constitution (if your Constitution is silent, the model rules will apply). Incorporated Associations must include a disciplinary procedure in the Constitution. Most Associations and Clubs will have these rules under the heading: "*Expulsion, Suspension or Fining of Members*".

Examples of disciplinary matters (not Competition or Member Protection related)

- Outstanding fees to Association or Club.
- Embezzlement of the Association or Club funds.
- Conduct, which brings the Association or Club into disrepute, which is not competition related or member protection related.
- Conduct which occurs on the site of any tournament, event or activity and which brings the sport and/or the Association or Club into disrepute.
- Damage to property.
- Being drunk and disorderly during or in connection with a tournament, event or activity.
- Consuming, or aiding and abetting the consumption of, illegal drugs during or in connection with a tournament, event or activity which is not a doping offence under the Association or Club Anti-Doping policy.
- Disruptive or disorderly behaviour during or in connection with a tournament, event or activity.
- Committing any criminal offence or any other unlawful activity during or in connection with a tournament, event or activity.
- Incurring debts (e.g. telephone or accommodation charges) during or in connection with a tournament, event or activity where such debts were not authorised.



SECTION FIVE

8. Mediation Procedure:

What is Mediation?

Mediation is a process of dispute resolution which encourages the parties in a dispute to isolate the issues, to develop possible settlement options, and to negotiate a resolution which is acceptable to both parties. Instead of having a judge, magistrate or arbitrator impose a decision, an impartial person – the mediator – facilitates the process and, if the dispute is resolved to the parties' satisfaction, the mediator helps the parties to set out their solution in the form of a written agreement which will be legally enforceable.

In mediation, the parties never hand over the power to make decisions to anyone else. The mediator cannot make or impose decisions on the parties. Settlement occurs only if the parties agree.

What happens at Mediation?

Different mediators use different models, but generally the mediator helps the parties to:

- Identify the disputed issues.
- Develop options.
- Consider alternatives.
- Reach an agreement.

The mediator controls how the session is run and the parties control what is discussed and agreed to.

Why choose mediation?

Mediation works because:

- It is a positive process which encourages co-operative problem-solving and preserves relationships.
- People have a say in how their dispute can be resolved.
- It is focused on the future - and how to improve things.
- It can solve current problems and prevent future problems.
- It can look at all aspects of the problem, not just the immediate issues.
- It creates an opportunity for communication which may not otherwise exist.
- It enables people to hear directly from each other and gain a better understanding of each other's point of view.



Who is appropriate to mediate?

- Someone from the Association or Club who is not a party to the dispute.
- Representative from the Region.
- Dispute Settlement Centre Victoria can provide a qualified mediator – free service to community and not-for-profit organisations (refer to Attachment A for contact details).

What should I look for when choosing a mediator?

While this is by no means a comprehensive list, you should aim to choose someone who can be supportive yet:

- Remain neutral at all times.
- Communicate well with all those involved.
- Listen and understand what everyone is saying.
- Explore all options without trying to influence anyone.

As the aim of mediation is to end in agreement, everyone must feel they have participated in a fair process, otherwise they will be reluctant to agree to anything. A mediator who appears to be biased assists no one, as they will provoke hostility rather than overcoming it.

Who can I bring to be on my side?

Each party to the dispute may bring a support person or advocate to the mediation. An advocate is a person who represents a person or group of people who may need support and encouragement to exercise their rights, in order to ensure that their rights are upheld.

The person/party will choose their advocate/support person, which may be a family member, friend or other suitable person.

What is the role of the Advocate/Support Person at mediation?

- Assist the person to express their wishes.
- Help the person present their case clearly.
- Help the person feel comfortable throughout the process.
- Encourage the person to speak for him/her rather than have the advocate speak for them.
- Ensure the person's rights are safe guarded.

9. Mediation Process:

Mediation follows eight basic steps which allow the people involved in the dispute to describe the situation as they see it in their own words and to hear each others view. During the session, the parties describe the dispute; how it has been in the past, what is happening at present and then looks towards



the future and discuss options and solutions. The mediator assists the parties to identify and discuss the issues in a safe, controlled and respectful environment and reach an acceptable solution.

1. **Introduction:** During this stage the mediator and parties introduce themselves. The mediator explains how the session will be conducted and answers any questions the parties have.
2. **Description of events:** During this stage the parties each tell the mediator how they see the dispute and what the issues are for them.
3. **List of issues:** The mediator identifies and lists the main points that the parties have raised. During the next stage these points are discussed in detail.
4. **Exploration:** During this part of the mediation the parties discuss the issues with each other. This is an opportunity to hear directly from one another, to ask questions and to give explanations. This helps to gain a better understanding of each others' view of the situation.
5. **Private session:** The mediator meets with each party privately to check how they are feeling about the session and to discuss anything that the party may not want to discuss in the group session. During private session the focus moves from the problems of the past and starts to look at possible solutions for the future.
6. **Negotiation:** The parties and the mediator all meet together again and generate and discuss options for resolutions. The mediator helps to maintain focus on the issues and draw points of agreement together.
7. **Agreement:** During this stage any agreements reached by the parties can be written up by the mediator. All aspects of the agreement are tested for workability to ensure that everyone understands the agreement and accepts it.
8. **Closing statements:** The mediator thanks the parties for their co-operation and congratulates them on the agreement/s that is reached.

SECTION SIX

10. Investigation Procedure:

As outlined in the Volleyball Victoria Competition Regulation, each Association or Club must appoint a Tribunal/Hearing Chairperson. This appointment must be approved by Volleyball Victoria and the appointed person must attend training as required.

If an investigation needs to be conducted to gather more information for a suspected breach of policy and/or procedure, the following steps are to be followed:

1. A written complaint or incident report must be provided to the Tribunal/Hearing Chairperson.
2. The details of the complaint allegations will be conveyed to the person/people complained about (respondent(s)) in full. The respondent(s) must be given sufficient information to enable them to properly respond to the complaint.
3. The respondent(s) will be asked to supply their response in writing.
4. If there is a dispute over the facts, then statements from witnesses and other relevant evidence will be obtained to assist in a determination.



5. The Tribunal/Hearing Chairperson will convene a hearing and advise all involved parties. This includes witnesses if applicable.
6. No party to the hearing may be represented by a barrister or solicitor. A party may be represented by an advocate who is not a barrister or solicitor at the hearing.
7. The Tribunal/Hearing Chairperson will make a finding as to whether the complaint is:
8. Substantiated (there is sufficient evidence to support the complaint has substance).
9. Unsubstantiated or inconclusive (there is insufficient evidence either way).
10. Unsubstantiated (there is sufficient evidence to show that the complaint is unfounded).
11. Mischievous, vexatious or knowingly untrue.

A report documenting the complaint and summarising the investigation process and key points that were found to be substantiated, inconclusive, unsubstantiated and/or mischievous will be provided to the complainant and the respondent(s).

11. Tribunal/Hearing Chairperson:

The Tribunal/Hearing Chairperson role is to investigate any complaint received that is deemed to be an alleged breach of the Volleyball Victoria Competition Regulation or the Association/Club Constitution. The Tribunal/Hearing Chairperson investigates the complaint thoroughly, gaining written reports from all parties involved. Interviews may be undertaken if the Tribunal/Hearing Chairperson deems this necessary.

When conducting an interview, the Tribunal/Hearing Chairperson should:

1. Only asks for the facts of the situation NOT emotive opinion.
2. Listen to the information provided without imposing personal views or opinions. Allow the person to 'have their say'.
3. Listen empathetically. Ask questions to clarify calmly and without judgement.
4. The Tribunal/Hearing Chairperson in consultation with the complainant will decide if the charge needs to go ahead to mediation, tribunal or should be dismissed.

A sensitive and thorough investigation of an issue may provide a sufficient resolution for the complainant, negating the need to take the complaint further.

If the Tribunal/Hearing Chairperson is a party to any dispute or complaint, another Tribunal/Hearing Chairperson must be appointed by the Association.

Choosing the Right Person:

To ensure the dispute resolution process is fair and efficient, it is crucial that the right person is chosen as the Tribunal/Hearing Chairperson for your Association. They are the key to handling these sensitive and emotional in a common sense manner with respect shown to all parties.



The Tribunal/Hearing Chairperson should:

- Be an excellent communicator.
- Have the ability to relate to all types of people.
- Display integrity and be respected by their peers.
- Be a good listener.
- Shows common sense even under pressure.
- Have the 'bigger picture' of volleyball in mind at all times.

SECTION SEVEN

12. Tribunal Procedure:

What is a Tribunal?

A Tribunal is a group of people who interpret and enforce the rules of the Association/Club. It is usually disciplinary in nature and is known as a Tribunal Hearing as opposed to tribunals that regulate and interpret our laws of the land such as VCAT.

The Tribunal is usually made up of a chairperson and two other members with some sporting or administration experience. They hear cases together at an appointed time.

What does a Tribunal do?

A Tribunal is set up to interpret the rules of the Association/Club and enforce the rules, and, if necessary, discipline those involved who break the rules.

The Tribunal Hearing is not meant to be like a court - it is not to have the same formality as a court. But it does have to follow certain procedures to ensure that everyone involved gets a fair go.

The Tribunal Hearing Procedure:

As outlined in the Association/Club Constitution or the Volleyball Victoria Competition Regulation:

- The Tribunal/Hearing Chairperson is to hear and determine the report in whatever manner he or she considers appropriate in the circumstances (including by way of teleconference, video conference or otherwise) provided that he or she does so in accordance with the principles of natural justice.
- No party to the hearing may be represented by a barrister or solicitor. A party may be represented by an advocate who is not a barrister or solicitor at the hearing.
- Each party to the hearing shall bear their own costs in relation to the hearing.
- If the Tribunal/Hearing Chairperson considers that a charge has been established, the Tribunal/Hearing Chairperson may impose penalties as outlined.



Burden of Proof:

There will be evidence presented at the Tribunal on both sides of the complaint. How strong does that evidence have to be? In other words, what is the 'burden of proof', how much of a complaint does the Association/Club have to make to prove the respondent is guilty of breaking the rules?

In courts there are two types of burdens of proof - civil and criminal. In criminal cases there is a higher burden of proof due to the possibility of a penalty that includes a prison sentence. Therefore, in a criminal matter, there is a requirement to prove that the respondent is guilty 'beyond reasonable doubt'.

A Tribunal does not hear criminal charges, so the civil burden of proof applies. A respondent is found guilty of a charge if 'on the balance of probabilities' she/he committed the offence.

The Tribunal must weigh up the possible explanations for what happened and then decide, on the balance of probabilities, if one version of the case is more probable. If the Tribunal is not satisfied to that extent, the charge should be dismissed and the respondent be given the benefit of the doubt.

Onus of Proof:

It is not up to the respondent to prove he/she is innocent. It is the duty of the Tribunal, on the basis of the evidence before it, to find the respondent guilty.

No oath:

Unlike a court, there is no swearing in before giving evidence in a Tribunal. There can be no charge of perjury for giving false evidence in a Tribunal, as it is not a legal institution.

Tribunal Rules:

A Tribunal must act in accordance with its own rules and these rules should be on public display and as part of the Association/Club Constitution and the Volleyball Victoria Member Protection Policy and Competition Regulation.

Composition:

When considering the composition of a Tribunal the following should be considered:

- No person apart from the Tribunal members may participate formally in its processes.
- There can be no change of personnel during a hearing; however, a member of the tribunal may withdraw provided there is a quorum.



- 'Stacking' of the tribunal should never occur, an officer of the Association/Club cannot prevent or dissuade a member from sitting
- The rules of the Association/Club in regard to majority voting must be observed.
- A tribunal member cannot be party to the dispute in question.

Observance of the Rules of the Association:

Proceedings against a member must be based on the rules which authorise the tribunal to deal with the party. The power to take disciplinary action must be clearly expressed.

Acting Without a Basis in Fact:

The tribunal must honestly and reasonably make a finding on the evidence presented before it. An error will be made if a finding is made when:

- there is NO evidence to support the finding.
- no honest and reasonable tribunal could have made the decision.
- the decision is obviously wrong.

Compliance with Procedural Requirements:

Tribunals must comply with the rules that prescribe procedure.

The Rules of Natural Justice:

A tribunal decision can be challenged if there is a denial of natural justice. Impartiality and fairness are the two key factors that must be present explicitly to ensure natural justice is conveyed.

The principles of natural justice are that:

- a member accused should know the nature of the accusation made.
- the member should be given an opportunity to state their case.
- the tribunal should act in good faith.

Knowledge of the Charge:

The charged member (respondent) should be given sufficient information. Notification of an alleged breach should:

- be in writing and delivered personally to the person concerned
- clearly sets out the nature, particulars and basis of, the alleged breach
- clearly sets out the sanctions which may be imposed if it is determined that the alleged breach has occurred
- clearly sets out the time, date, composition of and the place at which the relevant tribunal will conduct the hearing



- clearly states that they, the respondent, are required to attend.

The following should be observed in relation to the running of the tribunal:

- Time requirements should be strictly observed.
- The time and place of the hearing must be fair and reasonable in view of the charged member's circumstances.
- The respondent requires time to consider their position; this time should begin only when they have received notice of the requirement that they must attend the hearing on the said date.
- If a member fails to appear at the appointed time and place without reasonable excuse then if the tribunal is satisfied that due notice was given of the hearing it may proceed to decide the matter in their absence.
- If a proper reason is given for the member's non-appearance, then an adjournment should be granted.
- Advise whether the member is entitled to representation at the tribunal hearing.

A tribunal can deal with multiple charges at one hearing provided it is not unfair to the respondent. Charges can be amended after service of the notification provided that correct notification procedures are used.

The Right to a Fair Hearing:

- Tribunals are not courts and when reference is made to the right to a fair hearing, it does not mean that the tribunal has to conduct its hearing as a court hearing might be conducted.
- The hearing does not have to be oral, unless the rules state otherwise. However, if a member's reputation is at stake, natural justice will only be satisfied if there is an oral hearing.
- The tribunal must act on the evidence provided.
- Corroboration of evidence is desirable.
- A member is not strictly entitled to be present throughout the hearing. However, the charged party must be given fair opportunity to reply to any evidence received by the tribunal.
- It is vitally important to ask the member whether they are satisfied that they have been given the opportunity to be heard and give all evidence on the matter.
- A member may refuse to answer particular questions or decide to remain silent. This may amount to a breach of discipline.
- Documents in possession of the tribunal should be handed to the charged member. Communication of the contents is not sufficient.
- Tribunals may act on their own knowledge and on information gathered, provided the member is made aware of the substance of that information.
- There is no general right to cross examine.
- The rules of the Association may provide the right to counsel to prohibit legal representation or be silent on the matter.
- The denial of legal representation is not a denial of natural justice.



Penalties and sanctions:

- Once a charge against a member has been substantiated, the tribunal will consider the question of a penalty/sanction to be imposed. The member has the right to introduce evidence which may lessen the penalty or sanction (i.e. past history).
- The only penalties/sanctions that can be imposed are those provided for by the Rules of the Association.
- There is no obligation for the tribunal to give reasons for its decisions unless the rules so require.
- Remember that one of the purposes of a Volleyball Association is to provide opportunities for members to participate in Volleyball. Suspending or fining members should be a last resort.

Minors:

Special consideration may need to be given to minors. A warning or reprimand as a sanction for a first offence is suitable. Parents or guardians should be present during a tribunal hearing or mediation.

Right to an Unbiased Tribunal:

Bias can occur in three ways:

1. A financial or any other interest in the outcome of the hearing.
2. Evidence of prejudgment.
3. The presence of senior officers who have no part in the proceedings might be seen as an attempt to influence the outcome and tarnish the deliberations of the tribunal.

Clearly:

- The person who brought the complaint to the committee should not form part of the tribunal (including family members and best friends of).
- This person should not participate in or be present during the deliberations of the tribunal.
- Persons who are known to have actual personal animosity towards the member should not participate as members of the tribunal.

Composition of a Tribunal Panel:

- All hearings should be conducted before an independent tribunal comprising at least three members to form a quorum group (except for Competition Regulation Tribunal Hearings which only need to be heard by the Tribunal/Hearing Chairperson).
- These members do not have to be experts in the intricacies of the laws of the land. They are just expected to act fairly and responsibly and in accordance with what are commonly called the rules of natural justice.
- They should be well versed with the Rules of the Association in so far as they affect the issue before the tribunal.



- The tribunal members will apply the laws of the Association and decide on the evidence presented before them.
- A Chairperson should be elected by the members of the panel to be responsible for the conduct of the hearing.
- After all the evidence is given and the charged member has again been asked if there is anything else they would like say and the tribunal is satisfied that it has all the evidence it needs to make a decision, the panel will deliberate in private.
- This process can also be done 'on papers' through written submissions if the charged person cannot be present for legitimate reasons and they agree to this process.

Sample Running Sheet for Tribunal Hearings:

1. Chairperson announces proceedings are open and asks for all information and charges to be read.
2. The Tribunal/Hearing Chairperson (who may be a member of the Tribunal Panel) presents any information gleaned from the investigation.
3. The Complainant presents their case first and calls any witnesses to give evidence. Each witness may then be questioned by the Tribunal members.
4. The Respondent then presents their case and calls any witnesses, who may be questioned by the Tribunal members.
5. The Tribunal is not bound by the rules of evidence and may receive information in any way it considers appropriate.
6. Chairperson asks all parties if they are satisfied that all evidence has been presented.
7. Asks all parties to vacate the room whilst the panel considers the evidence and reaches a verdict and decides a penalty if required.
8. The Tribunal may give its decision immediately, but usually adjourns to consider the evidence further and write the decision. The Tribunal/Hearing Chairperson will send that decision to the parties when it is ready.

What to expect when giving evidence at a Tribunal?

Giving evidence at a tribunal can be an intimidating prospect — it doesn't need to be. The tribunal is there to help all concerned and make a fair decision. They need your help to do so. Remember, members of the tribunal did not witness the event, you did.

To prepare for your appearance remember:

- You need to state the facts with confidence
- You need to record and clearly explain the incident
- Refrain from discussing the incident until the tribunal is convened
- Make sure you know what time the tribunal hearing is scheduled for
- Be prompt and well presented when attending the tribunal



- Give clear, concise, objective evidence
- Witnesses may be required
- There may be a video of the incident available.

Following these simple guidelines will help you to assist the tribunal in reaching a fair decision for all concerned.

Appeal Grounds:

The right to appeal and the composition of the Appeals Body will be outlined in the appropriate policy document (i.e. Constitution, Member Protection Policy or Competition Regulation). In some circumstances, there is no right to appeal a decision made by the Tribunal Hearing.

If the right to appeal exists, the appeal must be received in writing within 48 hours of the tribunal hearing and accompanied by the payment of an application fee which is non-refundable.

A member cannot appeal a decision because they are unhappy with the outcome. However, the person complained about may appeal a decision of a Tribunal Hearing on the grounds that natural justice has not been provided.

There is only one right of appeal following the decision of the initial Tribunal Hearing. Any appeal must be solely and exclusively resolved by the Appeal Body and the decision of such Appeal Body is final and binding on the parties.





ATTACHMENT A:

Other Organisations:

Consumer and Business Affairs Victoria

(Consumer Affairs Victoria)
Level 2, 452 Flinders Street, Melbourne Vic 3000
GPO Box 123A, Melbourne VIC 3001
Telephone: 03 9627 6444
Consumer Affairs Helpline: 1300 55 81 81
Web: www.consumer.vic.gov.au

Dispute Settlement Centre of Victoria

Level 3, 235 Queen Street, Melbourne Vic 3000
GPO Box 4113, Melbourne Vic 3001
Telephone: 03 9603 8370
Freecall: 1800 658 528
Email: dscv@justice.vic.gov.au
Web: www.justice.vic.gov.au/disputes

Sport and Recreation Victoria

Level 14, 1 Spring Street, Melbourne Vic 3000
GPO Box 2392V, Melbourne, Vic 3001
Telephone: 03 9208 3522
Email: info@sport.vic.gov.au
Web: www.sport.vic.gov.au

Court of Arbitration for Sport

National Dispute Centre
233 Macquarie Street
Sydney NSW 2000
Telephone: 02 9223 1044
Email: info@tas-cas.org
Web: www.tas-cas.org

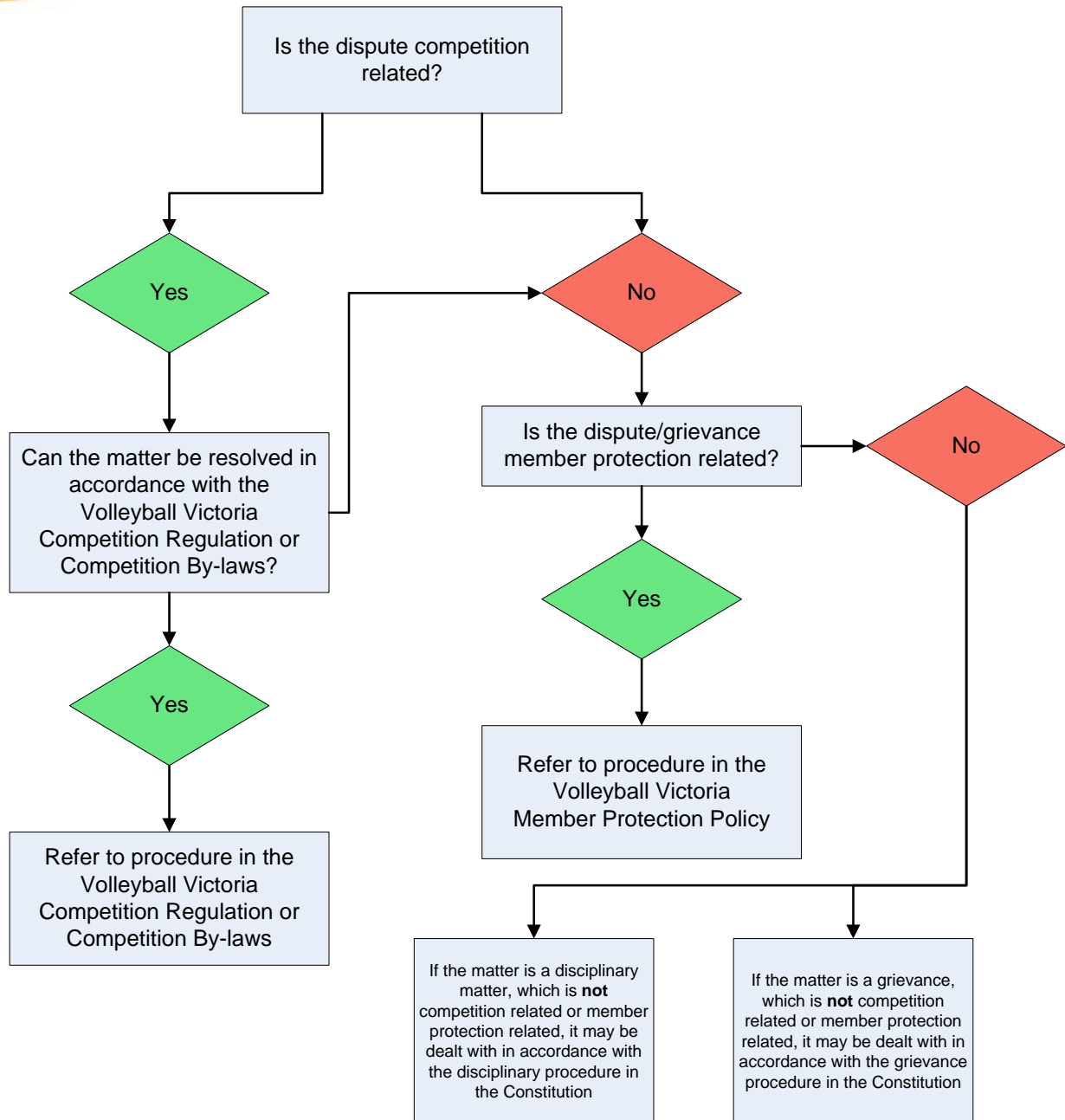
National Dispute Centre

National Dispute Centre
233 Macquarie Street
Sydney NSW 2000
Telephone: 02 9223 1044
Email: ndc@counselschambers.com.au
Web: www.counselchambers.com.au



ATTACHMENT B:

Suggested Dispute Resolution Process:





ATTACHMENT C:

Tribunal Process Flowchart:

