



## ***2020 AFL NSW/ACT Tribunal Rules and Procedures***

**The AFL NSW/ACT Tribunal Rules and Procedures (this document) are rules and guidelines that apply to the conduct of all Tribunals arising out of Australian football games conducted in AFL NSW/ACT competitions.**

**AFL NSW/ACT has adopted the procedures set out in the AFL NSW/ACT Tribunal Guidelines 2020 (State Guidelines) pursuant to Regulation 11 of the AFL NSW/ACT Regulations 2020 (the Regulations).**

**The State Guidelines, the Regulations, these Rules and Procedures and the Conduct and Disciplinary Procedures set out in the AFL NSW/ACT By-Laws 2020 (the By-Laws) apply to all competitions administered by AFL NSW/ACT.**

**Persons appearing before the Tribunal must familiarise themselves with the State Guidelines and Regulations, as well as these Rules and Procedures and the By-Laws.**

**In the event of any inconsistency between the State Guidelines, the Regulations, these Rules and Procedures and/or the By-laws, the Tribunal shall use its discretion as to which applies and shall draw the inconsistency to the attention of AFL NSW/ACT.**

***July 2020***

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# TRIBUNAL RULES

## DEFINITIONS

Words in these Guidelines that are capitalised shall have the same meaning as in the Regulations, the National Guidelines and the By-Laws.

The following words are defined to mean:

<b>advocate</b>	means a person appearing before the Tribunal as permitted under Rule 4.2 to assist an Umpire, a reporting person or reported person.
<b>By-laws</b>	means the AFL NSW/ACT By-Laws 2020.
<b>CMC</b>	means the Competition Management Committee of the League.
<b>hearing</b>	means an enquiry by the Tribunal, in a properly convened meeting into a report or other matter.
<b>the Laws</b>	means the Laws of Australian Football as adopted by the National Australian Football Council and such other rules as may be adopted by the controlling body, including, where and as applicable, the By-laws.
<b>League</b>	means AFL NSW/ACT.
<b>Official</b>	includes any Umpire.
<b>Player</b>	includes unregistered and ineligible Players.
<b>pre-sentence</b>	means the report for presentation to the Tribunal prepared by a reported person in accordance with Rule 3.3.
<b>report</b>	means a report to or of the League as provided in the National Guidelines or By-Laws.
<b>reportable offence</b>	means any act or omission, whether within or without the field of play and whenever occurring which is provided under the Laws (whether expressly or implied) or the By-Laws of the League as being subject to report to the League.
<b>reporting person</b>	means the reporting person or entity as provided in the Regulations.
<b>Rules</b>	means these Rules.
<b>Tribunal</b>	means the Tribunal established by the League.
<b>Umpire</b>	includes all Umpires appointed by the League or discharging the duties of an Umpire and such other Officials authorised by the League to report offences against the Laws.

Words importing the masculine gender include the feminine and visa versa, and words importing the singular include the plural and visa versa.

NOTES do not form part of these Rules but are included for the assistance of the participants in the Tribunal process.

## COMPOSITION, JURISDICTION AND POWERS

- 1.1 The Tribunal shall be comprised of such persons as may be appointed by the League.
- 1.2 The League is to appoint a Tribunal Chair, whose functions and duties shall be as set out in the document Tribunal Chair – Position Description as set out in Appendix 1 and as directed by the League from time to time.
- 1.3 The League is to appoint any number of Tribunal Members as may be necessary to constitute a panel of Tribunal Members, who are to sit as a Tribunal. Persons appointed to the role of Tribunal Member may be rotated from hearing to hearing as determined by the Tribunal Chair, in consultation with the League. The functions and duties of a Tribunal Member shall be as set out in the document Tribunal Member – Position Description as set out in Appendix 2 and as directed by the Tribunal Chair from time to time.
- 1.4 The appointment of a Tribunal Member, including the Tribunal Chair, shall be for a period of no more than 12 months, but the appointment of a Tribunal Member, including the Tribunal Chair, may be extended from year to year.
- 1.5 A Tribunal Member may resign by providing notice in writing to the Tribunal Chair or to the League. The Tribunal Chair may resign by providing notice in writing to the League. The League may remove a Tribunal Member or the Tribunal Chair, at any time, in its absolute discretion.
- 1.6 A current member or Official of any Club cannot be appointed or remain a Member of the Tribunal. The CMC may waive compliance with this rule and allow a current Member or Official of a Club to be appointed to the Tribunal, but the Tribunal Member must not sit on or be involved in any hearings which involves a Player or Official of the Member's Club. A current member or Official of any Club cannot act as the Tribunal Chair.

**NOTE:** Proper adherence to this Rule is fundamental to ensuring the proceedings are free from attack on the grounds or prejudice, real or perceived. When there is doubt, especially where the matter is serious and the possible penalty severe, the Member of the Tribunal is to disqualify himself/herself from the hearing. It is not a question as to whether the Member of the Tribunal believes that they can hear the matter without any bias. The test is if an uninterested party could possibly perceive there to be bias. Courts will set aside findings of tribunals where this principle can be shown to have been breached.

- 1.7 For the purpose of exercising its powers under these Guidelines, the number of Tribunal Members to constitute a meeting of the Tribunal shall be three but may in special circumstances be as many as five or as few as two. A single Member of the Tribunal can give a direction under Rules 1.11(a), 1.11(d) or 4.15.
- 1.8 The Tribunal shall enquire into:
  - (a) reports by Umpires or by a reporting person of any Player or Official of any team participating in a Match conducted by or under the League;

**NOTE:** The definition of Official is wide and includes any person performing a duty or function on behalf of a Club, including even if not acting in the capacity of an Official of the Club at the relevant time.

- (b) such other matters as may be referred to it by the League.
- 1.9 Where a reference to the Tribunal requires it to determine whether a reportable offence has occurred, the Tribunal may, if it finds there is a case to answer, charge any Player or Official with one or more reportable offences.
- 1.10 The Tribunal shall be empowered to suspend or caution any Player or Official:

- (a) against whom a reportable offence or charge has been proven;
- (b) found guilty of deliberately giving false or misleading evidence;
- (c) who fails, without reasonable excuse, to attend at a meeting of the Tribunal after being required to appear pursuant to Rule 1.11(d);
- (d) found guilty of contempt of the Tribunal;

and shall be empowered to fine any Club.

1.11 The Tribunal may:

- (a) adjourn any hearing with or without imposing conditions;
- (b) find any report proven with or without the imposition of a penalty;

**NOTE:** This Rule allows the Tribunal to find an offence proven but discharge the Player or Official without penalty. Where an offence has been proven, a person would generally need to show exceptional circumstances as to why a penalty should not be imposed.

- (c) find, on facts proven before it, that an alternative (but not more serious) offence to that for which a person has been reported or charged is proven;

**NOTE:** For example, a charge of 'charging' might be found not to be proven, but the offence of 'unduly rough play' may be proven; the offence of 'threatening an Umpire' (for which the person is reported) may not be proven but the offence of 'using insulting language to an Umpire' may be proven.

- (d) require upon reasonable notice the appearance before it of any Umpire, Player or Official or the production to it of anything within the possession, power or control of such Umpire, Player or Official;

**NOTE:** The Tribunal has no power to 'subpoena' or order members of the public to appear. However, Players, Umpires and Officials are subject to the Tribunal's jurisdiction and may be guilty of contempt if they disobey a direction given under this Rule.

- (e) make findings and recommendations and determine penalties by a majority of the Tribunal. Where the Tribunal consists of an even number of Members, and the Tribunal is evenly divided, the decision of the Presiding Member will prevail;

**NOTE:** The effect of this Rule is that the Tribunal's decisions do not have to be unanimous.

- (f) vacate, annul or vary (conditionally or unconditionally) any finding, or penalty previously imposed by it.

1.12 The Tribunal is not bound by the rules of evidence or by the practices and procedures applicable to a Court of record and may inform itself as to any matter in such manner as it thinks fit.

1.13 Tribunal hearings shall be conducted with as little formality and technicality and with as much expedition as a proper consideration of the matters before it permits.

1.14 The Tribunal shall have power to regulate its own procedures.

1.15 The Tribunal Chair may make any guidelines not inconsistent with the Rules or the By-laws that he/she thinks appropriate for the practice and procedure of the Tribunal. Any such guidelines shall be

directory in nature and no decision of the Tribunal shall be invalid solely by reason of a guideline not being followed.

- 1.16 In accordance with natural justice principles, the Tribunal shall:
- (a) hear and determine the matter before it in an unbiased manner;
  - (b) make a decision that a reasonable Tribunal could honestly arrive at.
- 1.17 While the Tribunal will endeavour to hear and determine any charge or matter referred to it before the charged person's Club is next scheduled to compete, to the extent that the rules of natural justice require that:
- (a) a person be given adequate notice of or sufficient time to prepare for a hearing; or
  - (b) the Tribunal hearing be scheduled at a time which does not affect the person or the person's Club preparation for the next scheduled match,
- those requirements are expressly excluded from the Rules.
- 1.18 A decision of the Tribunal is not invalid because of any defect or irregularity in or in connection with the appointment of a Tribunal Member.

## **REPORTING PROCEDURE**

- 2.1 Any Umpire shall be competent to report Players or Officials of any team or Club for any reportable offence. However, goal and boundary Umpires not officially appointed by the Regional Committee or the League shall not be competent to report Players or Officials of any team or Club for any reportable offence.

<p><b>NOTE:</b> The definition of 'Umpire' includes 'unofficial' Umpires, who may be officiating because no official Umpire is available. In this circumstance the unofficial Umpire can make a valid report.</p>
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- 2.2 A copy of the report shall be received from the field Umpire by an Official of the reported person's Club in the manner required by the League.
- 2.3 If any Club neglects to obtain a copy of the Umpire's report in accordance with the procedures prescribed by the League, the Umpire shall be deemed to have complied with the requirements of Rule 2.2.
- 2.4 When reporting Players, Umpires must, in addition to complying with the By-laws and the Rules, comply with the Laws, to the extent that they are able.

## **ATTENDANCE**

- 3.1 A reporting Umpire or the reporting person, the reported person and a representative of the reported person's Club shall attend a hearing at a time and place specified by the League.
- 3.2 The Tribunal may convene, including the hearing of any report or the evidence of any witness, by telephone or videoconference.
- 3.3 A reported Player or Official shall bring to the hearing a completed pre-sentence report in the form (or as nearly as possible) set out in Appendix 3.
- 3.4 A person wilfully or carelessly making any false statement to the Tribunal, including a false or misleading statement in a pre-sentence report, shall be liable to a fine or suspension for the false statement or misleading statement.

- 3.5 The onus of establishing that a false or misleading statement was not wilful or careless is upon the person making the false or misleading statement.
- 3.6 A reported person who is not able to be present at the time appointed for the hearing must submit a declaration, in the form provided in Appendix 4, setting out the reason for his/her non-attendance and including either:
- (a) the person's consent to stand down from representing his/her Club in a playing and/or official capacity until such time as he/she is able to appear before the Tribunal; or
  - (b) the person's consent to the Tribunal investigating the report in his/her absence and the person's undertaking to abide by the finding of, and any penalty imposed by the Tribunal in his/her absence.
- 3.7 A reported person who is not present at the time appointed for the hearing and who fails to submit a declaration as required by Rule 3.6 shall be in contempt of the Tribunal, which shall then be empowered to investigate the report in the absence of the reported person and to deal as it seems fit with the contempt and the report if found proved.
- 3.8 Where the Tribunal reasonably believes that misadventure has or may have prevented a reported person from either attending or submitting a declaration, it may in its discretion adjourn the hearing. The Tribunal is to exercise its discretion in determining whether the reported person shall be permitted to represent a Club in any capacity or participate in a competition or representative match during the period of the adjournment.
- 3.9 Where an Umpire or reporting person is unable to be present at the time appointed for the hearing, the hearing, at the Tribunal's discretion, is to be adjourned in which case the reported person may continue to play or officiate until the adjourned hearing takes place.
- 3.10 An Umpire or reporting person who fails to appear at a hearing without notice or reasonable excuse may be in contempt of the Tribunal, but the report shall not for that reason only be dismissed.

**NOTE:** The spirit of this Rule is consistent with Rule 4.12 and is directed to ensuring that reports are decided on their merits, rather than technicalities.

- 3.11 A person who has been required to attend or produce an item to the Tribunal and who without reasonable excuse fails to appear or produce as required shall be in contempt of the Tribunal.

#### **HEARINGS (1): ORGANISATION AND PRELIMINARIES**

- 4.1 The Tribunal Chair, or in his/her absence where the Tribunal Chair has appointed an acting Chair for that Tribunal, or where no acting Tribunal Chair has been appointed, the most senior Member, shall be the Presiding Member at any meeting of the Tribunal.
- 4.2
- (a) Any reported person or party to proceedings before the Tribunal may be represented by an advocate of his/her choice including a barrister, solicitor or agent, including an advocate or Club advocate;
  - (b) Where a reported person is under the age of 16 years at the time of the alleged Reportable Offence, the reported person may be represented by a parent/guardian instead of a barrister, solicitor or agent, advocate or Club advocate;
  - (c) Where the Presiding Member is of the opinion that the representative of a reported person or party to proceedings has failed to observe directions of the Tribunal or otherwise acted in a contemptuous, irresponsible or discourteous manner, the Presiding Member may dismiss the person's representative and if appropriate, adjourn the proceedings to enable the person to obtain fresh representation.

- 4.3 Hearings shall, at the discretion of the Tribunal and so far as facilities available reasonably allow, be open to the public.
- 4.4 In respect of each report the Presiding Member shall first ascertain:
- (a) whether the reported person and reporting person or reporting Umpire are present;
  - (b) whether the reporting person or reporting Umpire is represented by an advocate;
  - (c) whether the reported person is represented by an advocate;
  - (d) whether the reported person has been supplied with a copy of the report;
  - (e) how the reported person intends to plead;
  - (f) the availability of any witnesses the parties propose to call;
  - (g) the nature and availability of such further evidence the parties intend to present, including the availability of any visual evidence;
  - (h) the likely duration of the hearing.
- 4.5 The Tribunal may then:
- (a) proceed immediately to hear the report; or
  - (b) appoint a later time on the same day to hear the report; or
  - (c) adjourn the hearing on such terms as it sees fit.
- 4.6 At the commencement of the hearing, the report shall be read to the reported person who shall be asked to either admit or not admit the report or charge.

**NOTE:**

- (1) In junior competitions, Players and other reported persons are asked to either admit or not admit the report or charge, rather than plead "guilty or "not guilty".
- (2) Players should be careful not to enter a 'Claytons' "admit the charge" plea. This happens when a Player admits the report or charge (for example) striking then, when the hearing gets under way, admits contact but quickly adds 'it was just an accident'. This is 'the 'guilty' plea you make when you're not pleading 'guilty'.

An element is a component of a charge which must be proved in order for a finding the report or charge is proven.

For the report or offence of striking to be proven, TWO elements must be satisfied:

- (i) physical contact; and
- (ii) intention to perform some act which results in such contact.

It follows that a Player who admits (i) but denies (ii) cannot possibly admit the charge or report of striking, so Players should give careful consideration to just what they are admitting to before admitting the charge.

Intent can be either:

- (a) intent to make the actual type of physical contact which occurs (e.g. wilfully aiming and



delivering a punch); or

- (b) intent to perform some act, a probable result of which is the contact which consequently occurs (e.g. wilfully lashing out with a forearm or elbow in the general direction of a Player close enough to be struck even though not specifically aiming a blow). The resulting contact (and particularly any serious injury resulting) might not be intended, but the act is and contact which results from recklessness of this kind is not a mere accident.
- (3) Players often try to admit the report or charge 'under provocation' or even admit the charge or report but that they were 'acting in self-defence'. Such pleas are not acceptable. Provocation may be able to be used in mitigation, but not as a complete defence to the charge.

A Player claiming provocation must simply admit the report or charge and then rely on any proved act of provocation to mitigate the penalty.

A Player claiming that he/she acted in self-defence should not admit the report or charge, because self-defence, if proved, is a complete answer to the report. However, a plea of self-defence can only succeed where the reported person was, at the time, under real or apprehended attack and his/her response (which is the act for which he/she was reported) was proportional to the threat. Thus, a Player who responds to an open-handed push in the face from a niggling Player by punching the niggler cannot claim self defence, for the response is not defensive at all; it is an escalation of the degree of physical contact.

- 4.7 The Tribunal shall decide on the balance of probabilities whether a reportable offence or other charge has been sustained.
- 4.8 A reported person may, at any time prior to a decision being handed down by the Tribunal, change his/her plea.
- 4.9 A reported person may at any time admit an alternative reportable offence, but the Tribunal shall not be bound to accept the plea or to discontinue its enquiry into the alleged offence as originally reported.

**NOTE:** Under this Rule a reported Player can elect to plead that they do not admit the offence reported (say, 'charging') but admit as proven an alternative offence ('unduly rough play') for which he/she was not reported. The Tribunal is not bound to accept a plea admitting to a lesser charge (because a reported Player, facing a serious charge and recognising the weight of evidence against him/her, might seek to avoid a likely heavy penalty by pleading as proven the lesser offence).

- 4.10 The Tribunal may, at any stage of a hearing, reject a plea admitting the report or charge and make a finding of not proven.

**NOTE:** This Rule is appropriate where a Player (particularly one not having the assistance of a good advocate) mistakenly admits the report or charge in the belief he/she has no defence and the evidence subsequently discloses that there is a defence. An example is a plea admitting the report or charge by a Player who genuinely acted in self-defence (see note (3), Rule 4.6) but mistakenly believes that because he/she did strike his/her opponent he/she must admit the report or charge.

- 4.11 A reported person who refuses to plead shall be deemed to have admitted the report or charge.

## **HEARINGS (2): FORM OF REPORTS**

- 4.12 A report shall be in writing in a form prescribed by the League or to a similar effect and shall be valid provided that it complies with the requirements of Rules 4.13 and 4.16.

**NOTE:** 'or to a similar effect' means that valid reports can be made on any report form including those of other Regions or leagues or even on a blank sheet of paper, so long as the minimum details required by the Rules are provided.

- 4.13 The reportable offence or offences alleged, or the conduct or actions alleged to constitute a reportable offence, must be stated.
- 4.14 A report may allege alternative offences.

**NOTE:** It is perfectly acceptable for an Umpire, who is uncertain of all the facts or of which offence they may constitute, to allege alternative offences, e.g., where the Umpire believes he/she has seen a fist swing and an opposing Player's head jerk back, but cannot say for sure whether this was the result of contact or swift evasive action, he/she could report for 'striking or attempting to strike'. Where an Umpire believes he/she has seen a Player swinging blows in a pack but cannot be sure which of several Players has been hit, 'striking an unidentified Player' is a valid report.

- 4.15 A reported person may ask in advance of the hearing for particulars of any reported offence where the conduct constituting the offence is not stated in the report.

**NOTE:** Recourse to this Rule is appropriate where the report alleges a non-specific offence, e.g. 'misconduct', 'wasting time', 'disputing decision' etc. The particulars to be provided are limited to the alleged act or words constituting the reported offence.

- 4.16 The reported Player must be identified by jumper number and/or by name.
- 4.17 Where the number and name as stated on the report are inconsistent the Tribunal may take into account the surrounding circumstances and, in particular, who the Umpire orally advised of the report, in determining whether the reported person has been sufficiently identified.
- 4.18 A technical error or failure to comply with Rules 2.2, 2.3 or 2.4 shall not invalidate a report.
- 4.19 In particular, a report shall not be invalid by reason only of error or omission in stating the date or place of the report, the quarter in which the report was made, the capacity in which the reporting Umpire was officiating or the number of the Law under which the report is made.
- 4.20 Where a report is not signed, the reporting Umpire may be shown the report and if he/she identifies it as his/her document, the report shall be deemed to have been signed.
- 4.21 The Tribunal may amend a report in order to rectify any deficiency or to substitute an alternative offence to the offence reported, but no such amendment shall be made if to do so would, in the opinion of the Tribunal, prejudice the reported person in a way which cannot be cured by imposing conditions upon which the amendment is made.

**NOTE:** In some instances (particularly where vision evidence is available) a reporting Umpire may seek to amend his/her report (e.g. he/she may say that, having viewed the vision, he/she now believes the report should have been for 'unduly rough play' not 'charging', or 'striking' or 'assault'). It would be permissible for the Tribunal to use its powers under this Rule in such a situation because the amended offence is less severe (see rule 1.11(c)) and the Player has been aware, from the time he/she was reported, of what the circumstances of the report are. An attempt to amend a report from, for example 'intentionally attempting to trip' to 'assault' would not be allowed. Not only is the proposed amendment a more serious charge, but the Player will have prepared his/her defence to meet alleged facts which are significantly different from those constituting the proposed alternative offence, and so he/she would be disadvantaged by the amendment.

### HEARINGS (3): PROCEDURE

4.22 Where a reported person pleads that they do not admit the offence following a report from an Umpire, the hearing is to proceed as follows:

- (a) The Umpire shall give evidence concerning his/her report after which he/she may be questioned by the Tribunal.
- (b) The Umpire may be assisted by his/her advocate and questioned by the reported person or his/her advocate.
- (c) The reported person shall give evidence after which he/she may be questioned by the Tribunal.
- (d) The reported person may be assisted by his/her advocate and questioned by the Umpire or his/her advocate.
- (e) The Umpire and then the reported person may adduce further oral, documentary or visual evidence and any witness may be questioned by the other party or his/her advocate and by the Tribunal.

**NOTE:** The Tribunal may direct that the showing of any visual evidence be undertaken at such time during the hearing as it directs, as long as this does not cause any procedural unfairness to any party.

- (f) Witnesses shall remain outside the hearing room until called.
- (g) Any person who has been called to give evidence shall remain within the precincts of the Tribunal until the taking of all evidence has been concluded, unless the Tribunal earlier releases that person.
- (h) The Umpire may give further evidence by way of reply to evidence adduced on behalf of the reported person.
- (i) The reported person or his/her advocate may question the Umpire about any evidence given in reply.
- (j) At the conclusion of the evidence, the Umpire or his/her advocate and the reported person or his/her advocate may present a summary of the evidence and make any submission after which the Tribunal shall retire to consider its determination.
- (k) After the Tribunal has reached a decision and reconvened, the Presiding Member shall announce the determination of the Tribunal.
- (l) The Tribunal is not obliged to give reasons for any decision made by it under these guidelines.

4.23 Where a reported person has admitted the report or charge, his/her evidence shall be taken before that of the Umpire after which the procedure shall be as provided in Rules 4.22 (d) and 4.22 (h).

**NOTE:** The hearing procedure is set out in Appendix 5.

4.24 When a reported person has admitted the report or charge, or the Tribunal has found the report or charge proven:

- (a) if he/she is an Official, he/she or his/her advocate may make a statement in mitigation and may call witnesses in support of his/her character;
- (b) if he/she is or has at any time been a Player, he/she shall hand to the Tribunal a completed pre-sentence report (if it has not already been tendered) after which he/she or his/her

advocate may make a statement in mitigation and call witnesses in support of his/her character.

**NOTE:** Usually the pre-sentence report is not handed to the Tribunal before the Tribunal makes its finding. The reason is that the Tribunal, in weighing the evidence when a Player has not admitted the report or charge, should not be deflected in its deliberation by having before it documentary evidence that the Player 'has a record'. However, a Player with a very good record may wish that fact to be known to the Tribunal in support of his/her 'case' that his/her playing history suggests he/she is unlikely to have done what he/she has been reported as doing or would only have done so under extreme provocation. In such situations it is open to a Player's advocate to tender the pre-sentence report at any stage he/she wishes. Of course, where the Player admits the report or charge, the Tribunal has only penalty to determine, so the pre-sentence report is handed up immediately.

- 4.25 A pre-sentence report may be inspected by the Umpire and his/her advocate who may challenge its accuracy but otherwise shall make no submission as to penalty, unless invited to do so by the Tribunal.
- 4.26 The Tribunal may question a reported person about his/her pre-sentence report.
- 4.27 Subject to any ruling by the Tribunal, where a Player or former Player fails to produce a completed pre-sentence report neither he/she nor his/her advocate may call evidence or be otherwise heard in mitigation of penalty.
- 4.28 Where a reported person does not admit a report or charge following a report **other** than from a report from an Umpire, the hearing is, subject any directions to the contrary from the Tribunal, to proceed as follows:
- (a) The reporting party shall call such evidence in support of the report after which any witnesses may be questioned by the Tribunal and questioned by the reported person or his/her advocate
  - (b) The reporting party may be assisted by their advocate.
  - (c) The reported person shall give evidence after which he/she may be questioned by the Tribunal and questioned by the reporting person or their advocate.
  - (d) The reported person may be assisted by his/her advocate.
  - (e) The reported person may call other evidence after which any witnesses may be questioned by the Tribunal and questioned by the reporting person or their advocate.
  - (f) Witnesses shall remain outside the hearing room until called.
  - (g) Any person who has been called to give evidence shall remain within the precincts of the Tribunal until the taking of all evidence has been concluded, unless the Tribunal earlier releases that person.
  - (h) With the leave of the Tribunal the reporting person may give further evidence by way of reply to evidence adduced on behalf of the reported person.
  - (i) The reported person or his/her advocate may question any evidence given in reply.
  - (j) At the conclusion of the evidence, the reporting person or advocate and the reported person or his/her advocate may present a summary of the evidence and make any submission after which the Tribunal shall retire to consider its determination.
  - (k) After the Tribunal has reached a decision and reconvened, the Presiding Member shall announce the determination of the Tribunal.

- (l) Where a reported person has admitted the report or charge, his/her evidence shall be taken before that of the reporting party after which the procedure shall be as follows:
  - (i) The reported person may be assisted by his/her advocate and questioned by the reporting party's advocate.
  - (ii) The reporting party may give further evidence by way of reply to evidence adduced on behalf of the reported person.

#### **HEARINGS (4): PROCEEDINGS IN REPORTED PERSON'S ABSENCE**

- 4.29 Where the reported person has in a request in writing consented to the Tribunal's investigating a report in his/her absence the following additional Rules shall apply where applicable:
- (a) the Presiding Member shall pronounce a plea on behalf of the reported person as the request in writing directs;
  - (b) the request in writing shall be read to the Tribunal;
  - (c) any person who is referred to by the reported person in his/her written request as a person whom he/she would have called to give evidence on his/her behalf shall be called and allowed to give evidence after which he/she may be questioned by the Umpire or his/her advocate and by the Tribunal.

#### **HEARINGS (5): REPORTS ON PLAYERS UNDER 12**

- 4.30 If the reported person is under 12, the Tribunal may, after considering the age and degree of maturity of the Player and such other factors as the Tribunal determines appropriate for the hearing of the report, deal with and hear the report in such manner as the Tribunal thinks fit.
- 4.31 In dealing with the Report, the Tribunal may:
- (a) dispense with the Tribunal processes described in the Rules in whole or in part, and this may include a direction from the Tribunal that any questions asked of the Player are done so by the Tribunal only; and/or
  - (b) hear the report in such manner and pursuant to such directions of the Tribunal as appropriate to the circumstances; or
  - (c) give directions as appropriate for dealing with or for the hearing of the report.

#### **HEARINGS (6): EVIDENCE, CHALLENGE TO JURISDICTION AND OTHER MATTERS**

##### **Evidence**

- 4.32 Where the hearing follows a report or charge from a report from an Umpire, a copy of any visual evidence, whether by way of photographs or video/DVD etc, must be submitted to the League by no later than midday on the day of the hearing.
- 4.33 Where the hearing follows a report or charge other than from a report from an Umpire, a copy of any visual evidence, whether by way of photographs or video/DVD etc, must be submitted to the Club of the charged person and to the League by no later than midday on the day of the hearing.
- 4.34 Any person charged and required to attend before the Tribunal may request to adduce witness evidence at the Tribunal hearing, provided that such a request is submitted to the League in writing by no later than 10.00am on the day after notification of the charge or matter, and contains:
- (a) the name of the witness;
  - (b) if to be called as an expert witness the qualifications and experience summarised in less than fifty (50) words of the expert witness, if applicable; and

(c) the substance of the evidence it is proposed to adduce from the witness.

4.35 Unless permission is granted by the Presiding Member, a person shall not adduce the evidence of a witness unless that person complies with Rule 4.34 above.

4.36 Only in exceptional circumstances, as determined by the League in its absolute discretion, will the Tribunal receive evidence from a person who is not recorded on the Club official team sheet or Club official for a relevant Match. The League will confirm acceptance or otherwise by 5.00pm on the day before the hearing.

4.37 Appendix C of the By-Laws – Recording of Images, applies.

#### **Challenge to Jurisdiction, Formalities of Report and Other Technical Matters**

4.38 Where a person intends at a hearing of the Tribunal to:

- (a) challenge the jurisdiction of the Tribunal to deal with a matter;
- (b) challenge the constitution of the Tribunal;
- (c) challenge the formalities of the laying of any charge; or
- (d) raise any other matter requiring a legal or technical interpretation,

the person intending to do such things must provide full written particulars of all relevant matters and forward a copy of those particulars to the League and any other person who has an interest in the proceeding (including, without limitation, the Reporting Officer and the League) by midday on the day after notification of the charge or matter to be heard by the Tribunal.

#### **State Guidelines - Classifiable Offences, Conduct, Impact and Contact definitions and other matters**

4.39 Section 5 Reportable Offences of the State Guidelines provides some guidelines as to different categories of Reportable Offences and in assessing particular offences and appropriate sanctions for such an offence. It includes definitions for Conduct (Intentional, Careless), Impact (Low, Medium, High or Severe), Contact (High/Groin/Body) as well as other matters. Those considering whether to accept or reject a Prescribed Penalty and advocates appearing before the Tribunal must be fully familiar with this document

#### **HEARINGS (7): PENALTIES**

4.40 The Tribunal shall retire to determine penalty and having so determined shall reconvene and the penalty shall be announced by the Presiding Member, after which any Member of the Tribunal may make a statement.

4.41 The penalty is to be recorded in writing and signed by the Presiding Member.

4.42 Where the penalty is or includes a period of suspension, the period may be expressed as either the number of matches from which, or alternatively the period of time during which, the Player is precluded from participating.

4.43 The Tribunal may defer, on terms or absolutely, the operation of any penalty or part thereof.

<b>NOTE:</b> This Rule allows the Tribunal to impose a sentence which is suspended in whole or in part.
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4.44 Where a period of suspension is expressed as a number of matches:

- (a) a 'match' shall mean a competition match of the same age group or division in which the Player committed the offence, and shall also include as the one match, the matches in all grades in a particular round for which the Player would, but for the suspension be eligible,

whether played on the one day or not. Any suspension shall take effect from and include the next competition match following the suspension for which the Player would, but for the suspension, be eligible;

**NOTE:** The effect of this Rule is that a Player cannot count towards his/her suspension matches in more than one grade in each round, even if he/she regularly 'doubles up'.

- (b) a Player is ineligible to play in any representative match whilst under suspension. In addition to this, the representative matches do not count towards part of the suspension;

**NOTE:** Without this Rule, any Player could claim theoretical eligibility for any representative fixture, no matter how remote his/her real prospects of selection are, and so count the fixture toward his/her suspension.

- (c) Competition games which are forfeited, washed out for any other reason not played, shall not be counted for the purpose of reckoning a period of suspension.

- 4.45 Where a period of suspension is expressed as a period of time the period shall commence from the time the penalty is pronounced and conclude at midnight on the last day of the period, unless the Tribunal orders otherwise.
- 4.46 A suspended person may not, during his/her period of suspension, participate in any match in the capacity of Player, runner or trainer, nor shall he/she officiate within the enclosed playing area (or, where there is no enclosed playing area, within five metres of the boundary line), but may attend a game and observe as a spectator only. Players are not permitted within the confines of the playing field, and must not act as runner, water carrier or in any other capacity. Subject to any direction from the Tribunal, an Official may participate in any official capacity at their Club on non-match days.
- 4.47 Subject to any direction by the Tribunal, where the Tribunal imposes a suspended sentence, the period of the sentence is suspended, subject to good behaviour by the Player or Official. If the Player or Official is found guilty by the Tribunal of any subsequent offence committed during the period of the suspended sentence or, in the case of a Player, a Prescribed Penalty is offered and accepted which results in a match suspension, the suspended sentence will be added to any sentence imposed by the Tribunal for the subsequent offence or as a result of the Prescribed Penalty.
- 4.48 Where a reported person requests that a Prescribed Offence offer be dealt with by the Tribunal, and the Tribunal is of the opinion that the Prescribed Penalty offer to the Player was reasonable in all the circumstances and does not reduce the penalty, the Tribunal, in its absolute discretion, may impose an extra one match penalty in addition to the Base Sanction penalty for the Prescribed Offence (prior to the Early Guilty Plea offered by the League), or the penalty imposed by the Tribunal, whichever is the greater.
- 4.49 In the event of a dispute as to the games or matches covered by a suspension, the dispute is to be referred to the CMC for determination. The CMC may seek the advice of the Tribunal.
- 4.50 Where a Player receives notice of an automatic playing suspension as provided by the Rules and requests the automatic suspension be referred to the Tribunal for hearing, the Tribunal may impose such conditions on the Player as it deems appropriate, pending the hearing. The Tribunal may, following the hearing, affirm or vary the suspension, (including increasing the suspension) or apply any other penalty as it deems appropriate. Where the Tribunal is of the opinion that the automatic playing suspension was reasonable in all the circumstances, the Tribunal will impose a suspended sentence at least equal to the automatic match playing suspension imposed on the Player, such suspended sentence to remain in force for a period of 12 months from the date of the Tribunal hearing or to the equivalent round in the following season.

## CONTEMPT/CRITICISM OF TRIBUNAL DECISION

- 5.1 The Tribunal shall have power to act in a manner it believes appropriate where any persons appearing before it or acting on behalf of any person appearing before it behaves (whether in the course of the hearing or otherwise) in a manner which the Tribunal deems to be in contempt or misconduct falling short of contempt, including but not limited to unfair, unreasonable or excessive public criticism of a Tribunal decision, any Tribunal Member or any other matter touching on or concerning the Tribunal or a determination made by it and shall have power to call before it such person and deal with such person as the Tribunal thinks fit.

**NOTE:** The essence of contempt of any quasi-judicial body, (of which a Tribunal is an example), is any attempt to undermine its functions, and this includes:

- (a) Disrespectful behaviour – which may be contempt because it undermines confidence in the Tribunal and, therefore, its capacity to carry out its duties.
- (b) Disobeying a proper direction – the Tribunal will generally encounter this as failure to comply with Rules 1.11(a) or 1.11(d), i.e., not appearing at a hearing or failing to comply with a direction to produce something to the Tribunal. Obviously, such conduct affronts the very basis of the League's ability to exert discipline over the game.
- (c) Attempting to influence decisions by means other than putting argument or evidence before the Tribunal according to the Rules. Public comment prior to a hearing, designed to influence the attitude of Tribunal Members, is one example, but far worse is any direct attempt to bypass the Tribunal's proceedings by 'lobbying' the League. There can be no clearer example of undermining the functions of a Tribunal than attempting to have it 'overruled' in a manner quite contrary to the Rules by which all participating Clubs and the League are bound. The League is to refer such matters to the Tribunal for determination.

- 5.2 The failure of a representative of the Club of a reported person to attend a hearing as required under Rule 3.1, or any adjourned hearing, without proper excuse as determined by the Tribunal, may be dealt with by the Tribunal as contempt of the Tribunal, and the Tribunal shall have the power to fine the Club for such contempt.
- 5.3 No Player, Umpire, advocate or reported person, or any person who is subject to the jurisdiction of the League shall make any unfair, unreasonable or excessive public criticism of, or comment on a Tribunal decision, of the Tribunal or any Tribunal Member or any other matter touching or concerning the Tribunal, or a determination made by it.
- 5.4 The League shall determine in its absolute discretion whether any public criticism or comment is unfair, unreasonable or excessive.
- 5.5 Where a person contravenes this Rule, the person's Club may be liable to a sanction.
- 5.7 These provisions are in addition to, and not derogate from the provisions of the By-laws.

## POINTS OF LAW

- 6.1 Where a point of law (which does not include a Law within the meaning of 'the laws' as defined) is raised in any hearing before the Tribunal, the following procedure is to apply:
- (a) the Presiding Member, if legally qualified, or other Tribunal Member, if legally qualified, shall (after consultation if he/she sees fit) make a ruling and that ruling shall be the determination of the Tribunal on the point;
  - (b) if the Presiding Member or any other Member is not legally qualified, the Tribunal may proceed to a determination of the factual issues before it but that determination shall be expressed to be, and shall be, not effective until a ruling on the point of law has been obtained from a legally qualified person.



## APPEALS

- 7.1 Findings of fact and determination of penalty shall be final except that the Tribunal may, in its discretion, re open any hearing for the purpose of considering fresh evidence (but not for the purpose of reconsidering any finding made or penalty imposed on the basis of previously presented evidence).
- 7.2 Fresh evidence means evidence which was not known to be available and could not, with reasonable diligence, have been known to have been available at the time of the original hearing.

**NOTE:** It is not sufficient that the new evidence was simply not presented at the first hearing. An example would be wanting to call fresh evidence from another witness who is, say, a trainer or Club Official and who could have been interviewed and called before the original hearing. This would not satisfy the test. An example of what would satisfy the test is belated awareness that a spectator had taken a private videotape of the incident but had not communicated this fact to the Club prior to the hearing.

- 7.3 The Tribunal shall not re-open any hearing to consider fresh evidence where it appears that even if presented to the original hearing, the fresh evidence could not reasonably be expected to have resulted in a different finding or penalty.
- 7.4 An appeal from any decision on a point of law or procedure only may be made to the AFL (NSW/ACT) in accordance with the Regulations.

**NOTE:** It is important to distinguish between an appeal and a re-hearing. Persons without legal training usually talk about the former when they really mean the latter.

A re-hearing simply means recycling the same evidence before another body of persons in the hope that (even though the first hearing made no procedural errors) the second hearing might be persuaded to come to a different view of the facts. There is neither need, nor provision under these Rules, for any re-hearing.

An appeal is directed to correcting some error of procedure or law, which may have been made in the original hearing and affected its findings. Examples are failure to give proper notice of a hearing, wrongly admitting or excluding certain evidence, misinterpreting a by-law etc. 'Error' in this sense does not include a belief by the unsuccessful party that the ultimate decision is wrong. It is not the result but the path to that result which matters and if the Tribunal has followed the correct procedures the mere fact that it has believed one witness and disbelieved another in arriving at a conclusion is not an 'error' which provides grounds for an appeal (i.e. credibility).

- 7.5 The procedure for any appeal is set out in Regulation 16 Appeals and Section 4 Competition Appeal Rules of the State Guidelines.

## OTHER DOCUMENTS

- 8.1 Those appearing before the Tribunal are urged to read and refer to the documents on the League's website, under the Resource Centre tab.

## HEADINGS AND NOTES

- 9.1 Headings are used only for the purpose of identification and notes, while assisting and clarifying the parts in which they are located, do not form a part of these Tribunal Guidelines.

## ***Additional Tribunal Procedures***

### ***To assist in understanding the Tribunal Rules and procedures***

#### **IMPORTANT NOTE:**

**These Additional Tribunal Procedures are to further assist persons involved in proceedings before the Tribunal. They provide a general commentary and should be read in conjunction with the preceding Rules and related documents. Where there is any inconsistency between the preceding Rules and these Additional Procedures, the preceding Rules will generally prevail.**

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## **INTRODUCTION**

The defined words in the Rules also apply in these Additional Tribunal Guidelines. The term 'reported person' is used throughout these Additional Tribunal Guidelines to refer to anyone facing disciplinary proceedings.

Proceedings before the Tribunal fall into one of three classes:

- (a) hearing of Umpire's reports involving Players and Officials;
- (b) hearing of reports referred to the Tribunal by the Regional Committee or the CMC, as provided by the By-Laws;
- (c) such other matters as may be referred by the League.

## **NATURAL JUSTICE**

The proceedings before the Tribunal are heard in accordance with the rules of natural justice.

### ***Right to an unbiased Tribunal***

Tribunal Members must not be prejudiced (that is, biased). Prejudice (that is, 'pre-judged') means nothing more than having certain views of the merits of the case, which, for instance, may have been formed outside the hearing itself - for example, where a Member of the Tribunal witnessed the reported incident, or is connected by business or personal relationship with one of the parties.

No person who is or might be thought to be prejudiced should be a Member of the Tribunal hearing any disciplinary matter. If, during the hearing, a Tribunal Member finds himself/herself in a position of possible prejudice, he/she should disqualify himself/herself immediately, even if this means aborting the hearing and starting again.

### ***Notice of the charge***

Notice of the charge is given in writing, including electronically, by way of a Notice of Report – see the By-laws and Rules.

### ***Adjournments***

In disciplinary proceedings, swift and certain determination of disputes is desirable. Where a reported person reasonably requests an adjournment on good grounds, it may be granted, particularly if short notice was given of the hearing. Adjournments which are blatant delaying tactics are refused or discouraged by granting them on terms (for example, imposing a condition that a reported Player will not play until the case is heard, or that a Club Official will not undertake any duties as an Official or attend games until the matter is finalised).

The granting of an adjournment is always a discretionary matter for the Tribunal.

The power to grant an adjournment is dealt with under Rules 1.11 and 3.8.

### ***The Hearing***

The Tribunal's hearings are oral.

The Rules generally provide for an open hearing, at the discretion of the Tribunal (Rule 4.3). However, a closed hearing will be ordered by the Tribunal where, for example, sensitive evidence is likely to be given.

Subject always to the Tribunal's discretion, the Rules provide for:

- all oral evidence against a reported person to be taken in his/her presence.
- all documentary evidence against a reported person to be made available to him/her.
- a reported person or his/her advocate to question all witnesses.
- a reported person to present evidence on his/her behalf.

Any reported person may be represented by an advocate of his/her choice including a barrister, solicitor or agent, including an advocate or Club advocate. Where the reported person is under the age of 16 years at the time of the alleged Reportable Offence, the reported person may be represented by a parent/guardian instead of a barrister, solicitor or agent, advocate or Club advocate.

The Tribunal is not required to give reasons for its decisions and the giving of reasons is at the discretion of the Tribunal.

### ***Fresh Evidence***

The Rules provide a Tribunal with the discretion to re-open a hearing, which it has previously concluded, for the purpose of considering further evidence (but not for reviewing the decision it has previously made on the same evidence) (Rule 7.1). Before the Tribunal takes this unusual step, the 'new evidence' must satisfy two tests –

- it must be genuinely new, which means not merely that it was not presented to the original hearing, or that its availability at the time of the original hearing was now known, but that its availability could not with reasonable diligence have been known. For example, wanting to call fresh evidence from another witness who is, for example, a trainer or Club Official and would or could have been interviewed and then given evidence at the original hearing, would not satisfy this test.
- the evidence must also be sufficiently strong that, in the opinion of the Tribunal, it may well have affected the outcome of the earlier determination had it then been available.

### ***Appeals***

There is a limited right of appeal (Rule 7.4)

### **HEARING PROCEDURE AS PRESCRIBED IN THE RULES**

The Tribunal is not bound by rules of procedure and evidence, but the rules of natural justice are applied.

Although the Tribunal has power to waive strict adherence to the Rules for the presenting of evidence, it may not necessarily do so. Proper preparation of a case is essential.

### **ABSENCE FROM THE HEARING**

Where a postponement or adjournment has not been sought or granted, the reported person must attend the hearing. If he/she cannot attend, he/she must then elect to:

- have the report adjourned and agree to terms imposed by the Tribunal, such as not playing until the adjourned hearing takes place; or
- have the report heard in his/her absence and accept the decision of the Tribunal (Rule 3.6).

Whichever he/she decides he/she must, through his/her Club or advocate, submit a declaration in which he/she:

- explains his/her absence from the hearing; and
- nominates which of the two courses outlined above, he/she has elected.

The making of a declaration should not be treated lightly. Knowingly or carelessly making a false statement in a declaration is more than just contempt of the Tribunal's proceedings and may subject the declarant to the criminal law.

Where a reported person fails to appear or to submit a declaration, the report can be heard in his/her absence and he/she may be called before the tribunal and further penalised for contempt. (Rule 3.7).

### **ADVOCATES**

Effective advocacy is no less a skill than effective coaching and Clubs are encouraged to give thought early in the season (not on the day of a hearing) as to who will represent a reported person.

Any advocate's leave to appear may be withdrawn if, at any stage, he/she misconducts himself/herself.

Whilst a reported person can act as his/her own advocate, this is not encouraged for Players. If the advocate decides (even part way through the hearing) that he/she wishes to give evidence, another advocate must be appointed from then on.

## **CLARIFYING THE REPORT**

An Umpire is not required, although he/she is encouraged to, set out in his/her report:

- the number of the law under which he/she made the report (provided the relevant law is identifiable from the wording of the report);
- his/her proposed evidence (i.e. details of what happened).

'Striking Player (number) of (club)' is a sufficiently worded charge without the need to set out how the 'victim' was (allegedly) hit or what the surrounding circumstances were.

However, there are some instances where the Player will be entitled to know more about just what is alleged against him/her, in order that he/she may prepare his/her defence. The most obvious examples are a report for 'misconduct', (which, in the absence of particulars, can be almost anything), 'unacceptable language', 'wasting time' and any report, which identifies the offence by reference to a law by number only, and that law includes a multiplicity of offences. In such a case, particulars should be given, for example 'threatening language to an Umpire in that he/she said, "you may not live to see full time", "wasting time in that he/she refused to kick out when directed". If it is not clear from the report just what is alleged, the Player (through his/her advocate or Club) may apply for details of the charge to be given in advance of the hearing. In appropriate cases, an application for details can be made at the hearing, but if a Player leaves his/her request so late, the application is unlikely to cause the hearing to be postponed while a defence is prepared.

## **NOTES ON 'TECHNICAL DEFENCES'**

The spirit of the Rules is that reports are determined on the facts, not on technicalities. Provision has been made to ensure that this approach is taken by empowering the Tribunal to amend clerical deficiencies in reports.

Actual prejudice to the Player in defending the report is generally the only circumstance in which a technical error will vitiate a report.

## **MAKING SURE THE RIGHT EVIDENCE IS AVAILABLE**

It is vital that advocates ensure the appropriate persons are available to give evidence at the hearing (see below under 'Proper Presentation of Evidence at the Hearing') and that any other evidence which assists the case, such as a medical report, is procured.

Obviously, if witnesses will attend the Tribunal or produce things to it willingly, there is no need for the Tribunal to become involved before the hearing itself. However, where a person is reluctant to give evidence or to produce things in his/her possession, the assistance of the Tribunal can be enlisted. The Tribunal is NOT a court, and therefore the Tribunal cannot compel members of the public (for example, spectators, first aid volunteers etc) to attend. However, any person's subject to the League's jurisdiction (which would include Players, Umpires and Club members or Officials) can be required to attend a hearing of the Tribunal or to produce any item which is under their control. Failure to comply may be contempt, and the Rules give the Tribunal wide power to suspend or fine any person or Club held to be in contempt.

## **PROPER PRESENTATION OF EVIDENCE AT THE HEARING**

### **Important note:**

While the following discussion is technically correct, it is a more legalist approach than that generally adopted by the AFL NSW/ACT Tribunal, which seeks to avoid the more traditional adversarial approach to the giving and taking of evidence before it. The Tribunal is very quick to limit the number of, type and tone of questions, whether they are 'in chief' or, more often than not, in 'cross examination', where it considers such questions to be unhelpful. The Tribunal also takes a more active role in the process than that which is generally encountered in the adversarial situation.

Finally, the calling of a large number of witnesses who simply re-affirm or repeat evidence previously given does not assist the hearing and will be discouraged, unless the evidence is of real assistance to the Tribunal. Advocates must interview witnesses before they are called to give evidence to ensure that their evidence will assist the Tribunal.

The following notes are directed to ensuring that only evidence that is admissible is presented to and accepted by the Tribunal. However, it must also be recognised that even when the evidence is technically admissible, it may carry only limited weight, that is, persuasiveness. The obvious example is evidence given by an ardent Club supporter, who, even when trying to be 'unbiased', tends to 'see' (and so recall) incidents in a way favourable to the Club's or reported person's interests. It is a matter for the Tribunal's judgement, in each case, to decide how much weight to give any evidence.

## **THE 'BEST EVIDENCE' RULE**

This rule simply means that so far as oral testimony is concerned, the only person who can give evidence of a fact is the person who actually saw it happen, or heard it said. A person who heard about it from someone else cannot give such evidence. For example, a Player cannot give evidence such as, "the trainer told me after the match that he heard the Umpire say to the ground manager...". The trainer himself will have to attend the Tribunal to give evidence of what he heard the Umpire say.

This is the 'rule against hearsay', and the reasons for it include:

- stories get distorted as they are repeated from one person to another;
- effective questioning of a person who did not actually witness an event is clearly limited to what aspects of it he has been told about and the questioner may want to question other things that the witness was not told about.

The Tribunal may accept written medical reports as evidence of the extent of injury but not of how the injury was sustained. Thus, a medical report saying, "X-ray revealed a fractured cheekbone which Mr Smith claimed to have received when struck during a football match" may be allowed as evidence of the injury but not of how he got it (because coming from the doctor who did not actually see the incident, that statement is hearsay). Player Smith must personally tell the Tribunal how he sustained the injury for which he was treated.

## **DIRECT SPEECH MUST BE USED TO RELATE ALL CONVERSATIONS**

This means that the words actually spoken must be repeated as closely as they can be recalled. The reason is that indirect speech can distort the meaning of words actually used.

For example, a Player cannot say in evidence:

"After the Umpire blew the whistle he came over and threatened me".

He/she also cannot say:

"After he blew the whistle he came over and told me he'd be watching me closely all through the game".

The Player must use the Umpire's words as best the Player recalls them, for example:

"The Umpire blew his whistle, came over to me and said: 'number 41, that tackle was after disposal and we've been instructed to be severe on that all day, or words to that effect'".

Plainly, the Umpire's actual words are significantly different from the suggestions of intimidation and bias respectively, contained in the earlier two versions, where the Player is interpreting, rather than repeating what was said to him/her.

## **WITNESSES MUST STATE FACTS, NOT OPINIONS**

Witnesses should tell only what they actually saw or heard, not what they think was intended. The statement:

'the midfielder tried to pass the ball to the full forward',

is an opinion about the midfielders intention and the midfielders tactics might have been quite different. The evidence should be just a simple statement of what happened, that is:

'the midfielder kicked the ball towards the goal square'.

## **DOCUMENTS MUST BE PRODUCED, NOT DESCRIBED**

Just as conversations must be reconstructed, a document must be allowed to 'speak for itself', so an advocate should always arrange to have the document available. For instance, an injured Player cannot say:

"the doctor gave me a certificate for two days off work because of concussion from being punched".

Not only would the Player be 'interpreting' the medical reason for the doctor giving the Player two days off work, the Player is giving hearsay evidence of a supposed opinion by the doctor about how the injury occurred ('from being punched'). Such evidence would therefore be riddled with irregularity and inadmissible. The medical certificate itself should be produced to the Tribunal and as stated earlier, would be evidence only of the Player's medical condition, not the cause of the condition. The Player could say "the doctor gave me two days off work", for that is a fact and not hearsay, but without admissible evidence linking the sick leave to an alleged football injury, the 'two days off' statement is of little, if any, weight.

In some cases, where it is not possible to produce the document, the Tribunal may allow someone familiar with it to say what they believe was in it but only when this course will not prejudice a party to the hearing. Again, this is an example of evidence that may have only limited weight.

## **THE PROPER PRESENTATION OF ORAL EVIDENCE**

The three stages in a witness's oral evidence are:

Evidence in chief – where the witness gives his/her version of what he/she saw or heard.

Cross-examination – where the opposing advocate explores the evidence in chief.

Evidence in reply – where the witness's own advocate questions him/her further about matters raised in the cross-examination.

### ***Examination in chief***

The witness should give his/her version of the events in his/her own words and with as little interruption as possible. He/she should not give his/her evidence simply by answering leading questions (i.e. questions which suggest the answer) from his/her advocate. Consider the following example:

Advocate: "You were playing back pocket during the last quarter?"  
Player: "Yes"  
Advocate: "And did you and Player 43 contest a mark?"  
Player: "Yes"  
Advocate: "And did he elbow you in the face?"  
Player: "Yes, he did"  
Advocate: "Did you then push him in the chest?"  
Player: "Yes"  
Advocate: "Was that when the umpire reported you?"  
Player: "Yes, he just said he'd be reporting me for striking".

The advocate has given all the evidence and the Player has simply agreed with the advocate. The Player can be asked "non-leading" questions to which the Player will answer, or the Player can simply give evidence by way of a statement or in a narrative fashion.

Particularly for younger Players, there is generally no objection to the Player reading a pre-prepared statement.

The Player could say something along the following lines:

"I was playing back pocket when the ball came down field and 43 and I went for a mark. I got an elbow in the face and so I gave him a push in the chest and that's when the umpire reported me for striking".



It is however, quite acceptable (and time saving) for an advocate to lead a witness through preliminary questions on matters which are not 'In issue', for example.

Advocate: "Your name is Ron Reilly?"  
Player: "It is"  
Advocate: "You are the captain of the Under 16's?"  
Player: "Yes"  
Advocate: "You were playing in the game last Sunday?"  
Player: "That's right"  
Advocate: "And you were involved in an incident reported by this umpire?"  
Player: "Yes"  
Advocate: "Please tell the Tribunal, in your own words, exactly what happened".

The Player now relates his/her story without being led, because the Player has now reached the contentious part of the evidence.

After the Player has made his/her statement, his/her advocate, if he/she feels something important has been left out or not put clearly, can try to prompt his/her Player to say it. This can be tricky because the advocate must not directly suggest the evidence to be given (i.e. lead the witness). So, the advocate could now ask the Player giving the evidence:

"Why did you push Player 43?"

To which the Player will (the advocate hopes) reply:

"To fend him off after his elbow got me".

But the advocate cannot ask:

"Your push was only in self-defence?"

because that suggests the answer to the Player and it is the role of the Tribunal to determine if the Player was acting in self-defence, not the Player.

### ***Cross-examination***

The purpose of cross-examination is to test the witness's evidence in chief, for a person is entitled to expect that anything he/she says in evidence which is not tested in cross-examination has been accepted by the other side as truth and should (subject to his/her general credibility) be similarly treated by the Tribunal. This does not mean, however, that everything a witness says should be challenged. If an advocate has no questions of substance to put to the witness, he/she will do better not to ask any.

Cross-examination differs from examination in chief in that 'leading' the witness is allowed as the advocate tries to get the witness to agree with propositions put to him/her. An Umpire's advocate, in questioning the Player, could (if he/she wished) ask the very sequence of questions set out above which the Player's advocate could not ask. Indeed, not only can the cross-examiner put things directly to the witness, he/she must put to the witness (so as to give the witness an opportunity to answer) any allegation which the cross-examiner knows will later be made against the witness by one of the cross-examiner's own witnesses.

This last point is essential where the evidence is to contradict the evidence of the witness – the witness must be given an opportunity to have put to them the alternative version of the events that it is sought to be established.

Continuing the above example, if the Player's advocate knows that he/she intends to call a witness of his/her own who is going to allege hearing the Umpire say before the match, 'Reilly beat me at the Tribunal last time, but I'll get him today,' the Player's advocate must, in cross-examination, directly put that allegation to the Umpire, something like this:

Advocate: "Did you speak to the ground manager just as you went out onto the field?"  
Umpire: "I don't remember"  
Advocate: "Didn't you say to him 'Last time I reported Reilly he beat me at the tribunal but I'll settle that score today?'"

This gives the Umpire the chance to deny the allegation if he/she wants to. If this question was not asked, it would mean the Umpire, after he/she finished his/her evidence, would have no chance of denying the allegation when it was communicated later in the hearing, and the allegation would then stand uncontradicted. Where an advocate adduces from a witness a statement concerning another witness which was not put directly to that (other) witness the Tribunal will either:

- allow the other witness to be recalled, to respond to the statement; or
- disregard the statement in coming to its decision (and advise the advocate that his/her breach of this principle of cross-examination has led to the evidence being disregarded).

Cross-examination does not have to be restricted to what the witness said in chief. The cross-examiner can ask anything else, provided it is relevant to what is 'in issue'.

Finally, it must be remembered that the above has essentially been written with adult witness in mind. The Tribunal will not allow any aggressive, hectoring or unfair questions, in particular to under age witnesses, and the age and apparent sophistication of underage witnesses, including Umpires, must be taken into account by the advocate when framing their questions. It will certainly be taken into account by the Tribunal when determining whether to allow or reject any question it considers is unfair to the witness.

### ***Re-Examination***

The witness's own advocate can try to repair any unhelpful answers given under cross-examination. Re-examination must be limited to matters raised in cross-examination – it cannot raise new matters without the express permission of the Tribunal (which must be sought). If there is a real need to bring up something new, leave of the Tribunal should first be asked, and if it is given, the opposing advocate will be given the opportunity of a second cross-examination, limited to the new material.

### **QUESTIONS BY THE TRIBUNAL**

The Rules clearly provide for the questioning of the Umpire, the Player and any witness by the Tribunal. The Tribunal is entitled to, and will, question any witness as and when it sees fit.

### **QUESTIONS BY ADVOCATES THAT WILL NOT BE ALLOWED**

Multiple questions are unfair and are not allowed. A good question covers one point only, not several. Thus, the question:

“Were you playing back pocket when the ball came down the wing on the grandstand side from a long kick by the other team's rover?”

This is really three questions, and the answer is not necessarily 'yes' to all three. This makes it hard for the witness to answer without 'explanations', which only confuse and prolong proceedings. Questions should always be worded to allow the witness to give only a direct answer to one point at a time, as in this exchange:

- Q. “You were in the back pocket?”  
A. “Yes”  
Q. “Did the ball come down the grandstand side?”  
A. “Not really, it came more from the edge of the centre square.”  
Q. “But it was a long kick by the opposing rover?”  
A. “Yes”

### ***Questions that are not relevant to what is 'in issue'***

'In issue' means 'the subject of disagreement between the opposing parties'. In a striking charge, for example, there may be no dispute (that is, no 'issue') that the reported Player actually struck another Player. What is disputed ('in issue') is whether it was deliberate or accidental. In that situation, questions about peripheral detail (for example, where other Players, Umpires, trainer etc were positioned), which are directed to suggesting that if the Umpire's recall is inadequate, then his/her evidence of the reported incident is similarly suspect, are usually irrelevant to the issue. The Umpire should really be questioned about whether he/she observed any behaviour on the part of the 'victim' which could have provoked the alleged striking, or whether the contact may have occurred unintentionally.

## **Questions that assume a fact that has not been established**

Questions that assume a fact that has not been established will not be allowed, unless the witness is requested to assume the fact (which then must be established later).

## **OBJECTIONS TO EVIDENCE**

The proper way for an advocate to challenge any questions (or answer) is to say to the Tribunal, "Objection, that question (or answer) is (for example) leading – irrelevant – assumes a fact not admitted – is an opinion not a fact etc. as appropriate."

Advocates are not permitted to address their objections directly to witnesses or opposing advocates and should not interject during answers or bicker with other advocates. This applies with equal force during final submissions: each advocate has his/her turn, has a right to be heard uninterrupted by his/her opponent and should afford reciprocal courtesy to that opponent.

## **VISUAL EVIDENCE**

The Tribunal may at its discretion permit visual evidence into the proceedings and may direct that the showing of any such visual evidence be undertaken at such time during the hearing as it directs, as long as this does not cause any procedural fairness to any party.

## **PENALTIES**

Fixing a penalty is at the absolute discretion of the Tribunal.

## **CONTEMPT OF THE TRIBUNAL**

The essence of contempt of the Tribunal is any attempt to undermine its functions, and this includes:

- disrespectful behaviour – which may be contempt because it undermines confidence in the Tribunal and, therefore, its capacity to carry out its duties. This does not prevent proper, reasoned comment or criticism at the appropriate time.
- attempting to influence decisions by means other than putting argument or evidence before the Tribunal according to the Rules. Public comment prior to a hearing, designed to influence the attitude of Tribunal Members, is one example, as is any direct attempt to bypass the Tribunal's proceedings

The Regulations and the Rules deal with various forms of contempt of the Tribunal.

## **APPENDICES FOR THE TRIBUNAL RULES**

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## APPENDIX 1

### TRIBUNAL CHAIR - Position Description

#### Overview:

Tribunal Central is a centrally managed process designed to deliver to AFL NSW/ACT (the League) League a consistent set of disciplinary procedures and processes.

As part of Tribunal Central, the League:

- established the AFL NSW/ACT Tribunal (Tribunal) to hear and determine Reports and other matters as referred to the Tribunal, held at locations convenient to those involved on a set night (Wednesday). Hearings are held at the AFL offices at Moore Park and, Blacktown, and other venues as required.;
- established a panel of Tribunal Members, drawn from all Regions on the recommendation of the Regions, managed by the Competition Management Committee (CMC) of the League. Tribunal Members are called upon to sit on Tribunals constituted across all Regions;
- holds meetings as required chaired by the Tribunal Chair of all Tribunal Members and/or other relevant persons to outline and review Tribunal Central and provide information and guidance on the delivery of outcomes;
- provides administrative support to the Tribunal Members to assist them in conducting their hearings.

The Tribunal is an independent disciplinary tribunal constituted pursuant to the AFL NSW/ACT By-Laws as provided by the AFL NSW/ACT Regulations. The Tribunal deals with reports from Umpires and on direct report from Regional Committees and the CMC into alleged breaches.

The Tribunal Chair leads the Tribunal and is a direct interface between Tribunal Members, the CMC and other key stakeholders, such as the Regions and Clubs.

#### Reports To:

The Tribunal Chair reports to the CMC.

#### Tasks and Activities:

A sitting Tribunal hears the evidence of Umpires, Players and witnesses and determines reports laid under the Laws or By-Laws, or matters referred to it, and imposes penalties in accordance with the By-Laws and Laws where reports are proven.

The Tribunal Chair:

- chairs all Tribunal hearings on which the Tribunal Chair sits;
- sits on hearings across all Regions, as required;
- consults with the CMC on the appointment of Tribunal Members as nominated by the Regions;
- liaises with the CMC in the convening of Tribunals;
- in conjunction with the CMC, maintains a database of all hearings and outcomes;
- reports to the CMC on the functioning of Tribunal Central and the ongoing development and refinement of disciplinary procedures as administered by the Tribunal and Tribunal Central;
- seeks ways in which the processes can be enhanced.

#### Knowledge and Skills Required:

The Tribunal Chair is a Tribunal Member. The Tribunal Chair must chair Tribunals on which he/she sits, hearing and determining reports and other matters referred to the Tribunal involving breaches of the Laws and By-Laws including the hearing of evidence and submissions. A sound knowledge and understanding of the Laws and in particular the playing of AFL in the under 12-18 age groups, is required.

The Chair must have an understanding of the functions and performance of disciplinary tribunals, be independent and impartial and act in a fair manner. Like all Tribunal Members, the Tribunal Chair cannot be a current member or Official of a Club affiliated to the CMC. Legal qualifications are not a pre-requisite but are desirable. High level communication and interpersonal skills are necessary.

**Time Commitment Required:**

A sitting Tribunal consists of three Members, drawn on rotation from a panel of available Tribunal Members. The Tribunal usually sits on a Wednesday evening during the League's football season (approximately mid March to mid September each year). The hearings are at AFL offices at Moore Park, Blacktown or other venue as appropriate. The hearings generally take up to approximately 2 hours.

The Tribunal Chair should be available most Wednesdays to chair Tribunal hearings during the League's football season and occasionally be available to sit on hearings of the Tribunal in other regions.

Administrative and other related tasks would require, on average, approximately 2 to 3 hours per week, in addition to sitting on the Tribunal.

## **APPENDIX 2**

### **TRIBUNAL MEMBER - Position Description**

#### **Overview:**

The AFL NSW/ACT Tribunal is an independent disciplinary tribunal constituted pursuant to the AFL NSW/ACT By-Laws (the By-Laws) as provided by the AFL (NSW/ACT) Commission Limited Regulations. The Tribunal deals with reports from Umpires and on direct report from Regional Committees and the CMC into alleged breaches.

The Tribunal deals with reports from Umpires and on direct report from Regional Committees and the Competition Management Committee (CMC) of the AFL NSW/ACT (the League) into alleged breaches of the Laws of Australian Football (the Laws) and the By-Laws, involving Players and Officials in the under 12 to under 18 year groups, and on other matters referred to the Tribunal. The Tribunal also deals with matters referred to it directly by the CMC.

#### **Reports To:**

Tribunal Members report to the Tribunal Chair.

#### **Tasks and Activities:**

A sitting Tribunal hears the evidence of Umpires, Players and witnesses and determines reports laid under the Laws or By-Laws, or matters referred to it, and imposes penalties in accordance with the By-Laws and Laws where reports are proven.

#### **Knowledge and Skills Required:**

Tribunal Members must be able to hear and determine reports and other matters referred involving breaches of the Laws and By-Laws including the hearing of evidence and submissions. A sound knowledge and understanding of the Laws and in particular the playing of AFL in the under 12-18 age groups is required. Members must have an understanding of the functions and performance of disciplinary tribunals, be independent and impartial, and act in a fair manner. Legal qualifications are not a pre-requisite. High level communication and interpersonal skills are necessary. Tribunal Members cannot be a current member or Official of a Club affiliated to the League.

#### **Time Commitment Required:**

A sitting Tribunal consists of three Members, drawn on rotation from a panel of available Tribunal Members. The Tribunal usually sits on a Wednesday evening during the League's football season (approximately mid March to mid September each year). The hearings are at AFL offices at Moore Park and Blacktown or other venues as required. The hearings generally take up to approximately 2 hours.

Tribunal Members must be available and willing to sit on no less than 4 occasions during the League's football season.



### APPENDIX 3 PRE-SENTENCE REPORT

To be completed and brought to the Tribunal hearing by any reported person or annexed to a request in writing by any person consenting to a hearing in his/her absence.

REPORTED PERSON'S NAME: \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_/\_\_\_\_/\_\_\_\_ CLUB: \_\_\_\_\_

#### PLAYING HISTORY

YEAR(s)	CLUB (s)	AWARDS AT CLUB, LEAGUE OR ASSOCIATION LEVEL i.e. not Club Awards	TRIBUNAL CONVICTIONS	
			Offence	Penalty

Signature of Player: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

## APPENDIX 4

### PRO FORMA REQUEST IN WRITING

to be submitted by reported person unable to attend Tribunal hearing

I, \_\_\_\_\_ (full name)

of \_\_\_\_\_ (full address),

make the following request of the League Disciplinary Tribunal (the Tribunal).

1 I am unable to attend before the Tribunal on \_\_\_\_\_ (date) for the reason/s that:

(state reason/s *fully and unambiguously*)

2A I am willing to stand down from representing my Club as a Player or Official until I have appeared before the Tribunal and I agree to give to the CMC not fewer than four clear business days notice of the date of a Tribunal meeting which I am able to attend.

OR

2B (i) I consent to the Tribunal investigating in my absence the report of which I am the subject set down for hearing on the aforesaid date

(ii) I agree that the report is proven but ask the Tribunal to take into account the following matters:

(*set out mitigating circumstances*).

OR

2C (i) I plead the report as not proven and say in answer that (*state any **facts** and briefly refer any further evidence or witnesses which the Tribunal should consider or hear*).

(ii) I undertake to abide by any finding (including penalty) of the Tribunal and I further undertake not to raise the fact of my absence from the hearing in any challenge to the finding or to any penalty which may be imposed.

(iii) I attach a completed pre-sentence report.

and I make this request in writing believing the same to be true.

\_\_\_\_\_  
Signature of Applicant

**NOTE CAREFULLY:** *Clause 1 must be completed in all circumstances. Select one only of the alternative forms of clause 2, depending upon whether the reported person is seeking an adjournment (clause 2A) OR is consenting to hearing in his/her absence (clause 2, comprised of options 2B and 2C)*

*The reported person selects ONE ONLY of the alternative forms of 2B or 2C, depending upon whether he/she is pleading the report as proven (clause 2B) or not admitted (clause 2C)*



# APPENDIX 5 - PROCEDURE FOR HEARING AN UMPIRE'S REPORT

TRIBUNAL OPENED. REPORTED PERSON AND UMPIRE IDENTIFIED. REPORT READ TO PLAYER, WHO IS ASKED TO PLEAD 'ADMIT OR 'NOT ADMIT' TO THE REPORT

The player's advocate does not plead on the player's

**A. PLAYER DOES NOT ADMIT TO CHARGE OR REPORT**

behalf

1. WITNESSES ASKED TO LEAVE THE ROOM
2. UMPIRE'S EVIDENCE (WITH ASSISTANCE OF ADVOCATE (IF NEED BE))
3. UMPIRE QUESTIONED BY PLAYER'S ADVOCATE
4. UMPIRE MAY BE QUESTIONED BY TRIBUNAL AT ANY TIME
5. PLAYER'S EVIDENCE (WITH ASSISTANCE OF ADVOCATE (IF NEED BE))
6. PLAYER QUESTIONED BY UMPIRE'S ADVOCATE
7. PLAYER MAY BE QUESTIONED BY TRIBUNAL AT ANY TIME
8. UMPIRE ALLOWED TO CLARIFY EVIDENCE THROUGH ADVOCATE
9. UMPIRE'S WITNESSED CALLED:
  - questioned by umpire's advocate
  - questioned by player's advocate
  - clarification by umpire's advocate
  - Umpire witnesses may be questioned by Tribunal at any time
10. PLAYER ALLOWED TO CLARIFY EVIDENCE THROUGH ADVOCATE
11. PLAYER'S WITNESSES CALLED:
  - questioned by player's advocate
  - questioned by umpire's advocate
  - clarification by player's advocate
  - Player witnesses may be questioned by tribunal at any time
12. ADVOCATES SUM UP
13. TRIBUNAL RETIRES TO CONSIDER FINDING

REPORT DISMISSED

OR

PLAYER FOUND GUILTY

**A. PLAYER ADMITS TO CHARGE OR REPORT**

1. WITNESSES ASKED TO LEAVE THE ROOM
2. PLAYER'S EVIDENCE
3. UMPIRE'S EVIDENCE
  - which should just supplement or traverse player's account of what he has admitted to
4. UMPIRE AND PLAYER QUESTIONED AS NEED REQUIRES
5. WITNESSES CALLED AND EXAMINED

PROCEED TO B.

**B. PRE-SENTENCE REPORT HANDED UP**

PLAYER'S ADVOCATE MAKES SUBMISSION ON PENALTY

TRIBUNAL RETIRES TO CONSIDER PENALTY

