

# DISCIPLINARY TRIBUNAL BY-LAWS

## Frequently Asked Questions

(as adopted by Basketball Australia, State / Territories and BNSW)

### INTRODUCTION

The following questions and answers are to clarify certain matters contained in the Tribunal By-Laws adopted by the BA, States, Territories, State/Territories, and national leagues

It is strongly recommended that Tribunal personnel make themselves fully conversant with the new By-Laws.

### CLARIFICATION MATTERS

#### **Q.1 What type of incidents do these By-Laws refer to?**

**A.** Generally speaking they apply to on-court incidents and to incidents that refer to a particular Conduct charge, invariably that incident could be dealt with under the Organisation's constitution.

#### **Q.2 If a player receives a disqualifying foul, does he automatically appear before a Tribunal?**

**A.** No. The official should record the incident on the back of the score sheet or reporting form and the matter dealt with in accordance with these rules

#### **Q.3 How much notice should be given to a person before they have to appear before a Tribunal?**

**A.** No less than 24 hours. Although not specified in the By-Laws, the 24-hour period is considered sufficient for a charged person to prepare a defence. Any period less than 24 hours could be construed as reasonable grounds for an appeal. N.B At special fixtures e.g. Carnival Tribunals

**Q.4 It is noted that the charged person can now call as many witnesses as they like. What is the reason for this change?**

**A.** The charged person has to be given rights of natural justice.

**Q.5 Can a Court Supervisor charge a player?**

**A.** Yes. Refer to item 1.1.5.

**Q.6 Article 4.1.5 requires accurate records to be kept of tribunal hearings. Does this mean we have to hire stenographers just like in a Court of Law?**

**A.** Not necessarily. It will be necessary to keep a written record of details of the charge, date, time and place of the Tribunal, Tribunal members, a list of those in attendance, including witnesses called by both parties and the names of legal representatives advocates (if any) and the penalty (if any) imposed by the Tribunal. In so far as evidence by witnesses and statements by the complainant are concerned, a tape recording should be made of those statements. The tape must be retained until the period of appeal has expired (14 days). If an appeal is lodged a typed transcript of the tape may be necessary. (See sample reporting forms Section 10).

**Q.7 Why is it necessary to send reports of all Tribunal hearings to BNSW**

**A.** So that a centralised recording system can be put in place. When a person is to appear before a Tribunal BNSW records should be checked to see if the person cited has appeared before and if so, those matters can be considered when imposing penalties for any second or subsequent "convictions".

**Q.8 Legal representatives or advocates are now allowed. Why?**

**A.** Unless a charged person is given a right to properly defend themselves, we could find ourselves the subject of litigation in the open Courts. This scenario becomes even more likely as more and more people rely on Basketball as a source of income.

**Q.9 When witnesses are being monitored, do the questions have to be directed through the Chair?**

**A.** No. Questions may be asked direct to the witnesses, but the Chairman should keep control of matters by ensuring that the questions are pertinent to the issue and as to the manner in which the questions are put.

**Q.10 What does the term "Balance of Probabilities" mean? (article 6.12).**

**A.** "Balance of probability" is to be applied in determining the outcome of evidence to produce a decision at a Tribunal. Tribunal Chairmen are asked to note that the By-Laws themselves say that the burden of proof is to be on the basis of the balance of probabilities. This is a far lesser standard of proof for the complainant to prove than is the criminal standard of beyond reasonable doubt.

Put in colloquial terms, if after hearing all the evidence, the Tribunal decides that the complainant has on balance, tipped the scales slightly in his favour, then the complaint is established.

Conversely, if the scales are slightly tipped in favour of the Charged person, then the complaint has not been established.

**Q.11 Why are suspended sentences not allowed?**

- A.**
- i) Opponents may use this probability as a provoking technique on the opponent.
  - ii) The transient nature of players especially in the cities where they may play in several Organisations.
  - iii) How is it fairly applied?

**Q.12 It is noted that there are now no longer any minimum penalties, yet the maximum penalties may have been increased, why is that?**

**A.** There have been occasions where even the minimum suggested penalty was excessive given the circumstances, which existed in specific cases. By deleting the minimums, Tribunals now have the opportunity to enter a "conviction", but not impose a penalty, or not impose a penalty but give a warning, right through to the maximum period permissible.

**Q.13 What is the reason behind penalties being calculated in weeks and years and/or numbers of games played?**

**A.** Circumstances have arisen whereby for example, the maximum penalty for an offence was 4 weeks. The incident occurred in a Grand Final and the organisation did not have another competition organised for a month or so. The 4-week suspension in this case became a non-event.

Organisations now have the right to calculate a penalty of weeks, years or games, whichever is the greater.

Tribunals should when imposing a penalty specify the date the penalty expires (at midnight).

**Q.14 If an official who made the original complaint considers that the penalty was not severe enough can that official lodge an appeal against the leniency of the sentence?**

**A.** Yes. See article 7.1.12. Leniency of sentence is the only grounds a complainant can appeal on in disciplinary tribunal matters only.

**Q.15 When a person lodges an appeal is it automatic that the appeal will proceed?**

**A.** No. To ensure that appeals are not lodged on totally frivolous grounds or without justification for an appeal other than "I may as well have a go", the particular Tribunal which may be hearing the appeal can determine whether in its view grounds do exist for a full hearing of the appeal. If they decline an appeal they do not have to give reasons for so doing.

**Q.16 Can a player resume playing pending the outcome of the appeal?**

**A.** Not necessarily. (See article 7.11). The Tribunal has the power of discretion on this issue.

**Q.17 If there are any costs incurred in the conduct of an appeal hearing, such as travel costs for witnesses, who pays those costs?**

**A.** That is at the discretion of the appeal Tribunal. Costs of travel, room hire and meal expenses for Tribunal members may be charged to the appellant.

**Q.18 How many steps of appeal does a charged person have?**

**A. (a)** If the charged person was found guilty by a local basketball organisation he has the right to appeal to his member and if that is not successful then to the State/Territory Tribunal or leagues appeal tribunal

**(b)** If the incident occurred at regional level the first step of appeal is to the state/Territory Tribunal and then the second step to the state/territory Appeals Tribunal.

In the case where a player is cited in an Organisation that has a regional Status the procedure is as following:

**i)** Hearing by local Organisation Tribunal

**ii)** Appeal to Local Organisation Board of Management Appeals Tribunal

**iii)** Appeal to state/territory Appeals Tribunal

**©** If the incident has occurred during a State event the matter is originally heard by the state/territory Tribunal, leaving only one step of appeal available and that is to the state/territory Appeals Tribunal.

**Q.19 Are these BY-LAWS Australia wide? In other words, does any penalty we impose in a home state apply in any other State/Territory and vice versa?**

**A.** The General Managers of States/Territories in association with Basketball Australia have agreed to recognise each others penalties and procedures.

Home state can expect other States to recognise the findings of its respective Tribunals and vice versa, home state will recognise the penalties of other State/Territories.

**Q.20 Is the media allowed to be present at Tribunal hearings?**

**A.** No.

**Q.21 When an adult appears at a Tribunal to assist a minor, can that person also act as a witness?**

**A.** This is permissible but could be detrimental to the case presented. It is best that different people perform each role.

If a person acted in both capacities, the representative would not be required to leave the room.

**Q.22 Please clarify the use of the video as a means of presenting evidence to Tribunals.**

**A.** Video evidence is valid to determine responsibility in matters of discipline.

Video is required to be continuous and independently produced or produced as required in the operational rules for a competition.

**Q.23 Explain the difference between matters that are handled by the Board of an Organisation in preference to a Disciplinary Tribunal. Where is the fine line drawn?**

**A.** As a general rule, Tribunals deal with game conduct and incidents arising during or after matches.

The Board of management deals with conduct that brings the sport into disrepute i.e. incidents that do not occur in the game situation.

If action is taken under the powers of the Constitution, there is no right of appeal unless a Special General Meeting of the Organisation is called to consider the matter.

If an incident occurs after the referees complete their control of the game, e.g. player confronting an official in the car park, the Organisation has the choice of dealing with the matter under Tribunal BY-LAWS or Constitution, former is preferable.

Incidents that occur during games and are reported by an administrative official, not the referees can be cited under the powers of the Constitution but again Tribunal BY-LAWS are preferred.

**Q.24 How is a registered participant of the Organisation, who attends a game as a spectator, treated any differently to an unregistered**

**participant who attends a game as a spectator, if there is a need for a disciplinary procedure to occur?**

**Who hears such cases? Tribunal or Board and what are the procedures?**

**What is the difference between a spectator and a team supporter?**

**A.** This question is best answered by considering two situations: -

**a)** Unregistered participants:

- i)** Spectator
- ii)** Team supporter

These people will not be subject to the Tribunal rules. The only powers are those of ejection from the building or refusal of entry.

**b)** Registered Person:

- i)** Team follower
- ii)** Team supporter
- iii)** Spectator

Can be dealt with under either Tribunal or Constitutional powers of the Organisation.

NB Proceed on the side of caution when citing persons under (b) above so that there is not an abuse of power by those in authority.

A team follower is clearly defined in the Official Basketball Rules and Referee's Manual (see Rule 4). The penalties applying to coaches, managers, players are also applicable to team followers in the game situation.

A team follower is a person who is or has acted in some capacity for the team during that game e.g. sits or sat on the team bench at some time during the game, acts as a team trainer, issued uniforms etc.

A team supporter/spectator are quite different as they do not have a connection with the team even though they may be related or wear the teams recognised promotional uniforms.

**Q.25 How are constantly charged persons of minor items best handled by the Board of Management?**

**A.** Such persons should be cited to the Board of Management. These cases are difficult to prove.

The complaints must be specific. Each incident must be dealt with on its own. Charged persons should be warned by letter. The Organisation has the right to refuse acceptance of constant charged persons into competitions.

**Q.26 A suspended player becomes involved in an incident that occurs in a game at which he is a spectator. The suspended player is cited;**

**a) By reporting officials**

**or**

**b) From evidence arising from the Tribunal concerned with the evidence given**

**or**

**c) From a court supervisors report as there was not an official's report on the incident.**

**How are (a), (b), (c) handled?**

**i) Tribunal process?**

**or**

**ii) Constitutionally by the Board?**

**How are penalties arrived at and applied?**

**A.** The point to remember is that a suspended player is still a member of the Organisation.

**a)** If cited by game officials for a game incident, the charged person goes through the normal Tribunal procedures.

If found guilty the period of suspension is added to the current penalty.

**b)** In the event of (b) or (c) above taking place, the reported incident is fully heard by the Board of Management. The spectator must be given the opportunity of defend him/herself.



In all cases, arriving at penalties cannot be done until after the charged person is proven guilty.

**Q.27 a) When a player / coach / team follower is suspended, is that person stopped from;**

- \* **Playing**
- \* **Coaching / managing a team in the game situation**
- \* **Refereeing / Table officiating**
- \* **Entering the stadium**
- \* **Acting in an administrative capacity**

**b) Does the Tribunal have the power to restrict the suspension just to one or two areas e.g., playing and coaching but free to referee?**

**A. a)** The intent of the BY-LAWS is that when a person is suspended for an incident involving a game situation, the said person/s cannot

- play
- referee /table officiate
- coach / manager in the game situation.

The coach may conduct team training sessions but cannot participate in the game situation. The coach is not prohibited from being a spectator at his/her teams game but cannot sit on the team bench or advise the officials as to the conduct of the game

A suspended player / coach / manager who is also an administrator may carry out his/her duties during the period of suspension but cannot be involved in any game situation.

However, if a member is suspended under the Constitutional powers of the Organisation, they are suspended from all Organisation activities and this includes administration.

A person under suspension by the Constitutional powers of the Organisation is not eligible to stand for election to Organisation administrative positions while serving the suspension.

**b)** The Tribunal does not have the power to restrict a suspension e.g. a suspended sentence or suspend the player from local competitions but not State League/ABA or free to referee but not play.

NBL Tribunals do not recognise State / domestic suspension.

**Q.28 When a player is suspended by a tribunal, when does the suspension commence and end and what are the exclusions?**

**A** When a player is suspended by a tribunal, the suspension commences immediately and concludes at midnight on the day the suspension ceases.

This means that the suspended player is excluded from

- Playing or Coaching a game
- Refereeing
- Being a score table official
- Being a game statistician

**Q.29 Can an unregistered or illegal player be cited to appear before a Tribunal?**

**A.** Yes.

**Q.30 Are cases that involve Police or Civil Court action held over until a legal decision is made?**

**A.** No. Deal with the matter as soon as possible as you would a general case. Police and Civil cases often take months or years to be resolved.

**Q.31 If evidence in a Tribunal incriminates person(s) not charged by the reporting officials, can the person(s) then be cited?**

**A.** No.

**Q.32 Can complainants appeal against irregularities in procedure processes in a Tribunal?**

**A.** No. Only leniency of penalty.

**Q.33 Can the complainant appeal against leniency if the charged person is found “not guilty”?**

**A.** No.

**Q.34 If a citing notice is sent to an address formerly occupied by the charged person, does it relieve the person of attending the Tribunal?**

**A.** No. It is the responsibility of the Charged person to have notified the Organisation of the change of address.

**Q.35 When several persons are cited over the same incident, is each Person's case heard separately?**

**A.** No. Hear all the evidence at the same Tribunal.

**Q.36 How are persons in games involving duty referees reported?**

**A.** 1) Duty Referees may report charged person Court Supervisors may report charged persons.

2) Court Supervisors may report charged persons