



Disciplinary Tribunals By-law

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Disciplinary Tribunals By-law

Preamble

This By-Law is designed to foster compliance with the policies, codes of conduct and guidelines adopted by Blue Mountains Basketball Association (BMBA).

This By-law is based on the NSW Basketball Association (NSWBA) Disciplinary Tribunals By-Law which is a model by-law designed to be adopted by NSW based Basketball Associations.

Due to the scope and scale of our association, BMBA has determined that the full adoption of the NSWBA Disciplinary Tribunals By-Law is not practicable. This by-law complies with the key principles and objectives of the BNSW model by-law, but modifies certain procedural elements to suit our unique context and capacity.

This BMBA by-law will be reviewed in line with the BNSW by-law to ensure ongoing compliance. The version of the BNSW Disciplinary Tribunals By-Law in force at the time of publishing this BMBA by-law is dated 24 March 2021.

Interpretation and Definitions

The interpretations and definitions provided in the BNSW Disciplinary Tribunals By-Law apply to this BMBA by-law.

Adoption of By-law

This By-law is made under Section 13 of the BMBA constitution and comes into operation on 01 April 2024. It is binding on all members of the Association and other persons or organisations which submit themselves to the jurisdiction of the Association.

All By-laws previously made concerning Tribunals are expressly rescinded. For the avoidance of doubt, all penalties handed down under previous disciplinary by-laws shall continue to be recognised by the Association.

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Part 1: Jurisdiction and Establishment of a Tribunal

1. Authority of the Tribunal

- 1.1. BMBA has the power under Section 11 of the constitution to hear and determine disciplinary matters against BMBA members, and spectators of BMBA basketball activities, matches and competitions.
- 1.2. The Tribunal has the power to hear and determine disciplinary matters related to breaches of the rules of the game, policies, codes of conduct and guidelines adopted by BMBA.
- 1.3. The Tribunal has the power to suspend, disqualify, reprimand, fine, bond, ban or otherwise deal with any person involved with BMBA basketball activities (including, but not limited to players, coaches, teams, clubs, officials or spectators).
- 1.4. The Tribunal may consider any incident that may have occurred before, during or after the conduct of the activity, within the confines of the stadium, activity venue or its immediate surrounds, or elsewhere if directly related to a basketball activity of any sort. In particular, the Tribunal shall have the power to deal with behaviour that is basketball related and occurs or utilises a technological medium such as:
 - 1.4.1. Mobile phones;
 - 1.4.2. Email or Instant Messaging services (including SMS);
 - 1.4.3. Internet forums;
 - 1.4.4. Internet social networking sites (such as, but not limited to, Facebook, X, Instagram);
 - 1.4.5. Other technologies that are a means of communication.
- 1.5. The Tribunal will act independently and impartially in carrying out its duties in accordance with this By-law.

2. Membership of Tribunal

- 2.1. The Tribunal members will be appointed on a case-by-case basis by the BMBA Committee and will comprise of the following persons:
 - 2.1.1. a Tribunal chairperson, (typically the BMBA President)
 - 2.1.2. no fewer than two other Tribunal members. (typically, other members of the BMBA Committee)
- 2.2. In appointing Tribunal members, the BMBA Committee may consider advice from BNSW or other affiliated Associations and may appoint representatives from these organisations to maximising the expertise in handling disciplinary matters within the sport.
- 2.3. Wherever possible, a Tribunal quorum shall be three (3) members (Chairman and two other members).
- 2.4. No Tribunal decision shall be invalidated by any irregularity in the appointment of a Tribunal member.

3. Responsibilities of Tribunal chairperson

- 3.1. Without limiting the duties of the Tribunal chairperson as set out in this By-law, the chairperson shall have the following responsibilities:
 - 3.1.1. to ensure accurate records are kept of all of the Tribunal's proceedings and decisions within the BMBA Microsoft Teams platform which is accessible to the BMBA Committee;
 - 3.1.2. to communicate the results of hearings of the Tribunal to both the BMBA Committee and the involved persons;

3.1.3. to chair hearings of the Tribunal or to ensure that such task is delegated to a member of the Tribunal;

3.1.4. to raise with any proposed Tribunal member (including themselves) any potential or possible conflict of interest which may arise.

4. Convening a Tribunal

4.1. A Tribunal will be convened on a as needed basis to adjudicate issues as they arise. Where practical, matters arising from a match will be considered prior to the next round of matches.

4.2. For all matters where a person is charged with an offence carrying a maximum penalty of twenty (20) weeks or less an Administrative Tribunal will be held.

4.3. For all matters where a person is charged with an offence carrying a maximum penalty of twenty-one (21) weeks or more a Tribunal Hearing will be held.

4.4. The process for Administrative Tribunal's and Tribunal Hearings are set out in Parts 3 and 4 of this by-law.

4.5. In instances where a tribunal cannot be convened before the next round of matches, a Charged Person, team or club may continue to participate in basketball activities until such time as the matter has been determined, unless the BMBA Committee deems it unsafe or inappropriate for a Charged person, the team, or the club, to continue participating based on the nature of the allegations.

4.6. Interim suspensions issued under 4.5 will be notified to the relevant party(s) in writing detailing the conditions of the suspension. The maximum interim suspension period cannot exceed 14 days. Any suspension or other penalty that is ultimately imposed by a tribunal will be backdated to consider any interim suspension period served.

Part 2: Reports and Notifications

5. Reporting of matters for Tribunal consideration

5.1. Any BMBA official (including but not limited to Committee Members, Referees, Court Supervisor and other BMBA staff) may report any person, team or club which, in the opinion of the official, has committed an offence under this By-law.

5.2. Where no report has been made but an BMBA official reasonably believes an offence may have been committed, or where BMBA receives a complaint from a member or spectator, the Committee will reasonably investigate the alleged offence. If after the investigation there is a recommendation that a report should be made, a report will be raised, and the matter will be referred to the Tribunal for consideration. Such referrals will be made within a reasonable time of the alleged offence.

5.3. The Tribunal Chairman will have final determination of whether the time elapsed between the incident occurring and a report being raised was reasonable.

5.4. BMBA maintains an electronic register and case management system for all reports and complaints received by officials, members and spectators.

6. Duties of officials making a report

6.1. BMBA maintains an electronic Behavioural Tracking and Incident Report Form which must be completed as soon as possible after an offence has occurred. This form must be completed with the details of the alleged offence(s), noting all the particulars related to the incident so that a clear account can be given to the Tribunal when the report is to be dealt with.

6.2. In addition to completing the form, the Official must notify a representative of the BMBA committee (e.g. the Referee Co-ordinator) as soon as practical after the incident via email or text to notify that an incident has occurred, and a report is to follow.

7. Duties of members or spectators making a report

- 7.1. BMBA maintains a Complaints Procedure with an associated Feedback and Complaint Form. This form must be completed by the complainant as soon as possible after an offence has occurred. This form must note all the particulars related to the incident so that the BMBA Committee is provided with sufficient information to investigate the complaint.
- 7.2. Where no report has been completed, but a letter or email is received in lieu of a completed form, the BMBA Committee will raise the report on behalf of the complainant.
- 7.3. The complainant may be contacted by a BMBA official to clarify the information provided.

8. Duties of BMBA upon receiving a report

- 8.1. BMBA has appointed a Tribunal Manager to receive reports made under this By-law and to carry out the duties in connection with such reports. Their duties include:
 - 8.1.1. to convene the Tribunal members, considerate of any potential conflicts of interest.
 - 8.1.2. to organise any logistics required to hold the Tribunal;
 - 8.1.3. to receive and refer to the Tribunal all material relating to any reports made under this By-law;
 - 8.1.4. to ensure the availability of all forms and records required to be used in any proceedings of the Tribunal;
- 8.2. For all tribunal matters involving a minor, the relevant parent or guardian will be the main point of contact.

9. Duties of the Charged Person

- 9.1. A Charged Person / Team must comply with all reasonable enquires of the Tribunal.
- 9.2. A Charged Person / Team or anyone representing a Charged Person / Team is not permitted to contact a reporting official or other parties involved in the reported incident once a matter has been formerly reported.

Part 3: Administrative Tribunals

10. Conducting an Administrative Tribunal

- 10.1. BMBA has determined that all matters where a person is charged with an offence carrying a maximum penalty of twenty (20) weeks will be adjudicated by an Administrative Tribunal in accordance with the procedures set out in this by-law.
- 10.2. An Administrative Tribunal allows for the handing down of penalties without the need of a Tribunal Hearing.
- 10.3. The Administrative Tribunal may escalate a matter to a Tribunal Hearing at their discretion if the charged person has committed previous offences under this by-law within the last 12-months.

11. Administrative Tribunal Procedures

- 11.1. The Administrative Tribunal will meet and determine a penalty based on the documented accounts and evidence received. The charged person and/or witnesses are not required to attend this meeting.
- 11.2. The Tribunal must be satisfied that a charge has been established on the balance of probabilities (i.e. more probable than not) to prove the charge. Otherwise, the charge shall be dismissed.
- 11.3. The Tribunal at its discretion, may consider a lesser or alternative charge, if the original charge cannot be established.

11.4. The Tribunal has the right to charge additional persons with an offence under this by-law on the basis of evidence presented during the course of conducting the tribunal.

11.5. The tribunal may rely solely on the official report and any supporting evidence when determining a charge. At the tribunal's discretion, additional written accounts of the alleged incident from the charged person, any witness, or any other relevant person may be sought.

11.6. The Tribunal is not obliged to give reasons for any decision made by it under this By-law.

12. Administrative Tribunal Outcomes

12.1. The Charged Person shall be notified in writing as soon as practicable following the meeting of the administrative tribunal of:

12.1.1. A short summary of the facts that have been considered;

12.1.2. The charges brought against them;

12.1.3. The penalty;

12.1.4. Their right to appeal the penalty.

12.2. The Charged Person is required to notify BMBA of their acceptance or rejection of the penalty within five working days of the notification. If the penalty is accepted by the Charged Person, the penalty shall be enforced with no right of appeal.

12.3. If the Charged Person fails to notify BMBA in accordance with 12.2, the penalty will automatically be invoked with no right of appeal.

13. Right to Appeal

13.1. There shall be no appeal from a decision of the Tribunal unless the Charged Person ("Appellant") satisfies the Tribunal Chairperson, or their nominee, in that person's sole discretion, that one or more of the following grounds of appeal is satisfied:

13.1.1. that significant new or additional evidence has become available, which is likely to make a material difference to the decision of the Tribunal;

13.1.2. that the penalty imposed by the Tribunal is not in accordance with the provisions of this By-law; or

13.1.3. that the Tribunal failed to follow procedures or requirements of this By-law to the significant detriment of the person seeking the appeal.

13.2. The appellant will be notified as soon as is reasonably possible after receipt of the Notice of Appeal as to whether their appeal is granted.

13.3. If an appeal is granted, where possible the Tribunal will be reconvened to assess and decide the appeal in accordance with this By-law. Where reconvening the full Tribunal is not practical or possible, the Chairperson may decide the matter as a single member Tribunal or consult with any additional persons they deem appropriate to the circumstances.

13.4. Tribunal members who were not involved in the original consideration of the matter are eligible to consider an appeal.

13.5. The Appeal Tribunal shall have the power to:

13.5.1. dismiss the appeal;

13.5.2. uphold the appeal;

13.5.3. impose any of the penalties set out in this By-law.

13.5.4. reduce, increase or otherwise vary any penalty imposed by the initial Tribunal in such manner as it thinks fit.

13.6. The Appeal Tribunal is not obliged to give oral or written reasons for its decisions.

13.7. At the conclusion of the appeal, the chairperson will ensure that the Appellant and the reporting official are correctly informed of the determinations of the Tribunal, and update the records held by BMBA regarding the matter.

13.8. Appeal matters may be further escalated to a formal Tribunal Hearing as per Part 4 of this by-law. Once all BMBA level appeals are exhausted, the appellant may apply to the NSWBA Appeals Tribunal as set out in the *NSWBA Disciplinary Tribunals By-Law*.

13.9. A person shall exercise their right of appeal under this By-law and have any appeal heard and determined by the Tribunal before commencing any proceedings or becoming a party to any proceedings in a court of law.

14. Serving of Administrative Tribunal Penalties

14.1. A Charged Person who has been convicted of an offence and received a penalty under this By-law shall not play, coach (this may include the act of training), referee or otherwise take part in basketball activities as directed by the Tribunal until the penalty has been served to the satisfaction of the BMBA. However, a decision of the Tribunal does not prevent a person carrying out duties directly related to their employment if they are so employed by the BMBA or other affiliated Basketball organisation.

14.2. Where the Tribunal imposes a penalty that prevents the Appellant from participating in a match, the appellant shall serve that penalty pending the determination of the appeal.

14.3. The Tribunal Chairperson may of their own motion or upon application of the appellant agree to a stay of the execution of the penalty imposed by the Tribunal pending the determination of the appeal.

14.4. In determining if a stay is granted under clause 14.3, the Chairperson must be satisfied that there are exceptional and compelling circumstances that make it harsh and unconscionable if such an order was not made. In determining that question, the Tribunal shall without limitation have regard to:

14.4.1. the merits of the appeal and the Appellant's prospects of success;

14.4.2. the interests of other teams, clubs and players; and

14.4.3. the effect on the results of the competition.

Part 4: Tribunal Hearings

15. Conducting a Tribunal Hearing

15.1. For all matters that can not be determined via an Administrative Tribunal as set out in this by-law, a Tribunal Hearing will be conducted in accordance with the requirements of *NSWBA Disciplinary Tribunals By-Law*. This includes the full notification requirements, Tribunal procedures and rights of appeal as specified in that by-law at the time of the Tribunal Hearing.

Part 5: Offences and Penalties

16. Standard Offences

16.1. The NSWBA Disciplinary Tribunals By-Law sets out the standard offences and maximum penalties to be applied where a charge has been established by a Tribunal. All BMBA Tribunals are bound by these requirements.

16.2. The current version of the standard Offences and Penalties as published by NSWBA at the time of the Tribunal will be considered.

17. BMBA Specific Offences

17.1. The BMBA Competition By-laws provide for automatic suspensions for particular behaviours and incidents (e.g. disqualifying fouls, accumulated Technical Fouls etc). These offences are not within the scope or jurisdiction of Tribunals, unless a standard offence is committed in parallel (e.g. a Technical Foul is issued in a game for behaviours that constitute a Code of Conduct breach).

17.2. Where a standard offence is committed in parallel with a BMBA specific offence, these are considered as individual matters with separate penalties.

17.3. Any penalties applied by the Tribunal will be considered as additional to the automatic suspension issued under the Competition By-laws, however, the Tribunal has discretion to direct these penalties to be served cumulatively or concurrently.

17.4. As the automatic suspension issued under the Competition By-laws is a separate matter, it has no bearing on the maximum penalty prescribed in the Standard Offences.

18. Application of Penalties resulting from Tribunals

18.1. Where charges arising from one particular incident are heard together and the Tribunal finds the person or team guilty of more than one offence, it may impose a single penalty, being not more than the maximum penalty for the total maximum penalties of the offences, or it may impose individual penalties for each offence.

18.2. A penalty handed down under by the Tribunal shall commence from the date of the Tribunal finding unless otherwise stated in writing by the Tribunal.

18.3. Penalties will wherever possible be expressed to be calendar weeks as opposed to number of matches. The Tribunal has the discretion to rule that a penalty will be suspended for the number of weeks which fall between seasons or during any season break or for other reason such as intended absence of the person overseas or interstate.

18.4. Where a Tribunal imposes more than one period of suspension, it may impose them to be served concurrently or cumulatively or partly concurrently and partly cumulatively.

18.5. Persons on a first offence shall have this taken into account when assessing the penalty to be handed down.

18.6. The Tribunal may take into account a Charged Person's prior convictions in determining a penalty to be handed down provided the penalty does not exceed the maximum penalties assigned to the offences.

18.7. The Tribunal has a discretion to rule that a penalty apply only in relation to a particular competition, however this shall only be done in exceptional circumstances.

Part 7: Miscellaneous

19. Relationship with a criminal matter

19.1. If during a Tribunal it becomes known that criminal charges have been brought (as opposed to merely the subject of police investigation) arising out of the actions that are the subject of the Tribunal, the Tribunal and / or the BMBA Committee may rule that further action be deferred until completion of the criminal charges, unless the police or other prosecuting authority advise they have no objection to the matter proceeding.

19.2. In making a determination under clause 18.1, the Tribunal and / or BMBA Committee shall have regard to the need to ensure the ongoing safety of players, referees and other persons involved in basketball activities.

20. Natural Justice

20.1. To the extent that the principles of natural justice are not included in the provisions set out in this By-law they are expressly excluded.

21. Recognition of Penalties across Associations

21.1. BMBA acknowledges and agrees that it is required to recognise and enforce penalties handed down against individual persons, teams or clubs by the disciplinary tribunals of all other Organising Bodies, basketball associations, leagues and competitions which are affiliated with Basketball NSW, Basketball Australia and or its Constituent Associations.