

Tribunal Guidelines & FAQ

Please note these guidelines are modelled off the Tribunal By-Laws adopted by BWA on 21 September 2012.

Who is subject to these by-laws?

All members of BWA and other persons or organisations which submit themselves to the jurisdiction of BWA. This includes players and coaches registering to play through BWA or with an Affiliated Association of BWA.

Who can be reported?

A player, coach, official or team

What type of behaviour can be reported?

Any incident arising from a basketball activity (such as a game or training). The incident may have occurred before, during or after the activity within the stadium or its immediate surrounding, or elsewhere (including technological forum) if related to the basketball activity.

For example, abusive language towards an official on social media or electronic messenger about the game can be reported, but abusive language not related to basketball delivered more generally towards someone who happens to be an official is not within BWA jurisdiction.

What is an administrative tribunal?

If an offence carries less than 20 weeks maximum suspension and meets certain other criteria, the Association may elect to deal with the matter via Administrative Tribunal. This will involve an Association representative and a Tribunal chairperson reviewing the initial allegations and evidence and offering a penalty (if any) to the charged person.

The charged person has 3 working days to notify the Association of their acceptance or rejection, and if a notification is not received within this timeframe, the charged person is taken to have accepted the penalty.

If the charged person rejects the administrative tribunal penalty, the matter will proceed to a full tribunal.

Who can be a Tribunal member?

There are no formal requirements to be a Tribunal member, however Associations should try to ensure members have a basketball and/or legal background or knowledge to ensure Tribunals run fairly and smoothly.

BWA have a pool of suitably qualified Tribunal members who Associations are able to utilise for both in-person and remote attendance at Tribunal. Please contact us for more information.

The most important consideration when selecting a Tribunal is ensuring they are independent, and can act impartially without bias. Associations should check with prospective Tribunal members whether there is any conflict of interest with the person/s involved and/or the matter itself, by providing them with the name of the charged person and any other relevant witnesses.

Who are the Tribunal members?

Suitably qualified & independent individuals selected by the Association or provided by BWA.

Charged person/s have the opportunity to raise concerns of bias prior to the Tribunal commencing. They will need to explain why they believe the member/s are unable to act impartially.

Any concerns around impartiality or objections to member/s will be dealt with at the discretion of the remaining Tribunal members.

Wherever possible, matters should be heard by 3 members, however the quorum is 2 members. BWA should always be contacted for assistance in finding a 3rd panel member before 2 is settled upon.

How are Tribunals recorded?

At the discretion of the Tribunal chairperson. Audio recording is preferred where possible and consented to by everyone participating in the hearing.

When are Tribunals held?

At the discretion of the Affiliated Association, usually on a weeknight after normal business hours.

All reasonable efforts should be made to hold the hearing prior to the charged persons next scheduled fixture, or if not, as soon as possible.

How much notice needs to be given?

Ideally, at least 48 hours notice should be given to the charged person of the Tribunal hearing details. A charged person can request an adjournment if they are unable to make the scheduled time and venue – see Adjournments for further information.

How does the need for a Tribunal come about?

Usually, an official will use a Report Form to detail the alleged misconduct and submit it to the Hearings Officer at the Association within 4 days of the incident occurring.

Anyone can make a complaint to the Association, which if investigated and deemed to be initially valid by the Association, can also form a report as a basis for a Tribunal hearing.

For example, a parent or other spectator may have witnessed one player striking or tripping another that the official missed and bring the matter directly to the Association. The Association may view CCTV or other relevant evidence available (such as calling involved players, coaches or other spectators) to see whether there is enough evidence for the matter to be heard at Tribunal.

Associations may also contact BWA to request a low-cost independent investigator review the matter to advise the Association whether there is enough evidence to have the matter proceed to Tribunal.

Can a player continue playing or coaching in the period between the incident and tribunal?

Yes. There is currently no mechanism to impose an interim suspension on players who have not had a full hearing. This is why it's important to schedule the Tribunal as soon as practicable.

Are lawyers or media allowed in the hearing?

Only with permission of the Tribunal.

Who else can attend a Tribunal?

The president, secretary or other delegate representing a charged team or club
Any player of a charged team or club

Non-attendance at hearing

Charged person

The Hearings Officer should attend the hearing and inform the Tribunal members the steps taken to inform the charged person of the hearing details, and any attempts to contact the charged person, and any responses from the charged person. Based on this information, the Tribunal will decide whether to proceed with the hearing, or if they are not satisfied notice procedures have been effected from the Association, they can adjourn to allow the charged person the opportunity to attend.

Reporting official

It is the Associations responsibility to ensure the reporting official is in attendance. If they cannot make it, the Tribunal can grant leave for them to attend by phone.

This is important as the Tribunal members and/or the charged person may have questions for the reporting official, and their evidence may be lessened if they are not present to speak to it.

Other witnesses

It is the Associations responsibility to ensure key witnesses are in attendance to support the officials account, and the charged persons responsibilities to ensure their key witnesses can attend. Any witnesses who are not in attendance will not be able to give evidence and Tribunals should not be adjourned on this basis. Witnesses can attend by phone or by giving a statement, however it's preferred they attend in person so the Tribunal or charged person can ask questions.

Adjournments

A charged person, team, club or reporting official may apply to have a hearing adjourned if there are *compelling circumstances which warrant such steps being taken to avoid costs, hardship or significant inconvenience to the charged person, team, club or reporting official.*

If the adjournment request is made prior to the hearing, it is at the discretion of the Hearings Officer.

If the adjournment request is made at the hearing, it is at the discretion of the Tribunal chairperson.

Hearings by telephone

A charged person, team or club may apply to attend hearing by telephone or other technology if there are *compelling circumstances which warrant such steps being taken to avoid costs, hardship or significant inconvenience to the charged person, team or club*

A teleconference should always be preferred to an adjournment, however should only be utilised when the above criteria is satisfied. The preference is for all participants to attend in person.

What happens at the Tribunal?

The charged person has the opportunity to accept or deny the charges and relevant facts.

If the charge/s are accepted, the matter can proceed straight to penalty determination, and the charged person/s can outline any relevant mitigating factors to the Tribunal and/or provide character references.

If the charge/s or facts are denied, the matter will proceed to a full hearing where the Tribunal will ask questions and review evidence from relevant parties.

The rules of evidence do not strictly apply however the Tribunal should ensure the Tribunal processes are carried out in a fair, clear and efficient manner.

The reporting official should give evidence first whilst the remaining witnesses remain outside the hearing. The charged person and the Tribunal are able to ask questions of the reporting official. Association witnesses will then be asked to give evidence and can be asked questions by the Tribunal or charged person.

The charged person is then entitled to give their version of events and call any witnesses who support their version of events. The Tribunal can ask questions of the charged person or their witnesses.

Both the reporting official and the charged person should remain in the room at all times, other than when the Tribunal are deliberating. If they choose to leave the hearing, they should be informed by the Tribunal their evidence and case may be affected.

Witnesses should be called in one at a time and may also be asked questions by the Tribunal or the charged person. Following their evidence, they may leave the hearing or remain with permission of the Tribunal.

All parties except for the Tribunal members should leave the room whilst the Tribunal are deliberating.

Tribunal decision

Determinations are made on the balance of probabilities (*more likely than not that the incident occurred as reported*).

If the charge/s are not accepted, the first step is for the Tribunal to decide whether the charge/s are *proven or not proven*.

The Tribunal can vary the charges if deemed necessary, however the charged person should be given the opportunity to adjourn the hearing if the charge/s are amended.

If they are proven, the charged person is then given the opportunity to make submissions on penalty and any relevant mitigating factors.

The Tribunal then once again deliberate in private before informing the charged person of their decision.

Penalty

The Tribunal have the power to suspend, disqualify, reprimand, fine, bond, ban or otherwise deal with a charged person, however most penalties involve a suspension from participating in playing, coaching or officiating at Affiliated Associations.

If the Tribunal are considering other penalties, they should discuss with the Association their ability to monitor or enforce the alternative sanction.

Where does the suspension take effect?

If a suspension is imposed, unless the Tribunal specifies otherwise, the penalty takes effect at every Affiliated Association in WA. The Association should inform BWA and other Affiliated Associations via email of the person charged and the penalty, so it can be enforced across associations.

The suspension applies in respect of all basketball related roles – coaching, playing and/or officiating.

How can a Tribunal decision be appealed?

A person can appeal the decision of the Tribunal if they satisfy the Appeals Officer at the Association of one of the following:

- ⇒ Significant new or additional evidence has become available that is likely to make a material difference to the Tribunal decision;
- ⇒ Penalty imposed by the Tribunal is not in accordance with the by-laws;
- ⇒ The Tribunal failed to follow by-law procedures or requirements to a significant detriment of the person seeking the appeal; or
- ⇒ The penalty is manifestly excessive.

An organisation can appeal a decision on the basis that the penalty imposed is inadequate.

Who is the appeals officer?

An Appeals Officer should be *separate* from the Hearings Officer but otherwise can be any appointed person at the Association, or someone external to the organisation such as a usual Tribunal member who was not part of the first hearing.

Process for appealCharged person

- ⇒ Within 14 days of being notified of the Tribunal's determination, the person must lodge a notice stating full details of charges and results and the grounds of appeal with the Appeals Officer at the Association
- ⇒ Pay an appeal fee of \$110.00, unless waived by the Appeals Officer.
- ⇒ The Appeals Officer must decide whether the appeal meets a ground of appeal
- ⇒ Advise the person as soon as reasonably possible after receiving the appeal whether it's granted and the time, date and place of the appeal hearing (if granted)

Organising body

- ⇒ Provide the charged person with details on why they consider the penalty to be inadequate
- ⇒ Provide an undertaking to pay their reasonable costs of the Appeal Tribunal if the organisation appeal is unsuccessful (costs may include lawyers fees, travel costs for attending the hearing and/or missed work, etc).

Organising an Appeal Tribunal

Three different and independent Tribunal members should be arranged to attend the Appeal. Preferably these members should have experience in hearing and determining disciplinary matters in sport.

An Appeal Tribunal may be conducted as a full re-hearing, or limited to consideration of the grounds of appeal (i.e., hearing from the person why they believe the penalty is excessive, or detailing the new evidence).

The Appeal Tribunal may decide to uphold the appeal and adjust or remove the penalty, or dismiss the appeal whereby the original decision and penalty would stand.

Can a person play/coach whilst awaiting appeal?

No, they must continue serving the suspension, *unless* they apply to and are granted a stay by the Tribunal on the basis that:

- ⇒ There are exceptional and compelling circumstances that make it harsh and unconscionable if an order was not made, with regard to
- ⇒ The merits of appeal and prospects of success
- ⇒ Interests of other teams, clubs and players
- ⇒ The effect on the results of the competition

The Association should take all steps to ensure the Appeal should occur as soon as possible.

Can an appeal fee be waived or refunded?

An appeal fee can be waived at the discretion of the Appeals Officer, and/or refunded by the Appeal Tribunal.

Are there any further avenues of appeal?

Not under the BWA by-laws.

This does not limit an individual or organisations right to seek legal advice on other appeal avenues they may have available to them.