

<b>POLICY</b>	<b>Integrity</b>
TITLE:	Hearing Tribunal Procedure
AREA:	National Integrity Framework
RESPONSIBILITY:	National Integrity Manager
DRAFTED BY:	National Integrity Manager
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## 1. OVERVIEW

- 1.1. This Procedure outlines the process to be followed in respect of matters referred to an internal Hearing Tribunal pursuant to clause 7.2(d) or 8.6(a) of the Paddle Australia Complaints, Disputes and Discipline Policy (**Policy**). Defined terms have the meaning given to them in the Policy.

## 2. COMPOSITION

- 2.1. The relevant Paddling Organisation shall appoint Hearing Tribunal members as soon as practicable after the matter is referred to an internal Hearing Tribunal.
- 2.2. The Hearing Tribunal shall be composed of between two to three members.
- 2.3. The Hearing Tribunal chair must have formal legal training and be a person whom the relevant Paddling Organisation considers has experience and skills suitable to the function of chairing a tribunal.
- 2.4. Hearing Tribunal members must declare any actual or perceived conflict of interest, such as a close personal connection to the Complainant or Respondent or the matters under consideration.
- 2.5. Should a Hearing Tribunal member become unable to sit once appointed, the relevant Paddling Organisation shall appoint a replacement.
- 2.6. No Hearing Tribunal decision shall be invalidated by any irregularity in the appointment of a Hearing Tribunal member.

## 3. ATTENDANCE

- 3.1. The Complainant and Respondent are required to attend the Hearing Tribunal.
- 3.2. The following persons shall be entitled to attend the Hearing Tribunal:
- (a) witnesses called to give evidence by the Complainant or Respondent (the number of which shall be subject to the approval of the Hearing Tribunal chair in their absolute discretion);
  - (b) a support person for the Complainant or Respondent, who may accompany them but may not advocate on their behalf or participate in any other way;
  - (c) any person that the Hearing Tribunal chair considers will assist the Hearing Tribunal and invites to attend the Hearing Tribunal for that purpose; and
  - (d) where a person entitled to attend the Hearing Tribunal is under the age of 18 years, an adult adviser, who will in the absence of unavailability or other extraordinary circumstance be expected to be such person's parent or guardian.
- 3.3. Legal Practitioners are not permitted to appear before, or represent the Complainant or Respondent at, the Hearing Tribunal.
- 3.4. The relevant Paddling Organisation shall notify in writing all persons required to attend the Hearing Tribunal, at least 7 days in advance, of the appointed date, time and place (or alternative arrangements if conducted via technology).
- 3.5. The Complainant or Respondent may apply to the relevant Paddling Organisation to have the Hearing Tribunal adjourned or convened in another way if there are compelling circumstances which warrant such steps being taken to avoid costs, hardship or significant inconvenience. The relevant Paddling Organisation has sole and absolute discretion to determine such application, which must be made within 24 hours being notified of the hearing arrangements.

- 3.6. If the Complainant or Respondent fails to attend the Hearing Tribunal without reasonable cause, it may proceed and a determination may be made by the Hearing Tribunal in the absence of that person, provided that the Hearing Tribunal is satisfied that they were notified in accordance with this clause.
- 3.7. A Complainant, Respondent or witness who is unable to attend a Hearing Tribunal may provide a written statement containing the evidence they would have provided to the Hearing Tribunal. The Hearing Tribunal may give less weight to written evidence than oral evidence.

## **4. PROCEDURE**

- 4.1. The Hearing Tribunal shall conduct proceedings in such manner as it sees fit and may in its absolute discretion:
  - (a) consider any evidence, and in any form that it deems relevant;
  - (b) question any person giving evidence;
  - (c) limit the number of witnesses; and
  - (d) act in an inquisitorial manner to establish the truth of the matter before it.
- 4.2. Hearing Tribunals shall not be recorded, except at the discretion of the Hearing Tribunal chair.
- 4.3. Without limiting the Hearing Tribunal's power to regulate its own procedure as it sees fit, the Hearing Tribunal shall ordinarily proceed in accordance with the following steps:
  - (a) At commencement, the chair will identify the Hearing Tribunal members and determine whether the Complainant and Respondent are present.
  - (b) Should the Complainant or Respondent challenge the impartiality of any Hearing Tribunal member, the challenge will be determined by the chair sitting alone, unless that challenge relates to the chair in which case it will be determined by the relevant Paddling Organisation or, if unavailable or unable to act, the other Hearing Tribunal members.
  - (c) The Complainant and Respondent (and any support person and adult advisor) shall be notified of their right to remain in the hearing until all evidence is given but not to be present while the Hearing Tribunal considers its findings.
  - (d) The chair shall advise all those present of the method of recording the hearing (if any).
  - (e) The alleged Prohibited Conduct (if referred pursuant to clause 7.2(d) of the Policy) or the substantiated allegation and proposed Sanction in the Breach Notice (if referred pursuant to clause 8.6(a) of the Policy) shall be read out in the presence of all persons entitled to attend.
  - (f) The Respondent shall be asked whether or not they intend to contest the allegation(s).
  - (g) If the Respondent does not contest the allegation(s), the chair will provide each of the Complainant and Respondent with an opportunity to make submissions as to the appropriate Sanction (if any) to be imposed. In such circumstances, the Complainant and Respondent may each call witnesses to give evidence regarding the seriousness or otherwise of the Prohibited Conduct, and any other mitigating or aggravating factors.
  - (h) If the Respondent contests the allegation(s), the chair will ask all witnesses except the Complainant and Respondent (and any support person and adult advisor) to leave the hearing and to wait to be called to give their evidence.

- (i) The Complainant shall give evidence first, followed by each of their witnesses (if any). The Respondent shall then give evidence, followed by each of their witnesses (if any).
  - (j) Each of the Complainant and Respondent (including their adult adviser) may ask questions of the other and each of their witness called.
  - (k) Each witness shall be entitled to remain in or leave the Hearing Tribunal after giving evidence unless otherwise directed by the Hearing Tribunal.
  - (l) Where a person under the age of 18 exercises their right to have an adult adviser present in accordance with this Procedure, they shall be provided a reasonable opportunity to consult during the hearing.
- 4.4. At the conclusion of all evidence the chair shall ask all persons present to leave while the Hearing Tribunal considers its findings.
- 4.5. If the Hearing Tribunal is satisfied that a category of Prohibited Conduct not the subject of the Complaint has been committed, then the Hearing Tribunal may find the Respondent engaged in such other category of Prohibited Conduct.
- 4.6. The decision of the Hearing Tribunal shall be given by the chair in the presence of the Complainant and Respondent. The Hearing Tribunal is not obliged to give oral or written reasons for any decision but may do so if it wishes.
- 4.7. Where the Hearing Tribunal finds that the Respondent engaged in Prohibited Conduct, it shall inform the Complainant and Respondent of its decision and provide each with an opportunity to make oral submissions as to any aggravating or mitigating factors before the Hearing Tribunal makes a decision on Sanction.
- 4.8. The Hearing Tribunal shall advise the Complainant, Respondent, and relevant Paddling Organisation of its decision on Sanction.
- 4.9. If the Complainant or Respondent chooses to leave the Hearing Tribunal at any time, the Hearing Tribunal may proceed to make findings and decisions in their absence. No further opportunity to give evidence or make submissions will be provided to any person who chooses to do so. In such circumstances, the chair must arrange for the Hearing Tribunal's decision to be communicated to that person in writing as soon as practicable.
- 4.10. The Hearing Tribunal chair must provide to the relevant Paddling Organisation accurate records of its proceedings and decisions in the form of **Schedule 1 Hearing Tribunal Outcome Form**.

**SCHEDULE 1**

HEARING TRIBUNAL OUTCOME FORM

<b>PARTICULARS</b>	
Date	
Location	
Hearing Tribunal Chair	
Hearing Tribunal Members	

<b>PERSONS INVOLVED</b>	
Complainant	
Respondent	
Complainant's Witnesses	
Respondent's Witnesses	
Others Present	

<b>DECISION</b>	
Prohibited Conduct Alleged	
Plea	

Findings	
Sanction	

<b>NOTIFICATION</b>	
Complainant	[Date]  [Oral/Writing]
Respondent	[Date]  [Oral/Writing]

<b>CHAIR'S DECLARATION</b>	
Signature	
Date	

## SCHEDULE 2

### HEARING TRIBUNAL CHAIR CHECKLIST

#### Preliminaries

- Introduce the Hearing Tribunal members.
- Ask the Complainant and Respondent if there is any objection to any of the Hearing Tribunal members – and rule on any objection.
- Advise the Complainant and Respondent (and any support person and adult advisor) of their right to remain in the hearing at all times except when the Hearing Tribunal is deliberating.
- Advise all persons of the method of recording the hearing (if applicable).

#### Plea

- Read aloud the alleged Prohibited Conduct (if referred pursuant to clause 7.2(d) of the Policy) or the substantiated allegation and proposed Sanction in the Breach Notice (if referred pursuant to clause 8.6(a) of the Policy) in the presence of all persons.
- Take the Respondent's plea (if referred pursuant to clause 7.2(d) of the Policy).
- Exclude all witnesses until they give their evidence.

#### Evidence for the Complainant

- Hear the evidence of the Complainant.
- Allow the Respondent to ask questions of the Complainant.
- Hear the evidence of the Complainant's witnesses (if any).
- Allow the Respondent to ask questions of the Complainant's witnesses.

#### Evidence for the Respondent

- Hear the evidence of the Respondent.
- Allow the Complainant to ask questions of the Respondent.
- Hear the evidence of the Respondent's witnesses (if any).
- Allow the Complainant to ask questions of the Respondent's witnesses.

#### Findings

- Inform witnesses that they may be excused.
- Exclude all persons while deliberating.
- Deliver findings on Prohibited Conduct to the Complainant and Respondent.

#### Sanctions (if applicable)

- Invite the Complainant to make submissions on Sanction.
- Invite the Respondent to make submissions on Sanction.
- Exclude all persons while deliberating.
- Deliver decision on Sanctions to the Complainant and Respondent.

#### Outcome

- Complete Schedule 1 Hearing Tribunal Outcome Form.
- Provide form to the relevant Paddling Organisation.