

# NATIONAL DISCIPLINARY TRIBUNAL GUIDELINES

February 2013



## 1 APPLICATION

These *National Disciplinary Tribunal Guidelines* (**Guidelines**), if formally adopted, apply to an Australian Football league that is conducted or administered by:

(a) a State or Territory league or body that is affiliated with the AFL, including:

- a. NSW/ACT: AFL (NSW/ACT) Commission Ltd (ACN 086 839 385);
- b. NT: AFL (Northern Territory) Ltd (ACN 097 620 525);
- c. QLD: AFL (Queensland) (ACN 090 629 342);
- d. SA: South Australian Football League Inc (ABN 59 518 757 737);
- e. TAS AFL (TAS) (ACN 135 346 986);
- f. Victoria: Australian Football League (Victoria) (ACN 147 664 579);
- g. WA: West Australian Football Commission Inc (ABN 51 167 923 136);  
or

**(Affiliated State or Territory Body)**

(b) an entity or body that is affiliated with (or licensed by) an Affiliated State or Territory Body .

**(Football Body)**

If applicable to the Football Body, Australian Football: players; coaches; officials; spectators; and administrators and all people reasonably connected to the Football Body (**Members**) must comply with these Guidelines.

## 2 DISCIPLINARY TRIBUNAL

### 2.1 Definitions

“**Disciplinary Matter**” means any matter with which the Disciplinary Tribunal is empowered to deal other than a Reportable Offence.

“**Disciplinary Tribunal**” means a tribunal convened by the Football Body in accordance with these *National Disciplinary Tribunal Guidelines*.

### 2.2 Functions

The function of the Disciplinary Tribunal shall be to deal with Disciplinary Matters in accordance with the Rules & Regulations.

### 2.3 Members of Disciplinary Tribunal

The Disciplinary Tribunal shall consist of:

- (a) a Chairman being a person who is a member of the legal profession (**Chairman**);
- (b) a panel of persons who in the opinion of the General Manager have appropriate qualifications to act as panel members as required under these Rules (**Disciplinary Tribunal Panel Members**).

### 2.4 Qualifications

Save and except where the General Manager otherwise determines, a person shall not be appointed to the Disciplinary Tribunal if that person:

- (a) has been a member of a Board of Directors of a Club; or
- (b) has been a Coach or assistant or specialty Coach of a Club; or
- (c) has been a Player of a Club

in the twelve months preceding the appointment.

### 2.5 Composition for Disciplinary Tribunal Hearing

The Disciplinary Tribunal shall comprise three Disciplinary Tribunal Panel Members being:

- (a) a Chairman; and
- (b) two other persons.

### 2.6 Procedure and Evidence

Subject to the further matters set out in this Rule, the Disciplinary Tribunal may regulate any proceedings brought before it in such manner as the Chairman thinks fit.

### 2.7 Conduct of Hearing

- (a) Any hearing by the Disciplinary Tribunal shall be conducted with as little formality and technicality and with as much expedition as a proper consideration of the matters before it permits.

- (b) The Chairman shall determine all questions of law, evidence or procedure and give such directions in such manner as the Chairman thinks fit. Without limitation, the Chairman may give directions as to the length, form and nature of submissions, the reception of evidence, amendment of a report, adjournment of hearings and all other matters of procedure. .
- (c) The Disciplinary Tribunal Panel Members shall decide questions of fact and law.

## **2.8 Rules of Evidence**

- (a) The Disciplinary Tribunal is not bound by the rules of evidence or by practices and procedures applicable to Courts of record, but may inform itself as to any matter in any such manner as it thinks fit.
- (b) A person who intends at a hearing of the Disciplinary Tribunal to adduce the evidence of a person as an expert witness shall lodge with the Disciplinary Tribunal a written statement containing:
  - (i) the name and address of the witness;
  - (ii) the qualifications and experience of the witness; and
  - (iii) the substance of the evidence it is proposed to adduce from the witness.
- (c) The time for compliance with Rule 1.1(b) shall be other time as directed by the Disciplinary Tribunal.
- (d) Unless permission is granted by the Chairman, a person shall not adduce the evidence of an expert witness unless that person complies with Rules 1.1(b) and 1.1(c).
- (e) Where the Chairman allows a person to adduce evidence from an expert witness or on any other occasion, the Disciplinary Tribunal may at the direction of the Chairman, hear any other expert evidence in relation to the matters requiring its determination.

## **2.9 Matters Referred Under AFL Anti-Doping Code**

Where a matter is referred to the Disciplinary Tribunal for an alleged contravention of the AFL Anti-Doping Code or the AFL Illicit Drugs Policy (if applicable), this Rule shall be read in conjunction with the provisions of the AFL Anti-Doping Code or the AFL Illicit Drugs Policy as the case may be, provided that to the extent of any inconsistency, the provisions and guidelines contained in the AFL Anti-Doping Code or the AFL Illicit Drugs Policy shall respectively prevail.

## **2.10 Obligations of Disciplinary Tribunal**

The Disciplinary Tribunal shall:

- (a) provide any person whose interest will be directly and adversely affected by its decision, a reasonable opportunity to be heard;
- (b) hear and determine the matter before it in an unbiased manner; and
- (c) make a decision that a reasonable Disciplinary Tribunal could honestly arrive at.

## **2.11 Standard of Proof**

The standard of proof in the case of a Disciplinary Matter shall be comfortable satisfaction.

## **2.12 Onus of Proof**

Unless otherwise provided in the Rules, no person appearing before the Disciplinary Tribunal shall bear an onus of establishing that an alleged offence has been committed.

## **2.13 Decision and Sanctions**

In dealing with a Disciplinary Matter, the Disciplinary Tribunal may in the hearing and determination of any matter:

- (a) impose a sanction upon any person for a breach of the Rules;
- (b) give any judgment or decision or make such order as in the Disciplinary Tribunal's opinion the justice of the case requires.

## **2.14 Majority Decision – Questions of Fact**

In dealing with a Disciplinary Matter, all questions shall be determined by a majority of the Disciplinary Tribunal Panel Members.

## **2.15 Other Powers**

- (a) The Disciplinary Tribunal may make any interim orders it thinks fit in any proceedings before it.
- (b) The Chairman may give directions on any matter or thing not provided for by the Rules in relation to any proceeding before the Disciplinary Tribunal.

## **2.16 No Obligation to Provide Reasons**

The Disciplinary Tribunal is not obliged to give reasons for any decision made by it under this Rule.

## **2.17 Representation**

At any hearing before the Disciplinary Tribunal a person may:

- (a) appear in person; or
- (b) subject to leave of the Chairman, be represented by a barrister, solicitor or agent on such terms, if any, as the Chairman directs.

## **2.18 Representative**

Where the Chairman is of the opinion that a representative of a Player or person appearing before the Disciplinary Tribunal has failed to observe directions of the Chairman or otherwise acted in a contemptuous, irresponsible or discourteous manner, the Chairman may withdraw leave for that person to represent the Player or person and if appropriate, adjourn the proceedings to enable the Player or person to obtain fresh representation.

## **2.19 Persons Entitled to be Present**

- (a) At any hearing before the Disciplinary Tribunal, the charged person must attend at the time and place specified in the Notice of Charge or other notice.
- (b) If a required person fails to appear at the time and place specified in the Notice of Charge or other notice, the Disciplinary Tribunal may proceed to hear and Disciplinary Tribunal Panel Members may determine the charge or matter and any sanction in the absence of the person.

- (c) Counsel may attend and appear before the Disciplinary Tribunal at the date, time and place and fixed for the hearing of the Disciplinary Tribunal. Where Counsel fails to attend before the Disciplinary Tribunal, the Disciplinary Tribunal may hear and determine the charge or matter in the absence of Counsel.

## **2.20 Co-operation with Disciplinary Tribunal**

Any person who appears before the Disciplinary Tribunal and who in the opinion of the Disciplinary Tribunal Chairman has:

- (a) failed to fully co-operate with the Disciplinary Tribunal; or
- (b) failed to truthfully answer any questions asked by Counsel or the Disciplinary Tribunal; or
- (c) failed to provide any document in that person's possession or control relevant to the matter to be determined by the Disciplinary Tribunal following a request by the Disciplinary Tribunal; or
- (d) makes any false or misleading statement or makes a statement or acts in a manner calculated to or which is likely to mislead engages in any improper or insulting behaviour at any time before the Disciplinary Tribunal;
- (e) engages in conduct designed to inhibit, frustrate or pervert the proper administration of justice in relation to any proceeding before the Disciplinary Tribunal,

shall be dealt with by the Disciplinary Tribunal Chairman as they in their absolute discretion think fit.

## **2.21 Public Comment and Criticism – Notice of Charge**

- (a) A person subject to these Rules shall not publicly comment on:
  - (i) the contents of a Notice of Charge prior to the conclusion of any determination by the Disciplinary Tribunal, as the case may be;
  - (ii) a Notice of Investigation and any matter touching upon or concerning an Investigation under these Rules, until completion of such investigation and relevant determination by the Disciplinary Tribunal or;
  - (iii) an Incident Referral Form and any matter touching upon or concerning an incident referral form until that matter has been dealt with by the Disciplinary Tribunal;
- (b) Where a person contravenes Rule 1.1(a), the person's Club shall also be liable to a sanction unless the person establishes to the reasonable satisfaction of the General Manager that such public comment was not intended to influence or affect the conduct of the Disciplinary Tribunal hearing or the process of the investigation, as the case may be.

## **2.22 Public Comment and Criticism – Disciplinary Tribunal Decision**

No person subject to these Rules shall make any unfair, unreasonable or excessive public criticism of a Disciplinary Tribunal decision or of any Disciplinary Tribunal Member or any other matter touching upon or concerning the Disciplinary Tribunal or a determination made by it. The General Manager shall determine in his absolute discretion in any case, whether any public criticism is unfair, unreasonable or excessive. Where a person contravenes this Rule, the person's Club shall also be liable to a sanction.

# **3. APPEAL FROM DISCIPLINARY TRIBUNAL DECISION**

### **3.1 Person May Appeal**

A person may appeal to the Appeal Board in respect of a determination by the Disciplinary Tribunal under Rule 0 by no later than 12.00 noon on the fifth day following the decision of the Disciplinary Tribunal, on one or more of the following grounds:

- (a) that there was an error of law;
- (b) that the decision was so unreasonable that no Disciplinary Tribunal acting reasonably could have come to that decision having regard to the evidence before it; or
- (c) that the sanction imposed was manifestly excessive.

### **3.2 General Manager May Appeal**

The General Manager may appeal to the Appeal Board in respect of a determination of the Disciplinary Tribunal under Rule 0 within the time and on one or more of the grounds referred to in Rule 0.

### **3.3 Appointment**

The General Manager may from time to time appoint persons to an appeal board to be known as the Appeal Board.

### **3.4 Members of Appeal Board**

The Appeal Board shall consist of:

- (a) a Chairman being a member of the legal profession (**Chairman of the Appeal Board**); and
- (b) a Panel of not more than four persons who in the opinion of the General Manager possess the appropriate qualifications (**Appeal Board Panel**).

### **3.5 Qualifications**

Save and except where the General Manager otherwise determines, a person shall not be appointed to the Appeal Board if that person:

- (a) has been a member of a Board of Directors of a Club; or
- (b) has been a Coach or assistant or specialty Coach of a Club; or
- (c) has been a Player of a Club,

in the twelve months preceding the appointment.

### **3.6 Composition for Appeal Board Hearing**

On any occasion when an appeal is brought before the Appeal Board, the Appeal Board shall comprise three persons being:

- (a) the Chairman; and
- (b) two persons or other persons from the Appeal Board Panel.

### **3.7 Notice of Appeal by Person**

An appeal shall be brought by lodging with the General Manager a Notice of, shall be accompanied by payment of:

- (a) the sum of \$1,000 towards the costs of the appeal, which sum shall not be refundable in any circumstances; and
- (b) the further sum of \$1,000 which shall be dealt with in accordance with this Rule.

### **3.8 Lodgement of Notice of Appeal**

A Notice of Appeal shall be lodged by:

- (a) delivering; or
- (b) transmitting,

that Notice addressed to the General Manager provided it is received by no later than the time prescribed in Rule 0.

### **3.9 Time for Hearing of Appeal**

- (a) Upon receipt of a Notice of Appeal, the General manager (or his delegate) shall:
  - (i) fix the date, time and place for the hearing of the appeal as soon as practicable;
  - (ii) advise all parties interested in the appeal in writing of those particulars;
  - (iii) provide each person appointed to sit on the Appeal Board and Counsel with a copy of the Notice of Appeal;
  - (iv) cause a transcript of the hearing before the Disciplinary Tribunal to be prepared (if available); and
  - (v) provide each person appointed to sit on the Appeal Board, Counsel and the appellant with a copy of the transcript of the hearing before the Disciplinary Tribunal (if available).
- (b) The Appeal Board may vary the date, time or place specified under this Rule and upon doing so shall as soon as practicable provide all parties interested in the appeal with written notice of any such variation.

### **3.9 Attendance**

- (a) An appellant shall attend and appear before the Appeal Board at the date, time and place fixed for the hearing of the appeal. Where an appellant fails to attend before the Appeal Board, the Appeal Board may hear and determine the appeal in the appellant's absence.
- (b) Counsel may attend and appear before the Appeal Board at the date, time and place fixed for the hearing of the appeal. Where Counsel fails to attend before the Appeal Board, the Appeal Board may hear and determine the appeal in the absence of Counsel.

### **3.10 Procedure and Evidence**

- (a) Subject to the further matters set out in this Rule, the Appeal Board may regulate any proceedings brought before it in such manner as the Chairman of the Appeal Board thinks fit.



- (b) The Appeal Board is not bound by the rules of evidence or by practices and procedures applicable to Courts of record, but may inform itself as to any matter in such manner as it thinks fit.

### **3.11 Obligations of Appeal Board**

The Appeal Board shall:

- (a) provide any person whose interest will be directly and adversely affected by its decision a reasonable opportunity to be heard;
- (b) hear and determine the matter before it in an unbiased manner; and
- (c) make a decision that a reasonable body could honestly arrive at.

### **3.12 Adjournment and Stay of Sanction**

- (a) Unless determined otherwise by the Chairman of the Appeals Board, where the Disciplinary Tribunal imposes a sanction that prevents the appellant from participating in a Match, the appellant shall serve that sanction pending the determination of the Appeal.
- (b) The Appeal Board may of its own motion or upon application of any party to the Appeal, order:
  - (i) that an Appeal be adjourned;
  - (ii) a stay of the execution of the sanction imposed by the Disciplinary Tribunal pending the determination of the Appeal.

### **3.13 Exceptional and Compelling Circumstances**

The Appeal Board shall make an order under Rule 1.1(b) only where it is satisfied that there are exceptional and compelling circumstances that make it harsh and unreasonable if an order was not made. In determining that question, the Appeal Board shall without limitation have regard to:

- (a) the merits of the appeal and the appellant's prospects of success;
- (b) the interests of other Clubs and Players;
- (c) the effect on the results of the relevant competition; and
- (d) the need to permit the due and proper administration of Australian football in accordance with the Rules.

### **3.12 Representation**

- (a) At any hearing before the Appeal Board a person may:
  - (i) appear in person; or
  - (ii) subject to leave of the Appeal Board, be represented by a barrister, solicitor or agent on such terms, if any, as the Chairman directs.
- (b) At any hearing before the Appeal Board, Counsel shall be entitled to appear until or unless excused by the Chairman of the Appeal Board.

### **3.13 Representative**

Where the Appeal Board is of the opinion that a representative of a Player or person appearing before the Appeal Board has failed to observe directions of the Appeal Board or otherwise acted in a contemptuous, irresponsible or discourteous manner, the Appeal Board may withdraw leave for that person to represent the Player or person and if appropriate, adjourn the proceedings to enable the Player or person to obtain fresh representation.

### **3.14 Review**

- (a) The Appeal Board shall hear all appeals by way of a review of the evidence presented before the Disciplinary Tribunal and determine whether one or more of the grounds referred to in Rule 0 have been established.
- (b) Neither the appellant nor Counsel may produce fresh evidence at the hearing of an appeal without leave of the Appeal Board. If an appellant or Counsel seek leave to produce fresh evidence, the Appeal Board shall not grant such leave unless:
  - (i) the evidence could not by reasonable diligence have been obtained by the appellant or Counsel prior to the conclusion of the hearing before the Disciplinary Tribunal; and
  - (ii) the evidence is of sufficient probative value that, considered with other evidence which was before the Disciplinary Tribunal, the Disciplinary Tribunal would have reached a different decision.

### **3.15 Decisions of Appeal Board**

Where the Appeal Board determines that one or more of the grounds set out in Rule 0 have been established, the Appeal Board may confirm, reverse or modify the decision of the Disciplinary Tribunal the subject of the appeal and make such orders and give such directions in such manner as it thinks fit.

### **3.16 Majority Decisions**

Any question on appeal before the Appeal Board must be decided according to the opinion of a majority of those constituting the Appeal Board.

### **3.17 No Obligation to Give Reasons**

The Appeal Board is not obliged to give reasons for a decision under Rule 0.

### **3.18 Onus and Standard on Appeal**

On the hearing of an appeal the appellant shall bear the onus of establishing on the balance of probabilities, one or more of the grounds set out in Rule 0.

### **3.19 Appeal Fee**

- (a) Where an appeal is successful, the payment made under Rule 1.1(b) shall be refunded on receipt by the AFL of a valid tax invoice.
- (b) Where an appeal is not successful, the payment made under Rule 1.1(b) shall not be refunded, unless the matter involves a monetary sanction and the Appeal Board determines that it would be manifestly unjust and unfair not to refund the whole or part of such payment in which case, the whole or part may be refunded.

### **3.20 Costs**

Each party to an appeal shall bear their own costs.

### **3.21 Abandon Appeal**

- (a) Subject to Rule 1.1(b), an appellant may abandon an appeal prior to any hearing by giving written notice to the General Manager in which case the payment under Rule 1.1(b) shall be refunded.
- (b) Where an appellant abandons the appeal during the conduct of the appeal, the payment made under Rule 1.1(b) shall not be refunded.

### **3.22 Validity of Appeal and Hearings**

- (a) Where there is any procedural irregularity in the manner in which an appeal has been brought, the Appeal Board may still hear and determine the appeal unless it is of the opinion that the irregularity has caused or will cause injustice if the appeal was heard.
- (b) A decision of the Appeal Board is not invalid because of any defect or irregularity in, or in connection with, the appointment of an Appeal Board Member.
- (c) Any procedure or requirement regulating the function of the Appeal Board is directory in nature and a decision of the Appeal Board is not invalid by reason of that procedure or requirement not being fulfilled.

### **3.23 Public Comment and Criticism**

- (a) A person subject to these Rules shall not publicly comment on the contents of a Notice of Appeal prior to the determination by the Appeal Board. Where a person contravenes this Rule, the person's Club shall be liable to a sanction unless the person establishes to the reasonable satisfaction of the General Manager that such public comment was not intended to influence or affect the conduct of the Appeal Board hearing.
- (b) No person subject to these Rules shall make any unfair, unreasonable or excessive public criticism of a decision of the Appeal Board or of any member of the Appeal Board or any other matter touching or concerning the Appeal Board or a determination made by it. The General Manager shall determine in his absolute discretion and in any case, whether any public criticism is unfair, unreasonable or excessive. Where a person contravenes this Rule, the person's Club shall be liable to a sanction.

### **3.24 Exhaust Internal Appeal**

A person shall exercise their right of appeal under this Rule and have any appeal heard and determined by the Appeal Board before commencing any relevant proceedings or becoming a party to any relevant proceedings in a court of law.