



WATER POLO AUSTRALIA
DISCIPLINARY AND TRIBUNAL RULES

Adopted by resolution of the Board of Water Polo Australia Limited on 2 May 2015 in accordance with the requirements of clause 35 of the Constitution of Water Polo Australia Limited.

REVIEW HISTORY

Version	Date Reviewed	Date Endorsed	Content Reviewed/Purpose
One		Board Meeting 2 May 2015	New

1 Definitions and Interpretation

Definitions

The definitions which appear at clause 1 of the Constitution apply for the purposes of interpretation of these Disciplinary Rules where the same capitalised terms are used.

Further, for the purposes of these Disciplinary Rules the following terms shall be ascribed the corresponding meanings:

Appeals Tribunal Rules means the Appeals Tribunal Rules made by Water Polo Australia in accordance with the Constitution.

Appeals Tribunal means the body constituted under the Appeals Tribunal Rules.

Constitution means the constitution of Water Polo Australia adopted by special resolution on or about 25 October 2014 and as subsequently amended, modified or replaced from time to time.

Disciplinary Rules means these “Disciplinary and Tribunal Rules”.

Disciplinary Tribunal means the Disciplinary Tribunal Members from the Disciplinary Tribunal Panel Pool who are empanelled pursuant to rule 4 to constitute the Disciplinary Tribunal for any case.

Disciplinary Tribunal Chairman means the person appointed to that role, in accordance with rule 4, for a hearing before a Disciplinary Tribunal.

Disciplinary Tribunal Member means a person appointed to that role, pursuant to rule 4, for a hearing before a Disciplinary Tribunal.

Disciplinary Tribunal Panel Pool means the pool of people, established in accordance with rule 4, from which the Disciplinary Tribunal Member may be selected to form a Disciplinary Panel to hear a matter in accordance with these Disciplinary Rules.

President means the president of the Appeals Tribunal.

Secretary means the secretary to the Disciplinary Tribunal.

Water Polo Australia means Water Polo Australia Limited, ABN 86 159 573 403.

WPA Counsel means the person appointed by the Board to appear at hearings of the Disciplinary Tribunal to:

- (a) present evidence relied upon in support of proceedings brought against a Member or other person;
- (b) Test the Member’s case;
- (c) Address the Disciplinary Tribunal and make submissions; and
- (d) Perform such other functions which are necessary in the course of any proceedings before the Disciplinary Tribunal.

Interpretation

The following rules shall apply in the interpretation of these Disciplinary Rules:

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Any reference to a gender includes a reference to all genders.
- (c) The singular includes the plural and vice versa.
- (d) Where a word or phrase is defined, its other grammatical forms have corresponding meanings.
- (e) A reference to a rule or sub-rule is to a rule or sub-rule, as the case may be, of these Disciplinary Rules unless stated to the contrary.
- (f) A mention of anything after “include”, “includes” or “including” does not limit what else might be included.
- (g) A reference to a “person” includes a corporation, incorporated association, trust, partnership, unincorporated association or other entity, whether or not it comprises a separate legal entity.
- (h) Nothing in these Disciplinary Rules shall prevent the hearing of two or more matters jointly where the Disciplinary Tribunal Chairman forms the view that it is necessary or desirable to do so in the interests of fairness and the due dispatch of the Disciplinary Tribunal’s functions.

2 Application of Disciplinary Rules and Jurisdiction of the Disciplinary Tribunal

The objective of Water Polo Australia, in adopting these Disciplinary Rules, is to establish the Disciplinary Tribunal and vest it with jurisdiction to consider and determine matters brought before it under the various rules, regulations, by-laws, codes of conduct and policies of Water Polo Australia.

These Disciplinary Rules shall govern, any matter before the Disciplinary Tribunal involving a Member or other person subject to the jurisdiction of Water Polo Australia, concerning:

- (a) any alleged breach or other contravention of any of the rules, regulations, by-laws, code of conduct and policies of Water Polo Australia to which these Disciplinary Rules are stated to apply; and
- (b) any other rules, regulations, by-laws or policies nominated by Water Polo Australia.

The Board shall have the absolute discretion to change and / or amend these Disciplinary Rules for the purpose of ensuring fair, impartial and efficient conduct of the business of the Disciplinary Panel.

3 WPA Counsel

- (a) The Board shall appoint the WPA Counsel.
- (b) The WPA Counsel shall be a person who is a Barrister or Solicitor of the Supreme Court of one or more of the States or Territories of Australia.
- (c) The WPA Counsel shall at all times, in the discharge of his functions and responsibilities:
 - (1) Act independently, impartially and fairly; and
 - (2) Be aware of, and proceed with, due respect to preserve the independence of the decision-making body before whom he is appearing.

4 The Disciplinary Tribunal Panel Pool and the Disciplinary Tribunal

- (a) The Board shall, at its discretion, nominate a pool of not less than six (6) people, who shall for the purposes of these Disciplinary Rules comprise the Disciplinary Tribunal Panel Pool. Further, the following provisions shall apply:
 - (1) At all times a minimum of two (2) members of the Disciplinary Tribunal Panel Pool shall be legal practitioners who hold a current practising certificate issued by either the Law Society or Bar Association of a State or Territory of Australia.
 - (2) For each hearing before the Disciplinary Tribunal, the Disciplinary Tribunal shall consist of three (3) members of the Disciplinary Tribunal Panel Pool, who are selected by the Secretary. The Disciplinary Tribunal Panel Pool selected by the Secretary to sit on a Disciplinary Panel must include at least one (1) of the people qualified under rule 4(a)(1).
 - (3) A Disciplinary Tribunal member, who is qualified under rule 4(a)(1), shall act as the Disciplinary Tribunal Chairman for that hearing.

The Disciplinary Tribunal Chairman

- (b) In every case, it shall be the Disciplinary Tribunal Chairman's task to decide every question of law, evidence and procedure.
- (c) The Disciplinary Tribunal Chairman shall in his absolute discretion give such instructions or directions as he thinks fit to the Disciplinary Tribunal as to matters of law, evidence and procedure.
- (d) The Disciplinary Tribunal Chairman may give whatever directions and make all such orders, as he in his absolute discretion deems fit, for the conduct, expedition and resolution of matters heard by the Disciplinary Tribunal.

Role of Disciplinary Tribunal Members

- (e) In every matter before the Disciplinary Tribunal, it is the task of the Disciplinary Tribunal, comprising the Disciplinary Tribunal Members (including the Disciplinary Tribunal Chairman) to decide every question of fact.
- (f) Rule 15 sets out the procedure to be followed by the Disciplinary Tribunal in deliberating and reaching a verdict in all matters before the Disciplinary Tribunal.

Secretary

- (g) The Board shall appoint the Secretary, whose role it shall be to perform all procedural and administrative tasks so as to ensure the fair, impartial and efficient conduct of the business of the Disciplinary Tribunal

5 Hearings before the Disciplinary Tribunal

Unless matters of urgency or fairness otherwise require in particular circumstances, hearings before the Disciplinary Tribunal shall take place no sooner than five (5) days after notice is given by the Secretary to the relevant parties, unless matters of urgency or fairness require, in accordance with these Disciplinary Rules.

For every matter to be heard before the Disciplinary Tribunal, the Secretary shall:

- (a) Empanel the Disciplinary Tribunal, by selecting three (3) Disciplinary Tribunal Panel Pool members (in accordance with rule 4) to comprise that Disciplinary Tribunal;
- (b) Notify the WPA Counsel of the details of the Disciplinary Tribunal hearing and provide him with copies of all relevant documents (such documents which are to be determined in accordance with rule 6);
- (c) Notify the Member or other person of the details of the Disciplinary Tribunal hearing and provide the Member or other person with copies of all relevant documents (such documents which are to be determined in accordance with rule 6);
- (d) Provide to the WPA Counsel and the Member, or other person, the Secretary's contact details, including the Secretary's telephone number, facsimile number and email address for service; and
- (e) Take whatever other steps which are necessary in the circumstances.

6 Documents

For the purposes of rules 5(b) and 5(c), the documents which must be provided to the parties and the Member shall include:

- (a) A notice of charge which specifies the charge(s) laid against the Member or other person; and which sets out the details as to the date, time and place of the Disciplinary Tribunal hearing, as well as the names of the Disciplinary Tribunal Members comprising the Disciplinary Tribunal;
- (b) A statement of all facts, matters and particulars of the charge(s).
- (c) Copies of the relevant rules, regulations, codes, by-laws and / or policies under with the notice of charge is issued;
- (d) Copies of all incident reports, witness statements and notices relating to the hearing;
- (e) Copies of all evidence which is relied on by Water Polo Australia or the WPA Counsel to support the charge;
- (f) The disciplinary history of the Member or other person (if any); and
- (g) Any expert evidence which has been obtained which is relevant to the charge.

7 Challenges to Jurisdiction

Where in any proceedings before the Disciplinary Tribunal any party to the proceedings intends to challenge:

- (a) The jurisdiction of the Disciplinary Tribunal to deal with the Member and / or the charge;
- (b) The composition of the Disciplinary Tribunal; and / or
- (c) Any other matter which might reasonably take the Disciplinary Tribunal by surprise;

That party, or his representative, shall provide written notice of that challenge, including the particulars of the challenge and the grounds on which it is made, and forward those documents to the Secretary no later than 9.00am on the day of hearing. Upon receipt of such a notice the Secretary shall forthwith forward a copy of it to the WPA Counsel.

The Disciplinary Tribunal shall consider and make a determination on any such notice of challenge at the commencement of any proceedings before the Disciplinary Tribunal and before the Disciplinary Tribunal commences hearing the substantive case.

In the event of a successful challenge of a Disciplinary Panel Member, a replacement shall be appointed by the Secretary or (in the case of no available replacements) by the Board.

8 Representation

Subject to the leave of the Disciplinary Tribunal Chairman having first been obtained, a party appearing before the Disciplinary Tribunal may be represented by a barrister, solicitor, agent or other representative on such terms, if any, as the Disciplinary Tribunal Chairman in his absolute discretion thinks fit.

9 Attendance at Hearings

- (a) A Member or other person served with a notice of charge and given notice of the hearing in accordance with rules 5 and 6 shall attend the Disciplinary Tribunal hearing at the time and place specified.
- (b) If a party is unable to attend a hearing in person, he must inform the Secretary of this fact no later than 48 hours prior to the scheduled commencement time of the hearing. If the party so advises of its / his inability to attend the hearing in person, in accordance with this rule 9(b), the Secretary shall make appropriate arrangements so that the party is able to participate in the hearing by alternate means, such as video conference or teleconference.
- (c) If a Member or other person properly issued with a notice of charge and notice of the relevant hearing, in accordance with rules 5 and 6, fails to attend at the time specified in the notice of hearing, the Disciplinary Tribunal may proceed to hear and determine the charge and penalty in the absence of the person.

10 Decision Final

Any decision of the Disciplinary Tribunal in respect of any charge brought before it in accordance with these Disciplinary Rules, including decisions given under rule 15, shall be final, binding and conclusive subject to:

- (a) any conflicting provision of the Constitution or the rules, regulations, by-laws, code of conduct and policies of Water Polo Australia; or
- (b) Leave to appeal the decision of the Disciplinary Tribunal being granted by the President in accordance with the relevant provisions of the Appeals Tribunal Rules.

11 Pleas and Onus of Proof

- (a) In every case the WPA Counsel bears the onus of proof on the balance of probabilities.
- (b) At the commencement of every case, the Disciplinary Tribunal Chairman shall ask that the Member or other person informs the Disciplinary Tribunal

whether the Member pleads guilty to the charge(s) laid, or whether the Member pleads not guilty to the charge(s). Thereafter:

- (A) In respect of a charge(s) in which the Member pleads guilty, the Disciplinary Tribunal shall proceed to a sanctioning hearing under rule 16 and in accordance with the requirements of natural justice.
- (B) In respect of a charge(s) in which the Member pleads not guilty, the Disciplinary Tribunal hearing shall proceed as set out in rules 12 to 15 (both inclusive).

12 Evidence

Proceedings before the Disciplinary Tribunal shall be conducted in accordance with the orders and determinations of the Disciplinary Tribunal Chairman, subject to the following requirements set out below in rules 12 to 15 (both inclusive):

- (a) Proceedings before the Disciplinary Tribunal are not bound by the rules of evidence usually applicable to proceedings before courts of law.
- (b) Without otherwise limiting the interpretation of rule 12, the Disciplinary Tribunal Chairman shall be entitled to disallow the appearance of any witness or the tender of any evidence on the grounds of irrelevance or on other valid grounds.
- (c) Evidence of a Member's or other person's disciplinary history (if any) shall not be admissible as evidence on the issue of guilt.
- (d) Subject to any ruling by the Disciplinary Tribunal Chairman, a party may present the evidence of a witness by that witness giving evidence:
 - (1) In person at the hearing;
 - (2) Via teleconference;
 - (3) Via video conference; or
 - (4) In the form of a written statement verified by statutory declaration, provided that if evidence is given in this form it will not be admitted into evidence if another party reasonably objects, and where that objecting party does not have the opportunity to cross-examine that witness on material facts relevant to the proceedings.
- (e) Any documents or things admitted into evidence shall be consecutively marked as exhibits, which exhibits at the conclusion of the hearing shall be retained for safe keeping.

13 Procedure

The WPA Counsel's Case

- (a) Subject to any other orders and after the Disciplinary Tribunal Chairman outlines briefly to the parties the procedure of the hearing to be conducted, the WPA Counsel shall present his case in the following sequence:
- (1) Tendering any documentary evidence;
 - (2) Tendering any expert reports; and
 - (3) Calling each witness whereupon that witness:
 - (A) Shall be examined in chief by the WPA Counsel;
 - (B) May be cross-examined by the Member (or other person) or his representative;
 - (C) May be questioned by the Disciplinary Tribunal Chairman and, with leave, by any Disciplinary Tribunal Member;
 - (D) May, with leave granted by the Disciplinary Tribunal Chairman be re-examined by the WPA Counsel.
 - (4) Thereafter the WPA Counsel shall close his case.

The Member's (or other person's) Case

- (b) After the close of the WPA Counsel's case the Disciplinary Tribunal Chairman shall call upon the Member or his representative to advise whether he wishes to give or call evidence in his defence. If he does wish to present evidence that evidence shall be given in the following sequence by:
- (1) Tendering any documentary evidence;
 - (2) Tendering any expert reports;
 - (3) Calling each witness whereupon that witness:
 - (A) Shall be examined in chief by the party or his representative;
 - (B) May be cross-examined by the WPA Counsel;
 - (C) May be questioned by the Disciplinary Tribunal Chairman and, with leave, by any Disciplinary Tribunal Member
 - (D) May, with leave granted by the Disciplinary Tribunal Chairman, be re-examined by the party or his representative.
 - (4) Thereafter the party or his representative shall close his case.

14 Closing Addresses

At the conclusion of the Member's or other person's case:

- (a) The WPA Counsel may make a closing address; followed by
- (b) A closing address made by the Member (or other person) or his representative.

15 Deliberations and Verdict

- (a) A verdict of the Disciplinary Tribunal must at least be a verdict of the majority of the Disciplinary Tribunal.
- (b) Unless ordered otherwise by the Disciplinary Tribunal Chairman, reasons for a decision may (however need not be) given.
- (c) If the Member or other person is found not guilty of the charge(s) the proceedings are thereby concluded.

16 Sanction

If the Disciplinary Tribunal finds the Member or other person guilty of the charge then:

- (a) Sanctions shall be imposed on the party by the Disciplinary Tribunal in accordance with the relevant provisions of the Constitution and / or the rules, regulations, by-laws, code of conduct and policies under which the proceedings are brought.
- (b) The Disciplinary Tribunal must proceed to impose sanctions under rule 16(a) in accordance with the requirements of natural justice, including as to affording the Member a hearing on the question of any sanction.

17 Appeal

The rights of a Member to appeal against a decision of the Disciplinary Tribunal, and the procedure to be followed in respect of such an appeal, is set out in the Appeals Tribunal Rules.

18 Costs

Unless otherwise ordered, each party in any proceedings before the Disciplinary Tribunal shall be responsible for his own legal costs and the costs of witnesses, experts and interpreters relied on by that party.