



***Basketball
Model Tribunal By-law***

For adoption by Constituent Association Members and their affiliated bodies

Date adopted by Basketball Australia Board 21 September 2012

Date Tribunal By-law Effective 1 October 2012

Basketball Australia
Model Disciplinary Tribunals By-law

Preamble

This Disciplinary Tribunal By-law ("the By-law") has been prepared to assist Basketball Australia members in dealing with competition related offences and disputes which may arise in the conduct of basketball programs, competitions and events throughout Australia.

The By-law has been developed with reference to existing procedures currently utilised by State and local Basketball Associations and in consideration of the principles of procedural fairness.

League Associations may make their own Tribunal Rules to suit their own particular circumstances, but such Rules and any subsequent proposed alterations thereto require the approval of Basketball Australia.

The By-law is designed to be adopted by Basketball Associations in place of their existing rules in accordance with the procedure for adopting by-laws as set out in their Association constitution.

Each Constituent Association Member of BA Limited (trading as Basketball Australia) is required to adopt this By-law which shall govern the conduct of disciplinary procedures carried out in relation to all basketball competitions and activities conducted by the Constituent Association Member and its affiliated bodies.

Constituent Association Members **only** may make limited amendments to the provisions of this By-law to take account of particular circumstances which might arise. However any such amendments must be submitted to Basketball Australia for its written approval, which will not be unreasonably withheld.

Notwithstanding any particular circumstances which a Constituent Association Member may have, the following provisions of this By-law shall be mandatory provisions and may not be amended:

Clause 1	Adoption of By-law
Clause 15	Procedures of the Tribunal
Clause 16	Offences and Penalties
Clause 18	Right of Appeal
Clause 22	Proceedings of Appeal Tribunal
Clause 25	Single Right of Appeal
Clause 26	Exhaust Internal Appeal
Clause 27	Relationship with Criminal Matters
Clause 28	Natural Justice
Clause 29	Recognition of Penalties across Associations

Any purported amendments to this By-law which contain amendments to the mandatory provisions will not be approved by BA.

Importantly, where the structure or operations of a Constituent Association member so require, this By-law must also be adopted by basketball organisations affiliated to Constituent Associations which currently conduct their own disciplinary tribunals in accordance with local rules.

This by-law was originally implemented by the Australian Basketball Federation in July 2004 and has been adopted, for continuity purposes, without alteration by BA Limited.

Part 1 Jurisdiction and Establishment of Tribunals

1. Adoption of By-law

- 1.1 This By-law is made under Rule # of the [insert name of Constituent Association] ("Association") constitution and comes into operation on [insert date] and is binding on all members of the Association and other persons or organisations which submit themselves to the jurisdiction of the Association.
- 1.2 Any and all By-laws of the Association 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.

2. Authority of Tribunal

- 2.1 The Association has the power under its constitution to hear and determine charges made against persons, affiliated associations, teams or clubs arising from or related to basketball activities, matches and competitions conducted by:
 - a. the Association itself; or
 - b. its affiliated associations
 (referred to in this By-law as "Organising Bodies").
- 2.2 The Association and each affiliated association has the right to delegate the power of hearing and determining charges to the Association or affiliated association tribunal ("Tribunal") in accordance with the provisions of this By-law.
- 2.3 Where a matter arises for determination by a Tribunal it shall be dealt with at first instance by the Tribunal of the relevant affiliated association. Where an affiliated association has not convened a Tribunal in accordance with this By-law matters may be referred to the Association Tribunal with the consent of the General Manager of the Association.
- 2.4 The Tribunal shall have power to suspend, disqualify, reprimand, fine, bond, ban or otherwise deal with any person involved with basketball and / or the Organising Body (including, but not limited to players, coaches, teams, clubs, officials or spectators) in accordance with this By-law, regarding any incident arising from an activity conducted by an Organising Body. The incident 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.
- 2.5 In particular, the Tribunal shall have the power deal under this By-law with behaviour that is basketball related and occurs or utilises a technological medium such as:
 - a. Mobile phones;
 - b. Email or Instant Messaging services (including SMS);
 - c. Internet forums;
 - d. Internet social networking sites (such as, but not limited to, Facebook, Twitter);
 - e. Other technologies that are a means of communication.
- 2.6 The Tribunal may also deal with any other disciplinary matter delegated to it for adjudication by the relevant Organising Body.
- 2.7 The Tribunal must at all times act independently and impartially in carrying out its duties in accordance with this By-law.

3. Membership of Tribunal

- 3.1 The Tribunal panel shall be appointed by the relevant Organising Body or Constituent Association and shall comprise of the following persons:
 - (a) a Tribunal chairperson who shall be a person of experience and skills suitable to the function of chairing the Tribunal and discharging the responsibilities set out under Clause 4.1;
 - (b) no fewer than three Tribunal members.

- 3.2 In appointing Tribunal and Appeal Tribunal members, Organising Bodies and Constituent Associations shall have regard to the desirability of pooling Tribunal members with other associations with a view to maximising the expertise in handling disciplinary matters within the sport of basketball.
- 3.3 Where a Tribunal chairperson or Tribunal member resigns or is dismissed such that a vacancy exists on the Tribunal, the management committee of the relevant Organising Body or Constituent Association shall act to fill such vacancy by appointing a replacement for that position as soon as is reasonably practical to do so.
- 3.4 Wherever possible, matters referred to the Tribunal for determination shall be heard by three members of the Tribunal as determined by the Tribunal chairperson, however a quorum of the Tribunal shall be two (2) members.
- 3.5 No Tribunal decision shall be invalidated by any irregularity in the appointment of a Tribunal member.

4. Responsibilities of Tribunal chairperson

- 4.1 Without limiting the duties of the Tribunal chairperson as set out under the various clauses of this By-law, a person appointed to the position of Tribunal chairperson shall have the following responsibilities:
- a. to ensure accurate records are kept of all of the Tribunal's proceedings and decisions and to make such records available to the Organising Body upon request;
 - b. to communicate to the Organising Body the results of hearings of the Tribunal;
 - c. to chair hearings of the Tribunal or to ensure that such task is delegated to a member of the Tribunal;
 - d. to raise with any proposed Tribunal member any potential or possible conflict of interest which may arise from time to time.

5. Records of Tribunals Proceedings

- 5.1 The method of recording the proceedings and determinations of the Tribunal shall be at the discretion of the Tribunal chairperson.

6. Convening Tribunal hearings

- 6.1 If practicable, the Organising Body shall provide notice to all teams participating in competitions conducted by it of the regular day, time and place of Tribunal hearings throughout the duration of the competition.
- 6.2 The Tribunal will be convened to hear charges arising from a match as soon as is practicable, preferably prior to the next round of matches occurring.
- 6.3 Notification of persons charged under this By-law shall include details of the day, time and place of the Tribunal hearing at which the charge will be heard in accordance with Part 3 of this By-law, and must be provided a reasonable period prior to such hearing.

Part 2 Reports and Notifications

7. Reports by officials

- 7.1 Any Organising Body Game official (other than scoretable officials) who has been so empowered by the relevant Organising Body, shall be entitled to report any person, team or club which, in the opinion of the official has committed an offence under this By-law.

8. Investigations

- 8.1 Where an Organising Body or an official of an Organising Body believes an offence may have been committed or the Organising Body receives a letter of complaint, but no report has been made, the Organising Body may investigate, or appoint a person to investigate, the alleged offence. If after the investigation it or the person appointed to investigate recommends that a report should be made, the Organising Body or the person appointed by it may make a report. A report arising out of an investigation conducted under this clause should be made within 1 week of the date on which the alleged offence took place.

9. Duties of officials making a report

- 9.1 Any official who makes a report under clauses 7.1 or 8.1 shall ensure that the charged person, team or club is notified of the report, as well as any other person involved in the report and all other match officials as soon as possible (but in any case within 4 days), after the report is made.
- 9.2 An official who makes a report under clauses 7.1 or 8.1 shall enter the details of the alleged offence(s) on the report form issued by the Organising Body for that purpose as soon as possible (but in any case within 4 days) after the match or other activity, noting all the particulars in connection with the report so that a clear account can be given to the Tribunal when the report is to be dealt with.
- 9.3 An official who makes a report under clauses 7.1 or 8.1 shall lodge a report form with the person nominated by the Association to take charge of reports, or if that is not possible, to leave the report at the stadium or Association office, marked to the attention of that person, as soon as possible (but in any case within 4 days) after the activity.

10. Duties of Organising Body receiving a report

- 10.1 The Organising Body shall appoint an officer to be responsible for the receipt of reports made under this By-law and to carry out the duties in connection with such reports ("Hearings Officer"). The officer to whom responsibility is delegated under this clause 10.1 may hold another position within the Organising Body.
- 10.2 The Organising Body shall require each team entered in competitions to designate on the entry form the address, telephone number and email address or other electronic contact details of the team secretary, or manager, to be used for notification of reports.
- 10.3 The Organising Body shall maintain lists of names, addresses, telephone numbers and email addresses (if applicable) of all officials registered with the Organising Body.
- 10.4 The Hearings Officer designated under clause 10.1 shall have the following duties:
- a. to organise the venue, time and day of the week to be set aside for hearings of the Tribunal;
 - b. to convene hearings of the Tribunal to deal with matters referred to it;
 - c. to ensure that three members of the Tribunal are present to deal with any matters referred to it for determination;
 - d. to receive and refer to the Tribunal all material relating to any reports made under this By-law;
 - e. to ensure the availability of all forms required to be used in any proceedings of the Tribunal;
 - f. to notify the charged person, team or club, through their team secretary or manager, of the date, time and place of the Tribunal hearing;
 - g. if the notification under clause 10.4(f) is made by telephone, the officer giving the notification shall immediately make a written record of the time and details of the telephone conversation;

- h. if the charged person is under the age of 18 years, or otherwise unable to represent him or herself, then they are to be advised that they have the right to have an adult (not being an appointed legal practitioner) with or for them at the Tribunal hearing, as an adviser, and that the adviser shall be allowed to ask questions;
- i. to provide the charged person, team or club with a copy of the report form. In carrying out this function the Organising Body shall:
 - (i) hand a copy of the report form to the charged person (or a representative of a charged team or club) prior to the charged person leaving the match / activity venue following the activity out of which the report was made; or
 - ii. send a copy of the report form to the charged person, team or club at the address of the team secretary or manager as collected under clause 10.2 above, as soon as possible after the date of the report being lodged by the official with the Organising Body; or
 - iii. make a copy of the report form available for collection by the charged person, team or club and notify the team secretary or manager of the requirement to effect such collection.
- j. to notify the reporting official and any other officials or witnesses required to be in attendance, of the date, time and place of the Tribunal hearing. Where such reporting official is under 18 years of age or have a disability which prevents them from adequately representing themselves, they are to be advised that they have the right to have an adult with them at the Tribunal hearing, as an adviser, and that the adviser shall be allowed to ask questions;
- k. to notify each of the above persons of the consequences of non-attendance at a Tribunal hearing and the procedure to be followed in each case;
- l. to notify the chairperson (or his/her delegate) of the Tribunal that a report has been received, and to deliver to the chairperson (or his/her delegate) of the Tribunal the report form and any other information relevant to the case; and
- m. to ensure sufficient report forms are available to officials at competitions conducted by the Organising Body and that officials are aware of the availability of such forms.

11. Period between report & Tribunal hearing

- 11.1 A charged person, team or club shall be entitled to participate in basketball competitions conducted by the Organising Body until such time as the Tribunal has heard and determined the report.

Part 3 Conduct of Tribunal hearing

12. Attendance at Tribunal hearings

- 12.1 The following persons shall be required to attend a Tribunal hearing conducted under this By-law:
- (a) the charged person;
 - (b) the president, secretary or other delegate representing a charged team or club;
 - (c) the reporting official(s);
 - (d) any other person involved in the report;
 - (e) witnesses as indicated by the reporting official or charged person to be notified by the officer designated under clause 10.1;
 - (f) any witness required by the Tribunal.
- 12.2 The following persons shall be entitled to attend a Tribunal hearing as appropriate:
- (a) any player of a charged team or club;
 - (b) witnesses called to give evidence by a charged person, team or club;
 - (c) witnesses called to give evidence by the reporting official(s);
 - (d) any adult adviser to a charged person or reporting official.
- 12.3 The following persons shall be entitled to attend a Tribunal hearing with the permission of the Tribunal:
- (a) Organising Body and/or Constituent Association representatives;
 - (b) approved representatives of the media;
 - a. any other person.
- 12.4 Legal representatives or advocates are permitted to appear before the Tribunal where leave to appear has been granted by the Tribunal chairperson.

13. Non-attendance at Tribunal hearings

- 13.1 If any charged person (or representative of a charged team or club) fails to attend a Tribunal hearing without reasonable cause, the hearing may proceed and a determination made by the Tribunal in the absence of the charged person, team or club, provided that the Tribunal is satisfied that all notification procedures under this By-law have been carried out.
- 13.2 A charged person, team or club or reporting official may apply to the Hearings Officer to have a Tribunal 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 or club. This will be at the discretion of the Hearings Officer (or the Tribunal if already convened) and if the application is granted a new date shall be fixed.
- 13.3 A charged person who is unable to attend a Tribunal hearing shall be entitled to appoint a representative (who is not a legal practitioner) to appear in his/her place if that charged person intends on pleading guilty, subject to the Tribunal receiving a letter of consent from the charged person containing the person's guilty plea to the charges contained in the report and any statement that person would have given to the Tribunal had he or she attended the hearing.
- 13.4 If any witness fails to attend a Tribunal hearing, the hearing may continue in their absence.
- 13.5 If a reporting official fails to attend a Tribunal hearing without reasonable cause, the hearing may proceed and a determination made by the Tribunal in the absence of the reporting official, provided that the Tribunal is satisfied that all notification procedures under this By-law have been carried out.
- 13.6 If a reporting official or Organising Body official inadvertently fails to carry out any duties listed in clause 10, the charges shall not be dismissed for this reason, but may be adjourned to allow the omission to be rectified. Where appropriate, the Tribunal shall take the failure into account and make suitable allowance.

14. Tribunal hearing Conducted Via Teleconference

- 14.1 A charged person, team or club may apply to the Tribunal chairperson to have a Tribunal hearing conducted by telephone conference call 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. In all other respects the procedure of the Tribunal hearing shall be conducted in accordance with this By-law. The same rights should be available to the reporting person and/or other witnesses.

15. Procedures of the Tribunal

- 15.1 For the purpose of this clause 15, a reference to a charged person includes a reference to the representative(s) of a charged team or club.
- 15.2 In the event of a team or club being reported, one (1) member of the team or club shall act as spokesperson for the team or club provided that an individual member of that team or club may elect to speak on their own behalf.
- 15.3 At the commencement of a hearing, the chairperson shall identify the members of the Tribunal and determine whether the charged person is present to answer the charge(s) set out in the report.
- 15.4 The charged person shall be asked whether they accept the members of the Tribunal as impartial and independent, or whether they wish to raise any objection in relation to any member. If the objection is found by the Tribunal to be valid, then the Tribunal member shall stand down for the duration of the hearing.
- 15.5 The charged person and the reporting official(s) shall be notified of their right to remain in the hearing until all evidence is presented but not to be present whilst the Tribunal considers its findings and determines an appropriate penalty (if any).
- 15.6 The chairperson shall advise all those persons present of the method of recording the hearing.
- 15.7 The charge(s) as contained in the report shall be read out in the presence of all persons eligible to be present.
- 15.8 The charged person shall be asked whether the charge is understood and the reporting official asked whether the charge correctly represents their intention.
- 15.9 The charged person shall be asked to indicate whether they:
 - a. Admit the charges;
 - b. Admit part of the charges but wish to bring other evidence;
 - c. Deny the charges.
- 15.10 If the charged person admits the charge(s), the chairperson may read a short summary of the facts, admit the reporting official's evidence (written/verbal) and no witnesses need be called to give evidence unless the Tribunal requires it.
- 15.11 If the charged person admits part of the charges the chairperson may read a short summary of the facts and ask the charged person to identify what is admitted. Those facts will then be accepted by the Tribunal and no witnesses need be called to give evidence on those matters unless the Tribunal requires it.
- 15.12 If the charged person denies the charges then the chairperson shall ask all witnesses except the reporting official(s) and the charged person (and their advisers if appointed in accordance with this by-law) to leave the room and to wait to be called to give their evidence. An adviser may not also be a witness.
- 15.13 The reporting official shall proceed to give evidence and the witnesses of the reporting official(s) shall be called upon to give his/her evidence in turn, subject to the approval of the number of witnesses to be called by the Tribunal in its discretion. The charged person or his/her adviser may ask questions of the reporting official or any witness called.
- 15.14 Each witness shall be entitled to leave the Tribunal hearing after giving evidence unless otherwise directed by the Tribunal. Witnesses shall be entitled to remain in the hearing room after giving evidence with the permission of the Tribunal.

- 15.15 The charged person shall then be entitled to present their defence. Witnesses may be called subject to the approval of the number of witnesses to be called by the Tribunal in its discretion. Reporting officials or the adviser to a reporting official who is a minor may ask questions of the charged person or any witness called.
- 15.16 The Tribunal is empowered to question any person giving evidence.
- 15.17 Where a person exercises their right to have an adult adviser present in accordance with this by-law, an opportunity for consultation shall be provided.
- 15.18 Video evidence may be presented at the absolute discretion of the Tribunal.
- 15.19 At the conclusion of all of the evidence and submissions the chairperson shall ask the charged person, the reporting official and all other persons present to leave the hearing room while the Tribunal considers its findings.
- 15.20 If the Tribunal is not satisfied that a particular charge has been proved, but is satisfied that a lesser charge has been established, then the Tribunal may find such lesser charge established and shall apply a penalty applicable to the lesser charge.
- 15.21 Where it appears to the Tribunal that the reporting official has made an error in laying the wrong charge or omitted charges that should have been laid, the Tribunal may amend the charges and proceed to make a finding. Further, the Tribunal has the right to direct that a person other than the charged person be charged with an offence under this by-law on the basis of evidence presented before it during the course of conducting a hearing.
- 15.22 Where charges have been amended under clause 15.21, the Tribunal shall adjourn the hearing unless the charged person consents to it proceeding at that time.
- 15.23 The charged person, reporting official and any witnesses may be present when the decision of the Tribunal is given by the Tribunal chairperson. If the charged person is not present the Tribunal chairperson shall ensure that the decision is conveyed to the charged person by the most expedient means.
- 15.24 Subject to clause 15.20, if the Tribunal is satisfied that a charge has been established on the balance of probabilities (ie more probable than not) it shall find the charge proved. Otherwise the charge shall be dismissed.
- 15.25 If a charge has been found proven by the Tribunal the charged person shall be informed of the finding. Any previous convictions against the charged person should then be laid before the Tribunal.
- 15.26 The charged person is then given the right to make a final statement in relation to previous convictions or other mitigating circumstances before being asked to leave the room a second time. The charged person may, with the consent of the Tribunal Chairman, call witnesses or submit written statements or references for consideration by the Tribunal on the decision of penalty.
- 15.27 The Tribunal shall then determine the penalty to be imposed (if any) and shall recall the charged person and reporting official to advise of the penalty.
- 15.28 The Tribunal is not obliged to give reasons for any decision made by it under this By-law.
- 15.29 A charged person who has been convicted of an offence and received a penalty under this By-law shall not play, coach, referee or otherwise take part in basketball activities as directed by the Tribunal until the penalty has been served to the satisfaction of the Organising Body. However a decision of the Tribunal does not prevent a person carrying out duties directly related to their employment.

Part 4 Offences and Penalties

- 16.1 Clause 16.3 sets out the standard offences and maximum penalties to be applied where a charge has been established by a Tribunal.
- 16.2 For the purposes of this By-law, penalties for many offences which are established by a Tribunal shall be divided into two separate categories:
- a. penalties for offences involving persons other than officials ("Group A offence"); and
 - b. penalties for offences involving an official ("Group B offence")
- 16.3 Offences and penalties
- a. Disputing the decision(s) of a referee
Maximum penalty: 6 weeks suspension
 - b. Unsportsmanlike behaviour
Maximum penalty: 6 weeks suspension
 - c. Breach of Code of Conduct
Maximum penalty: 6 weeks suspension
 - d. Attempting to trip

A – Maximum penalty:	10 weeks suspension
B – Maximum penalty:	20 weeks suspension
 - e. Tripping

A – Maximum penalty:	10 weeks suspension
B – Maximum penalty:	52 weeks suspension
 - f. Obscene gestures

A – Maximum penalty:	10 weeks suspension
B – Maximum penalty:	20 weeks suspension
 - g. Offensive language (which may include abusive, obscene or insulting language)

A – Maximum penalty:	10 weeks suspension
B – Maximum penalty:	20 weeks suspension
 - h. Attempting to strike

A – Maximum penalty:	10 weeks suspension
B – Maximum penalty:	52 weeks suspension
 - i. Striking (fist, hand, object, head)

A – Maximum penalty:	52 weeks suspension
B – Maximum penalty:	life-time suspension
 - j. Attempting to elbow

A – Maximum penalty:	10 weeks suspension
B – Maximum penalty:	52 weeks suspension
 - k. Elbowing

A – Maximum penalty:	20 weeks suspension
B – Maximum penalty:	life-time suspension

- l. Fighting
 - A - More than 2 players: Maximum penalty 20 weeks suspension
- m. Attempting to kick
 - A – Maximum penalty: 10 weeks suspension
 - B – Maximum penalty: 52 weeks suspension
- n. Kicking
 - A – Maximum penalty: 20 weeks suspension
 - B – Maximum penalty: life-time suspension
- o. Spitting
 - A – Maximum penalty: 20 weeks suspension
 - B – Maximum penalty: 52 weeks suspension
- p. Moving under an airborne player (tunneling)
 - A - Maximum penalty: 104 weeks suspension
- q. Putting a person in fear of impending violence
 - A – Maximum penalty: 52 weeks suspension
 - B – Maximum penalty: 104 weeks suspension
- r. Coaching, refereeing, playing, scorebench duties while under suspension
 - A - Minimum penalty: 2 weeks per game plus the suspension period
 - B - Maximum penalty: 5 weeks per game plus the suspension period
- s. Deliberately endangering the safety, health, of the players, spectators, officials (incidents involving blood/body fluids)
 - A: Maximum penalty: life-time suspension
- t. Conduct which brings the game of Basketball into disrepute
 - Maximum penalty: 19 weeks suspension
- u. Failure to attend Tribunal without proper cause when notified
 - Maximum penalty: 20 weeks games suspension
- v. Failure to co-operate in, or hindering an investigation or hearing under these by-laws.
 - Maximum penalty: 20 weeks suspension
- w. Intimidating or bullying a person or attempting to do so
 - Maximum penalty: 52 weeks suspension
- x. Public criticism of officials, coaches or players related to basketball activities
 - Maximum penalty: 20 weeks suspension

16.4 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.

16.5 A penalty handed down under this clause shall commence from the date of the Tribunal finding unless otherwise expressly directed by the Tribunal. Penalties should 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.

- 16.6 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.
- 16.7 Persons on a first offence shall have this taken into account when assessing the penalty to be handed down.
- 16.8 A 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 offences under clause 16.3.
- 16.9 The Tribunal has the discretion to rule that a penalty apply only in relation to a particular competition, however this shall only be done in exceptional circumstances.
- o The Tribunal has the discretion to apply suspended sentences as part of a penalty provided that they do not exceed the maximum penalties assigned to offences under clause 16.3. It is recommended that suspended sentences remain in place for a period of 12 months.
 - o If a charged person faces another Tribunal in the period in which the suspended sentence is in place (i.e. 12 months) and is found guilty the suspended sentence will be added to whatever penalty is handed down. (QLD)

17. Administrative Tribunal (optional)

[This clause provides for the handing down of penalties without the need for a Tribunal hearing and may be implemented by Constituent Associations which wish to provide such an option for charged persons, teams and clubs]

- 17.1 If a person is charged with an offence carrying a maximum penalty of ten weeks or less, and
- a. is not a minor; and
 - b. has not been found to have committed an offence under this by-law within the last 12 months

the matter will be dealt with by an administrative tribunal.

- 17.2 Where
- a. a charged person is not a minor;
 - b. and is charged with an offence carrying a maximum penalty of less than twenty weeks; and
 - c. the Organising Body believes that circumstances exist that mean the matter can appropriately be dealt without proceeding to a Tribunal

the matter may be dealt with by an administrative tribunal.

- 17.3 A person:
- a. charged with an offence that has not been dealt with by an administrative tribunal under clauses 17.1 or 17.2; or
 - b. who has rejected a penalty of the administrative tribunal under clause 17.6

must be dealt with by the Tribunal.

- 17.4 An administrative tribunal shall consist of:
- a. The Tribunal Chairman for the relevant competition; and
 - b. The secretary or administrator for the relevant competition.

- 17.5 When a report is received that is to be dealt with under clauses 17.1 or 17.2 the administrative tribunal shall meet and determine a penalty. The charged person shall be notified as soon as practicable following the meeting of the administrative tribunal of:
- a. a reason/s why the charges have been dealt with by administrative tribunal;
 - b. the penalty;
 - c. their right to accept or reject the penalty proposed by the administrative tribunal.

- 17.6 The charged person shall be required to notify the Organising Body of their acceptance or rejection of the penalty within three working days of notification. If the penalty is accepted by the charged person the penalty shall be enforced with no right of appeal.

- 17.7 If the penalty is not acceptable to the charged person the matter shall be referred to the Tribunal and be treated in the same manner as any other charge.

- 17.8 If the charged person fails to indicate acceptance or rejection of the administrative penalty in writing to the Organising Body within three working days of notification, the administrative penalty will automatically be invoked.

Part 5 Appeals

18. Right of Appeal

- 18.1 The decision of an administrative tribunal that is invoked under clause 17.8 can only be appealed if the charged person ("Appellant") satisfies the Appeals Officer of the Organising Body, or their nominee, in that person's sole discretion, that the Appellant did not receive the notice issued under clause 17.5.
- 18.2 There shall be no appeal from a decision of the Tribunal unless the charged person ("Appellant") satisfies the Appeals Officer of the Association, or their nominee, in that person's sole discretion, that one or more of the following grounds of appeal is satisfied:
- (a) that significant new or additional evidence has become available, which is likely to make a material difference to the decision of the Tribunal;
 - (b) that the penalty imposed by the Tribunal is not in accordance with the provisions of this By-law; or
 - (c) that the Tribunal failed to follow procedures or requirements of this By-law to the significant detriment of the person seeking the appeal.
- 18.3 The Organising Body may appeal a decision of the Tribunal on the grounds that the penalty imposed by the Tribunal is inadequate.

19. Notice of Appeal

- 19.1 A person seeking to appeal a decision under clause 18.1 or 18.2 must:
- (a) lodge a notice stating full details of charges and results thereof and stating in full the grounds of appeal with the Appeals Officer within fourteen (14) days of the notification of a determination of a Tribunal hearing ("Notice of Appeal").
 - (b) pay the appeal fee to the Appeals Officer when lodging the Notice of Appeal, which shall be \$110.00 (including GST) (the appeal fee does not apply in the case of appeals by minors and may be waived in the discretion of the Appeals Officer).
- 19.2 An Appellant shall be notified as soon as is reasonably possible after receipt of the Notice of Appeal as to whether an appeal hearing is to be granted and the time, date and place of the Appeal hearing, in the event that it is granted.
- 19.3 An Organising Body wishing to appeal under clause 18.3 must:
- (a) provide the charged person with details of why they consider the penalty to be inadequate and setting out what penalty the Organising Body believes would have been adequate
 - (b) provide an undertaking to pay the charged person's reasonable costs of the Appeal Tribunal if the Organising Body's appeal is not upheld.

20. Appeal Tribunal

- 20.1 If an appeal hearing is granted, the Appeals Officer shall convene an Appeal Tribunal to hear and determine the appeal in accordance with this By-law.
- 20.2 An Appeal Tribunal shall consist of no fewer than three (3) persons appointed by the Association from time to time to hear appeals as required by the Association. Members of an Appeal Tribunal will preferably have experience in hearing and determining disciplinary matters in sport, however need not have any particular experience with the sport of basketball.
- 20.3 Tribunal members who were not involved in the hearing of a matter the subject of an appeal shall be eligible to sit on an Appeal Tribunal.

21. Serving of Tribunal Penalties

- 21.1 Subject to clause 21.2(b), 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.

- 21.2 Subject to clause 21.3, the Appeal Tribunal may of their own motion or upon application of the appellant:
- (a) that an appeal be adjourned;
 - (b) a stay of the execution of the penalty imposed by the Tribunal pending the determination of the appeal.

- 21.3 The Appeal Tribunal shall make an order under clause 21.2(b) only where it is 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 Appeals Tribunal shall without limitation have regard to:
- (a) the merits of the appeal and the Appellant's prospects of success;
 - (b) the interests of other teams, clubs and players; and
 - (c) the effect on the results of the competition.

22. Proceedings of Appeal Tribunal

- 22.1 The Appeal Tribunal and persons appearing before it are bound by the same procedures under this By-law as if the Appeal Tribunal was a Tribunal hearing a matter at first instance.
- 22.2 The Appeals Officer shall forward records of the Tribunal hearing in which the matter the subject of the Appeal was heard at first instance to the chairperson of the Appeal Tribunal.
- 22.3 The Appeal Tribunal shall have the discretion to conduct the hearing as a complete re-hearing or to limit the hearing to consideration of the ground(s) of appeal relied upon by the Appellant under clause 18.2.
- 22.4 An Appeal Tribunal shall have the power to:
- (a) dismiss the appeal;
 - (b) uphold the appeal;
 - (c) impose any of the penalties set out in Part 4 of this By-law.
 - (d) reduce, increase or otherwise vary any penalty imposed by the initial hearings Tribunal
- in such manner as it thinks fit.
- 22.5 The Appeal Tribunal is not obliged to give oral or written reasons for a decision under clause 22.4.
- 22.6 At the conclusion of the appeal, the chairperson of the Appeal Tribunal shall ensure that the Appellant and the reporting official are correctly informed of the determinations of the Appeal Tribunal. The chairperson shall also notify the Appeals Officer of the decision of the Appeal Tribunal.

23. Refund of Appeal Fee

- 23.1 The Appeal Tribunal shall have the discretion to refund the appeal fee payable under clause 19.1(b).

24. Costs

- 24.1 Each party to an appeal shall bear their own costs. The Appeal Tribunal has the power to award that the reasonable costs of the Appeal Tribunal be borne by either party in its absolute discretion.

25. Single Right of Appeal

- 25.1 There is only one right of appeal following the decision of the initial Tribunal. Any appeal must be solely and exclusively resolved by the Appeal Tribunal and the decision of the Appeal Tribunal is final and binding on the parties.

26. Exhaust Internal Appeal

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

Part 6 Miscellaneous

27. Relationship with criminal matters

27.1 If during a Tribunal hearing an investigation under this By-law it becomes known that criminal charges have been brought (as opposed to merely the subject of police investigation) arising out of the actions the subject of the hearing or investigation, the Tribunal and / or the Organising Body 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.

27.2 In making a determination under clause 27.1, the Tribunal and / or Organising Body shall have regard to the need to ensure the ongoing safety of players, referees and other persons involved in the Organising Body.

28. Natural Justice

28.1 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.

29. Recognition of Penalties across Associations

29.1 Each Organising Body 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 Australia and or its Constituent Associations.

29.2 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, excluding their own witnesses from the time in which they are informed that a report will be submitted and the tribunal hearing.