



## ***Tribunal Guidelines***

# ***To assist in understanding rules and procedures***

As at 2008

### **IMPORTANT NOTE:**

These guidelines are to assist persons involved in proceedings before the tribunal. The guidelines provide a general commentary and should be read in conjunction with the Tribunal Rules. To the extent that there is any inconsistency between the Tribunal Rules and the Tribunal Guidelines, the Tribunal Rules will prevail. In these guidelines, words incorporating the male gender are taken to include the female gender.

### **INTRODUCTION**

Proceedings before the tribunal fall into one of two classes:

- (i) hearing of umpire's reports involving players and officials;
- (ii) such other matters as may be referred by the controlling body.

In practice, the former are by far the more frequent. Reference is made in these guidelines to the tribunal rules. The term 'reported person' is used throughout to refer to anyone facing disciplinary proceedings of either kind and unless otherwise stated, 'law(s)' means the Laws of Australian Football.

## **NATURAL JUSTICE**

The proceedings before the tribunal are heard in accordance with the rules of natural justice.

### ***Right to an unbiased tribunal***

Tribunal members must not be prejudiced (i.e. biased). Although 'prejudice' has a pejorative ring (suggestive of personal animosity by tribunal members to the reported person) it need not go that far. Prejudice (that is, 'pre-judged') really means nothing more sinister than having certain views of the merits of the case, which have been formed outside the hearing itself - for example where a member of the tribunal witnessed the reported incident, or is connected by business or personal relationship with one of the parties.

No person who is, or might be thought to be prejudiced (for justice must 'be seen to be done'), should be a member of the tribunal hearing any disciplinary matter. If, during the hearing, a tribunal member finds himself/herself in a position of possible prejudice, he/she should disqualify himself/herself immediately, even if this means aborting the hearing and starting again.

### ***Notice of the charge***

Notice of the charge is given in writing (tribunal rule 2).

### ***Adjournments***

In disciplinary proceedings, swift and certain determination of disputes is desirable. Where a reported person requests an adjournment on good grounds, it is generally granted, particularly if short notice was given of the hearing. Adjournments which are blatant delaying tactics are refused, or discouraged by granting them on terms (for example imposing a condition that a reported player will not play until the case is heard, or that a club member will not avail himself/herself of certain facilities of the club until the matter is finalised).

The granting of an adjournment is always a discretionary matter for the tribunal.

The power to grant an adjournment is dealt with under tribunal rules 1.7 and 4.5

### ***The Hearing***

The tribunal's hearings are oral.

The tribunal's rules generally provide for an open hearing, at the discretion of the tribunal (rule 4.3). However, a closed hearing will be ordered by the tribunal where, for example, sensitive evidence is likely to be given.

Subject always to the tribunal's discretion, the rules provide for:

- all oral evidence against a reported person to be taken in his/her presence.
- all documentary evidence against a reported person to be made available to him/her.
- a reported person or his/her advocate to question all witnesses.
- a reported person to present evidence on his/her behalf.

Legal representation of any reported person is only permitted with the leave of the tribunal (rule 4.2.(a)). It should never be assumed that leave will be granted.

The tribunal is not required to give reasons for its decisions and the giving of reasons is at the discretion of the tribunal.

### ***Fresh Evidence***

The rules provide a tribunal with the discretion to re-open a hearing, which it has previously concluded, for the purpose of considering further evidence (but not for reviewing the decision it has previously made on the same evidence)(rule 7.1). Before the tribunal takes this unusual step, the 'new evidence' must satisfy two tests –

- it must be genuinely new, which means not merely that it was not presented to the original hearing, or that its availability at the time of the original hearing was now known, but that its availability could not with reasonable diligence have been known. For example, wanting to call fresh evidence from another witness who is, for example, a trainer or club official and would or could have been interviewed and then given evidence at the original hearing, would not satisfy this test.
- the evidence must also be sufficiently strong that, in the opinion of the tribunal, it may well have affected the outcome of the earlier determination had it then been available.

### ***Appeals***

There is a limited right of appeal (rule 7.4)

### **HEARING PROCEDURE AS PRESCRIBED IN THE RULES**

The tribunal is not bound by rules of procedure and evidence, but the rules of natural justice are applied.

Although the tribunal has power to waive strict adherence to rules for the presenting of evidence, it may not necessarily do so. Proper preparation of a case is essential.

### **ABSENCE FROM THE HEARING**

Where a postponement or adjournment has not been sought or granted, the reported person must attend the hearing. If he/she cannot attend, he/she must then elect to:

- have the report adjourned and agree to terms imposed by the tribunal, such as not playing until the adjourned hearing takes place; or
- have the report heard in his/her absence and accept the decision of the tribunal (rule 3).

Whichever he/she decides he/she must, through his/her club or advocate, submit a declaration in which he/she:

- explains his/her absence from the hearing; and
- nominates which of the two courses outlined above, he/she has elected.

The making of a declaration should not be treated lightly. Knowingly or carelessly making a false statement in a declaration is more than just contempt of the tribunal's proceedings, and may subject the declarant to the criminal law.

Where a reported person fails to appear or to submit a declaration the report can be heard in his/her absence and he/she may be called before the tribunal and further penalised for contempt. (rule 3.7).

### **ADVOCATES**

Effective advocacy is no less a skill than effective coaching and clubs are encouraged to give thought early in the season (not on the morning of a hearing) to who will represent a reported person before the tribunal.

Any advocate's leave to appear may be withdrawn if, at any stage, he/she misconducts himself/herself.

A reported person can act as his/her own advocate, but this is discouraged. Under no circumstances can a person (other than a reported person or reporting umpire) be both witness and advocate in the one matter. If the

advocate decides (even part way through the hearing) that he/she wishes to give evidence, another advocate must be appointed from then on.

## **CLARIFYING THE REPORT**

An umpire is not required, although he/she is encouraged to, set out in his report:

- the number of the law under which he/she made the report (provided the relevant law is identifiable from the wording of the report);
- his/her proposed evidence (i.e. details of what happened).

'Striking player (number) of (club)' is a sufficiently worded charge without the need to set out how the 'victim' was (allegedly) hit or what the surrounding circumstances were.

However, there are some instances where the player will be entitled to know more about just what is alleged against him/her, in order that he/she may prepare his/her defence. The most obvious examples are a report for 'misconduct', (which, in the absence of particulars, can be almost anything), 'unacceptable language', 'wasting time' and any report, which identifies the offence by reference to a law by number only, and that law includes a multiplicity of offences. In such a case, particulars should be given, for example "threatening language to an umpire in that he/she said, "you may not live to see full time", "wasting time in that he/she refused to kick off when directed". If it is not clear from the report just what is alleged, the player (through his/her advocate or club) may apply for details of the charge to be given in advance of the hearing. In appropriate cases an application for details can be made at the hearing, but if a player leaves his request so late, the application is unlikely to cause the hearing to be postponed while a defence is prepared.

## **NOTES ON 'TECHNICAL DEFENCES'**

The spirit of the rules is that reports are determined on the facts, not on unmeritorious technicalities. Provision has been made to ensure that this approach is taken by empowering the tribunal to amend clerical deficiencies in reports.

Prejudice to the player in defending the report is generally the only circumstance in which a technical error will vitiate a report.

## **MAKING SURE THE RIGHT EVIDENCE IS AVAILABLE**

It is vital that advocates ensure the appropriate persons are available to give evidence at the hearing (see below under 'Proper Presentation of Evidence at the Hearing') and that any other evidence which assists the case, such as a medical report, is procured.

Obviously, if witnesses will attend the tribunal or produce things to it willingly, there is no need for the tribunal to become involved before the hearing itself. However, where a person is reluctant to give evidence or to produce things in his/her possession, the assistance of the tribunal can be enlisted. The tribunal is NOT a court, and therefore the tribunal cannot compel members of the public (for example, spectators, first aid volunteers etc) to attend. However, any persons subject to the controlling body's jurisdiction (which would include players, umpires and club members or officials) can be required to attend a hearing of the tribunal or to produce any item which is under their control. Failure to comply may be contempt, and the rules give the tribunal wide power to suspend or fine any person or club held to be in contempt.

## **PROPER PRESENTATION OF EVIDENCE AT THE HEARING**

**Important note:**

**While the following discussion is technically correct, it addresses a more legalist approach than that generally adopted by the tribunal, which seeks to avoid the more traditional adversarial approach to the giving and taking of evidence before it. The tribunal is very quick to limit the number of, type and tone of questions whether they are 'in chief' or, more often than not, in 'cross examination', where it considers such questions to be unhelpful. The tribunal also takes a more active role in the process than that which is generally encountered in the adversarial situation.**

The following notes are directed to ensuring that only evidence that is admissible is presented to and accepted by the tribunal. However, it must also be recognised that even when the evidence is technically admissible, it may carry only limited weight, that is, persuasiveness. The obvious example is evidence given by an ardent club supporter, who, even when trying to be 'unbiased', tends to 'see' (and so recall) incidents in a way favourable to the club's interests. It is a matter for the tribunal's judgement, in each case, to decide how much weight to give any evidence.

## **THE 'BEST EVIDENCE' RULE**

This rule simply means that so far as oral testimony is concerned, the only person who can give evidence of a fact is the person who actually saw it happen, or heard it said. A person who heard about it from someone else cannot give such evidence. For example, a player cannot give evidence such as, "that the trainer told me after the match that he heard the umpire say to the ground manager...". The trainer himself will have to attend the tribunal to give evidence of what he heard the umpire say.

This is the 'rule against hearsay', and the reasons for it include:

- stories get distorted as they are repeated from one person to another;
- effective questioning of a person who did not actually witness an event is clearly limited to what aspects of it he has been told about and the questioner may want to question other things that the witness was not told about.

The tribunal may accept written medical reports as evidence of the extent of injury but not of how the injury was sustained. Thus, a medical report saying, "X-ray revealed a fractured cheekbone which Mr Smith claimed to have received when struck during a football match" may be allowed as evidence of the injury but not of how he got it (because coming from the doctor who did not actually see the incident, that statement is hearsay. Player Smith must personally tell the tribunal how he sustained the injury for which he was treated).

## **DIRECT SPEECH MUST BE USED TO RELATE ALL CONVERSATIONS**

This means that the words actually spoken must be repeated as closely as they can be recalled. The reason is that indirect speech can distort the meaning of words actually used. For example, a player cannot say in evidence:

"After the umpire blew the whistle he came over and threatened me".

He also cannot say:

"After he blew the whistle he came over and told me he'd be watching me closely all through the game".

The player must use the umpire's words as he recalls them, for example:

"The umpire blew his whistle, came over to me and said: 'number 41, that tackle was after disposal and we've been instructed to be severe on that all day'".

Plainly the umpire's actual words are significantly different from the suggestions of intimidation and bias respectively, contained in the earlier two versions, where the player is interpreting, rather repeating what was said to him.

## **WITNESSES MUST STATE FACTS, NOT OPINIONS**

Witnesses should tell only what they actually saw or heard, not what they think was intended. The statement:

'the rover tried to pass the ball to the full forward',

is an opinion about the rover's intention (and the rover's tactics might have been quite different)? The evidence should be just a simple statement of what happened, that is:

'the rover kicked the ball towards the goal square'.

## **DOCUMENTS MUST BE PRODUCED, NOT DESCRIBED**

Just as conversations must be reconstructed, a document must be allowed to 'speak for itself', so an advocate should always arrange to have the document available. For instance, an injured player cannot say:

"the doctor gave me a certificate for two days off work because of concussion from being punched".

Not only would the player be 'interpreting' the medical reason for the doctor's giving him two days off work, he is giving hearsay evidence of a supposed opinion by the doctor about how the injury occurred ('from being punched'). Such evidence would therefore be riddled with irregularity and inadmissible. The medical certificate itself should be produced to the tribunal and as stated earlier, would be evidence only of the player's medical condition, not the cause of the condition. (Note: the player could say, "the doctor gave me two days off work", for that is a fact and not hearsay, but without admissible evidence linking the sick leave to an alleged football injury, the 'two days off' story is of little, if any, weight).

In some cases, where it is not possible to produce the document the tribunal may allow someone familiar with it to say what he believes was in it but only when this course will not prejudice a party to the hearing. Again, this is an example of evidence that may have only limited weight.

## **THE PROPER PRESENTATION OF ORAL EVIDENCE**

The three stages in a witness's oral evidence are:

Evidence in chief – where the witness gives his/her version of what he/she saw or heard.

Cross-examination – where the opposing advocate explores the evidence in chief.

Evidence in reply – where the witness's own advocate questions him/her further about matters raised in the cross-examination.

### ***Examination in chief***

The witness should give his/her version of the events in his/her own words and with as little interruption as possible. He/she should not give his/her evidence simply by answering leading questions (i.e. questions which suggest the answer) from his/her advocate. Consider the following example:

Advocate: "Your were playing back pocket during the last quarter?"  
Player: "Yes"  
Advocate: "And did you and player 43 contest a mark?"  
Player: "Yes"  
Advocate: "And did he elbow you in the face?"  
Player: "Yes, he did"  
Advocate: "Did you then push him in the chest?"  
Player: "Yes"  
Advocate: "Was that when the umpire reported you?"  
Player: "Yes, he just said he'd be reporting me for striking".

The advocate has given all the evidence and the player has simply agreed with him. It is essential that the witness says something along the following lines:

"I was playing back pocket when the ball came down field and 43 and I went for a mark. I got an elbow in the face and so I gave him a push in the chest and that's when the umpire reported me for striking".

It is however, quite acceptable (and time saving) for an advocate to lead a witness through preliminary questions on matters which are not 'In issue', for example.

Advocate: "Your name is Ron Reilly?"  
Player: "It is"  
Advocate: "You are the captain of the Under 16's?"  
Player: "Yes"  
Advocate: "You were playing in the game last Sunday?"  
Player: "That's right"  
Advocate: "and you were involved in an incident reported by this umpire?"  
Player: "Yes"  
Advocate: "Please tell the tribunal, in your own words, exactly what happened".

The player now relates his/her story without being led, because he has reached the contentious part of his evidence.

After the player has made his/her statement, his/her advocate, if he/she feels something important has been left out or not put clearly, can try to prompt his/her player to say it. This can be tricky because the advocate must not directly suggest the evidence to be given (i.e. lead the witness). So, the advocate could now ask the player giving the evidence:

"Why did you push player 43?"

To which the player will (the advocate hopes) reply:

"To fend him off after his elbow got me".

But the advocate cannot ask:

"So your push was only in self-defence?",

because that suggests to the player what he should say ("yes").

### ***Cross-examination***

The purpose of cross-examination is to test the witness's evidence in chief, for a person is entitled to expect that anything he/she says in evidence which is not tested in cross-examination, has been accepted by the other side as truth and should (subject to his/her general credibility) be similarly treated by the tribunal. This does not mean, however, that everything a witness says should be challenged. If an advocate has no questions of substance to put to the witness, he/she will do better not to ask any.

Cross-examination differs from examination in chief in that 'leading' the witness is allowed as the advocate tries to get the witness to agree with propositions put to him/her. An umpire's advocate, in questioning the player, could (if he/she wished) ask the very sequence of questions set out above which the player's advocate could not ask. Indeed, not only can the cross-examiner put things directly to the witness, he/she must put to the witness (so as to give the witness an opportunity to answer) any allegation which the cross-examiner knows will later be made against the witness by one of the cross-examiner's own witnesses.

Continuing the above example, if the player's advocate knows that he/she intends to call a witness of his/her own who is going to allege hearing the umpire say before the match, 'Reilly beat me at the tribunal last time, but I'll get him today,' the player's advocate must, in cross-examination, directly put that allegation to the umpire, something like this:

Advocate: "Did you speak to the ground manager just as you went out onto the field?"  
Umpire: "I don't remember"  
Advocate: "Didn't you say to him 'Last time I reported Reilly he beat me at the tribunal but I'll settle that score today?'"

This gives the umpire the chance to deny the allegation if he/she wants to. If this question was not asked, it would mean the umpire, after he/she finished his/her evidence, would have no chance of denying the allegation when it was communicated later in the hearing, and the allegation would then stand uncontradicted

Where an advocate adduces from a witness a statement concerning another witness which was not put directly to that (other) witness the tribunal will either:

- allow the other witness to be recalled to respond to the statement; or
- disregard the statement in coming to its decision (and advise the advocate that his/her breach of this principle of cross-examination has led to the evidence being disregarded).

Cross-examination does not have to be restricted to what the witness said in chief. The cross-examiner can ask anything else, provided it is relevant to what is 'in issue'.

### ***Re-Examination***

The witness's own advocate can try to repair any unhelpful answers given under cross-examination. Re-examination must be limited to matters raised in cross-examination – it cannot raise new matters without the express permission of the tribunal (which must be sought). If there is a real need to bring up something new, leave of the tribunal should first be asked, and if it is given, the opposing advocate will be given the opportunity of a second cross-examination, limited to the new material.

### **QUESTIONS BY THE TRIBUNAL**

The tribunal rules clearly provide for the questioning of the umpire, the player and any witness by the tribunal. The tribunal is entitled to, and will, question any witness as and when it sees fit.

### **QUESTIONS BY ADVOCATES THAT WILL NOT BE ALLOWED**

Multiple questions are unfair, and are not allowed. A good question covers one point only, not several. Thus, the question:

“Were you playing back pocket when the ball came down the wing on the grandstand side from a long kick by the other team's rover?”

is really three questions, and the answer is not necessarily 'yes' to all three. This makes it hard for the witness to answer without 'explanations', which only confuse and prolong proceedings. Questions should always be worded to allow the witness to give only a direct answer to one point at a time, as in this exchange:

- Q. “You were in the back pocket?”  
A. “Yes”  
Q. “Did the ball come down the grandstand side?”  
A. “Not really, it came more from the edge of the centre square.”  
Q. “But it was a long kick by the opposing rover?”  
A. “Yes”

### ***Questions that are not relevant to what is 'in issue'***

'In issue' means 'the subject of disagreement between the opposing parties'. In a striking charge, for example, there may be no dispute (that is, no 'issue') that the reported player actually struck another player. What is disputed ('in issue') is whether it was deliberate or accidental. In that situation, questions about peripheral detail (for example, where other players, umpires, trainer etc were positioned), which are directed to suggesting that if the umpire's recall is inadequate, then his/her evidence of the reported incident is similarly suspect, are usually irrelevant to the issue. The umpire should really be questioned about whether he/she observed any behaviour on the part of the 'victim' which could have provoked the alleged striking, or whether the contact may have occurred unintentionally.



### ***Questions that assume a fact that has not been established***

Questions that assume a fact that has not been established will not be allowed, unless the witness is requested to assume the fact (which then must be established later).

### **OBJECTIONS TO EVIDENCE**

The proper way for an advocate to challenge any questions (or answer) is to say to the tribunal, "Objection, that question (or answer) is (for example) leading – irrelevant – assumes a fact not admitted – is an opinion not a fact etc. as appropriate." Advocates are not permitted to address their objections directly to witnesses or opposing advocates and should not interject during answers or bicker with other advocates. This applies with equal force during final submissions: each advocate has his turn, has a right to be heard uninterrupted by his opponent and should afford reciprocal courtesy to that opponent.

### **PENALTIES**

Fixing a penalty is at the absolute discretion of the tribunal.

### **CONTEMPT OF THE TRIBUNAL**

The essence of contempt of the tribunal is any attempt to undermine its functions, and this includes:

- disrespectful behaviour – which may be contempt because it undermines confidence in the tribunal and, therefore, its capacity to carry out its duties. This does not prevent proper, reasoned comment or criticism at the appropriate time.
- attempting to influence decisions by means other than putting argument or evidence before the tribunal according to the rules. Public comment prior to a hearing, designed to influence the attitude of tribunal members, is one example, as is any direct attempt to bypass the tribunal's proceedings

The tribunal rules deal with various forms of contempt of the tribunal.