

Tennis NSW

Member Discipline Policy



Tennis NSW Member Discipline Policy

PART I - APPLICATION

1. Purpose

- 1.1 This Tennis NSW Member Discipline Policy (**Policy**) is made pursuant to clause 7.2 of the Tennis NSW Constitution (**Constitution**) for the purpose of disciplining Members whose conduct is inconsistent with the Objects of Tennis NSW and/or the Constitution.
- 1.2 The purpose of this Policy is to set and maintain standards of conduct and behaviour within the sport of Tennis within NSW, and in doing so, ensure all Members are treated fairly and consistently.
- 1.3 For the avoidance of doubt this Policy is focused on the conduct of Members who are directly affiliated with Tennis NSW (including but not limited to affiliated Clubs, Associations and Court Operators). This Policy is not intended to cover the conduct of individual tennis participants whose conduct is properly dealt with under the Tennis Australia National Policies and/or other Tennis NSW policies as apply from time to time, including but not limited to the Member Protection Policy, the Safeguarding Children Code of Conduct, the Competitive Play Code of Behaviour and the Tennis Australia Disciplinary Policy or similar policies of a different name as may apply from time to time.

2. Application

- 2.1 This Policy applies to the following individuals and organisations:
 - (a) Tennis New South Wales Limited (**Tennis NSW**);
 - (b) All persons and entities, however described, who are registered as affiliated members of Tennis NSW (hereafter **Member or Members**) in accordance with the Constitution including but not limited to Associations, Clubs, Court Operators and persons elected as Honorary Life Members of Tennis NSW; and
 - (c) Persons and administrators appointed or elected to the boards of directors, executive and/or committees (including sub-committees) of Members and Tennis NSW and Officers of Members including but not limited to Presidents, Vice-Presidents, Treasurers and Secretaries.
- 2.2 This Policy is subject to the *Corporations Act 2001* (Cth) (**Corporations Act**) and the Tennis Australia National Policies (**National Policies**). To the extent of an inconsistency between a provision of the Corporations Act or a National Policy and a provision of this Policy, the Corporations Act or National Policy prevails to the extent of the inconsistency.
- 2.3 This Policy applies to conduct and behaviour which is not otherwise captured by the Tennis Australia National Policies including but not limited to Tennis Australia's Member Protection Policy, Safeguarding Children Code of Conduct, Competitive Play Code of Behaviour or Disciplinary Policy as amended and however named from time to time.
- 2.4 Typical conduct captured by this policy could include the committee of an affiliated Tennis Club or Association bringing the sport of Tennis and/or Tennis NSW into disrepute, for example by introducing a membership policy that is discriminatory or which excludes participants that hold a particular personal characteristic.

- 2.5 Notwithstanding clause 2.3 above, the Board reserves the right to take action against a Member under this Policy, at its absolute discretion, where conduct could be captured under a Tennis Australia National Policy, but in the majority view of the Board, appropriate action will not and/or cannot be taken under the relevant National Policy.

3. Definitions

Unless otherwise stated, capitalised terms in this Policy have the same meaning given to those terms in the Constitution.

In this Policy the following terms have the following meaning:

Appeal Tribunal means a panel made up of Directors of the Board which is constituted to hear and determine a matter on appeal from a Tribunal in accordance with the provisions of this Policy.

Assessor means the person nominated by the Board to conduct an initial assessment of a Report under this Policy, being the Tennis NSW CEO or their delegate.

Baseless Complaint is a complaint which the Assessor considers is without merit and/or lacking in sufficient grounds or evidence to be substantiated.

Chairperson means a person appointed as chairperson of an Appeal Tribunal convened under this Policy.

Complainant means the person or entity who is alleging that a breach of this Policy has occurred and has made a Report to that affect in accordance with this Policy.

Member Protection Information Officer (MPIO) means a person appointed in accordance with clause 3.2, of the Tennis Australia Member Protection Policy to act as the first point of contact for any enquiries, concerns or complaints associated with harassment, abuse and other inappropriate behaviour.

Report means a report of an alleged breach of this Policy made in accordance with clause 5.1.

Respondent means the person or entity alleged to have breached this Policy.

Tennis Australia Disciplinary Policy means the Tennis Australia Disciplinary Policy as amended from time to time, or a policy of a different name but with a similar intent and application as may be in force from time to time.

Tennis Australia Integrity Unit means the Tennis Australia Integrity Unity or similar team within Tennis Australia but with a different name from time to time.

Terms and Conditions of Affiliation mean the terms and conditions set by the Board and/or Tennis NSW from time to time which a prospective Member must agree to prior to becoming a Member.

Tribunal means a panel made up of three Directors of the Board which is constituted to hear and determine a matter in accordance with the provisions of this Policy.

Trivial Complaint is a complaint which in the Assessor's opinion holds little weight, consequence or importance.

Vexatious Complaint means a complaint which the Assessor considers is being made for an improper purpose or with the intention of causing inconvenience, frustration, harm, harassment or expense to another.

4. Breach of this Policy

- 4.1 A Member who is found to have engaged in conduct which:
- (a) brings, or could reasonably be expected to bring Tennis NSW or the sport of Tennis into disrepute;
 - (b) is inconsistent with the Objects of the Company set out in clause 2.2 of the Constitution;
 - (c) is inconsistent with the Terms and Conditions of Affiliation;
 - (d) is otherwise inconsistent with the terms of the Constitution;
 - (e) amounts to a failure to comply fully with a properly made resolution or determination of the Board or any duly authorised Committee;
 - (f) amounts to misuse or unauthorised use of any Tennis NSW Intellectual Property; or
 - (g) is otherwise unbecoming of a Member of Tennis NSW or which is prejudicial to the Objects and interests of the Company or the sport of Tennis or both
- will be in breach of this Policy.

PART II – MANAGEMENT OF ALLEGED BREACHES OF POLICY

5. Reports of Alleged Breaches of Policy

Receipt of a Report

- 5.1 If any person considers that this Policy has been breached, they may make a report to:
- (a) The Tennis NSW MPIO via mpio.nsw@tennis.com.au; or
 - (b) The Tennis NSW CEO (or other Tennis NSW staff member acting as the CEO's delegate for this purpose from time to time)
- (in each case, a **Report**).
- 5.2 Tennis NSW aims to resolve all Reports in a fair, timely and effective manner. However, given the complexity, the process and timelines involved in resolving a Report may vary.
- 5.3 Notwithstanding the procedures outlined in this Policy, Tennis NSW may refer the Report to the relevant external agency/agencies at Tennis NSW's ultimate discretion.
- 5.4 The procedures outlined in this Policy may be suspended whilst an external investigation is undertaken into the Report. If a matter is referred for external investigation, the Board may, at its absolute discretion, provisionally suspend a Member whilst the external investigation is ongoing.

Initial Assessment of Report

- 5.5 Upon receipt of a Report the CEO (or their delegate) (**Assessor**) shall consider the information contained in the Report and make an initial assessment as to the nature of the Report.

- 5.6 In undertaking this initial assessment, the Assessor must base their initial assessment on the information provided in the Report. The Assessor may also, at their absolute discretion, undertake further fact-finding with the Complainant, the Respondent, a witness and/or any other parties the Assessor deems appropriate if they consider such fact-finding necessary to make an initial assessment of the Report.
- 5.7 Subject to clause 2.5 of this Policy, where the Assessor determines, in their absolute discretion, that the matter disclosed in the Report may properly fall under another Tennis Australia National Policy, the matter shall be referred to the Tennis Australia Integrity Unit for assessment and no further action shall be taken under this Policy. The Complainant must be notified of this outcome as soon as reasonably practical after the decision is reached.
- 5.8 Subject to clause 2.5 of this Policy, where the Assessor determines, in their absolute discretion, that the matter disclosed in the Report properly falls under another Tennis NSW policy, the matter shall be dealt with in accordance with the relevant policy and no further action shall be taken under this Policy. The Complainant must be notified of this outcome as soon as reasonably practical after the decision is reached.
- 5.9 Where the Assessor determines, in their absolute discretion, that the matter disclosed in the Report is a Vexatious Complaint, a Baseless Complaint or a Trivial Complaint, no further action shall be taken under this Policy. The Complainant must be notified of this outcome as soon as reasonably practical after the decision is reached.
- 5.10 There shall be no right of appeal from a decision made pursuant to clauses 5.7, 5.8 or 5.9 of this Policy.
- 5.11 Where the Assessor determines that the matter disclosed in the Report appropriately falls under this Policy and is not a Vexatious Complaint, a Baseless Complaint or a Trivial Complaint, the matter will be referred to a Tribunal in accordance with clause 6 of this Policy.

6. Tribunal Procedure

- 6.1 Where the Assessor refers a matter to a Tribunal in accordance with clause 5.11 of this Policy, the Board will convene a Tribunal panel which shall be made up of three (3) Directors of the Board, appointed by the Board in their absolute discretion.
- 6.2 For the purpose of clause 6.1, any Director who, in the opinion of the Board, has an actual, perceived or potential conflict of interest in respect of the matter to be considered by the Tribunal panel shall be precluded from sitting on the Tribunal panel.
- 6.3 The Tribunal shall hear and determine the alleged breach in accordance with the processes and procedures set out in clause 9 'Tribunals' of the Tennis Australia Disciplinary Policy, as amended by the panel as it considers appropriate in its absolute discretion, provided that it does so in accordance with the principles of natural justice and procedural fairness.
- (a) For the avoidance of doubt, the Tribunal panel must ensure that each party has an equal opportunity to consider the information before the Tribunal and to present any evidence and submissions that party wishes to present.
- (b) The Tribunal may also call on any external advisor, including a Tennis NSW staff member, to provide assistance and guidance to the Tribunal as it considers appropriate and at its absolute discretion. However, external advisors called in this way will not be panel members and will not have any decision-making power.
- 6.4 Where the Tribunal panel determines that a breach of this Policy has occurred, the Tribunal panel may issue a sanction in accordance with clause 8 of this Policy.

7. Appeals

- 7.1 Where a decision is reached by a Tribunal in accordance with clause 6 of this Policy (**Original Tribunal**), the Complainant or the Respondent (hereafter the **Appellant**) may appeal that decision on the following grounds:
- (a) that the Original Tribunal relied on a clear error in their decision making process;
 - (b) a failure of natural justice or procedural fairness;
 - (c) the sanction imposed by the Original Tribunal is manifestly disproportionate to the breach; or
 - (d) no reasonable decision maker in the position of the Original Tribunal, based on the material before them, could reasonably make such a decision.
- 7.2 The Appellant must, within 72 hours of the Original Tribunal delivering its decision give written notification to the CEO (or their delegate) of the Appellant's intention to Appeal (**Notice of Intention to Appeal**).
- 7.3 As soon as practicable following receipt of the Notice of Intention to Appeal, the Board shall appoint a Chairperson of the Appeal Tribunal Panel who shall be a Director unless clause 7.6 of this Policy applies.
- 7.4 As soon as practicable after their appointment, the Chairperson must determine in their sole discretion whether the Appellant has satisfied the criteria for an appeal under clause 7.1 of this Policy. If so satisfied, the Chairperson (or their nominee) shall determine a place, time and date for the hearing of the Appeal and as soon as possible thereafter notify all parties to the Appeal in writing of such details.
- 7.5 Once the Chairperson has determined that the criteria for an appeal has been met in accordance with clause 7.4 of this Policy, the Board shall convene an Appeal Tribunal panel which, unless clause 7.6 of this Policy applies, shall be made up of all Directors other than the three (3) Directors who sat on the Original Tribunal Panel and any Director who, in the opinion of the Board, has an actual, perceived or potential conflict of interest in respect of the matter to be considered by the Appeal Tribunal panel.
- 7.6 If, because of the excluding factors set out in clause 7.5 of this Policy, there are less than three (3) Directors who are able to sit on an Appeal Tribunal panel, the Board, in their absolute discretion, shall appoint an independent (that is who are not a Tennis NSW Director, a Member, or a Tennis NSW staff member) person or persons as is required to constitute a three (3) person Appeal Tribunal panel inclusive of any eligible Directors.
- 7.7 The Appeal Tribunal shall hear and determine the alleged breach in accordance with the processes and procedures set out in clause 11 'Appeals' of the Tennis Australia Disciplinary Policy, as amended by the Appeal Tribunal panel as it considers appropriate in its absolute discretion, including by hearing the appeal 'on the papers' only, provided that it does so in accordance with the principles of natural justice and procedural fairness.
- 7.8 The Appeal Tribunal may, at its absolute discretion, uphold, amend or overturn the decision of the Original Tribunal as it considers appropriate. For the avoidance of doubt, the Appeal Tribunal may increase the severity of any sanction handed down by the Original Tribunal.
- 7.9 The decision of the Appeal Tribunal is final and there shall be no right of appeal from a decision of the Appeal Tribunal.

8. Sanctions

- 8.1 Pursuant to clause 7.2(d) of the Constitution, where a Member is found to be in breach of this Policy the Board may, at its absolute discretion:
- (a) warn a Member;
 - (b) suspend a Member's rights as a Member on terms it considers appropriate;
 - (c) terminate the membership of a Member;
 - (d) require the matter to be determined at a general meeting; or
 - (e) take other disciplinary action as it considers appropriate.

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