



What You Need to Know About the Tribunal, but Didn't Bother to Ask?

Tribunal hearings are set up to interpret rules and to discipline players, officials, clubs and their members who breach these rules.

The operating principles of the Independent Tribunal

The Independent Tribunal is set up by the Central Murray & Golden Rivers Leagues Constitution to enforce our rules and Codes of Conduct. It is not a court of law.

The penalties handed out by the Tribunal can have a very significant impact on individuals or clubs. Therefore it is extremely important that disciplinary proceedings be conducted fairly.

If an individual or club refuses to accept the decision of a tribunal, (i.e. decides to fight against the penalty imposed by the Tribunal) they can appeal or take the matter to a law court. However courts of law are reluctant to intervene in such matters except when:

- The individual suffers a loss of livelihood (income);
- There is a flagrant breach of natural justice;
- The Tribunal/leagues do not comply with its own rules or interprets rules incorrectly;
- A decision is made that is outside the powers of the leagues (Ultra Vires).

Courts have tended to become more involved as professionalism (the ability to earn substantial income through sport) increases and participants suffer severe injuries resulting from incidents where there has been a flagrant disregard for their duty of care responsibility.

This guide has drawn on elements from the AFL Victoria Country Rules and Regulations, the CM & GR Leagues' Constitution, By-Laws, Policies and Codes of Conduct.

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1 DEFINITIONS

Authorised Person means a person who is been given the authority in the Rules and Regulations to complete a Notice of Report. (Umpires, Operations Manager, Netball Umpire Coach)

CM & GR Leagues means Central Murray and Golden Rivers Leagues, referred to as the league,

De novo is a Latin phrase used in English to mean “from the beginning”.

Natural justice is a legal term meaning “duty to act fairly”; in this guide procedural fairness is preferred when talking about administrative decision-making. The terms have similar meaning.

Person means player, official, club member, spectator and patron,

Reporting Officer means the leagues' advocate at any Tribunal hearing,

Rules and Regulations means the constitution, by-laws and policies of the CM & GR Leagues,

Tribunal means the Independent Tribunal of the CM & GR Leagues,

Ultra Vires is a Latin phrase meaning “beyond the powers”. Simply put, the league or person doesn't have the power to exercise this authority.

2 INTRODUCTION

The purpose of this guide is to outline the process followed by the CM & GR Leagues' Independent Tribunal Panel so clubs and individuals in both leagues have a clear understanding of the rules and regulations they must adhere to when dealing with matters before the Tribunal.

The leagues' tribunal members are bound by the rules of AFL Victoria Country, Netball Victoria, the CM & GR Constitution, By-Laws, Policies and the Codes of Conduct, clubs can access copies of these rules, which are located in the AFL Victoria Country Handbook, or can be accessed online via the CM & GR Leagues' website.

3 ADDITIONAL READING

This guide needs to be read in conjunction with the CM & GR Leagues' Tribunal Procedures, Tribunal Policy, relevant Codes of Conduct and AFL Victoria Country Rules and Regulations.

4 GENERAL INFORMATION

4.1 Legal Nature of the Independent Tribunal

- a. The Independent Tribunal is not a court of law nor is it a 'public tribunal' created by an Act of Parliament. The Tribunal is a 'domestic' or 'private' tribunal created by the Central Murray and Golden Rivers Leagues through their Constitution and By-Laws. Its functions, structure and powers have their source in these rules and regulations.
- b. The Independent Tribunal, as established in the constitution is a sub-committee of the Board.
- c. The Tribunal procedures and hearings are much less formal in nature than those of a Court of Law. In fact, a tribunal can conduct its hearings as it deems fit according to the circumstances of the matter being heard.

4.2 Characteristics of a Hearing

- a. Its hearings are “inquisitorial in character” as distinct from being “adversarial”. It is not bound by the rules of evidence. Accordingly, leading questions may be asked in the “examination” of witnesses and “hearsay” evidence can be admitted.
- b. In an inquisitorial system the Tribunal is actively involved in investigating the facts of the matter, as opposed to an adversarial system where the role of the Tribunal is primarily that of an impartial referee between the prosecution and the defence.
- c. The players, officials, clubs and the league agree to be bound by the Rules and Regulations that the clubs have in fact themselves created. The legal relationship between each of these parties is contractual and the rules and regulations are its terms.
- d. A Person charged with an offence “agrees” to the jurisdiction (or power) of the Tribunal to hear and determine the allegation of the offence and agrees to accept the penalty imposed by the Tribunal should it decide to impose a penalty.

4.3 Jurisdiction of the Tribunal

The following matters, not an exhaustive list, may be referred to the Tribunal;

- a. Reportable offences under the Laws of Australian Football;
- b. Matters referred from an Investigation;
- c. Breaches of the Codes of Conduct, from incidents involving players, officials, spectators, patrons at venues;
- d. Breaches of the rules of the league;
- e. Any other matter referred to it by the league.

5 NOT A COURT OF LAW

- a. Courts will not act as an “appeals” court from tribunal decisions.
- b. Courts will therefore not review the merits of a tribunal decision.
- c. For example, courts will not intervene on the simple grounds that a Person was found guilty when they thought that they were innocent or that they received a lengthier sentence than was appropriate.
- d. This is because players, officials (or club members) have ‘agreed’ to be bound by the tribunal decision. The Courts have stated on many occasions that any internal “sports” dispute that may arise is best handled by the sports body itself. It has been stated that: “... *where the parties have agreed to have their disputes decided by domestic tribunals designated for that purpose, the courts have been in the habit of respecting that agreement ...*” (per Tadjell JA in *Australian Football League v Carlton Football Club Ltd and Williams*).
- e. Furthermore, courts have also stated that any internal dispute involving a sporting matter is much better decided by “non-lawyers” who have special skill, knowledge or expertise in the matter giving rise to the dispute than a lawyer or judge in a court of law.

6 WHEN WILL THE COURTS INTERVENE?

Courts will intervene if it can be shown that the Tribunal has committed an ‘error of law’.

- a. If the sport’s governing body or its tribunal does not act in accordance with its own rules in carrying out an investigation or laying a charge; the following questions need to be asked:
 - i. Do the leagues Rules and Regulations permit the establishment of a tribunal and/or an Appeals Board which can hear and determine charges and impose a penalty?
 - ii. Do the leagues Rules and Regulations give the leagues the authority to lay charges?
 - iii. Are the requirements in laying the charge(s) compliant with the procedural steps?
 - iv. Are investigation procedures compliant with the Rules and Regulations?
 - v. Is the membership and composition of the Tribunal in accordance with the Rules and Regulations?
- b. If the Tribunal wrongly interprets a rule to the point that it demonstrates a lack of understanding of its role and function,
- c. If the Tribunal makes a finding where there is NO evidence upon which that finding can be based,
- d. If the Tribunal denies the player ‘natural justice’ or ‘procedural fairness’.

7 WHEN WILL THE BOARD INTERVENE?

The Tribunal is an independent sub-committee of the Board, established under the Rules and Regulations of the leagues. The Board may intervene by appealing the decision of the Tribunal if it believes that;

- a. An error by the Tribunal has occurred interpreting the rules of the leagues; or
- b. The decision of the Tribunal is so unreasonable that no tribunal acting reasonably could have come to that decision having regard to the evidence before it; or
- c. The sanction imposed by the Tribunal was manifestly disproportionate to the offence.

8 WHAT IS NATURAL JUSTICE OR PROCEDURAL FAIRNESS?

Procedural fairness usually involves two requirements;

- i. The “fair hearing” rule; and

- ii. The rule against “bias”.

8.1 The Fair Hearing Rule

The Tribunal is required to follow a fair and proper procedure when making a decision. It is considered highly likely that the Tribunal which follows a fair procedure will reach a fair and correct decision. Basically there are five (5) rules that must be applied:

- a. The Person must have knowledge of the charge and a reasonable opportunity to prepare a defence; and
- b. The Person must know what they are charged with; in other words, what is the offence they have to answer?; and
- c. The charge(s) must be well “particularized” so that nothing is left uncertain and lead to “guess work” on the part of the Person; and
- d. The Person must be given time to prepare their case, (*Dunkley v Australian Football League (1996)*); and
- e. The Person must be given the date, time and place for hearing and be “required” to attend at that date time and place.

8.2 The Bias Rule

The bias rule of procedural fairness requires that the tribunal members must not be biased (actual bias) or be seen by a ‘reasonable and fair-minded observer’ to be biased in any way (perceived bias).

- a. Actual Bias – is where a tribunal member is a party to the matter, or has a pecuniary or proprietary interest in the outcome. (Example: A tribunal member is hearing a matter involving a club of which they have an interest. (Member, sponsor etc.))
- b. Apparent or perceived bias - Apparent bias is present where a tribunal member is not a party to a matter and does not have an interest in its outcome, but through their conduct or behaviour gives rise to a suspicion that they are not impartial.

8.3 The Notice of Report or Charge

Procedural fairness dictates the following matters must be noted:

- a. The charge on the Notice of Report must allege the conduct of the charged Person which is said to breach the rules of Australian Football, Netball Victoria rules, or the rules of the CM & GR Leagues; and
- b. The authorised person must correctly write up their reports. The reports must not put into doubt what the charge is that the player is facing;
- c. It is insufficient to simply allege that the Person is charged with “*misconduct*” or “*conduct unbecoming of Australian Rules football*”. Such allegations MUST include the particulars of such allegations. For instance, the following words have to follow the allegations: “... *in that the Person struck Player A with a clenched fist.*”

8.4 Investigations

A leagues appointed Investigator with the responsibility of carrying out an investigation cannot make a finding of guilt or innocence and impose or suggest a penalty. The only function of an investigator or investigating committee is to investigate incidents and then to make recommendations to the Board as to whether a charge is to be made against a Person or club and if so, what that charge is to be. It is the Board who then determines the charge. The Person has not been charged correctly if all that they are given is a copy of the investigation report and then told to appear at the Tribunal at an appointed time; the Person or club is NOT required to “work out” the allegation and the charge against them. The Person or club must receive a Notice of Report or Code of Conduct Report so they can ascertain the nature of the offence.

8.5 Misconduct at a Hearing

Subject to what the Rules and/or Regulations say, a Tribunal cannot further suspend a Person at a tribunal hearing for misconduct at the hearing itself; a fresh charge of misconduct should be laid against that person.

8.6 Changing Charges

- a. If a Person is found not guilty of one charge, they cannot be found guilty of another charge that was not alleged against that charged Person. For instance, a Person is found “not guilty” of striking, but then found guilty of “attempted” striking.
- b. A Person must be offered further time to prepare their defence if charges are **altered, amended or substituted**, especially if the Person only becomes aware of the alterations, amendment and substitution shortly before the time the hearing is to begin. However, it is also imperative that the player be able to show how they are prejudiced or disadvantaged by the hearing proceeding at the appointed time with the charges altered, amended or substituted.

9 FAIR HEARING

9.1 No Appearance

Provided that the Tribunal is reasonably satisfied that the Person has notice of the charges and the date, time and place of the tribunal hearing, the hearing can proceed to a full hearing in the Person's absence. However, the Rules and/or the Regulations have to be checked to ascertain whether there is another course of action.

9.2 What Constitutes a Fair Hearing?

The Person must be given a fair hearing, including a fair hearing in relation to the penalty to be imposed if the Person is found guilty:

- a. What constitutes a “fair hearing” cannot be stated with precision. It very much depends on the circumstances of any particular matter as to what dictates a “fair hearing”. However, the following factors are relevant in determining whether a fair hearing has been afforded to the Person;
 - i. The Tribunal must decide the case on the “evidence” presented at the actual hearing and cannot be influenced by any other material “outside the hearing”;
 - ii. The evidence must be relevant, reliable, logical and significant within context;
 - iii. The Person must be allowed to call witnesses, especially in tribunal hearings following an investigation report. It is imperative for the umpires officiating at the game to be allowed to be called by the Person, if that Person desires the umpire to give evidence at the hearing.
 - iv. The request to have the umpire give evidence must be made to the Operations Manager within a reasonable time before the hearing so as to allow the Operations Manager to make the necessary arrangements.
 - v. This evidence can be received by the Tribunal via telephone or video conferencing if need be. The umpire might “not have seen” an incident (because nothing occurred), or if they did see an incident, the umpire thought “nothing of it”. This type of evidence is vital.
- b. It is also unwise for the Tribunal to interfere with the number of witnesses called or as to the evidence they give; however, this point is subject to the point below.
 - i. The Person has the right to conduct the defence as they deem appropriate. The Tribunal should not be leaving itself “open” to allegations by the Person that they were prevented from conducting their case or defence in the manner that they saw appropriate; and
 - ii. The Tribunal can intervene in the conduct of that party's case if, for instance, the number of witnesses desired to be called by that party is “excessive,” especially if they are each giving the “same evidence”; this is particularly so in the case where spectators are called to give evidence; and
 - iii. Spectator evidence must be treated very cautiously.
- c. The Tribunal must act “on the evidence” and not capriciously or arbitrarily.

10 DISCLOSURE OF EVIDENCE/DOCUMENTS

- a. The Tribunal must disclose any documents or information it may have in its possession to the Person.
- b. The justification for this is that a Tribunal cannot make a finding of innocence or guilt, or reach a decision as to penalty, on material that the Person has not seen; thus, the Person must receive (within a reasonable period of time prior to the hearing):
 - i. Copies of investigators reports;
 - ii. Witness statements;
 - iii. Medical reports;
 - iv. Police reports (if any);
 - v. Photos;
 - vi. Videos of the incident;
 - vii. Any relevant correspondence.

11 TRIBUNAL EVIDENCE

- a. The Tribunal should allow cross-examination of witnesses.
- b. The Tribunal is not bound by the formal rules of evidence; it can thus allow, within reason, "hearsay" evidence and permit "leading" questions.
- c. The Tribunal do not allow legal representation; (AFL and CM & GR Leagues' rules)
- d. The Tribunal must give the Person the opportunity to call character evidence or references in an attempt to mitigate penalty. (Once the Person has been found guilty)
- e. The Tribunal need not give reasons for its decisions unless the Rules and Regulations otherwise provide.
- f. The Tribunal must not treat the umpire's evidence as **binding and conclusive**. Such evidence must be considered in conjunction with all of the other evidence that has been presented; *however, the Tribunal is free to give the umpire's evidence whatever "weight" it considers appropriate in the circumstances of the case.*
- g. The Tribunal should not have access to the Persons history unless and **until there is a finding of guilt** made against the Person. The advocate for the Person should be given the opportunity by the Tribunal to address this prior history.
- h. At all times throughout the tribunal hearing, evidence, argument or submissions should not be received in the absence of the charged Person. In other words, the Person should not be asked to "wait outside" the tribunal hearing room whilst the evidence, arguments and/or submissions are made. The Person has the right to observe what is being alleged so that adequate instructions can be given to their advocate in response.

12 TRIBUNAL DECISION MAKING

12.1 Tribunal Members must not be Biased

- a. "Bias" means that the Tribunal, or any of its members, has not brought an "open mind" to the hearing. Alternatively, it can mean that the members have either a personal or financial interest in the outcome of the hearing.
- b. Tribunal members must be open to persuasion and cannot therefore participate in the hearing of a matter if their minds were "already made up".
- c. Accordingly, the members of the Tribunal must decide the case on the 'evidence' or information brought before it during the hearing and not outside it.
- d. Bias can be established even if only one tribunal member has a 'closed' mind; it is possible in those circumstances that the member with the "closed" mind can "infect" the other members.

12.2 The Tribunal must act Honestly and in Good Faith at all times.

The following matters are relevant to ensure that bias or the perception of bias does not "infect" the hearing or the adjudication process;

- a. The Tribunal must not be seen to "*be merely going through the motions*" of carrying out the hearing; (*Australian Football League v Carlton Football Club Ltd and Williams*).

- b. The members of the Tribunal must come to the hearing “genuinely open to persuasion”.
- c. The Tribunal cannot consider the “evidence” of the umpires as “binding and conclusive”.
- d. The Tribunal must not have access to the Person’s history unless and until there is a finding of guilt against that Person.
- e. The Tribunal should not allow the members of the Board executive into the tribunal room during the actual hearing and deliberation process; the presence of any member may be seen as an attempt to “influence” the outcome. Administrative staff will be permitted into the tribunal room if assisting to run the recording equipment or video. Other than those functions, administrative staff, including the tribunal secretary plays no role in the hearing whatsoever.
- f. Tribunal members must not discuss the case either before the hearing or subsequent to it. Comments made to the media by tribunal members should be avoided at all times.
- g. Knowing of the incident from the radio, television or newspapers will not necessarily constitute bias unless the tribunal members cannot bring an ‘open mind’.

13 SET PENALTY OR CONTEST THE CHARGE

13.1 Overview

- a. Following the game where a report has been made, the umpire may elect to offer the player a Set Penalty. This is for certain incidents and carries an automatic suspension. If the player elects to accept the set penalty, they may not be required to attend the Tribunal and is suspended from playing immediately for the length of the set penalty.
- b. The umpire may also recommend sending the report direct to the Tribunal, whether or not the set penalty has been accepted by the player, his club or umpire. The Operations Manager may refer any report to the Tribunal. This may happen in the case of a player with a history of reportable offences, or if further information regarding the charge is made available that suggests the set penalty accepted may be inappropriate and the charge warrants a full hearing of the Tribunal (e.g. Significance of injury to the player discovered at a later date).
- c. The club and player, after receiving a copy of the report from the umpires’ room, have to decide whether or not to accept the set penalty or contest the charge at the Tribunal. It is in this time that an honest appraisal of guilt or innocence is critical. If the player accepts the minimum set penalty the club secretary must fill in their Report Sheet or contact the Operations Manager no later than 12 noon on the first business day immediately following the match.

13.2 Deciding whether to contest the Charge

- a. Automatic Suspension or Contest the Charge?
 - i. Not all reportable offences can be offered a set penalty;
 - ii. A set penalty is offered at the discretion of the umpire;
 - iii. Even if a set penalty has been offered and accepted, the Operations Manager may decide to refer the case to the Tribunal;
 - iv. If you decide on game day to contest the charge and later change your mind and wish to accept the set penalty, contact the Operations Manager by 12 noon on the first business day immediately following the match.
- b. Factors to consider when deciding whether or not to accept the set penalty may be:
 - i. An honest appraisal of guilt or innocence;
 - ii. The number of umpires/witnesses that reported/observed the incident;
 - iii. The severity or consequences of the incident;
 - iv. The possibility of a more severe penalty.
- c. Rolling the dice and believing the skills of your advocate through technicalities and muddying the facts will get the player off is foolhardy. The fact that the player has been reported and an umpire has offered a one or two week suspension demonstrates what one credible witness believes the severity of the indiscretion deserves. Should the

charge appear before the Tribunal, this evidence will be presented. If found guilty the minimum sentence is the set penalty and consideration is given that the player could have taken the set penalty. It is highly probable the Person will receive additional sanctions for not taking the set penalty.

- d. Once a player decides to contest the charge, preparation for the hearing should begin immediately. If after the game the player has decided to challenge the charge at the Tribunal, but later decides that it is in their best interests to accept the set penalty, the club should contact the Operations Manager as early as possible and at the latest by 12 noon on the first business day immediately following the match.
- e. As long as the umpire is still happy for the set penalty to be offered and no other information surrounding the charge has been revealed, this is usually able to be accommodated. If the player has accepted the set penalty after the game, they cannot change their mind at a later time and the penalty applies immediately.

13.3 Serving the sanction

All suspensions are served in the grade to which the player was playing at the time of the infringement. For example: If a player incurs a two match penalty playing in the seniors during the last round of the year, he misses the next two senior grade matches. If the seniors are not playing in the finals, this means rounds 1 and 2 of the next season. If the reserves team is playing finals, even if the player qualifies under finals eligibility rules, he cannot play as he has to miss the next two senior games, which is next season.

14 THE PLEA – GUILTY OR NOT GUILTY?

14.1 Overview

When deciding on a plea, the advocate and the charged Person should take into consideration the following points:

- i. An honest appraisal of innocence or guilt!
- ii. What occurred leading up to the reportable offence?
- iii. What evidence will be presented at the Tribunal, including injuries to witnesses?
- iv. Are there any mitigating circumstances?
- v. Was a set penalty offered by the umpire?
- vi. What is the penalty that may be imposed should a 'guilty' finding be upheld?
- vii. The Person's past record, and the impact this may have on the sanction should a 'guilty' finding be upheld.

It should be remembered that the Tribunal bases its decision on the balance of probability. This means that the Tribunal considers whether or not it is more probable than not that the offence occurred.

14.2 Guilty or Not Guilty

- a. The tribunal hearing is inquisitorial in nature. This means the tribunal members can act as questioners to find the truth and judges to determine the penalty.
- b. An independent official (umpire or official) has reported the Person in the belief they are guilty of a reportable offence or breached the Codes of Conduct under the laws of the game or the leagues. It is the responsibility of the club to prove they are incorrect.
- c. The standard of proof for a tribunal matter is to its reasonable satisfaction. (In numerical terms this is 51 %!)

15 PLEADING GUILTY PROCEDURE

If the charged Person pleads guilty to the charge(s) laid against them, the following procedure should be followed:

- a. The umpire(s) and their witnesses together with the charged Person, their witnesses and advocate will be called to the tribunal room by the tribunal secretary.
- b. The tribunal chairman will ask the secretary to introduce the tribunal members, the charged Person and advocate, the offended Person and advocate.

- c. The tribunal chairman will then detail the specifics of the match from which the report (or investigation) arose and confirm with the parties that those particulars are correct. The chairman will then read the report specified and ask the charged Person how they plead with respect to each charge laid.
- d. If video evidence is available, the video should be shown and the umpires and/or advocates asked to confirm that the video shown captures the incident(s) which has led to the report(s).
- e. By the Person pleading "guilty" to the charge(s), the Person is "admitting" all of the elements that constitute the reportable offence(s).
- f. The chairman should then invite the umpire to give a summary of the evidence so as to enable the Tribunal to determine the circumstances of the offence.
- g. The umpire may be questioned by the tribunal members so as to clarify any uncertain matters.
- h. The umpire may be cross-examined by the charged Person's advocate so as to clarify anything that was left uncertain in the umpire's summary. In conducting the cross-examination, the advocate has to keep in mind that the Person has pleaded guilty to the charge.
- i. Upon completion of that cross - examination, the chairman should announce formally that the charge has been proven.
- j. At this time, the Tribunal can have access to the charged Person's tribunal history. Such history should be in a sealed envelope and must not be opened until there is a formal finding of guilt. Alternatively the tribunal chairman can have the secretary recount the Person's past history.
- k. If the charged Person's advocate desires to let that Person make a statement about the circumstances surrounding the reportable offence or to make a formal apology to the offended Person, then the charged Person should be allowed to do so at this time;
 - i. The statement should not be seen as an opportunity to deny the allegations made;
 - ii. To attack the evidence of the umpire or to raise fresh defences;
 - iii. If that is the intention of the advocate, the plea should have been "not guilty";
 - iv. Unless there are truly exceptional, convincing and compelling reasons such as to cause the Person substantial prejudice, a "guilty" plea should not be allowed to be changed to a "not guilty" plea at this stage of the hearing.
- l. The charged Person's advocate should then be invited to make submissions (including the calling of character witness and reading reference letters) about the penalty that the Tribunal should impose. That is, the advocate should bring to the Tribunal's attention particular matters about the charged Person that the Tribunal should consider in determining penalty.
- m. Upon the completion of the advocate's submission as to penalty, the tribunal room must be cleared of all persons and the tribunal members then carefully consider and determine the penalty to be imposed. It can again review the video of the incident and for this purpose and this purpose only, allows the secretary to operate the video equipment, if the chairman seeks that assistance. Once the video is shown, that person must leave the tribunal room.
- n. In doing so, the Tribunal must impose any penalty that the leagues have prescribed to be imposed. For instance, the leagues' Rules and/or Regulations might state that the Tribunal must suspend a player for at least one match. If that is so, "suspended" sentences cannot be imposed to replace the set penalty of one week. The Tribunal may sanction the Person for three weeks; impose one week (the set penalty) plus two weeks suspended. In deciding the penalty, the Tribunal should consider the following factors, amongst many others, that might be relevant:
 - i. The charged Person's prior history as a player, administrator or supporter;
 - ii. The seriousness of the offence and the nature and extent of any injury sustained by the "offended Person";
 - iii. The number of games played or the years of involvement as a volunteer;

- iv. The contribution that the charged Person has made to their club, to the leagues and/or to Australian football or netball generally;
 - v. Any involvement by the charged Person to training or coaching programs, especially those involving under age teams;
 - vi. Any remorsefulness shown by the charged Person and/or whether there was an apology from the charged Person;
 - vii. The guilty plea made by the charged Person;
 - viii. Any evidence received from character witnesses; and
 - ix. All of the circumstances surrounding the offence.
- o. Once the Tribunal has determined the penalty, the charged Person, together with their advocate, are called back into the Tribunal room and the penalty is read out to the Person.
 - p. As soon as the penalty is read out, the tribunal room should be cleared of all persons present so as to allow the next case to commence.

16 PLEADING NOT-GUILTY PROCEDURE

16.1 When to plead not-guilty?

A charged Person should plead "not guilty" when:

- a. They deny the allegations made by the umpire or investigator; or
- b. There has been procedural irregularity in the laying of the charges (especially investigation reports); or
- c. The charged Person wants to raise specific defences such as "provocation" or self-defence.

16.2 Who can remain in the tribunal room

- a. The umpire(s) and their witnesses and advocate together with the charged Person, their witnesses and advocate will be called to the tribunal room by the tribunal secretary.
- b. The tribunal chairman will ask the secretary to introduce those present.
- c. The tribunal chairman will then detail the specifics of the match from which the report (or investigation) arose and confirm with the parties that those particulars are correct. The chairman will then read the report(s) specified and ask the charged Person how they plead with respect to each charge.
- d. If video evidence is available, that video evidence should be shown and the umpire and/or advocates asked to confirm that the video captures the incident(s) which has led to the report(s) and/or investigation.
- e. All persons except, the three tribunal members, the charged Person and their advocate, the Reporting Officer and their first witness (usually the umpire who is to give the first evidence) are to leave the tribunal room and remain outside of "earshot" of the room.

16.3 The Case for the Leagues

- a. The leagues' case is then commenced by the Reporting Officer. The umpire who made the report should be the first witness to give their evidence regarding the incident(s) which has led to the report being made; but this is not a hard and fast rule. The advocate may call witnesses in any order they think is appropriate.
- b. The umpire is "examined" by their advocate:
 - i. The Reporting Officer asks relevant questions of them to assist the umpire in giving their evidence, leading questions may be asked by the advocate;
 - ii. The umpire can be asked questions by the tribunal members;
 - iii. The umpire can be "cross-examined" by the charged Person's advocate;
 - iv. The Reporting Officer should be allowed (if desired) to "re-examine" the umpire with respect to any matter arising from cross examination;
 - v. When the examination, cross examination and any re-examination is complete, the umpire is excused from any further part in the hearing unless, for good reason, the Tribunal or any of the advocates need that umpire to stay.

- c. The next witness for the leagues (usually another umpire who made the report or the “offended player”) then should give their evidence.
- d. The same procedure applies with respect to their examination, cross-examination and any “re-examination”.
- e. This process should be followed for all other witnesses for the leagues.
- f. When all witnesses have given their evidence, the advocate for the leagues should formally announce the “closure of the leagues’ case”.

16.4 The Case for the Charged Person

- a. At this time, the charged Person’s advocate will then commence the case for the defence by calling the charged Person or any of their witnesses to give evidence. It does not matter who is called first.
- b. Each witness, including the charged player or official, is examined by the defence advocate, cross-examined by the Reporting Officer and re-examined by the defence advocate. Of course, the Tribunal can also ask questions of each of the defence witnesses.
- c. Once each party has given their evidence, they may be excused from any further part of the hearing unless, for good reason, they have been requested to stay.

16.5 Summarizing the Case

- a. Once all of the evidence has been given by the defence, the parties will be asked to summarise their respective cases; the Reporting Officer will usually commence and then followed by the advocate for the defence.
- b. The summary is not to be a means of re-stating the evidence all over again; rather, the summary is to be used for the purpose of highlighting the strengths and weaknesses of the respective cases. That is, to highlight the strength of one party’s case and to highlight the weakness of the other party’s case.
- c. Once the summary of the cases is completed, the Tribunal chairman will ask all persons to leave the tribunal room so that the Tribunal can commence its deliberations; all persons, except the three tribunal members must leave the tribunal room.

16.6 Consideration of the Evidence

- a. In deliberating the innocence or guilt of the charged Person, the three tribunal members must consider the following matters:
 - i. The evidence of each witness carefully;
 - ii. It must do so with an open mind and not be influenced by any matters extraneous to the tribunal hearing;
 - iii. The tribunal members must not be merely “going through the motions” of deliberation;
 - iv. The tribunal members are free to give as much weight to the evidence of each witness as they deem appropriate; however, they must not treat the evidence of the umpire as “binding and conclusive”;
 - v. “Spectators” evidence has to be treated very carefully and much care needs to be taken as to the weight to be given to such evidence;
- b. In considering the evidence of each witness, the tribunal members should “test” that evidence by considering;
 - i. Its reliability; and
 - ii. Its credibility; and
 - iii. Its significance; and
 - iv. Its relevance; and
 - v. Its consistency with other evidence; and
 - vi. Its weight or strength; and/or
 - vii. Its vagueness of recollection; and/or
 - viii. Its accuracy!

- c. The decision made by the Tribunal need not be unanimous; and the more serious the offence, the more forceful or convincing the evidence needs to be in accordance with the principle of *Briginshaw v Briginshaw (1936) (60 CLR 336)*;
- d. After due consideration, the tribunal members ask this question:
 - i. *"Can we, as a tribunal, be reasonably satisfied that the offence with which this Person has been charged, been made out?"* Alternatively, it can ask:
 - ii. *"Is the decision that we make, a decision which a reasonable and honest tribunal would make?"*

16.7 Deliberations Complete

- a. Once the deliberations are completed, the charged Person, their advocate and the Reporting Officer are called back into the Tribunal room whereupon the finding of guilt or innocence is disclosed to all present.
- b. If the charged player or official is found "not guilty", the case is over and all present should clear the Tribunal room immediately so that the next case can begin.
- c. If the charged Person is found "guilty," that party's advocate must be allowed to present matters in mitigation of the penalty. This can include the calling of character witnesses, reading of reference letters and general submissions as to the good character made by the advocate.
- d. At this time, the 'sealed letter' containing the Person's history may be opened by the chairman so as to ascertain the Person's prior history; if there is a history.
- e. The Tribunal may question the Person about that history; the Person's advocate can address the Tribunal with respect to that history.

16.8 Deliberations on Sanction

- a. Upon completion of evidence as to character, again the Tribunal room is cleared of all persons and the tribunal members consider the appropriate penalty.
- b. Again, the Tribunal **MUST** have regard to any mandatory sanctions that the leagues has set out in its rules.
- c. The Tribunal **MUST** impose any penalty that the leagues has prescribed to be imposed. For instance, the league's rules and regulations might state that the Tribunal **MUST** suspend a player for at least one match. If that is so, **"suspended" sentences cannot be imposed** unless it is in addition to the leagues' prescribed penalty. In deciding penalty, the Tribunal should consider the following factors amongst many others which may be relevant:
 - i. The charged Person's prior history as a player, official, volunteer or patron;
 - ii. The seriousness of the offence and the nature and extent of any injury sustained by the "offended player";
 - iii. The number of games played by the player or years of service in the case of a volunteer;
 - iv. The contribution that the charged Person has made to their club, to the leagues and to their sport generally;
 - v. Any involvement by the charged Person to training or coaching programs, especially those involving under age teams;
 - vi. Any remorsefulness shown by the charged Person and whether there was an apology from the charged Person;
 - vii. Any evidence received from character witnesses; and
 - viii. All the circumstances surrounding the offence including remonstrations, ugly brawls, crowd reaction and adverse media attention;
 - ix. The circumstances of the offence leading to the report.
- d. The above are only some examples of what the Tribunal should consider in deciding penalty.

Once the Tribunal has reached a decision as to penalty, the charged Person, their advocate and the Reporting Officer are called back into the Tribunal room whereupon the penalty is disclosed to those present.

When the decision as to penalty is announced, the tribunal room is cleared.

17 INVESTIGATION REPORTS

The AFL Victoria Country Rules and Regulations (found in the AFL Victoria Country Handbook) provide a specific procedure for the investigation of particular incidents. These rules will be followed whether investigating football or netball matters.

17.1 Unbecoming Conduct

The procedures are outlined in AFL Victoria Country Rule 5, "Unbecoming Conduct". It is important to note that the procedure set out in Rule 5 be strictly followed. If not, there is a strong likelihood that the whole investigation can be declared null and void entitling the charged Person to avoid the hearing and any subsequent penalty.

17.2 The Investigation process

- a. The investigations officer appointed by the CM & GR Leagues has to be AFL Victoria Country accredited.
- b. Only those persons or bodies listed in Rule 5.2(a) can make allegations against those persons or bodies listed in Rule 5.2(a).
- c. The various time limits by which steps have to be taken must be strictly followed. In particular, the time limit that a request for an investigation is to be made.
- d. The role of the investigator is not to determine the innocence or guilt of a Person, nor to determine penalties. The role is simply to investigate an incident(s) referred to them in accordance with the Rules and at the completion of that investigation, to make recommendations to the Board as to whether or not charge(s) should be laid against a particular Person. The investigations officer will recommend, for instance that "*... Person so and so, be charged with misconduct or conduct unbecoming of Australian Rules football (or netball) in that they ... (name their actions)*".
- e. It is the leagues which will then lay the charge(s) against a Person. In doing so, it will not be sufficient to merely send that charged Person a copy of the investigations report and be told to appear at a tribunal hearing. Following the investigation, if the leagues desires to proceed to a hearing, the Person must be formally charged with an offence(s). The Person who is subject to the investigation should be sent a Notice of Report.
- f. The rules of procedural fairness apply to an investigation process.
- g. The Tribunal will be given copies of investigation reports, witness statements, police reports (if any), medical reports (if any) and videos. The charged Person should be given copies of these materials within a reasonable time so as to be in a position to prepare a defence. It is a denial of procedural fairness for a tribunal to have in its possession documents which have not been given to the charged Person or their advocate. The Tribunal cannot make a decision on documents that the charged person(s) has not seen and thus being denied an opportunity to address by calling appropriate evidence in response.
- h. The Tribunal must allow the charged Person to "cross examine" those witnesses who have provided written submissions and which form the basis of the investigation report.
- i. Appendix 2 of the AFL (Victoria Country) Rules and regulations has a "pro-forma" of the procedure to be followed; and
- j. The investigations officer does not act as an advocate during the hearing. Their role is to present the investigation report to the Tribunal. At the appeal level, the investigator will act as informant and can give evidence and be cross examined.

18 APPEAL PROVISIONS

18.1 Who can Appeal?

For football: Rule 8 of the Rules and Regulations of the AFL Victoria Country handbook contains the relevant appeal provisions and procedures.

For netball: As Netball Victoria does not have a formal structure in place to hear appeals against local tribunal decisions, the Board shall hear any appeal.

18.2 The following provisions need to be noted:

- a. The charged Person or leagues can appeal, but the umpire or offended Person cannot.
- b. The appeal must be lodged by no later than 2pm on the second day after the decision of the Tribunal was handed down.
- c. The Notice of Appeal and the Grounds for Appeal must be set out in the "AFL Victoria Country "Notice of Appeal" form or one substantially similar to it. It must be accompanied by the appropriate deposit fee.
- d. Procedural fairness is to be applied to Appeal hearings; however, note the exception in Rule 8.7.2.
- e. Rule 8.8 is to be noted; this rule provides that a Person is to serve the penalty imposed by the Tribunal pending the appeal. However, the Appeal Board can grant a stay of execution of sanction if the aggrieved party can show "exceptional and compelling circumstances". It must be shown that it would be "*harsh and unconscionable*" to the aggrieved party if the sanction was not stayed. The Appeal Board has to consider a number of matters before it can grant a stay of execution, namely:
 - i. The merits of the appeal and the prospects of success;
 - ii. The interests of other players and clubs; and
 - iii. The effect on the results of the competition conducted by the relevant league.
- f. The appeal hearing is conducted "de novo", that is, as a new hearing and the charge(s) against the Person has to be reheard all over again.
- g. The Appeals Board can however, have regard to any record of the proceeding including evidence taken at the tribunal hearing.
- h. The Appeals Board can regulate the proceeding as it thinks appropriate and is "inquisitorial in nature". It is conducted with as little formality and technicality as are permitted by the circumstances of the matter in question.
- i. The Appeals Board can confirm, reverse or modify the findings of the Tribunal; and
- j. Any person appearing before the Appeals Board must fully co-operate and answer truthfully any question asked. That person must provide relevant documents in their possession or control and at all times must not act in a manner which is false and misleading.

19 THE USE OF WITNESSES AND THE ROLE OF THE ADVOCATE

- a. If particular witnesses are needed to establish an "element" of the offence or defence or in other way assist the case for the leagues or the charged Person, then they should be permitted to give the evidence sought.
- b. It is important to note that the Tribunal (or Appeal Board) must not intervene as to who is called to give evidence or as to the number of witnesses a party wants to call. However, the Tribunal can intervene if, for instance, one party desires to call 20 witnesses each saying the same thing. This is especially so if the witnesses that are desired to be called are all spectators. Other than this, a tribunal ought to be reluctant to intervene in the manner one party desires to conduct its case. If it does so, it leaves itself open to a claim of "bias" by the party affected or unduly interfering with a party's case;
- c. Especially in investigation reports (where umpires have not been included in the investigator's report), if the charged Person desires to have umpires give evidence, that request should not be refused. To be denied might well constitute a breach of natural justice. The umpire's evidence is crucial in this sense because:
 - i. The umpire might not have seen an incident because it simply did not occur; or
 - ii. Saw an incident but decided it was not reportable; or
 - iii. The umpire may be in a position to give relevant, reliable and significant "unbiased" evidence.

- d. It is important for the charged Person to inform the league of their desire to have the umpire give evidence as soon as possible so the Operations Manager can make the necessary arrangements.

20 ROLES IN THE TRIBUNAL

20.1 The Role of the Reporting Officer

- a. The leagues must be represented by an advocate. The rules of the leagues which have allegedly been breached by the Person and therefore the leagues which seeks to ensure that they are not breached. The umpire(s) is a mere witness in the "prosecution" or "presentation" of the league's case against that charged Person.
- b. The Reporting Officer's role is to present the case to the Tribunal on behalf of the leagues and in doing so, will be relying on the umpire's evidence (if it is an umpire report) together with other witnesses. By doing so, the Reporting Officer is effectively representing the umpire in the presentation of their "evidence". Accordingly, there is no need for the umpire to have a "personal" advocate.
- c. The Reporting Officer will also be representing the "offended" Person who also becomes a "witness" for the leagues. This person should not have an advocate; their interest in the hearing is protected by the advocate. Of course, the "offended" player might wish to have a representative by their side for the purpose of "comfort and support", especially if they are young and vulnerable. However, that representative should play no active role in the hearing unless absolutely necessary in the circumstances of a particular case.
- d. The Reporting Officer will also be representing any other witnesses who will be called on behalf of the leagues.
- e. It is the task of the Reporting Officer to try and persuade or convince the Tribunal that the version of events presented to the Tribunal on behalf of the leagues ought to be accepted in preference to the case presented to the Tribunal on behalf of the charged Person and it does this by "advancing" the case of the leagues and attempting to "damage" the case of the offended Person by attacking its credibility, reliability and/or accuracy.
- f. It is also the Reporting Officer's role to remind the tribunal members of the leagues' sanction expectations in the matter being heard.

20.2 The Role of the Charged Person's Advocate

- a. The charged Person must, in an effort to protect their own interests, be represented by a capable and competent advocate.
- b. The advocate will also be representing any other witnesses that the charged Person may call to give evidence.
- c. The task of this advocate is identical to the task to be performed by the leagues advocate and that is to try and "advance" the case for the charged Person and "damaging" the league's case by attacking its credibility, reliability and/or the accuracy.

20.3 The Qualifications of an Advocate

- a. An advocate is not permitted to be a practising lawyer or hold a law degree.
- b. An advocate should be familiar with:
 - i. The AFL Victoria Country Rules and Regulations;
 - ii. Netball Victoria Rules and their Codes of Conduct;
 - iii. The rules of the CM & GR leagues;
 - iv. All the reportable offences and the elements of each tribunal procedures;
 - v. Reporting procedures and penalties, and appeal rules.

20.4 How to become a good advocate

- a. It is essential that the advocate, whether for the leagues or the charged Person be "prepared" in presenting their case to the Tribunal.

- b. A case properly and adequately prepared will be presented and received by the Tribunal with clarity and will be better structured, more convincing and/or more forceful.
- c. With good preparation the Tribunal will then have a better understanding of the evidence, arguments and submissions that have been made throughout the hearing.
- d. This will, no doubt, lead to the Tribunal giving more weight to the matters raised.

20.5 How is a case “better prepared”?

The following are some factors to have regarded in the preparation of the case:

- a. Take full statements from the “parties” and witnesses that the advocate is representing. This will enable the advocate to obtain a “full picture” of the incident leading up to the report and all its surrounding circumstances. All the relevant facts should be at the advocates “fingertips”.
- b. The main advantage of doing so is that the advocate will quickly be able to learn in what manner the adversary’s case is different as it is revealed during the hearing. Any differences will form the basis of cross examination and final submissions.
- c. Read all the relevant documentation that exists prior to the hearing including umpire report sheets, investigation reports and accompanying witness statements, videos of the incident (if any), photos, medical reports and any correspondence.
- d. From an examination of this documentation, note whether:
 - i. The relevant dates are correct;
 - ii. The charge is worded and laid correctly;
 - iii. There is a more appropriate charge to the charge(s) laid;
 - iv. The umpire's charge sheet has been signed;
 - v. The right person is charged;
 - vi. The right club is named;
 - vii. Medical reports are on correct letterhead and signed by the relevant doctor;
 - viii. The person taking the video or photographer is available to give evidence, if need be.
- e. Consider the evidence that is required to establish the charge against the charged Person and the evidence needed to establish any defence that may be raised. Is such evidence available or on call? Are the right witnesses called to give the appropriate evidence?
- f. Know the elements of each charge and is there evidence to establish those elements?
- g. Are all procedural steps compliant? This is important with investigation reports where there exist particular time constraints that must be observed.

20.6 Examining a Witness

- a. Develop the ability to “examine” a witness. When an advocate “examines a witness”, the advocate is questioning the witnesses for the “party” they are representing. As the Tribunal is not a court of law and thus not bound by the rules of evidence that bind a court, the advocate, in carrying out an “examination” can ask leading questions.
- b. A leading question is a question that suggests the answer or requires a simple “yes” or “no” answer. An example of a leading question is: “... *were you only 15 metres away from the ball...?*” However, it is important not to ask too many leading questions as it may affect the credibility of the advocate’s case.

20.7 Cross –examining a Witness

- a. Develop the ability to “cross examine” a witness. When an advocate is “cross examining a witness” the advocate is questioning witnesses who have been called for the other party. Leading questions are most certainly allowed. In carrying out cross examination, the advocate is trying to “discredit” the evidence given by the particular witness. The following “tips” should be noted:
 - i. Ask one question at a time (which can be a leading question) and note the answer.

- ii. Ask the same question of the next witness and note the answer. If the answers are different, there will be an “inconsistency” in the evidence that can form the basis of final submissions.
 - iii. Know what it is that you are seeking from the witness being cross examined and once you have received that evidence, go NO further! Avoid asking that one question too many! The answer may “undo” what you have sought to do in your cross examination.
- b. Put to each witness that is being cross examined what the advocate's own “client's” version of a particular issue is. This will enable that witness to possibly agree with what is put to them and this will go a long way to assist the case of the cross examiner. For instance, the advocate performing the cross examination should ask:
- i. “ ... I put it to you that this is what in fact happened ...”, or
 - ii. “ ... I put it to you that it was not number 5 that struck number 10 ...”, or
 - iii. “ ... this is what in fact happened. What do you say about that ...?”

Asking such questions in cross examination also prevents unfairness to the other party's case. It would be unfair to the other party to learn, for the first time, what it is that the opposing party is saying when its own case is completed.

20.8 Cross examination of umpires (and other Persons)

- a. The cross examining of others should centre on the following matters:
- i. The umpire's view of the incident (leading to the report) and the distance and position they were from the incident;
 - ii. Whether that view was clear and uninterrupted;
 - iii. When the umpire made up their mind to make the report;
 - iv. Where a player was struck (on his body) and the force of the strike (out of 10 if possible);
 - v. How did the offence occur; for instance, in a case of striking, was it a clenched fist, open hand or elbow;
 - vi. Was it right hand or left?;
 - vii. Whether the report, as laid, reflected what actually occurred on the field;
 - viii. When the player was told of the report and their reaction to it;
 - ix. Whether correct procedure was followed in making the report;
 - x. If more than one umpire made a report of the same incident, the consistency of the answers between the umpires; and
 - xi. Whether the umpire was correct, in the report sheet, as to the correct player reported in the right quarter and at the right time in the quarter.
- b. Remember, the whole purpose of cross examination is to create a doubt in the minds of the tribunal members (to the extent that it cannot be reasonably satisfied) as to the reliability, credibility or accuracy of the evidence received.

20.9 Final Submissions

- a. Develop the ability to give a summary (or make final submissions) to the Tribunal. Once all the evidence is heard, the advocate for the leagues and the charged Person will be asked to present a summary of their respective cases.
- b. This is an opportunity given to the advocates to summarise the strengths of their own case and the weaknesses, lack of consistency, lack of reliability, lack of credibility and/or inaccuracy of the other party's case. It is not an occasion for the advocates to repeat all the evidence—it has been heard and noted by the Tribunal!
- c. Advocates must at all times, whilst appearing before the Tribunal, speak clearly, audibly and with confidence or “firmness of conviction”. Questions during examination or cross examination of witnesses should be concise and to the point in issue.

20.10 Dress to Impress

- a. Advocates should dress neatly and should act with respect and dignity at all times. Respect must be shown to the Tribunal, its processes and members and to all those who appear before it.
- b. Advocates should never allow themselves to descend into the **"dust of conflict"**. They have a task to perform and that task is best performed by advocates keeping away from making provocative remarks and indeed, being affected by such remarks. Advocates are to keep a "cool head" at all times and not let their thinking be impacted upon by the actions and words of others.

21 STANDARD OF PROOF

The amount of evidence which a Reporting Officer must present in a hearing in order to win is called the standard of proof. In law there are two standards; one for criminal cases ("beyond reasonable doubt" and one for civil cases ("on the balance of probabilities"). There is a third in the AFL Victoria Country Handbook which declares that the benchmark for proof in a matter brought before the Tribunal is; **"To its reasonable satisfaction."**

To its reasonable satisfaction is the degree of proof required to establish a case; the scales only need tip more in one direction than the other. (This means that it was more likely than not that something occurred in a certain way)

22 DUTY OF CARE

Any person who participates in or has a personal capacity to organise and manage football or netball programs and events has a duty to make such activities as safe as possible for anyone who participates in the game. This duty is referred to in the eyes of the law as the Duty of Care. For any claim of negligence to be actionable the first thing to be establish is whether a Duty of Care existed between the two players involved in an incident on the ground/court during the match.

22.1 How is a duty of care established in a football or netball context?

- a. Each player in a lawful sporting contest owes every other player in that game a Duty of Care;
- b. The Duty is to exercise all Care that is objectively reasonable in the prevailing circumstances in the match in order to avoid injury to all other players;
- c. The prevailing circumstances has been defined by the courts to include the object of the match; the demands made upon the players, the inherent dangers in the game, its rules, conventions and customs and the standards, skills and judgments reasonably to be expected of the players;
- d. The universal measure of the actions of the player is reasonableness in the circumstances.

22.2 How is a player's breach of the duty of care established?

The following two tests are usually adopted as being indicative of the establishment of the liability of an offending player as follows:

- a. A reckless disregard of safety test;

For the reckless disregard of safety test to apply the threshold for liability is high and proof of a mere error of judgment or a lapse of skill by the offending player would not be sufficient to establish a breach of duty. In practice it would be difficult to prove a breach of duty unless there is proof of conduct amounting to reckless disregard for an opponent's safety.

Obviously, such breach is clear where a player is found guilty of striking (or similar such action) an opponent and causing injury outside the Rules before the Tribunal as a result of a report or investigation into their conduct.

- b. The playing culture of the sport test;

Under the playing culture of the sport test in order to establish liability the playing culture of the sport and the conditions in which participation takes place are the two factors which need to be considered. By focusing on the playing culture of the sport a Court is able to

establish whether the act of the offending player was in fact an integral part of the playing of the game and resulted from the inherent risk taken by all the participants in the playing of the football or netball match, or if it was in fact unconnected with the proper playing of the match, and in fact was an action by the player outside the Rules and therefore negligent.

23 FINANCIAL SANCTIONS

The Independent Tribunal operations are funded on a user pays basis.

23.1 Guilty Verdict Fees

If a Person from a club is found guilty at the Tribunal, the clubs will be invoiced a guilty verdict fee to contribute towards the costs associated with hosting tribunal cases. Funds received via this fee shall be retained by the CM & GR Leagues and used to defray the costs of the Tribunal.

23.2 Other Financial Sanctions

The CM & GR Leagues' Independent Tribunal has the right to impose a financial sanction on any club or individual for their involvement in an incident brought before them. Funds received via this avenue shall be retained by the league. Any fines imposed other than Guilty Verdict Fees shall be invoiced and retained by the league.

24 CO-OPERATION WITH LEAGUES' INDEPENDENT TRIBUNAL

Everyone appearing in front of a Tribunal is expected to treat the panel with respect and show respect for the process the Tribunal undertakes. Any individual who fails to meet these expectations in the opinion of the Tribunal panel may be subject to further penalties. Regardless of the situation or outcome of a specific case, CM & GR Leagues' demands that behavioural expectations are upheld at all times and tribunal panel members are treated with respect. These same behavioural expectations extend to the waiting area at any tribunal venues. Any club member found to act in an inappropriate manner whilst in the waiting area of a tribunal venue shall also be subject to further penalties.

AFL Victoria Country Handbook, Rule 7.6.16

- a. "Any person who appears before a League Independent Tribunal or Area Appeal Committee shall:
 - i. Fully co-operate with the Tribunal;
 - ii. Truthfully answer any questions they are asked;
 - iii. Upon request by the Tribunal, provide any document in that person's possession or control which is relevant to the matter to be determined by the Tribunal;
 - iv. Not make any statement or act in a manner which is false or misleading or calculated to mislead or which is likely to mislead; and
 - v. Act in a courteous and polite manner during the hearing and after a decision has been made.
- b. Where a league Independent Tribunal or Area Appeal Committee considers that a person has contravened this Regulation 7.6.16, it may deal with the matter and impose sanctions upon the person as it in its absolute discretion deems fit. Provided the person is given procedural fairness to state their case before the Tribunal prior to any sanction being imposed."
- c. Although the rules do not specifically mention 'collusion', the matters involving a hearing are confidential. Anyone appearing before a tribunal shall *"not make any statement or act in a manner which is false or misleading or calculated to or which is likely to mislead."* To communicate with the opposing player or official could be deemed to be collusion.

25 REPORTABLE OFFENCES

This section provides some guide as to the different categories of Reportable Offences and the appropriate sanctions and courses of action in respect of such offences. This guide is designed to be used by:

- The Match Review Panel at the discretion of that Panel.

- The Independent Tribunal shall adopt this guide in assessing the particular alleged offence and appropriate sanctions for such an offence.

Which Reportable Offences are Classifiable Offences?

Classifiable Offences are those Reportable Offences (specified in the table below) which may be graded by a Match Review Panel in order to determine an appropriate base sanction for that offence.

| MATCH REVIEW PANEL | | | | | |
|---|--------------------|-----------------|----------------|----------------------|--|
| CLASSIFIABLE OFFENCES | CONDUCT | IMPACT | CONTACT | BASE SANCTION | EARLY GUILTY PLEA (SET PENALTY) |
| Charging | Intentional | Severe | All | Tribunal | N/A |
| Eye-Gouging/Unreasonable or Unnecessary Contact to the Eye Region | | High | High/Groin | Tribunal | N/A |
| Forceful Front-On Contact | | | Body | 3 Matches | 2 Matches |
| Head-butt or Contact Using Head | | Medium | High/Groin | 3 Matches | 2 Matches |
| Kicking | | | Body | 2 Matches | 1 Match |
| Kneeing | | Low | High/Groin | 2 Matches | 1 Match |
| Rough Conduct | | | Body | 1 Match | Fine & Reprimand |
| Scratching | | Careless | Severe | All | Tribunal |
| Stomping | High | | High/Groin | 3 Matches | 2 Matches |
| Striking | | | Body | 2 Matches | 1 Match |
| Tripping | Medium | | High/Groin | 2 Matches | 1 Match |
| Unreasonable or Unnecessary Contact to the Face | | | Body | 1 Match | Fine & Reprimand |
| | | | Low | High/Groin | 1 Match |
| Body | | | | 1 Match | Fine or Reprimand |

Where a Classifiable Offence occurs behind play, a MRP may at its absolute discretion determine that the offence ought to be referred directly to the Tribunal on the basis that it is a Classifiable Offence which attracts a base sanction that the Panel finds inappropriate (see Direct Tribunal Offences)

| Tribunal Penalty Guides | | | | |
|--|-----------------------|---------------------------|--------------------------------------|--------------------------------|
| | | Striking/Undue Rough Play | | Kicking/Head butting |
| Conduct | Impact - Circumstance | Contact | Match Penalty Weeks (Guideline Only) | Match Penalty (Guideline Only) |
| Intentional | Severe | High/Groin | 8 - 10 | 10 - 12 |
| | | Body | 7 - 9 | 9 - 11 |
| | High | High/Groin | 6 - 8 | 8 - 10 |
| | | Body | 5 - 7 | 7 - 9 |
| | Medium | High/Groin | 4 - 6 | 6 - 8 |
| | | Body | 4 - 5 | 5 - 7 |
| | Low | High/Groin | 3 - 4 | 4 - 6 |
| | | Body | 2 - 3 | 3 - 5 |
| Careless | Severe | High/Groin | 5 - 6 | 6 - 8 |
| | | Body | 5 - 6 | 6 - 8 |
| | High | High/Groin | 4 - 5 | 5 - 7 |
| | | Body | 4 - 5 | 5 - 7 |
| | Medium | High/Groin | 3 - 4 | 4 - 6 |
| | | Body | 2 - 3 | 3 - 5 |
| | Low | High/Groin | 1 - 2 | 2 - 4 |
| | | Body | 1 - 2 | 2 - 4 |
| Tripping another person by foot or leg | | | | 2 - 4 |
| Charging another person | | | | 3 - 5 |
| Engaging in a melee | | | | 3 - 6 |
| Spitting at or on another person | | | | 5 - 8 |
| Pinning the arms of another and driving their head and or upper body to the ground | | | | 3 - 6 |
| Attempting to kick another person | | | | 3 - 4 |
| Attempting to trip another person by foot or leg | | | | 2 - 3 |

Offences against an Umpire

| | |
|--|---------------------|
| Intentionally, negligently or recklessly making contact with an umpire | Tribunal Discretion |
| Attempting to make contact with or strike an umpire | Tribunal Discretion |
| Using abusive, insulting, threatening or obscene manner towards or in relation to an umpire | 3 - 8 weeks |
| Behaving in an abusive, insulting, threatening or obscene manner towards or in relation to an umpire | 3 - 8 weeks |
| Disputing a decision of an umpire or failing to leave the playing field when directed to so by an umpire | 2 - 4 weeks |

NOT WITHSTANDING THE ABOVE PROCEDURES ALL PENALTIES WILL BE AT THE DISCRETION OF THE TRIBUNAL

The above penalties are for players only. Penalties against officials/coaches will be at the discretion of the Tribunal and will be considered exponentially more serious.

27 FREQUENTLY ASKED QUESTIONS

Which body makes the rules for the CM & GR Leagues' Independent Tribunal?

The rules and regulations relating to the establishment, jurisdiction and procedure of a league Independent Tribunal are contained in AFL Victoria Country rule 7.0, as well as the Constitution of the CM & GR Leagues.

What happens if I am summoned to appear before the Tribunal?

Any player, or official failing to appear before the Tribunal when advised to do so without an acceptable reason shall be disqualified for a minimum period of two matches, this to be additional to any penalty arising from the hearing for that time.

What is the jurisdiction of the Independent Tribunal?

The Independent Tribunal can hear and determine on a variety of matters: reportable offences under the Laws of Australian Football, Rules of Netball and Codes of Conduct, a matter referred by the Board or Investigation Officer, any appeal by a club/s, player/s or official/s against the decision of the Board, any other matter referred to it by the Board or AFL Victoria Country Football Manager. (Rule 7)

What is the normal size of an Independent Tribunal?

The Tribunal consists of 9 members; up to 5 can sit on a particular matter, but 3 is the quorum, with one member acting as the Tribunal Chair.

What is the correct procedure for the Tribunal?

The Tribunal may regulate any proceedings brought before it in such manner as it thinks fit. It is usually conducted with as little formality and technicality and with as much expedition as the proper consideration of the matters before it permits.

What is "natural justice"?

This means that the Tribunal is expected to act fairly; provide any person whose interest will be directly and adversely affected by its decision a reasonable opportunity to be heard (in writing); hear and determine the matter before it in an unbiased manner; and make a decision that a reasonable body could honestly arrive at.

What does the standard of proof for the Tribunal mean?

When a case is presented to the Tribunal by the league, the "standard of proof" is the degree of proof required to establish a case. In criminal cases a defendant's guilt must be proved "beyond a reasonable doubt." On the other hand, a Tribunal usually require proof "to its reasonable satisfaction" - meaning that the scales only need tip more in one direction than the other. In numerical terms 51%.

What are the factors used by the Tribunal to determine the severity of the sanction?

When determining its sanction the Tribunal will take into account: the seriousness of the reportable offence or conduct sustained against the person, any injury sustained or effect upon the person against whom the reportable offence or conduct has been committed, the prior record of reportable offences or conduct committed by the person; and if relevant, any objectives contained in AFL Victoria Country Rules and Regulations, Netball Victoria Rules or CM & GR Leagues' Rules.

Does the Tribunal need to give any reasons for its decisions?

No. Tribunals rarely give reasons for their decisions.

What happens if the report is technically incorrect?

All tribunals are conducted with as little formality and technicality and with as much expedition as a proper consideration of the matters before it permits. The Tribunal has the power to amend technical/clerical errors in reports. The only time a matter before the Tribunal can be considered on a technicality is when that irregularity has caused or may cause injustice if the case was heard.

Can I communicate with the player I am charged with striking?

Although the rules do not specifically mention collusion, the matters involving a hearing are confidential. Anyone appearing before a tribunal shall "not make any statement or act in a manner which is false or misleading or calculated to or which is likely to mislead." To communicate with the opposing player or official could be deemed to be collusion.

As an advocate, can I ask for a reprimand instead of a suspension?

If the player is found guilty of an offence a reprimand may be deemed appropriate by the Tribunal. At the discretion of the Tribunal, a reprimand may be offered for some offences.

Can an umpire report players or administrators for off field incidents?

An umpire has an obligation to report any reportable incident in a match, and "on the day of a match" within the "immediate proximity of the arena." This immediate proximity is defined as within 500m of the arena. (Rule 19) Further, under the CM & GR Leagues' Code of Conduct, spectators, club members and officials can also be reported under the Code of Conduct for their offensive off-field behaviour.

As a charged player or administrator, do I need an advocate when I appear at the Tribunal?

Any charged Person must have a club advocate. Club penalties apply for not having an advocate. Consider the proverb: " ... every person who is his own advocate, has a fool for a client."

Can I give written evidence instead of appearing at the Tribunal?

In the case of the charged Person attendance is mandatory. It is entirely at the discretion of the Tribunal, whether they will accept written evidence from other players/administrators. If you cannot attend, for a good reason, then explain to the tribunal secretary why you cannot appear. The secretary will contact the tribunal chairman and the tribunal members will make a determination. If you fail to appear when asked, a penalty will apply. If you have been allowed to provide written evidence then make sure it is comprehensive and detailed. Try to predict what information is needed by the tribunal members and answer these fully. The Tribunal take a dim view of players who do not make themselves available.

If I decide to contest a charge where I could have accepted a set penalty, can I change my mind later and accept the set charge?

You must contact the Operations Manager and negotiate. Technically you have until noon on the first business day after the incident to indicate your course of action.

As a victim in a melee, can I have a say whether the charge goes to the Tribunal?

The AFL Victoria Country Notice of Report Form has a section which is completed by the "Offended Player's Club" immediately after the match. Your club must ensure this is completed on game day and your opinion is registered. If you fail to fill in this section of the form, you have until 12 noon on the first business day after the incident to register your opinion with the Operations Manager.

What happens when an on-field incident is missed by the umpires?

The club can make a request to the Operations Manager for an investigation. This request must be in by 12 noon on the Tuesday following the incident and the appropriate fee must be attached to the request. Please note: the investigation is not limited to the complaint made by the club. If the

complaint is made under "Unbecoming Conduct" then the club has five days to lodge their notification, along with the appropriate fee.

As the offended player I want to minimise the impact of an incident, to support a charged player; what can I do?

All people appearing at the Tribunal "must fully co-operate" and "not make any statement which is false or calculated to mislead." If the Tribunal discover you are not being truthful or only half truthful evidence you could suffer a sanction. In recent Tribunal history several players have been suspended for not providing a completely truthful account of an incident.