

# Complaint Management Policy

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Applicable Legislation:

This policy will be reviewed every three years or earlier if required by the organisation. The review will ensure it reflects both the community expectations and all legal requirements.



## Overview

Volleyball WA (VWA) aims to provide a simple, confidential and trustworthy procedure for resolving complaints based on the principles of procedural fairness. Any person may report a complaint about a person, group of people or organisation bound by this policy if they feel they have been discriminated against, harassed, bullied or there has been any other breach of this policy. VWA aims to ensure that our complaints procedure is free of unfair repercussions or victimisation against any person making a complaint.

This policy is to be read in-conjunction with the following documents:

- VWA Anti-Harassment Policy
- VWA Document and Archiving Policy
- VWA Member Protection Policy Statement
- VWA Risk Management Policy Statement
- VWA Staff Appointment Policy
- VWA Codes of Behaviour
- VWA Member Disciplinary Policy
- Risk Management Framework – Reporting and Communication Procedure

## Definitions

- **Affiliate** means an organisation, club or association affiliated to VWA
- **Bullying** is when people repeatedly and intentionally use words or actions against someone or a group of people to cause distress and risk to their wellbeing.<sup>1</sup> Refer to the VWA Anti-Harassment Policy for further information
- **Complainant** means the person(s) making the complaint
- **Discrimination** happens when a person, or a group of people, is treated less favourably than another person or group because of their background or certain personal characteristics.<sup>2</sup> Refer to the VWA Anti-Harassment Policy for further information
- **Harassment** can be against the law when a person is treated less favourably on the basis of certain personal characteristics. Some limited exemptions and exceptions apply.<sup>3</sup> Refer to the VWA Anti-Harassment Policy for further information
- **Mediation** is a process that seeks to resolve complaints with the assistance of an impartial person – the mediator.
- **Member** means an individual who is a member of VWA
- **Member Protection Information Officer** means a person appointed by VWA to be the first point of contact for a person reporting an issue or a complaint under, or a breach of, this policy
- **Misconduct** means unacceptable or inappropriate behaviour
- **Respondent** means the person(s) who is the subject of the complaint
- **Tribunal** means the body convened to settle a dispute / complaint
- **Victimisation** means punishing or threatening to punish someone.<sup>4</sup> Refer to the VWA Anti-Harassment Policy for further information

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<sup>1</sup> <https://www.humanrights.gov.au/our-work/commission-general/what-bullying-violence-harassment-and-bullying-fact-sheet>

<sup>2</sup> <https://www.humanrights.gov.au/quick-guide/12030>

<sup>3</sup> <https://www.humanrights.gov.au/quick-guide/12040>

<sup>4</sup> <https://www.humanrightscommission.vic.gov.au/the-workplace/victimisation>

- **Vilification** means the act of saying or writing unpleasant things about someone or something, in order to cause other people to have a bad opinion of them<sup>5</sup>

## **Background**

VWA endeavours to deal with complaints on a confidential basis. VWA will not provide information about the complaint to another person without the complainant's consent, except if the law requires us to disclose this information or it is necessary to properly deal with the complaint.

To ensure fairness for everyone involved, VWA will provide the full details of the complaint to the person or people against whom the complaint has been made and ask for their response. As a result, it may be difficult for us to resolve complaints made anonymously.

In the event that costs are incurred, they will be met by the party who incurs the cost unless otherwise stated / agreed by the parties.

## Nature of a Complaint

If a complaint relates to behaviour or an incident that occurred at a club level, the complaint should be reported to and handled by the relevant club in the first instance. Only matters that relate to, or which occurred at, a state level, as well as serious cases referred from a club, should be dealt with by Volleyball WA. These cases should be referred to a trained VWA Member Protection Information Officer (MPIO).

## Handling complaints

A complaint may be handled informally or formally. The complainant may indicate his or her preferred option and the MPIO should consider whether that is an appropriate way to handle the particular complaint. For example, the law may require that the complaint / allegation be reported to an appropriate authority. Individuals and organisations may also seek to have their complaint handled by an external agency under anti-discrimination, child protection, criminal or other relevant legislation.

All complaints will be dealt with promptly, seriously, sensitively and confidentially as per the Complaint Management Procedure

## Improper complaints and victimisation

VWA will take all necessary steps to make sure that people involved in a complaint are not victimised. Disciplinary measures may be undertaken in respect of a person who harasses or victimises another person for making a complaint or supporting another person's complaint in accordance with the VWA Anti-Harassment Policy.

If at any point in the complaint handling process the MPIO considers that a complainant has knowingly made an untrue complaint, or the complaint is malicious or inappropriately intended to

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<sup>5</sup> <https://dictionary.cambridge.org/dictionary/english/vilification>

cause distress to the respondent, the matter will be referred to the CEO or VWA President for review and appropriate action, including possible disciplinary action against the complainant.

### Mediation

Complaints may be resolved by agreement between the people involved with no need for disciplinary action via mediation, outlined in the Complaint Management Procedure. Mediation may not be the appropriate course of action when:

- the people involved have completely different versions of the incident;
- one or both parties are unwilling to attempt mediation;
- there is a real or perceived power imbalance between the people involved; or
- the matters that involve serious allegations.

### External Investigation Process

There will be times when a complaint will need to be investigated further, determining additional facts relating to the incident and recommendations as to possible findings and next steps. Any investigation conducted will be fair to all people involved. The external investigation process will be undertaken by an unbiased person, as outlined in the Complaint Management Procedure.

### Tribunals

A Tribunal may be convened by the CEO or VWA President due to the serious nature of the complaint, because the complaint was unable to be resolved or because VWA policy directs it to be called. The procedure for a tribunal is outlined in the Complaint Management Procedure.

### Companions

Members may be accompanied by a companion at any investigation meeting and / or tribunal, such as another VWA member, official or family member. Members may not choose a companion whose presence would prejudice the outcome of any meeting / tribunal.

- The companion may address the meeting / tribunal to present and/or sum up the member's case, respond on their behalf to any views expressed at the hearing and confer privately with them at any stage during the hearing.
- The companion does not have the right to answer questions on the member's behalf, address the meeting / tribunal if the member does not want them to or prevent anyone, including the member, from explaining their case.
- Any companion who attends a meeting / tribunal with a member in connection with this policy shall not be penalised in any way.
- No one shall be obliged to act as a companion if they do not wish to do so.

### Disciplinary measures

VWA may impose disciplinary measures on an individual or organisation for a breach of this and other policies. Any disciplinary measure imposed will be:

- fair and reasonable;
- applied consistently;
- be based on the evidence and information presented and the seriousness of the breach; and
- be determined in accordance with our Constitution, policies and by-laws.

Disciplinary measures may include:

- Individual
  - A direction that the individual makes a verbal and/or written apology;
  - A written warning;
  - A direction that the individual attend counselling to address their behaviour;
  - A withdrawal of any awards, records, achievements bestowed in any tournaments, activities or events held or sanctioned by VWA;
  - A demotion or transfer of the individual to another location, role or activity;
  - A fine;
  - A suspension of the individual's membership or participation or engagement in a role or activity;
  - Termination of the individual's membership, appointment or engagement;
  - Any other form of discipline that the Tribunal considers appropriate.
- Organisation
  - A written warning;
  - A fine;
  - A direction that any rights, privileges and benefits provided to that organisation by VWA be suspended for a specified period;
  - A termination of the organisations affiliation with VWA;
  - Any other form of discipline that the Tribunal considers appropriate.

#### Document Management

VWA will ensure that all the complaints received, both formal and informal, are properly documented. This includes recording how the complaint was resolved and the outcome of the complaint.

This information, and any additional records and notes, will be treated confidentially (subject to disclosure required by law or permitted under this policy) and stored in a secure place in accordance with the VWA Document Management Policy.

#### **Policy Application**

1. This policy applies to all VWA employees, volunteers and members and all other people or organisations which by agreement or otherwise, are bound to comply with this policy.
2. This policy applies to behaviour occurring during the course of VWA business, activities, competitions and events.

#### **Responsibilities**

VWA'S role and contribution in making this policy work is to:

1. Ensure compliance with legislative requirements;
2. Prepare a policy statement
3. Take all reasonable steps necessary to ensure that all interested parties know:
  - What the policy is;
  - their roles and responsibilities;

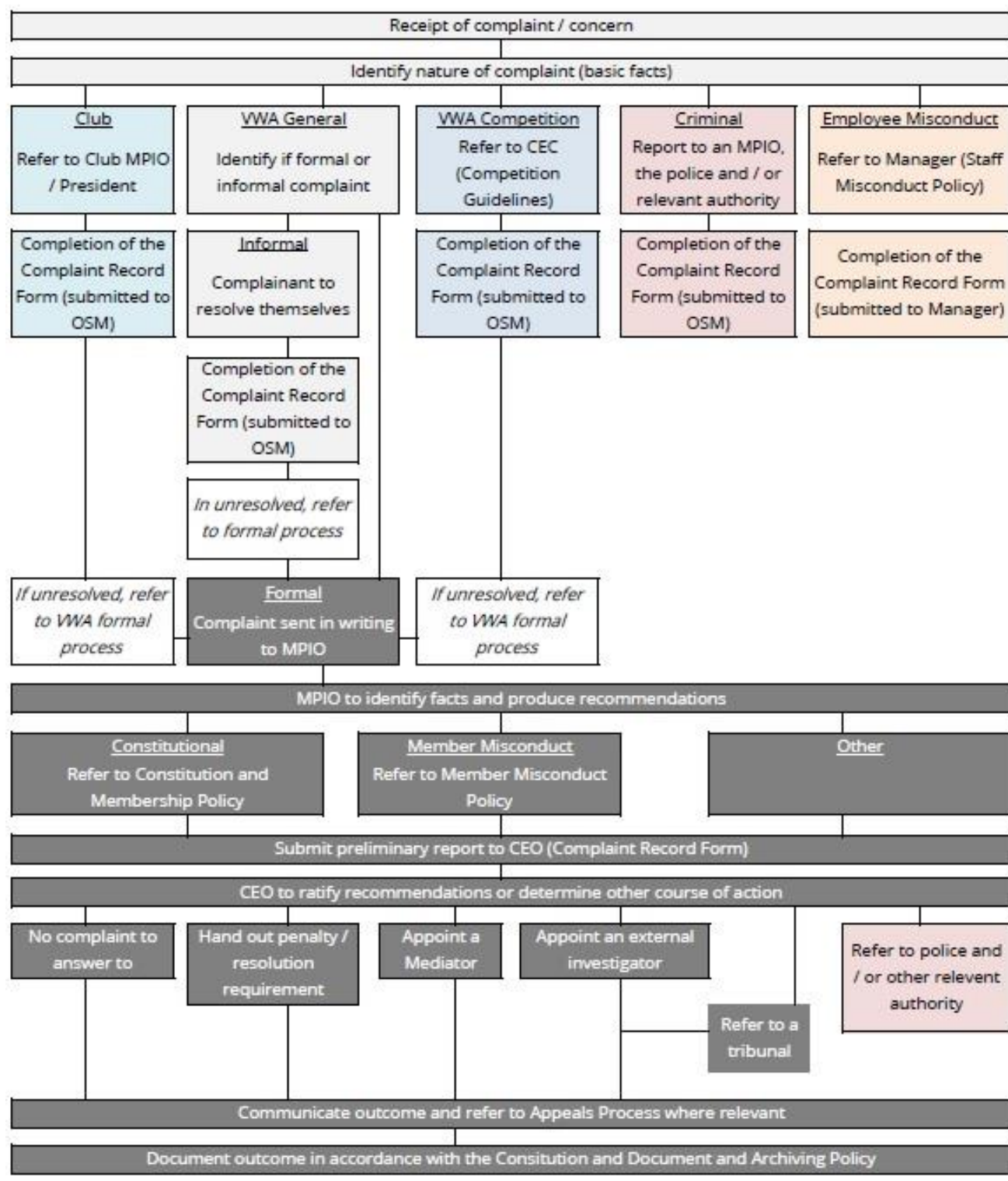
This will be achieved by:

- including a copy of the Policy in the Policy and Procedures Manual;
- ensuring all relevant personnel are educated and trained with the policy;
- providing written procedures and instructions;
- including a copy of the policy on the VWA website;
- notifying all affiliates, members, parents/guardians and officials that they will be required to comply with this policy;
- consulting with interested parties to enhance the effectiveness of procedures.

**Policy Statement**

VWA will take all breaches of the policy seriously and will ensure they are dealt with promptly, sensitively and confidentially. Disciplinary action may be taken against a person who is found in breach of this policy, in accordance with the Complaints Management Procedure.

# Complaint Management Procedure



CEC – VWA Competitions & Events Coordinator

OSM – Operations and Support Manager

### **On Receipt of a Verbal Complaint**

The person, who first receives the complaint, should ask some simple questions to determine the nature of the complaint (using the flowchart and Complaints Record Form as guides):

1. What the complaint is about?
2. Has the person tried to resolve the matter themselves?
  - a. Encourage the complainant to talk to the other person (if safe, reasonable and appropriate) – Informal approach.
  - b. Pass to the relevant staff member if the complaint is operational (e.g. competition rules, selection policy query)
3. Do they wish to make a formal complaint?
  - a. Advise to submit a complaint in writing / email to a trained MPIO
4. Would they like to talk to a trained MPIO?

The call should be referred to an MPIO if:

- a. The complainant is not sure how to approach step 2.a;
- b. The complainant is not sure whether step 2.a is appropriate;
- c. The complainant wishes to talk to someone confidentially about the options available; or
- d. the complaint was not resolved by step 2.a

The MPIO will:

- Ask the complainant how they would like the complaint to be resolved and what support they might need;
- Seek to provide different options for the complainant to address their concern;
- Inform the relevant government authorities and / or police, if required by law to do so;
- Document the conversation on the Complaint Records Form and submit to the VWA Operations and Support Manager; and
- Where possible and appropriate maintain confidentiality.

After talking to an MPIO, the complainant may decide:

- There is no longer a complaint;
- The complaint is minor and they do not wish to take the matter forward;
- To try and resolve the problem themselves;
- To try and resolve the problem with the help of someone impartial, such as a mediator; or
- To resolve the matter through a formal process.

The conversation should be documented on the Complaint Records Form and submitted to the VWA Operations and Support Manager or the MPIO if the matter has been referred.



### **On Receipt of a Formal Complaint**

After receiving a formal complaint, based on the material provided, the MPIO will decide whether:

1. they are the most appropriate person to receive and handle the complaint (if the MPIO has a conflict of interest with the case, the case should be handed over to another VWA MPIO as soon as the conflict is identified);
2. the nature and seriousness of the complaint requires a formal resolution procedure;
3. the matter should be reported to the police if there are allegations of criminal conduct

The MPIO will:

1. Complete the Complaints Record Form, requesting further information as deemed necessary, taking into account:
  - a. the wishes of the complainant, and the wishes of the respondent, regarding how the complaint should be handled;
  - b. the relationship between the complainant and the respondent (e.g. an actual or perceived power imbalance between you and the respondent);
  - c. whether the facts of the complaint are in dispute; and
  - d. the urgency of the complaint, including the possibility that the complainant might face further unacceptable behaviour while the complaint process is underway.
2. Submit the Complaints Record to the VWA Chief Executive Officer (CEO) for ratification, determining if there is enough information to identify whether the matter alleged did or did not occur.
3. Refer the matter to the police immediately if the investigation reveals allegations of criminal conduct.

The CEO may:

1. Choose to investigate the matter further and support the recommendations of the MPIO;
2. Refer the complaint to mediation;
3. Appoint an external person to investigate the complaint;
4. Refer the complaint to a tribunal hearing;
5. Refer the matter to the police or other appropriate authority; and/or
6. Implement any interim arrangements that will apply until the complaint process is completed.

### **Mediation**

1. The CEO will appoint an appropriate mediator to help resolve the complaint. This will be done in consultation with the complainant and the respondent(s). The mediator will be an independent person in the context of the complaint; however this does not preclude a person with an association with Volleyball WA acting as mediator. VWA will not allow lawyers to participate in the mediation process.
2. The mediator will talk with the complainant and respondent(s) about how the mediation will take place and who will participate. At a minimum, the mediator will prepare an agenda of issues to be discussed.
3. All issues raised during mediation will be treated confidentially.
4. If the complaint is resolved by mediation, where appropriate the mediator may seek to ensure the parties execute a document that sets out the agreement that has been reached. This

agreement will be signed by the complainant and the respondent(s). VWA expects the parties involved to respect and comply with the terms of the agreement.

5. If the complaint is not resolved by mediation, the complainant may:
  - a. write to CEO to request that the CEO reconsider the complaint; and
  - b. approach any relevant external agency, such as an anti-discrimination or equal opportunity commission, to resolve the matter

### **External Investigation Process**

1. The CEO may appoint an appropriate investigator to investigate the complaint further. The investigator will be an independent person in the context of the complaint; however this does not preclude a person with an association with Volleyball WA acting as an investigator.
2. The investigator will be provided with a written brief that sets out the terms of engagement and their roles and responsibilities.
3. The investigator may:
  - a. interview the complainant and record the interview in writing;
  - b. provide full details of the complaint to the respondent(s) so that they can respond
  - c. interview the respondent(s) to allow them to answer the complaint and record the interview in writing;
  - d. obtain statements from witnesses and collect other relevant evidence;
  - e. make a finding as to whether the complaint is:
    - **substantiated** (there is sufficient evidence to support the complaint);
    - **inconclusive** (there is insufficient evidence either way);
    - **unsubstantiated** (there is sufficient evidence to show that the complaint is unfounded);
    - mischievous, vexatious or knowingly untrue.
  - f. provide a report to the CEO and / or tribunal documenting the complaint, the investigation process, the evidence,) and, if requested, any findings and recommendations.
4. VWA will provide a report to the complainant and the respondent(s) documenting the complaint, the investigation process and summarising key points from the investigation.
5. The complainant and the respondent(s) will be entitled to support throughout this process from their Companion.

### **Tribunal Process**

1. VWA will convene a Tribunal / Disciplinary Hearing within a timely manner but not within ten days from the date the formal notification is sent.
2. The CEO will inform the respondent(s) in writing that a Tribunal hearing will take place. The notice will outline:
  - a. that the person has a right to appear at the Tribunal hearing to defend the complaint/allegations;
  - b. the details of the complaint and of all allegations, as well as the provision or clause of any policy, rule or regulation that has allegedly been breached;
  - c. the date, time and venue of the Tribunal hearing;
  - d. that verbal and/or written submissions can be presented at the Tribunal hearing;

- e. that witnesses may attend the Tribunal hearing to support the position of the respondent/s;
  - f. an outline of any possible sanctions that may be imposed if the complaint is found to be true;
  - g. that the respondent may be assisted by a Companion at a Tribunal hearing. For example, where the respondent is a minor, they should have a parent or guardian present. However a person cannot be a Companion if they have been admitted to the practice as a lawyer or worked as a trainee lawyer; and
  - h. that a copy of any investigation report findings will be provided to the respondent(s).
3. The CEO will notify the complainant in writing that a Tribunal hearing will take place. The notice will outline:
    - a. that the person has a right to appear at the Tribunal hearing to support their complaint;
    - b. the details of the complaint, including any relevant rules or regulations the respondent is accused of breaching;
    - c. the date, time and venue of the Tribunal hearing;
    - d. that verbal and/or written submissions can be presented at the Tribunal hearing;
    - e. that witnesses may attend the Tribunal hearing to support the complainant's position;
    - f. that the complainant may be assisted by a Companion at a Tribunal hearing. For example, where the complainant is a minor, they should have a parent or guardian present. However, a person cannot be a Companion if they have been admitted to practice as a lawyer or worked as a trainee lawyer;
    - g. a copy of the investigation report findings will be provided to the complainant;
    - h. If the complainant believes the details of the complaint are incorrect or insufficient, they should inform the CEO as soon as possible so that the respondent(s) and members of the Tribunal panel can be properly informed of the complaint.
  4. The panel will comprise of the VWA CEO, a Board representative and an independent representative from an external body / organisation (for example Department of Local Government, Sport and Cultural Industries).
  5. The panel members will be provided with a copy of all the relevant correspondence, reports or information received and sent by the CEO relating to the complaint/allegations.
  6. The respondent and their Companion must take all reasonable steps to attend. If the respondent provides notice that they are unable to attend the scheduled date and time an alternative must be agreed. If the respondent is unable to attend or fails to attend the rescheduled hearing, VWA may make a decision in the respondent's absence on the basis of the evidence available.
  7. At the hearing, the appointed Chairperson will explain the role of all those attending and the allegation(s) against the respondent, asking the respondent if they understand the complaint and if they agree or disagree with the complaint.
    - o If the respondent agrees with the complaint, they will be asked to provide any evidence or witnesses that should be considered by the Tribunal when determining any sanctions.
    - o If the respondent disagrees with the complaint, the complainant will be asked to describe the circumstances that lead to the complaint being made.
      - Reference may be made to brief notes.

- The complainant may call witnesses.
  - The respondent may question the complainant and any witnesses.
  - The respondent will then be asked to respond to the complaint.
  - Reference may be made to brief notes.
  - The respondent may call witnesses.
  - The complainant may ask questions of the respondent and any witnesses.
8. The complainant and respondent(s) may be present when evidence is presented to the Tribunal hearing. Witnesses may be asked to wait outside the hearing until they are required.
    - If there is an intention to call witnesses by either party, advanced written notice of the intent to do so. Any written statements of case, witness statements or other documentary evidence should be exchanged at least 10 days in advance of the hearing.
    - If the Tribunal panel considers that at any time during the hearing there is any unreasonable or intimidatory behaviour from anyone, the Tribunal chairperson may deny further involvement of that person in the hearing.
  9. The Tribunal may:
    - consider any evidence, and in any form, that it deems relevant;
    - ask questions of any person giving evidence;
    - limit the number of witnesses (including limiting witnesses to those persons who only provide new evidence);
    - require (to the extent it has power to do so) the attendance of any witness it deems relevant; and act in an inquisitorial manner in order to establish the truth of the issue/complaint before it.
  10. The main points of the discussion will be summarised and the respondent and complainant will be asked if they have anything further to say.
  11. After all the evidence has been presented, the Tribunal will make its decision in private. The Tribunal must decide whether the complaint has, on the balance of probabilities, been substantiated. The Panel must decide on what level of disciplinary action is justified and proportionate, if any, in accordance with the VWA Constitution and Member Disciplinary Policy.
  12. All Tribunal decisions will be by majority vote.
  13. The Tribunal chairperson may announce the decision of the Tribunal at the conclusion of the hearing. Alternatively, they may reserve the decision of the Tribunal at the conclusion of the hearing and deliver the decision at a later time.
  14. The respondent(s) will have the opportunity to make submissions to the Tribunal in relation to any sanctions that may be imposed.
  15. Within 48 hours of the Tribunal delivering its decision, the CEO will notify the respondent in writing citing:
    - a. the outcome of the hearing;
    - b. reasons for the sanction;
    - c. any mitigating / aggravating factors; and
    - d. the process and grounds for an appeal, if allowed.

The Tribunal does not need to provide written reasons for its decision.

## **Opportunity to Appeal**

A Complainant or Respondent may lodge an appeal in relation to the decision / outcome of the complaint on one or more of the following grounds:

- that a denial of procedural fairness has occurred;
  - that the sanction imposed is unjust and/or unreasonable;
  - that the decision was not supported by the information/evidence provided.
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1. The Complainant / Respondent should inform the CEO of the grounds for the appeal in writing within 10 working days of receiving written confirmation of the outcome of the complaint. An appeal fee of \$500.00 shall be included with the letter of intention to appeal. If the letter of appeal is not received by the CEO within this time, the right of appeal will lapse. If the letter of appeal is received, but the appeal fee is not received within this time, the right to appeal will also lapse.
  2. The letter of appeal and the notice of the outcome of the complaint will be forwarded to the VWA Board to review and to decide whether there are sufficient grounds for the appeal to proceed. The VWA Board may invite any witnesses to the meeting that they believe are required to make an informed decision.
  3. If the Complainant / Respondent has not shown sufficient grounds for an appeal then the appeal will be rejected. The appellant will be notified in writing, including the reasons for the decision. The appeal fee will be forfeited.
  4. If the appeal is accepted, an Appeal Tribunal with new panel members will be convened to rehear the complaint, and the appeal fee will be refunded. The Tribunal hearing procedure shall be followed for the Appeal Tribunal. The decision of the Appeal Tribunal will be final and binding.

## **Confidentiality and Record Management**

- Members should only discuss disciplinary matters with the VWA representatives involved in the process and their Companion. Breaching confidentiality may result in further disciplinary action being taken.
- The outcome of a disciplinary hearing will remain confidential to the parties involved. Disclosure may be made in accordance with Volleyball WA's legal, contractual or regulatory obligations.
- Should an investigation lead to a criminal investigation, all material obtained in the course of an investigation should be considered relevant and be made available to the police and, where applicable, to the member.
- VWA will not make an audio recording of any investigations or meetings. Members are not permitted to record disciplinary interviews, meetings or hearings without prior consent.
- VWA requires 'meeting notes' to be taken at all meetings to record decisions and outcomes. All interviews / hearings must have a written record, signed by the interviewer / CEO and the subject of the interview. The interview record must only contain first party evidence.
- The member will be sent a copy of the interview or meeting notes produced, which will constitute VWA's record of proceedings.
- Outcomes of any disciplinary sanctions will be kept on the member's file for:

- Written warning – 6 months
- Final written warning – 12 months
- Suspension and expulsion – in accordance with the VWA Constitution