

### Attachment C5

### Tribunal Process

A Tribunal may be established from time to time to hear any appeal or disciplinary matter referred to it. Such a Tribunal hearing shall operate in accordance with these procedures.

#### Step 1 – Establishment of Tribunal

- A Tribunal panel will be established, according to the rules set out in the BNSW Constitution, Regulations and this policy. The number of Tribunal panel members required to be present throughout the hearing will be three (3).
- The Tribunal members will be provided with a copy of all the relevant correspondence, reports or information received and sent by the BNSW CEO relating to the complaint/allegations/appeal.
- The Tribunal hearing will be held as soon as practicable. However, adequate time must be provided for the respondent(s) to prepare for the hearing.
- The Tribunal panel will not include any person who has any actual or perceived conflict of interest or bias regarding the complaint/allegations/appeal.

#### Step 2 – Notification

- The BNSW CEO will notify the respondent(s) in writing that a Tribunal hearing will take place. The notice will outline;
  - that the person has a right to appear at the Tribunal hearing to defend the complaint/allegations.
  - the details of the complaint and of all allegations, as well as the clause of any policy or rule that has allegedly been breached
  - the date, time and venue of the Tribunal hearing
  - that either verbal or written submissions can be presented at the Tribunal hearing
  - that witnesses may attend the Tribunal hearing to support the position of the respondent/s (statutory declarations of witnesses not available to attend and from character witnesses may also be provided to the Tribunal hearing)
  - an outline of any possible penalties that may be imposed if the complaint is found to be true
  - that legal representation will not be allowed. If the respondent is a minor, he or she should have a parent or guardian present.
- A copy of any information/documents that have been given to the Tribunal panel (e.g. investigation report findings) will be provided to the respondent(s).
- The respondent(s) will be allowed to participate in all BNSW activities and events, pending the decision of the Tribunal, including any available appeal process, unless the BNSW Board believes it is necessary to exclude the respondent/s from all or some activities and events because of the nature of the complaint.
- The BNSW CEO will notify the complainant in writing that a Tribunal hearing will take place. The notice will outline:
  - that the person has a right to appear at the Tribunal hearing to support their complaint
  - the details of the complaint, including any relevant rules or regulations the respondent is accused of breaching
  - the date, time and venue of the Tribunal hearing
  - that either verbal or written submissions can be presented at the Tribunal hearing
  - that witnesses may attend the Tribunal hearing to support the complainant's position (statutory declarations of witnesses not available to attend may also be provided to the Tribunal hearing)
  - that legal representation will not be allowed. If the complainant is a minor, they should have a parent or guardian present.
- A copy of any information / documents given to the Tribunal (e.g. investigation report findings) will be provided to the complainant.
- If the complainant believes the details of the complaint are incorrect or insufficient, he or she should inform the BNSW CEO as soon as possible so that the respondent(s) and members of the Tribunal panel can be properly informed of the complaint.
- If possible, the Tribunal panel should include at least one person with knowledge or experience of the relevant laws/rules (e.g. anti-discrimination).

#### Step 3 – Tribunal Procedure

- The following people will be allowed to attend the Tribunal hearing:
  - Tribunal panel members
  - the respondent(s)
  - the complainant

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## Member Protection Policy

- any witnesses called by the respondent(s)
- any witnesses called by the complainant
- any parent/guardian or support person required to support the respondent or the complainant.
- If the respondent(s) is not present at the set hearing time and the Tribunal chairperson considers that no valid reason has been presented for this absence, the Tribunal hearing will continue subject to the chairperson being satisfied that all Tribunal notification requirements have been met.
- If the Tribunal chairperson considers that there is a valid reason for the non-attendance of the respondent(s), or the chairperson does not believe the Tribunal notification requirements have been met, then the Tribunal hearing will be rescheduled to a later date.
- The Tribunal chairperson will inform the BNSW CEO of the need to reschedule the hearing and the BNSW CEO will arrange for the Tribunal to be reconvened.
- The Tribunal chairperson will read out the complaint, ask each respondent if he or she understands the complaint and if he or she agrees or disagrees with the complaint.
- If the respondent agrees with the complaint, he or she will be asked to provide any evidence or witnesses that should be considered by the Tribunal when determining any disciplinary measures or penalties.
- 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.
- 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.
- The Tribunal may:
  - consider any evidence, and in any form, that it deems relevant
  - question any person giving evidence
  - limit the number of witnesses presented to those who provide new evidence
  - require (to the extent it has power to do so) the attendance of any witness it deems relevant
  - act in an inquisitorial manner in order to establish the truth of the issue/complaint before it.
- Video evidence, if available, may be presented. Arrangements must be made entirely by the person(s) wishing to offer this type of evidence.
- 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.
- After all the evidence has been presented, the Tribunal will make its decision in private. It must decide whether the complaint has, on the balance of probabilities, been substantiated. As the seriousness of the allegation increases, so too must the level of satisfaction of the Tribunal that the complaint has been substantiated. The respondent(s) have the opportunity to address the Tribunal on disciplinary measures which may be imposed. Any disciplinary measures imposed must be reasonable in the circumstances and in accordance with Attachment C6.
- All Tribunal decisions will be by majority vote.
- The Tribunal chairperson will announce the decision in the presence of all those involved in the hearing and will declare the hearing closed. Alternatively, he or she may advise those present that the decision is reserved and will be handed down in written form at a later time.
- Within 48 hours, the Tribunal chairperson will:
  - forward a notice of the Tribunal's decision to the BNSW CEO, including any disciplinary measures imposed.
  - forward a letter reconfirming the Tribunal's decision to the respondent(s), including any disciplinary measures imposed. The letter should also outline the process and grounds for an appeal, if allowed. If the matter is especially complex or important, the Tribunal chairperson may inform the parties in writing within 48 hours that the decision will be delayed for a further 48 hours.
- The Tribunal does not need to provide written reasons for its decision.

### Step 4 - Appeals Process

- The appeals process is set out in Attachment C7.