

Cricket Victoria Tribunal Guide

August 2024



Tribunal Guide

1. INTRODUCTION

1.1 Background

- (a) This Guide is a resource for Tribunals convened to assist in resolving complaints, reports and disciplinary matters in cricket in Victoria.
- (b) This Guide should be read in conjunction with:
 - (i) any relevant Cricket Victoria policies (e.g. Member Protection Policy, Complaints and Resolution Policy, Australian Cricket's Policy for Safeguarding Children and Young People and Code of Behaviour for Looking after our Kids);
 - (ii) any relevant rules of competition for cricket in Victoria; and/or
 - (iii) the Constitution or By-Laws of any relevant Victorian Cricket Organisation.
- (c) This Guide has been prepared in accordance with, and as guidance for Tribunals convened under the Cricket Victoria Complaints and Resolution Policy. This Guide may, however, also be a useful reference for Tribunals convened under other by-laws of any relevant Victorian Cricket Organisation, subject to appropriate amendments to reflect applicable by-laws and policies.
- (d) Capitalised terms in this Guide are defined in accordance with the definitions contained in clause 7 of this Guide.

2. VICTORIAN CRICKET ORGANISATION TRIBUNALS

2.1 Purpose and responsibilities

- (a) The purpose of Tribunals is to:
 - (i) consider all information relating to alleged Breaches;
 - (ii) where required, undertake Hearings to determine whether alleged Breaches constitute a breach of any By-Laws or Relevant Policies; and
 - (iii) as appropriate, impose Sanctions where an alleged Breach is found to have constituted a breach of any By-Laws or Relevant Policies.
- (b) Tribunals must ensure that parties before a Hearing receive a fair hearing and are afforded 'Procedural Fairness', which means a person's right to:
 - (i) a decision by an unbiased adjudicator (the hearing rule) (e.g., the adjudicator(s) has/have no applicable conflict of interest); and
 - (ii) adequate notice of the case against them, and a right to respond (the bias rule) (e.g. the Respondent receives details of the allegations made

against them and copies of any evidence to be relied on to attempt to prove those allegations).

- (c) In line with Victorian legislation and the Victorian Child Safe Standards, Tribunals must take a child-focused approach for matters involving Children or Young People that is consistent with the principles set out in the Child-Focused Approach Guide attached as an Appendix to this Guide.

3. TRIBUNAL HEARING

3.1 Convening Tribunal Hearings

- (a) If it is determined by the Complaints Manager who receives a Complaint that referral to a Hearing is appropriate, then the Complaints Manager will:
 - (i) determine the composition of the Tribunal, in accordance with this clause 3 and the Complaints and Resolution Policy; and
 - (ii) determine the date, time and place for the Hearing.
- (b) The Hearing should be convened as soon as reasonably practicable after a referral under clause 3.1(a), and the Hearing Members shall endeavour to convene no later than two weeks after notification by the Complaints Manager.
- (c) The Complaints Manager will notify all relevant parties of the date, time and place for the Hearing, including issuing the Respondent with a Notice of Hearing in accordance with the Complaints and Resolution Policy.

3.2 Composition of Tribunal Hearings

- (a) Each Tribunal should comprise such individuals with the necessary experience and skills required to carry out the responsibilities of the Tribunal outlined in clause 2.1 of this Guide, as appointed by the Complaints Manager (in consultation with another Victorian Cricket Organisation, as necessary).
- (b) To the extent possible, the Tribunal Members selected for any particular Hearing should not:
 - (i) have an actual or perceived conflict of interest in relation to the alleged Breach that might reasonably call into question the impartiality of the Tribunal or the Hearing; and
 - (ii) have any close personal connection to the Respondent(s), Complainant(s) or the matters being considered by the Tribunal.
- (c) Should a Tribunal Member become unable to sit on a Hearing following the convening of the Hearing for whatever reason, the Complaints Manager will appoint a replacement Tribunal Member, having regard to the requirements of this clause 3.2.
- (d) Should a party to the Complaint challenge the impartiality of any one or more Tribunal Member, the challenge may be determined by the Chair sitting alone,

unless that challenge relates to the Chair, in which case it will be determined by:

- (i) the Complaints Manager; or
 - (ii) if the Complaints Manager is unavailable, unable to act or the Chair in that instance, the other Tribunal Members.
- (e) There shall be no right of appeal from a decision made under clause 3.2(d).

3.3 Responsibilities of Chair

Without limiting any other duties of the Chair set out under this Guide, the person appointed as Chair should carry out the following responsibilities:

- (a) to chair the Hearing;
- (b) to ensure accurate records are kept of all of the Hearing's proceedings and decisions, including at a minimum:
 - (i) particulars of the Hearing, including date, time and location;
 - (ii) the names of each Tribunal Member, Respondent, Complaints Manager, witnesses called, and any other parties permitted to attend by the Tribunal; and
 - (iii) the decision of the Tribunal, including whether given to the parties orally, in writing or a combination of both, and the date(s) of communication; and
- (c) to communicate to all parties of a Hearing the results of such Hearing and provide a copy of the record of result to the Complaints Manager within two business days of the Hearing.

3.4 Attendance at Tribunal Hearing

- (a) Subject to the direction(s) of the Chair, the following persons shall be entitled to attend a Hearing:
 - (i) the Respondent;
 - (ii) the Complainant;
 - (iii) the Complaints Manager;
 - (iv) witnesses called to give evidence by a Respondent (at the direction of the Chair);
 - (v) witnesses called to give evidence by a Complainant (at the direction of the Chair); and
 - (vi) any person that the Chair in their absolute discretion believes will assist the Tribunal and invites to attend the Hearing for that purpose.

- (b) Legal Practitioners are not permitted to appear before the Hearing on behalf of any party, except where a Legal Practitioner is a Complainant, Respondent or witness in their personal capacity, or is otherwise the parent or guardian of a Child or Young Person involved in the Hearing.
- (c) Each party to the Hearing shall bear their own costs.

3.5 Non-attendance or failure to cooperate

- (a) If any Respondent fails to attend the Hearing without reasonable cause, the Hearing may proceed, and a determination may be made by the Tribunal in the absence of the Respondent.
- (b) Subject to clause 3.5(c), the Hearing Members may draw an inference adverse to the Respondent based on a Respondent's failure or refusal, after a request has been made in a reasonable time in advance, to answer any relevant question, provide relevant documentation, and/or participate in the Hearing.
- (c) No adverse inference (such as those in clause 3.5(b)) should be drawn where the Respondent does not answer a question or provide information on the basis that to do so would be a breach of any applicable law.

3.6 Procedure of Tribunal Hearings

- (a) Subject to taking a child-focused approach to Hearings as appropriate, the Tribunal may conduct the Hearing in such manner as it sees fit and may in its absolute discretion:
 - (i) consider any evidence, and in any form that it deems relevant;
 - (ii) question any person giving evidence;
 - (iii) limit the number of witnesses presented to those who provide any new evidence; and
 - (iv) convene in person or virtually, including by videoconference or teleconference facilities.
- (b) Without limiting the Tribunal's power to regulate its own procedure as it sees fit, the Hearing shall ordinarily proceed in accordance with the following steps:
 - (i) the Chair should bring all parties together, outline the powers of the Tribunal and introduce the format to be followed;
 - (ii) the Tribunal should register the names of persons in attendance, absentees and produce a written report of the Hearing;
 - (iii) the Tribunal at its discretion may proceed with, postpone or defer a hearing. It may proceed in the absence of the Complainant(s) or Respondent(s) if considered appropriate by the Chair;

- (iv) no person shall be represented by a Legal Practitioner at any hearing, without the consent of the Chair. An advocate may act on behalf of the reported player to determine the facts from the player or players before the Tribunal is assembled and to advise the best way to conduct or present the case. The advocate may cross-examine the informant, reported person or any witness;
- (v) the Chair shall read the Complaint. The Respondent will then be asked if the alleged Breach is admitted or denied;
- (vi) Complaints should be read at the Hearing by the Chair and the Complainant(s) be given the opportunity to elaborate on their statements;
- (vii) the Respondent(s) may then be given the opportunity to respond;
- (viii) witnesses may be called by Complainant(s) and Respondent(s) but should give evidence only. Witnesses should have the right to be present only during the giving of their evidence and any questioning arising from same;
- (ix) if during the consideration of the evidence the Tribunal desires to recall any witness, such witness should be questioned in the presence of both the Complainant and the Respondent;
- (x) through the Chair, parties may question, but not debate evidence;
- (xi) Respondents and Complainants should be given the opportunity to sum up evidence before the Tribunal retires for a decision;
- (xii) At the conclusion of the Hearing after handing down the decision of the Tribunal, the Chair should outline the rights of parties to the appeal process (if any); and
- (xiii) the Chair should forward to the Complaints Manager within 48 hours where practicable, a written report of the Hearing including the Tribunal Members and others present, a summary of findings and sanctions imposed (if any).

3.7 Relationship with criminal matters

- (a) If, during a Hearing, it becomes known that a criminal charge has been brought against a Respondent (as opposed to the Respondent merely being the subject of a police investigation) arising out of the actions the subject of a Complaint, the Tribunal or the Chair may at the request of the Respondent, rule that further action be deferred until completion of the criminal matter.
- (b) In making a determination under clause 3.7(a), the relevant person(s) should have regard to the need to ensure the ongoing safety of members and other persons involved in cricket generally.

4. SANCTIONS

- (a) In accordance with clause 24 of the Complaints and Resolution Policy, the Tribunal should have the power to impose one or more Sanctions on any person and/or Victorian Cricket Organisation found to have committed a Breach of one or more of the Relevant Policies. The Sanction imposed will be determined by the Tribunal in its sole discretion, having regard to the seriousness of the conduct in question.
- (b) A Sanction handed down by the Tribunal:
 - (i) should be notified to the Complainant and Respondent within seven days' of the decision;
 - (ii) should commence from the date of the decision; and
 - (iii) should be recorded in Play HQ and Umpires HQ (as applicable) and notified to other relevant Victorian Cricket Organisations where that is necessary to enforce the Sanction imposed.
- (c) Where the Tribunal finds that more than one Breach has been proven, it should hand down a single Sanction in respect of the totality of all Breaches that have been found to be proven.
- (d) The Tribunal may take into account any Sanctions previously ordered against the Respondent when determining the Sanction to be handed down in each case.

5. APPEALS

- (a) A decision of a Tribunal (**Disciplinary Decision**) may be appealed by a party on the grounds set out in, and in accordance with the provisions of, the Complaints and Resolution Policy or the By-laws or Rules under which the alleged Breach is being resolved.
- (b) A party may appeal a Disciplinary Decision by:
 - (i) giving written notice to the Complaints Manager within 72 Hours of notification of the Disciplinary Decision; and
 - (ii) paying any fee prescribed by the relevant Policies and/or the Complaints and Resolution Policy within 7 days of lodging the notification of intention to appeal.
- (c) The tribunal hearing the appeal (**Appeal Body**) may be convened in accordance with the Complaints and Resolution Policy. To the extent possible, no member who has sat on the original Hearing or who has a perceived conflict of interest should sit on the Appeal Body.
- (d) The Appeal Body must:

- (i) determine whether the appeal raises a valid ground of appeal under the Complaints and Resolution Policy (or other relevant policy or By-law), failing which the appeal is automatically dismissed; or
 - (ii) where the appeal raises a valid ground of appeal under the Complaints and Resolution Policy or other relevant policy or By-law, determine a place, time and date for the hearing of the appeal and as soon as possible thereafter notify all parties to the appeal in writing of such details.
- (e) The suggested procedure for the conduct of an appeal hearing should follow that of a Hearing in the first instance.
 - (f) The Appeal Body's arbitration of the appeal must determine, on the balance of probabilities, whether the ground(s) of appeal (as applicable) are proven and should not rehear the matter or the facts of the Complaint.
 - (g) Upon hearing the appeal, the Appeal Body may do any one or more of the following:
 - (i) dismiss the appeal;
 - (ii) uphold the appeal;
 - (iii) impose a Sanction in accordance with clause 24 of the Complaints and Resolution Policy or any other relevant Policy or By-law; or
 - (iv) reduce, increase or otherwise vary any Sanction imposed by the initial Tribunal.
 - (h) The decision of the Appeal Body is final and binding on the parties in relation to the matter and cannot be further appealed.

6. ENFORCEMENT OF SANCTIONS

6.1 Recording Sanctions

- (a) The Tribunal shall keep records of all Hearings, including at a minimum the information set out in clause 3.3(b).
- (b) Subject to any Appeal, the terms of any Sanction handed down by a Tribunal will be communicated by the Complaints Manager in accordance with the Complaints and Resolution Policy or other relevant By-laws or rules.

7. DEFINITIONS

In this Guide, the following terms have the corresponding meaning:

Australian Cricket's Child Safe Policies means Australian Cricket's documents of the following name:

- (a) Policy for Safeguarding Children and Young People;

- (b) Code of Behaviour for Looking after our Kids; and
 - (c) the Commitment Statement to Safeguarding Children and Young People,
- each as amended from time to time.

Breach or Breaches mean conduct prohibited in one or more of the Relevant Policies, including the conduct prohibited under clause 6 of the Complaints and Resolution Policy.

By-Laws mean and include all rules, by-laws, policies and procedures of the Victorian Cricket Organisation facilitating the resolution of the alleged Breach.

Chair means the chair of a particular Hearing, as the case may be, in accordance with this Guide.

Child-focused Approach Guide means the guide attached as Annexure A.

Complaints and Resolution Policy means the Cricket Victoria Complaints and Resolution Policy, as amended or replaced from time to time.

Complainant means a person or organisation who or which is directly affected by the alleged Breach and makes a Complaint about a Respondent in accordance with the Complaints and Resolution Policy.

Complaint means a complaint made under clause 15 of the Complaints and Resolution Policy.

Complaints Manager means the person appointed by the Victorian Cricket Organisation to manage the complaints and resolution process under the Complaints and Resolution Policy.

Hearing means a first-instance hearing formed to determine an alleged Breach in accordance with the Complaints and Resolution Policy and this Guide.

Legal Practitioner includes both a person holding a current practising certificate as a lawyer or barrister in any Australian jurisdiction, or a person who has held such a certificate at any time within the five years immediately prior to their date of appointment to the Tribunal.

Relevant Policies mean the following by-laws of Cricket Victoria and policies of Cricket Australia:

- (a) Cricket Victoria Member Protection Policy;
- (b) Australian Cricket's Child Safe Policies; and
- (c) Cricket Victoria Complaints and Resolution Policy.

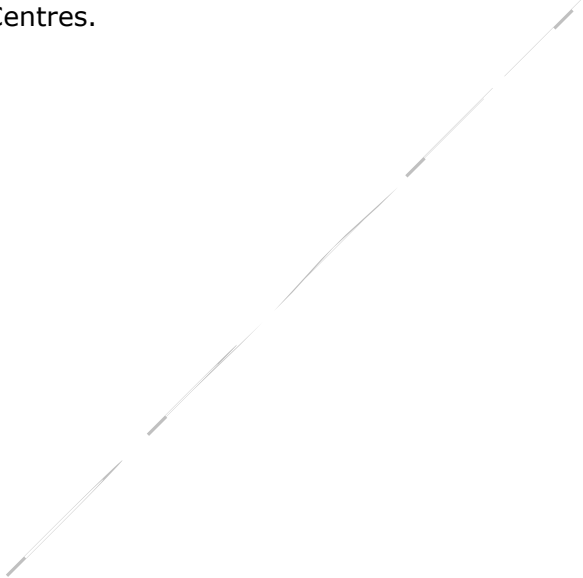
Respondent means the person(s) about whom a Complaint has been made and who was bound by a Relevant Policy at the time the alleged Breach occurred.

Sanction or **Sanctions** means the disciplinary action(s) taken against a Respondent for breaching a Relevant Policy.

Tribunal means the hearing tribunal established to hear and determine alleged Breaches under the Complaints and Resolution Policy.

Tribunal Member means an individual person sitting on a Hearing.

Victorian Cricket Organisation means all of Cricket Victoria, Premier Clubs, Community Cricket Peak Bodies, Regions and Affiliated Associations and Clubs and Indoor Cricket Centres.



ANNEXURE A – A CHILD-FOCUSED APPROACH TO COMPLAINT PROCESSES

Background

Cricket Victoria (**CV**) considers the safety and wellbeing of children paramount in everything that it does. Our new Complaints and Resolution Policy has been developed to provide flexibility of resolution pathways, as well as a strong emphasis on being child-focused in any complaint, report or dispute that may arise and involve children and young people in our cricket community.

This resource outlines the key considerations for all Victorian cricket organisations to take into account and action when managing complaints, reports and disputes involving children and young people under the age of 18 years. In using this guide, please consider that every child or young person is different, with differing needs, preferences, backgrounds and vulnerabilities. As such, implementing a child-focused approach is not a “one size fits all” exercise. Rather, it is necessary to tailor your approach – in consultation with the child or young person’s parent(s) and/or guardian(s), as appropriate - to account for a range of possibilities that may benefit and safeguard the wellbeing of the child or young person in question.

Key Considerations for a Child Focused Approach to Complaint Processes:

In conducting any complaint process involving children and young people, please consider and take the following steps, which are not exclusive and should be adapted for individual circumstances:

1. Plan for children and young people’s involvement in matters based on the circumstances of the child and young person and the matter at hand.
2. Appoint one person to liaise with the child or young person and/or their parent/guardian throughout the matter.
3. Inform children and young people about the process being undertaken and their rights from the outset.
4. Be honest and open about the things that children and young people can control and those they can’t control and/or may be able to influence. This is likely to include such things as who will be involved, timelines and dates, why the process is needed and their role in it as well as others, who will be present, protecting their confidentiality and privacy, etc.
5. As appropriate, consult with the child or young person’s parent/guardian throughout the process.

6. Ensure that support from their parent/guardian and/or advocate (depending on the circumstances) is available for a child or young person and that inquiries are made as to any other support (ie, counselling via their GP) that may be necessary for the child or young person participating in any process.
7. Assume that all children and young people are capable of being involved in the complaints process. In the presence of their parent/guardian(s) and/or advocate (as appropriate), ask the child for their input, including about the type of support(s) they need, how they prefer to provide input (eg, written, verbal, in-person or online, via video, etc)
8. Ensure that processes are trauma-informed. That is, the process recognises the potential distress and re-traumatisation that sharing their personal experiences may have and accommodates reasonable adjustments in any process to meet children and young people's needs. Adjustments may include (but are not limited to) taking breaks in interviews or witness accounts, clearing the room of other people in a tribunal setting to make the setting less confronting, not requiring a child or young person to front a tribunal at all and gathering evidence via other means, etc.
9. If the child feels able to do so, encourage the child or young person to provide an account of the circumstances of the matter in their own words.
10. Listen to what children and young people say without judgment and take their views seriously.
11. Don't dismiss or give less value to children's or young people's views because they are not adults.
12. Do not value or prioritise an adult's opinion over that of a child or young person where they may differ.
13. Inform children and young people of the outcome(s) of a matter and/or action taken and the reasons for it and check in with them as to whether they have any questions.
14. Ensure that children and young people know how the decision or outcome(s) can be reviewed, if applicable.
15. Ensure that records are kept of all complaints and/or conversations with children and young people.