

# **EQUESTRIAN AUSTRALIA**

## **DISCIPLINARY TRIBUNAL**

### **PROCEDURE AND PROTOCOL**

#### **OBJECTS:**

1. To ensure that allegations of breaches of the rules and regulations governing competitions, of conduct adversely affecting the welfare of animals and other conduct of members are properly investigated and fairly determined.
2. To ensure that all persons appearing before the Tribunal facing allegations are afforded respect, reasonable assistance, procedural fairness and natural justice.
3. To ensure that EA is not brought into disrespect.

#### **THE CHAIRPERSON: AN OVERVIEW OF THE ROLE**

The Chairperson's primary role is to ensure that the hearing is conducted in an orderly and procedurally fair manner to the person facing allegations and to Equestrian Australia (EA). The Chairperson also ensures that the hearing is conducted pursuant to the DISCIPLINARY BY-LAWS.

Prior to the hearing commencing the Chairperson will bring to the attention of each of the members of the Tribunal the provisions of clause 8 of the By-Laws and satisfy himself/herself that each member can sit on the hearing. He/she will satisfy himself/herself by requiring each member to state that they are not disqualified from sitting on the Tribunal under the said clauses or for any other appropriate reason.

The Chairperson informs the Tribunal about the standard of proof required to satisfy a finding of "offence proved". That standard is "the balance of probabilities". The Chairperson will also tell the Tribunal that at the conclusion of the hearing the Tribunal may not be able to reach a conclusion as to probabilities. This can arise where there is a disagreement as to an important fact and where it is impossible to discern where the truth lies.

The Chairperson must satisfy himself/herself that no member of the Tribunal has received any document, which outlines any of the evidence to be relied upon by EA in the hearing. The Tribunal should be learning of the detail of the alleged offence for the first time during the hearing. This eliminates any suggestion of prejudging the matter.

#### **PROCEDURE AT THE HEARING:**

1. The Chairperson brings the hearing to order and introduces the members of the Tribunal.
2. The Chairperson asks the representative of EA to identify him/herself and any other person in the room.
3. The Chairperson makes sure that there are no witnesses for EA or the person before the Tribunal present in the room until after such persons have given their evidence. Within reason there should be no opposition to any member of EA being present at the hearing provided they conduct themselves in an orderly manner. It is the role of the Chairperson to control the conduct of persons at the hearing regardless of whether they be directly involved or spectators.
4. The Chairperson informs those present and each witness as they present themselves to the committee that the proceedings are to be recorded.

5. If the “person before the committee” was not present when the proceedings first commenced then the Chairperson ensures that when the person is present they are formerly introduced to the Tribunal and the representative of EA conducting the proceedings on behalf of EA.
6. The Chairperson then confirms that the person before the committee has received all the relevant documents. Those documents must include:
  - (a) A letter from the EA CEO or a Branch Manager to “the person” pursuant to clause 9 of the Disciplinary By-laws specifying the date of the alleged breach, specifying the rule or rules alleged to be breached;
  - (b) The penalties which may apply if such beach is found to have occurred;
  - (c) Advice that the person may call witnesses or produce statements by witnesses, however, they cannot be legally represented.
  - (d) Advice that in the event of the person being under the age of 18 years at the time of the hearing they may be accompanied by a parent or guardian.
  - (e) Advice that in the event of failure to appear at the hearing or failure to submit an explanation then the Tribunal will proceed to deal with the matter in their absence.
7. The Chairperson ensures that the person understands how the proceedings will be conducted (see statement attached) and understands the rights the person has to be heard under clauses 9 to 14 of the By-Laws.
8. Having ascertained that the person has received all the relevant material from EA the Chairperson asks the EA representative to read out the offence alleged and to tender the complaint document.
9. The Chairperson then asks the person whether they admit or deny the offence.
10. If the person admits the offence then the EA representative reads a set of facts or tenders a statement of facts which the person has been previously shown and has indicated an agreement to its’ accuracy.
11. If the person pleads not guilty then the Chairperson asks the EA representative to call his first witness.
12. The witnesses must be asked to affirm that their evidence will be true and correct.
13. The EA representative then elicits the evidence from the witness orally and tenders any certificates or other relevant documents that can be identified by the witness. It is important that the document tendered is not inappropriate. That is, that it does not contain hearsay. Most documents tendered will be public documents or records.
14. The Chairperson and the EA representative should ensure that the evidence given by the witnesses is material that was directly seen or directly heard by the witness. (i.e. not hearsay unless it is not an issue or there are exceptional circumstances)
15. The Chairperson advises the person that he or she is entitled to ask any questions at the conclusion of the questions asked by the EA Representative. The Chairperson ensures that the person has had every opportunity to ask any question that is relevant and fair. The Chairperson should be prepared to assist the person frame a question if assistance is obviously required. The Chairperson has to balance time constraints and fairness in rendering any assistance.
16. The Chairperson should ensure that the Tribunal does not question a witness until the person has exhausted the questioning process first.
17. The Chairperson ensures that the Tribunal only asks questions to clarify areas of the evidence, which have not been understood by them.
18. This process is then repeated until all of the EA witnesses have completed their evidence.

19. The Chairperson then asks the Person if he or she wishes to give evidence and/or to call witnesses.
20. The person and his witnesses then give their evidence. The person may give evidence orally and /or by document. His witnesses may give their evidence orally or by document. The person should be told however, that unless the witnesses give their evidence after having taken an affirmation or unless the statements to be tendered are affirmed, the Tribunal may not give them the same weight as the affirmed evidence of the EA witnesses.
21. If the witnesses appear in person then the person can ask them questions. The witnesses should be asked if they are prepared to take an affirmation prior to giving evidence. Again the Chairperson may assist in the formulation of questions in order to attend to expedition of the hearing and also fairness. The EA representative may also ask questions of the person's witnesses.
22. The Chairperson allows the Tribunal to ask questions at the conclusion of everyone else. At the conclusion of the Tribunal's questions the person and the EFA representative are asked if there are any further questions they wish to ask arising out of the Tribunal's questions.
23. At the conclusion of all of the evidence the EA representative is asked to sum up and make submissions about findings which the tribunal should make.
24. At the conclusion of the EA representative's address the person is asked to make submissions about whether the offence should be found to be proved.
25. All persons present are then asked to leave the room so that the Tribunal may deliberate. When the Tribunal is ready the hearing is re-convened and the determination of the Tribunal on the question of whether the offence or offences have been established is given.
26. If the decision is that the person is guilty of the offence the EA representative is asked to address on penalty if they so wish.
27. The party is then asked to address on penalty. The person is asked to particularly address the question of hardship that may arise from any of the penalties which may be imposed.

(continued over)

**STATEMENT TO BE READ TO THE PERSON BEFORE THE EVIDENCE IS  
CALLED BY THE EFA**

I am required to inform you of the manner in which this hearing will be conducted.

I will shortly invite the EA representative to call the evidence to be relied upon by him/her. The witnesses called will deliver their evidence orally having first taken an affirmation to tell the truth. When the EA representative has completed asking witness questions, then I will invite you to ask any questions you may wish to ask of the witness.

When EA has called all of its witnesses and placed before us any relevant documents then you will be asked to call any witnesses you may wish to call and also to place before us any documents you may wish to rely upon.

At the conclusion of each witness' evidence the members of the Tribunal may ask the witnesses questions.

You need to know that if your witnesses do not affirm their statements to be true then the Tribunal may not be able to give such evidence the same weight as affirmed evidence.

At the conclusion of your witnesses' evidence and tendering of any documents you may wish to place before the Tribunal, the EA representative will be asked to sum up and make submissions. Thereafter you will be extended the same invitation to make submissions and sum up your case. You will have the last say.

During the submissions by EA and yourself the members of the Tribunal may ask questions and or explore submissions and arguments.

If at any time you do not understand the procedure or you have any questions please tell us.

Once you have received the decision of the Tribunal you may wish to consider an appeal against the decision. You should know that you only have until 5.00 p.m. Central Standard Time, three days from the date of the decision.