

MEMBER PROTECTION POLICY



ECU Joondalup Lakers Hockey Club

PREFACE

ECU Joondalup Lakers Hockey Club is committed to the health, safety and general well being of all its members and participants. Lakers is dedicated to providing a safe and prosperous environment for members and providers participating in any hockey activities.

As Australians, we greatly value the importance of sport in our culture and our community, and we all have the right to enjoy our sport, at which level we participate. As a sport, we are proud to lead the way in ensuring Safe and Harassment Free Sport for all of our competitors, coaches, officials, administrators, volunteers and supporters.

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PART I – INTRODUCTION

This Part sets out the purpose of this Policy, who it applies to, when it commences, what words mean and who has responsibilities under the Policy.

1. What is the Purpose of this Policy?

1.1 The purpose of this Policy is to provide guidelines for the protection of the health, safety and well being of all HA members and those who participate in the activities of HA, State Associations and Affiliated Associations.

1.2 This Policy sets out the procedures to be followed in dealing with Harassment and other forms of inappropriate behaviour in an effective, appropriate and timely manner. The Policy provides a procedure for informal and formal resolution of complaints, and a procedure for the appeal of such complaints.

2. Who does this Policy Apply to?

2.1 This Policy applies to the following organisations and individuals:

- (a) persons appointed or elected to boards of directors, executives and/or committees (including sub-committees) of HA, State Associations and Affiliated Associations;
- (b) employees of HA, State Associations and Affiliated Associations;
- (c) officials appointed or elected by HA, State Associations and Affiliated Associations in relation to players and/or teams which represent such organisations including team management personnel such as managers and physiotherapists;
- (d) coaches (including assistant coaches) who:
 - (i) are appointed and/or employed by HA, State Associations and Affiliated Associations (whether paid or unpaid); or
 - (ii) have an agreement (whether or not in writing) with HA, State Associations and Affiliated Associations to coach at a facility owned or managed by such organisation;
- (e) umpires and other officials involved in the regulation of the sport appointed by HA, State Associations and Affiliated Associations;
- (f) players who enter any tournament, activity or events (including camps, training sessions, etc) which are held or sanctioned by HA, State Associations and Affiliated Associations;
- (g) Support staff of HA, State Associations and Affiliated Association representative teams;
- (h) State Associations;
- (i) Affiliated Associations;
- (j) any other person or organisation, who or which is, a member of, or affiliated to, HA, State Associations and Affiliated Associations (including life members);
- (k) any other person or organisation (for example, a parent/guardian, spectator or sponsor) who or which agrees, in writing or otherwise (whether on a ticket, entry form, etc) to be bound by this Policy.

3. What is the Status of this Policy?

3.1 This Policy is issued by Hockey Australia Inc under Rule 26 of the HA Constitution.

3.2 Except to the extent outlined in **clause 3.3**, this Policy comes into force on the approval of the Board of Directors of HA.

3.3 The reference to Complaints in Part III shall only include Complaints which arise out of incident(s) occurring on or after 29 May 2004.

3.4 Affiliated Associations shall not be required to comply with **clauses 6.2** (screening) of this Policy until 1 Jan 2005 except where otherwise prescribed by law.

3.5 This Policy may be changed from time to time by resolution of the Board of Directors of HA.

4. What do Words in this Policy Mean?

In this Policy, words appearing with a capital shall have the meaning set out in Attachment A and Attachment A will form part of this Policy.

5. Responsibilities under this Policy

5.1 HA and State Associations must:

- (a) adopt and comply with this Policy;
- (b) recognise and enforce any penalty imposed under this Policy;
- (c) publish, distribute and promote this Policy (and any amendments made to it from time to time) to their members in the manner required by HA and make this Policy available for inspection, or provide a copy;
- (d) make such amendments to their constitution, rules or by-laws in order for this Policy to be enforceable;
- (e) use any forms, contracts and clauses prescribed by HA in order to give effect to this Policy in such documents as contracts, entry forms and player registration forms;

- (f) appoint and train at least one Member Protection Officer and one Mediator or have access to such persons in another sport to fulfill the functions set out in **clauses 12, 13 and 14**, and to publish and display the names and contact details of such persons to their members;
- (g) appoint a Hearings Convenor to fulfill the functions set out in **clause 15** and to publish and display the name of such person to their members; and
- (h) establish a Hearings Tribunal in accordance with **clause 15**, to fulfill the functions set out in **clauses 15 and 16**.

5.2 Affiliated Associations must

- (a) adopt and comply with this Policy;
- (b) recognise and enforce any penalty imposed under this Policy;
- (c) publish, distribute and promote this Policy (and any amendments made to it from time to time) to their members in the manner required by HA and make this Policy available for inspection, or provide a copy;
- (d) make such amendments to their constitution, rules or by-laws in order for this Policy to be enforceable;
- (e) use any forms, contracts and clauses prescribed by HA in order to give effect to this Policy in such documents as contracts, entry forms and player registration forms, as directed by HA.

5.2A Notwithstanding **clause 5.2** above, it is not mandatory for Affiliated Associations to establish procedures for dealing with Complaints and hearings under this By-law. If an Affiliated Association wishes to establish procedures for dealing with Complaints and hearings under this By-law, it must:

- 13** (a) appoint at least one Member Protection Officer and one Mediator to fulfill the functions set out in **clauses 12, and 14**, and to publish and display the names and contact details of such persons to their members;
- (b) appoint a Hearings Convenor to fulfill the functions set out in **clause 15** and to publish and display the name of such person to their members; and
- (c) establish a Hearings Tribunal in accordance with **clause 15**, to fulfill the functions set out in **clauses 15 and 16**.

5.3 All other organisations and persons (for example, administrators, employees, officials, coaches, players, parents) to which this Policy applies, must:

- (a) comply with this Policy;
- (b) comply with the Codes of Behaviour (as applicable).

5.4 The respective Boards of HA, State Associations and Affiliated Associations are responsible for taking all reasonable steps to ensure implementation, compliance and enforcement of this Policy.

PART II – PREVENTATIVE ACTION

This Part sets out the requirement for mandatory screening and declarations for certain roles.

6. What is Screening?

6.1 One of the ways HA, State Associations and Affiliated Associations seek to protect the health, safety and well being of people participating in their activities is to screen people for certain roles.

6.2 For the purposes of this Policy, screening shall mean:

- (a) Checking the Preferred Applicant's referees;
- (b) Interviewing the Preferred Applicant as to their suitability for the proposed role and their suitability for involvement with children under 18 years of age;
- (c) Obtaining a Prohibited Person Declaration; and
- (d) Obtaining a Police Check of Preferred Applicants and Existing Appointees in accordance with **clause 7**.

6.3 Checking the Preferred Applicant's referees includes making verbal or written inquiries of their nominated referees (preferably at least 2) as to the Preferred Applicant's suitability for the proposed role and their suitability for involvement with children under 18 years of age.

6.4 The purpose of a Police Check is to see whether the person has any previous relevant criminal convictions. If the Police Check reveals that the person has committed any criminal offences then the following applies:

- (a) If the offence (whenever it occurred) is one involving a **Serious Sex Offence**, drug offence (including but not limited to possession or trafficking of drugs), assault against a person or an offence which in any way involved persons under 18 years of age, then:
 - (i) in the case of a Preferred Applicant, they must not be appointed to the role;
 - (ii) in the case of an Existing Appointee, steps must be taken to transfer the person to another role which is not set out in **clause 7.1** or if no such alternatives exist, to end the appointment of the person. **Note: legal advice should be sought before the process of termination begins**
- (b) If the offence is one other than those in **clause 6.4(a)**, such as an offence to property or a minor traffic offence, then the Preferred Applicant may be appointed, subject to satisfaction of any other criteria for the role.

7. Who does screening apply to?

7.1 Screening (as set out in **clause 6.2**) is mandatory for HA, State Associations and Affiliated Associations for Preferred Applicants and Existing Appointees in the following types of roles:

- (a) coaches who are appointed or seeking appointment (whether employed, contracted or otherwise) by HA, State Associations and Affiliated Associations for reward;
- (b) volunteer personnel appointed or seeking appointment by HA, State Associations and Affiliated Associations who will or are likely to travel away with teams of players under 18 years of age; and
- (c) persons appointed or seeking appointment by HA, State Associations and Affiliated Associations to a role in which that person is likely to have individual and unsupervised contact with players under 18 years of age.

7.2 Screening is **highly recommended**, but not mandatory, for HA, State Associations and Affiliated Associations for Preferred Applicants and Existing Appointees in the following types of roles:

- (a) volunteer coaches appointed or seeking appointment by HA, State Associations and Affiliated Associations who will or are likely to travel away with teams of players **over** 18 years of age; and
- (b) persons appointed or seeking appointment by HA, State Associations and Affiliated Associations to a role in which that person is likely to have contact with players **under** 18 years of age but where such contact is supervised at all times by another adult.

7.3 All persons to whom this Policy applies must agree to HA, the relevant State Association or the relevant Affiliated Association obtaining a Police Check of them if they apply for or currently hold a role of the type set out in **clause 7.1**. The Police Check must be obtained, in the case of:

- (a) a Preferred Applicant, prior to the appointment;
- (b) an Existing Appointee, by 1 January 2005.

7.4 If a Preferred Applicant or Existing Appointee is not willing to agree to a screening, HA, the relevant State Association or Affiliated Association shall:

- (a) in the case of a Preferred Applicant, not appoint the person to any of the roles;
- (b) in the case of an Existing Appointee, steps must be taken to transfer the person to another role which is not set out in **clause 7.1** or if no such alternatives exist, to end the appointment of the person. **Note: legal advice should be sought before the process of termination begins.**

7.5 All information obtained during the course of screening (including any Police Check) must be kept confidential to the persons or committee within HA, a State Association or Affiliated Association who has been delegated the task of investigating and/or making the appointment for the role. Information collected during screening about a person who is not appointed to the role must be destroyed.

7.6 Screening under this Policy is not a replacement for any similar requirement prescribed by law. If State screening legislation sets an equivalent or higher standard of screening to that set under this Policy, the requirement to screen under this Policy need not be followed as it would be superseded by any similar requirement prescribed by law.

PART III – BREACHES

This Part outlines what constitutes a breach of this Policy.

8. What is Harassment?

8.1 Harassment is any behaviour by a person or organisation to whom this Policy applies which is offensive, abusive, belittling or threatening and which is directed at a person or a group of people because of a particular characteristic of that person or group of people. The behaviour must be unwelcome and the sort of behaviour a reasonable person would recognize as being unwelcome and likely to cause the recipient to feel offended, humiliated or intimidated. Whether or not the behaviour is Harassment is determined from the point of view of the person receiving the Harassment.

8.2 Harassment includes:

- (a) Sexual Harassment
- (b) Racial Harassment
- (c) Sexuality Harassment
- (d) Disability Harassment
- (e) Abuse
- (f) Vilification; and
- (g) Discrimination.

SEXUAL HARASSMENT

8.3 Sexual Harassment includes:

- (a) an unwelcome sexual advance; or
- (b) an unwelcome request for sexual favours; or
- (c) any unwelcome conduct of a sexual nature (including a statement, orally or in writing, of a sexual nature), where the person being harassed felt offended, humiliated or intimidated and this was reasonable in the circumstances.

8.4 Sexual Harassment is often, but need not be, behaviour which either:

- (a) involves blackmail, in that the harassment is accompanied by a direct or implied threat, promise or benefit. For example, a coach who implies that a player's selection to a team is dependent on compliance with a sexual proposition; or
- (b) creates a hostile or sexually permeated environment, in that the harassment consists of crude remarks, jokes, the display of offensive material or makes the environment uncomfortable.

8.5 Examples of Sexual Harassment may include:

- Uninvited touching, kissing, embracing, massaging;
- Staring, leering, ogling;
- Smutty jokes and comments;
- Persistent or intrusive questions about people's private lives;
- Repeated invitations to go out, especially after prior refusal;
- The use of promises or threats to coerce someone into sexual activity;
- The display of sexually explicit material, eg Internet use, computer screen savers, calendars, posters;
- Getting undressed in front of others of the opposite sex;
- Invading the privacy of others while showering or toileting;
- Photographing others while undressing, showering or toileting.

8.6 Sexual behaviour of any kind between an adult and a minor must be reported to the appropriate authorities.

RACIAL HARASSMENT

8.7 Racial Harassment includes harassment based on colour, descent, national or ethnic origin, cultural activity and sometimes religion.

8.8 Examples of Racial Harassment include:

- Jokes in which race is a significant characteristic of the 'butt' of the joke;
- Hostile comments about food eaten, dress or religious or cultural practices;
- Inferences that all members of a racial or cultural group have particular negative characteristics, such as laziness, drunkenness, greed or sexual promiscuity;
- Parodying accents.

SEXUALITY HARASSMENT

8.9 Sexuality Harassment includes harassment based on actual or assumed homosexuality, heterosexuality, bi-sexuality or transsexuality.

8.10 Examples of Sexuality Harassment include:

- Jokes in which sexuality is a significant characteristic of the 'butt' of the joke;

- Hostile comments about assumed sexual practices or social activities.

DISABILITY HARASSMENT

8.11 Disability Harassment includes harassment based on physical, mental or psychological disability or harassment of an associate or aide of a person with a disability.

8.12 Examples of Disability Harassment include:

- Jokes where a particular disability is a significant characteristic of the ‘butt’ of the joke;
- Interfering with a disability aid, (eg hearing aid);
- Obstructing a person in a manner that compounds his or her disability, (eg putting obstacles in the path of a person with a vision impairment);
- Mocking a person’s disability;
- Hostility based on assumed AIDS or HIV infection.

ABUSE

8.13 Abuse may be a form of Harassment. It includes:

- physical abuse, (eg assault);
- emotional abuse, (eg blackmail, repeated requests or demands, excluding someone or ‘bastardisation’ practices);
- verbal abuse, (eg derogatory comments, threats or taunts);
- neglect, (eg failure to provide the basic physical and emotional necessities of life);
- abuse of power, which the harasser holds over the harassed.
- Examples of relationships that involve a power disparity include a coach–player, manager–player, employer–employee, doctor–patient. People in such positions of power need to be particularly wary not to exploit that power.

8.14 Examples of abusive behaviour include:

- Bullying and humiliation of players by coaches;
- Verbal abuse and insults directed by players or parents at opposing participants;
- Verbal and/or physical abuse of umpires by players and coaches.

VILIFICATION

8.15 Vilification involves a person inciting hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the basis of race or religion by public act. Public acts that may amount to vilification include any form of communication to the public and any conduct observable by the public.

8.16 Racial, Religious or other forms of Vilification are breaches of this Policy where they are based on any of the attributes or characteristics set out in **clause 8.2**.

INTIMATE RELATIONSHIPS BETWEEN COACHES AND PLAYERS

8.17 Hockey Australia takes the view that intimate relationships (whether or not of a sexual nature) between coaches and players, while not necessarily constituting Harassment, can have harmful effects on the individual player involved, on other players, and on the sport’s public image. Such relationships may be perceived to be exploitative because there is usually a disparity between coaches and players in terms of authority, maturity, status and dependence. Given there is always a risk that the relative power of the coach has been a factor in the development of such relationships, they should be avoided by coaches at all levels. In the event that a player attempts to initiate an intimate relationship, the coach must take personal responsibility for discouraging such approaches, explaining the ethical basis for such actions.

8.18 Whilst not necessarily constituting harassment, it is a breach of this By-law for any coach, official or other person to whom this By-law applies to be involved in an intimate relationship (of any nature) with a player under the age of 18 years.

9. What is Discrimination?

9.1 Discrimination is treating or proposing to treat a person less favourably than someone else in certain areas of public life on the basis of an attribute or personal characteristic they have.

9.2 The applicable attributes or characteristics are:

- Age;
- Disability;
- Marital status;
- Parental/Carer status;
- Physical features;
- Political belief/activity;
- Industrial Activity;
- Pregnancy;
- Race;
- Religious belief/activity;

- Sex or gender;
- Sexual orientation;
- Gender Identity.

9.3 The areas in which Discrimination under this Policy are not permitted are in:

- (a) employment (including unpaid employment) by HA;
- (b) the provision of goods and services by HA;
- (c) the selection or otherwise of any person for competition or a team (domestic or international) by or on behalf of HA;
- (d) the entry or otherwise of any player or other person to any competition held or sanctioned by HA (note the exception in **clause 9.8**);
- (e) obtaining or retaining membership (including the rights and privileges of membership) of HA.

9.4 Not only is Discrimination unlawful, but HA also consider it is unjust because it may deny people a chance by judging them on the basis of stereotypes or assumptions about what they can or cannot achieve.

9.5 Discrimination includes direct Discrimination and indirect Discrimination. Direct Discrimination occurs if a person treats, or proposes to treat, someone with an attribute or characteristic (as outlined in **clause 9.2**) less favourably than the person treats or would treat, someone without that attribute or characteristic, in the same or similar circumstances. Indirect Discrimination occurs where a person imposes or intends to impose a requirement, condition or practice which on its face is not discriminatory, but has the effect of discriminating against a person(s) with a particular attribute.

9.6 Requesting, assisting, instructing, inducing or encouraging another person to engage in Discrimination, is also Discrimination.

9.7 Any behaviour or conduct that is Discrimination under any Federal or State legislation is also Discrimination for the purposes of this Policy.

9.8 Discrimination may be permitted if an exemption under the applicable Federal or State legislation applies.

9.9 Discrimination also includes **Victimisation**. Victimisation occurs where a person is subject to, or is threatened to suffer, any detriment or unfair treatment, because that person has or intends to pursue their legal rights under anti-harassment or anti-discrimination legislation or under this Policy.

10. What is a Breach of this Policy?

10.1 It is a breach of this Policy for any person or organisation to whom this Policy applies to:

- (a) Fail to comply with any of the responsibilities set out in **clause 5**;
- (b) Appoint, or continue to appoint, a person to a role set out in **clause 7.1**:
 - (i) without first undertaking screening (see **clause 6.2**); and
 - (ii) where the Police Check reveals the person has committed an offence of the type set out in **clause 6.5**;
- (c) Appoint, or continue to appoint, a person to a role set out in **clause 7.1**:
 - (i) without first obtaining a Prohibited Person Declaration; or
 - (ii) where the Prohibited Person Declaration reveals the person is a Prohibited Person;
- (d) Where the person is a Prohibited Person, to work or seek work in the roles set out in **clause 7.1**;
- (e) Engage in any form of Harassment;
- (f) Engage in behaviour set out in **clauses 8 & 9**;
- (g) Make a frivolous, vexatious or malicious Complaint under this Policy;

10.2 Any circumstances that may be a breach may be the subject of a Complaint and or referred to a hearing under **clause 15**.

PART IV – COMPLAINT RESOLUTION PROCEDURE

11. Complaint Resolution Procedure

11.1 Any person or organisation may make a complaint about a person or organisation to whom this Policy applies, if they consider that person or organisation has, or may have, committed a breach of any part of this Policy.

11.2 The Complaint will not be divulged to another person without the complainant's agreement, except in the case where a person is required by law to report the matter to governmental authorities (for example, in the case of suspected child abuse).

11.3 It is recommended that Complaints are handled, as far as possible, at an informal level. A commonsense, low-key approach is often far more satisfactory to the complainant and to the person complained about.

11.4 The **four principles of case handling** will apply at every stage of these procedures. This means that all responsible persons will handle all cases:

- promptly,
- seriously,
- sensitively and
- confidentially.

12. Informal Complaint Resolution Procedure

12.1 A person or organisation that has a Complaint ('a complainant') may seek to resolve the Complaint informally. It is hoped the complainant will make an initial approach to a Member Protection Officer within HA, a State Association or Affiliated Association. If the complainant makes an approach to:

- (a) the Chief Executive (or in their absence their Nominee) of HA, a State Association or Affiliated Association; or
- (b) another appropriate person within the organisation (eg team manager, coach etc)

then it is desirable that the person also seeks the advice of an MPO who has been especially trained for this purpose. If there are no trained (or available) MPOs on staff or within the organisation's membership, it is recommended access to a trained MPO working in an allied sport be obtained via the Australian Sports Commission Ethics in Sport Unit.

12.2 Member Protection Officers and/or the persons listed above in **clauses 12.1(a)** will:

- (a) listen to the complainant in an empathetic, supportive manner;
- (b) inform the complainant about their possible options;
- (c) document the particulars of the Complaint; and/or
- (d) act as a support person for the complainant, including supporting them through any mediation process undertaken to resolve the Complaint, if the complainant wishes;

12.3 The Member Protection Officer will:

- (a) keep the matter confidential and only discuss it with those people whom the complainant has authorised them to speak to about the Complaint; and/or
- (b) inform the relevant governmental authority, if required by law; and
- (c) if necessary, consult by seeking advice from the relevant State or Territory authority that administers the relevant law (eg. the Anti- Discrimination Board in NSW).

12.4 The Member Protection Officer will, in consultation with the complainant, arrange for a mediator (either the Mediator of HA, relevant State Association or Affiliated Association or a relevant third person) to mediate the Complaint.

12.5 While there are some trained Mediators in most States and Territories, organisations are encouraged to access mediation skills from their community (eg. alternative dispute resolution services), to seek advice from the relevant State or Territory authority that administers the relevant law (eg. the Anti-Discrimination Board in NSW) or to contact the ASC where a case presents particular difficulties. The Australian Sports Commission Ethics in Sport Unit can provide access to trained Mediators from a range of sporting organisations.

12.6 The Mediator shall:

- (a) notify the person complained about that an informal Complaint has been made and provide them with details of the Complaint;
- (b) attempt to mediate a resolution between the complainant and the person complained about.

12.7 If an agreed resolution is reached between the complainant and the person complained about, the Complaint shall be deemed to have been resolved and no further action in relation to that Complaint may be taken (except for that which is agreed) under this Policy.

12.8 If following the process in **clause 12.6** the Complaint is not resolved informally, the complainant may make a formal Complaint under **clause 13**.

12.9 Nothing in this Policy prevents the complainant taking action under State or Federal legislation.

13. Formal Complaint Resolution Procedure

13.1 In order for a Complaint to be dealt with in accordance with this clause, a Complaint is to be made in writing.

13.2 A written Complaint must be made to one of the following people:

- (a) a Member Protection Officer of HA, a State Association or Affiliated Association (if applicable). (A list of the Member Protection Officers must be made available to any person requesting such list and shall be displayed at the premises of HA and each State Association); or
- (b) the Chief Executive (or in their absence their Nominee) of HA, the relevant State Association or Affiliated Association.

13.3 If a person listed in **clause 13.2** receives a Complaint and that Complaint alleges Harassment, Discrimination or Vilification, then they shall:

- (a) ensure that the complainant is offered the services of a Member Protection Officer who will offer services and procedures as set out in **clauses 12.3 and 12.4**; or
- (b) refer the Complaint directly to the Hearings Convenor at HA or the relevant State Association or Affiliated Association (if applicable), whichever organisation the person complained about holds the highest role, for a hearing to be held under **clause 15** (if mediation is not a relevant/appropriate option).

13.4 If following the process in **clause 12** an agreed resolution is **not** reached the Member Protection Officer, in consultation with the complainant and following their wishes, will:

- (a) refer the Complaint to the hearings convenor at HA, the relevant State Association or Affiliated Association (if applicable), Tribunal (whichever organisation the person complained about holds the highest role) for hearing to be held under **clause 15**; or
- (b) refer the Complaint to the relevant State or Territory authority that administers the relevant law; or
- (c) close the Complaint because that is the wish of the complainant.

13.5 If a complainant withdraws the Complaint, no further action in relation to that Complaint may be taken (unless required by law) under this Policy.

13.6 To avoid any doubt, any Complaint relating to:

- (a) a State Association shall be referred to the Member Protection Officer and/or Hearings Convenor of the State Association. If a State Association has not appointed at least one Member Protection Officer and/or Hearings Convenor, the Complaint shall be referred to the Member Protection Officers and/or Hearings Convenor of HA;
- (b) an Affiliated Association, shall be referred to the Member Protection Officer and/or Hearings Convenor of the Affiliated Association. If the Affiliated Association has not appointed at least one Member Protection Officer and/or Hearings Convenor, the Complaint shall be referred to the Member Protection Officers and/or Hearings Convenor of the relevant State Association;

13.7 Nothing in this Policy prevents the complainant taking action under State or Federal legislation.

14. Suspected Breaches

14.1 If a Complaint is not received, but the Chief Executive (or in their absence their Nominee) or a Member Protection Officer of HA, State Association or Affiliated Association (if applicable) receives information (whether or not in writing) which gives them reasonable cause to suspect that a breach of this Policy may have been committed, then he or she shall use their reasonable endeavours to advise the person who is suspected of being subject to Harassment, Discrimination or Vilification, of the complaints procedures under this Policy, including the services provided by a Member Protection Officer.

14.2 Except as otherwise provided in this Policy, all information obtained by the Chief Executive, their Nominee, the Member Protection Officer, the Mediator or the Hearings Convenor in accordance with this clause must be kept confidential.

15. Hearings

15.1 Where the hearings convenor at HA, a State Association or Affiliated Association (if applicable) receives a Complaint referred to it under **clauses 13.3 or 13.4**; he or she shall follow the procedures set out in this clause.

15.2 Upon receipt of the Complaint or the information, the hearings convenor shall as soon as possible do the following:

- (a) Determine the composition of the Hearings Tribunal, as detailed in **clause 15.3**;
- (b) Send to the person complained about:
 - (i) a notice setting out the alleged breach including details of when/where it is alleged to have occurred; and
 - (ii) a notice setting out the date, time and place for the hearing of the alleged breach which shall be as soon as reasonably practicable after receipt of the Complaint or information;
 - (iii) a copy of the Complaint or the information received if in writing; ("referred to as Notice of Alleged Breach");
- (c) Send to the complainant(s) and the Chairperson of the Hearings Tribunal a copy of the Notice of Alleged Breach.

15.3 The Hearings Tribunal for each hearing shall be appointed by the Board of Directors (however described) of HA or the relevant State Association or Affiliated Association (if applicable) and shall comprise of the following persons:

- (a) a barrister or solicitor (who shall be the Chairperson) or, if after reasonable attempts have been made to obtain one without success, then a person with considerable previous experience in the legal aspects of a disciplinary/hearings tribunal;
- (b) a person with a thorough knowledge of the sport;
- (c) one other person of experience and skills suitable to the function of the Hearings Tribunal, **provided that** such persons do **not** include:
 - (i) a person who is a member of the Board of Directors (however described) of the organisation which appoints the Hearings Tribunal; or
 - (ii) a person who would, by reason of their relationship with the complainant or the person complained about, be reasonably considered to be other than impartial.

15.4 Frivolous, vexatious or malicious Complaints

- (a) If within 48 hours of sending the Notice of Alleged Breach, the person complained about alleges in writing to the Hearings Convenor that the Complaint is frivolous, vexatious or malicious, the Chairperson shall as a preliminary issue, determine whether or not such Complaint is frivolous, vexatious or malicious and shall advise the parties of his or her determination.
- (b) The Hearings Convenor shall provide to the other parties to the hearing (see **clause 15.6**) a copy of the written allegation made by the person complained about, that the Complaint is frivolous, vexatious or malicious.
- (c) The Chairperson shall determine such preliminary issue as soon as practicable and in whatever manner the Chairperson considers appropriate in the circumstances provided that he or she does so in accordance with the principles of natural justice.
- (d) The decision of the Chairperson under this **clause 15.4** may be appealed within 48 hours of the determination to the relevant appeal body under **clause 17**.

15.5 The Hearings Tribunal shall hear and determine the alleged breach in whatever manner it considers appropriate in the circumstances (including by way of teleconference, video conference or otherwise) provided that it does so in accordance with the principles of natural justice. **The purpose of the hearing shall be to determine whether the person complained about has committed a breach of this By-law.** If the Hearings Tribunal considers that the person complained about has committed a breach of this By-law, it may impose any one or more of the penalties set out in **clause 16**.

15.6 The parties to the hearing shall include the complainant, the person complained about and the relevant organisation (being HA, the relevant State Association, or Affiliated Association).

15.7 If upon receipt of the Notice of Alleged Breach, the Hearings Tribunal considers that pending the determination of the matter the person complained about may put at risk the safety and welfare of the complainant or others, it may order that the person complained about be:

- (a) suspended from any role they hold with HA, the relevant State Association or Affiliated Association; and/or
- (b) banned from any event or activities held by or sanctioned by HA, the relevant State Association or Affiliated Association; and/or
- (c) required not to contact or in any way associate with the complainant or other person about whom the alleged breach relates, pending the determination of the hearing.

15.8 There is no right of appeal of the decision by a Hearings Tribunal under **clause 15.7**.

15.9 Any party to the hearing may be represented at the hearing by any person, including a legal representative.

15.10 Each party to the hearing shall bear their own costs in relation to the hearing.

15.11 The Hearings Tribunal shall give its decision as soon as practicable, but in any case within 7 days after the hearing and will deliver to the following a statement of its written reasons:

- (a) the Chief Executive of the organisation which established the Hearings Tribunal;
- (b) the complainant;
- (c) the person complained about; and
- (d) any other party represented in the hearing in accordance with **clause 15.6** (except for witnesses).

15.12 Each member of each Hearings Tribunal established under this By-law shall be indemnified by the organisation which appointed them, from any claim or action for loss, damages, or costs made against them arising out of, or in connection with, their reasonable function as a member of the Hearings Tribunal under this By-law.

15.13 Except as otherwise provided in this By-law, all members of the Hearings Tribunal shall keep all matters relating to the hearing (including but not limited to the nature of the Complaint, information obtained before and during the hearing and the decision of the Hearings Tribunal) confidential.

15.14 To the extent of any inconsistency between the hearing procedure set out in the constitution of HA or the State Association or Affiliated Association (if applicable) and the hearing procedure set out in this By-law, this By-law shall prevail in relation to all Complaints under this By-law.

16. What Penalties may be imposed?

16.1 If the Hearings Tribunal considers that a person or organisation to whom this Policy applies, has breached this Policy, it may impose any one or more of the following penalties:

- (a) For breaches committed by individual persons:
- (i) direct that the offender attend counseling to address their conduct;
 - (ii) recommend that HA, the relevant State Association or Affiliated Association terminate the appointment of the role which the offender holds with such organisation;
 - (iii) recommend that HA, the relevant State Association or Affiliated Association suspend the individual from participating in further activities, fixtures, competitions or events for a period determined appropriate by the Hearings Tribunal;
 - (iv) where there has been damage to property, direct that the offender pay compensation to the relevant organization which controls or has possession of the property;
 - (v) impose a monetary fine (in the case of persons holding paid positions);
 - (vi) impose a warning;
 - (vii) in the case of a coach, direct the relevant organisation to deregister the accreditation of the coach for a period or indefinitely;
 - (viii) withdraw any awards, placings, records won in any tournaments, activities or events held or sanctioned by HA, the relevant State Association or Affiliated Association;
 - (ix) direct the offender to repay all or part of any financial assistance (excluding any fee for service, wages or expenses) given to them by the Australian Sports Commission, any Federal or State funding agency, the Australian Olympic Committee, HA, a State Association, an Affiliated Association or any other organisation which has provided funding;
 - (x) any other such penalty as the organisation considers appropriate.
- (b) For breaches committed by organisations:
- (i) direct that any funding granted or given to it by HA, a the relevant State Association or Affiliated Association cease from a specified date;
 - (ii) impose a monetary fine (in the case of persons holding paid positions);
 - (iii) impose a warning;
 - (iv) recommend to HA and/or the relevant State Association or Affiliated Association that its membership of such organisation be suspended or terminated in accordance with their applicable constitution;
 - (v) direct that any rights, privileges and benefits provided to that organisation by HA, a State Association or Affiliated Association be suspended for a specified period and/or terminated;
 - (vi) direct that HA, a State Association or Affiliated Association cease to sanction events held by or under the auspices of that organisation;
 - (vii) any other such penalty as the organisation considers appropriate.

16.2 If an organisation or individual commits a second or subsequent breach under this Policy then the Hearings Tribunal shall have regard to the previous breach, the penalty imposed and any other relevant factors, in imposing a penalty for the second or subsequent breach.

16.3 If a penalty is imposed by the Hearings Tribunal under **clause 16.1**, the Chief Executive of the organisation from which the Hearings Tribunal is established shall as soon as possible notify in writing HA of such penalty and HA shall in turn notify each State Association of such penalty. Notification of such penalty to State Associations shall be deemed to be notification to all Affiliated Associations which are members of the State Association.

16.4 Every organisation to which this Policy applies shall recognise and enforce any decision and penalty imposed by a Hearings Tribunal under this Policy.

17. Appeals

17.1 Any party to a hearing held under **clause 15** (including an organisation) may appeal a decision of a Hearings Tribunal.

17.2 An appeal shall be made to the following Appeal Body:

- (a) an appeal against a decision of a Hearings Tribunal established by an Affiliated Association shall be made to the Hearings Tribunal of the relevant State Association;
- (b) an appeal against a decision of a Hearings Tribunal established by a State Association shall be made to the Hearings Tribunal of HA;
- (c) an appeal against a decision of a Hearings Tribunal established by HA, shall be made to the appeal division of the Court of Arbitration for Sport (Oceania Registry) ("CAS") (referred to as the "Appeal Body").

17.3 There is only one right of appeal following the decision of the initial Hearings Tribunal. Any appeal must be solely and exclusively resolved by the Appeal Body and the decision of such Appeal Body is final and binding on the parties. It is agreed that no party to such appeal may institute or maintain proceedings in any court or tribunal other than the relevant Appeal Body. Note: This provision does not prevent any person or organisation taking action under State or Federal legislation.

17.4 The process for such appeal is as follows:

- (a) the party wishing to appeal ("the Appellant") shall within 72 hours of the Hearings Tribunal delivering its decision to all parties involved:

- (i) advise, in writing, the Chief Executive of the organisation of the relevant Appeal Body of their intention to appeal ("Notice of Intention to Appeal"); and
 - (ii) in the case of an appeal to CAS from a decision of a Hearings Tribunal established by HA, complete and file an application to appeal with CAS in accordance with the Code of Sports Related Arbitration; and
- (b) for all appeals, except those to CAS, as soon as possible after receipt of the Notice of Intention to Appeal, the Hearings Convenor of the organisation of the relevant Appeal Body shall appoint a Hearings Tribunal to hear and determine the appeal, which shall comprise of persons in accordance with **clause 15.3**; and
- (c) within 5 days of lodging the Notice of Intention to Appeal, (or such shorter time as determined by the Appeal Body if there is urgency) the Appellant shall:
- (i) pay the appeal fee to the Chairperson of the Appeal Body, which shall be \$110.00 (including GST) which is non-refundable, except for an appeal to CAS which shall be as per the Code of Sports- Related Arbitration applicable to CAS; and
 - (ii) submit to the Chairperson of the Appeal Body or CAS (as the case may be), the grounds of the appeal in writing and provide copies to the other party, to the Chief Executive of the organisation which established the Hearings Tribunal who made the decision which is the subject of the appeal and the Chief Executive of the organisation which established the Appeal Body. If either of the requirements in this sub-clause are not met by the due time the appeal shall be deemed to be withdrawn;
- (d) on completion of the procedures in (a) to (c), the Chairperson of the Appeal Body shall 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; and
- (e) the procedure for the appeal shall be the same as the procedure for the Hearings Tribunal set out in **clause 15** except where the Appeal Body is CAS, in which case the Code of Sports-Related Arbitration shall apply.

17.5 Upon hearing the appeal, the Appeal Body may do any one or more of the following:

- (a) dismiss the appeal;
- (b) uphold the appeal, in whole or in part;
- (c) impose any of the penalties set out in **clause 16**;
- (d) reduce, increase or otherwise vary any penalty imposed by the initial Hearings Tribunal.

17.6 The Chief Executive of the organisation from which the Appeal Body is established shall as soon as possible notify in writing HA, each State Association, and each Affiliated Association of the outcome of the appeal.

17.7 The Appeal Body has no power to award costs and each party shall bear their own costs in relation to any appeal.

17.8 To the extent of any inconsistency between the hearing appeal procedure set out in the constitution of HA, a State Association or Affiliated Association (if applicable) and the hearing appeal procedure set out in this By-law, this By-law shall prevail in relation to all Complaints under this By-law.

ATTACHMENT A

POLICY DEFINITIONS

‘**Abuse**’ means a form of Harassment, as more specifically set out in **clauses 8.13 to 8.14**.

‘**Affiliated Associations**’ means those associations, clubs or organisations (howsoever described), which are a member of, or affiliated to, a State Association or HA.

‘**Australian Sports Commission**’ means the government agency established under the Australian Sports Commission Act 1989 and includes the Australian Institute of Sport.

‘**Chief Executive**’ means the chief executive officer of an organisation, howsoever described (may include the executive officer, general manager or other similar title).

‘**Complaint**’ means a complaint made under **clauses 11 to 13**.

‘**Constitution**’ means the statement of purposes and rules or constitution of HA as amended from time to time.

‘**Disability Harassment**’ means a form of Harassment, as more specifically set out in **clauses 8.11 to 8.12**.

‘**Discrimination**’ means a form of Harassment, as more specifically set out in **clause 9**.

‘**Existing Appointee**’ means a person currently elected, appointed or holding a position, whether by way of employment, contract or otherwise and whether paid or unpaid.

‘**Harassment**’ has the meaning set out in **clause 8**.

‘**Hearings Tribunal**’ means the tribunal of HA, a State Association or Affiliated Association (if applicable) established to hear and determine alleged breaches and appeals under this Policy.

‘**Mediator**’ means a person appointed in accordance with **clause 5.1(f)** to mediate disputes and concerns in relations to Complaints under this Policy.

‘**Member Protection Officer**’ means a person appointed in accordance with **clause 5.1(f)**, who may be the first point of contact for someone bringing a Complaint under this Policy.

‘**Police Check**’ means a police records check which conducts a search on a national basis.

‘**Policy**’ and ‘**this Policy**’ means this Member Protection Policy.

‘**Preferred Applicant**’ means a person short listed for a position, whether by way of employment, contract or otherwise and whether paid or unpaid.

‘**Prohibited Person Declaration**’ means a declaration in relation to Serious Sex Offences as set out in **Attachment B**.

‘**Prohibited Person**’ means a person who has been convicted of a Serious Sex Offence or is otherwise prohibited from holding a position to which this Policy relates by virtue of a penalty imposed upon him / her by HA, a State Association or Affiliated Association.

‘**Racial Harassment**’ means a form of Harassment, as more specifically set out in **clauses 8.7 and 8.8**.

‘**Serious Sex Offence**’ means an offence involving sexual activity or acts of indecency including but not limited to:

- Rape
- Indecent assault
- Sexual assault
- Assault with intent to have sexual intercourse
- Incest
- Sexual penetration of child under the age of 16
- Indecent act with child under the age of 16
- Sexual relationship with child under the age of 16
- Sexual offences against people with impaired mental functioning
- Abduction and detention
- Procuring sexual penetration by threats or fraud
- Procuring sexual penetration of child under the age of 16
- Bestiality
- Soliciting acts of sexual penetration or indecent acts
- Promoting or engaging in acts of child prostitution
- Obtaining benefits from child prostitution
- Possession of child pornography
- Publishing child pornography and indecent articles.

‘**Sexual Harassment**’ means a form of Harassment, as more specifically set out in **clauses 8.3 to 8.6**.

‘**Sexuality Harassment**’ means a form of Harassment, as more specifically set out in **clauses 8.9 to 8.10**.

‘**State Associations**’ means those entities which are members of HA in accordance with its Constitution.

‘**their Nominee**’ means the person who is, under the constitution of the relevant organisation, empowered to act in the Chief Executive’s absence. [In the case of the President, it may include a Vice-President, Deputy Chairperson or other similar title, however described and in the case of the Chief Executive it may include the acting Chief Executive, acting executive officer, acting general manager or other similar title, however described].

‘**Vilification**’ may constitute a form of Harassment or Discrimination, as more specifically set out in **clause 8.15**.

