

MEMBER PROTECTION POLICY

Position Statement

Basketball WA is committed to the health, safety and well-being of all its members and participants and is dedicated to providing a safe environment for participating in the sport of basketball throughout Western Australia.

The following Member Protection By-Law conveys a strong message to all Basketball WA members and participants, and prospective members and participants, that we are committed to ensuring the safety and well being of everyone taking part in the sport.

To ensure that member protection matters are addressed, Basketball WA will uphold the principles established in both State and Commonwealth Government Legislation and will provide a process of recourse should a member, supporter, sponsor, registered player or official (BWA stakeholders) feel their rights have been violated.

Acknowledgment of Legislation

In adhering to the commitment to what is “this” to ensure members are protected, Basketball WA will have regard for both State and Commonwealth legislation including the following:

- Equal Opportunity Act 1984 (WA)
- The Racial Discrimination Act 1976 (C’wlth)
- The Sex Discrimination Act 1984 (C’wlth)
- The Disability Discrimination Act (C’wlth)
- The Human Rights and Equal Opportunity Commission Act 1987 (C’wlth)

Member Protection By-Law

Basketball WA adopts Basketball Australia’s Member Protection By -Law (effective July 2007). A copy of this By-law is attached at Annexure 1. The provisions of this By-Law cover the following areas:

- Harassment
- Discrimination
- Vilification
- Child Protection
- Codes of Behaviour

Procedures

The By-Law provides information on the following procedures:

- Establishment of the Member Protection Tribunal
- Member Screening
- Lodging Complaints
- Investigation
- Complaint Resolution
- Hearings
- Penalties

Member Protection By-Law Concerns

Any concerns regarding the Member Protection By-Law can be addressed by calling (08) 9284 0555 you can:

- Obtain more information about the way that we manage complaints.
- Obtain information on how to proceed with a complaint.

Or, by contacting Basketball WA.

Basketball Western Australia
PO Box 185
FLOREAT WA 6014
(08) 9284 0555
Fax: (08) 9284 0550
[E-mail: admin@basketballwa.asn.au](mailto:admin@basketballwa.asn.au)

CONTACTS

Additional further information can be obtained by contacting:

Equal Opportunity Commission of Western Australia

Address: Level 2, 141 St George's Terrace Perth WA 6000 Western Australia
Phone: 9216 3900
Phone: 1800 198 149 (Free Call)
Website: <http://www.equalopportunity.wa.gov.au>

Australian Human Rights Commission

Address: Level 8, Piccadilly Tower 133 Castlereagh Street SYDNEY NSW 2000
Postal: GPO Box 5218 SYDNEY NSW 2001
Phone: (02) 9284 9600
Complaints: 1300 656 419
Website: <http://www.hreoc.gov.au>

Revision History

Version	Date Approved	Amendments
V01	13/05/2009	New policy approved by the Board



BASKETBALL AUSTRALIA

MEMBER PROTECTION BY-LAW

Effective from: **1 July 2007**

PREFACE

Basketball Australia is committed to the health, safety and well-being of all its members and participants and is dedicated to providing a safe environment for participating in the sport of basketball throughout Australia.

The positive virtues of involvement in the sport of basketball are well heralded and evidenced by the thousands of young Australians participating in basketball activities and competition across the country each week. The value of regular exercise gained through basketball to an individual's personal health and fitness should not be underestimated, nor the role that social interaction provided through the basketball association environment can play in developing a young person's self esteem and involvement in their local community.

However, harassment in sport can serve to drastically undermine these intrinsic benefits of involvement in basketball. The unfortunate reality is that basketball, as a sport, is not immune from acts of discrimination, harassment and abuse, rather to the contrary, sport may provide an environment which in many cases lends itself to conduct which is not only inappropriate, but also unlawful.

Depending on the nature of the case, instances of harassment or abuse in sport can have devastating effects for not only the individuals involved, but also the sporting organisation itself. Apart from exposing the club or association to potential legal liability, officials may be faced with low morale, an unpleasant environment, higher turnover of personnel and the prospect of long-term damage to the organisation's image and reputation. These are all unnecessary harms which Basketball Australia is anxious to avoid.

The adoption of the Basketball Australia Member Protection By-Law reflects Basketball Australia's dedication to serving and protecting its members and participants throughout all levels of the sport. However, the adoption of the Member Protection By-Law itself is just the first step in affording our members and participants the protection they deserve. The successful implementation and enforcement of this Member Protection By-Law requires the cooperation and commitment of Basketball Australia members and participants at all levels.

The following Member Protection By-Law conveys a strong message to all Basketball Australia members and participants, and prospective members and participants, that as a sport, we are committed to ensuring the safety of our most valuable asset well into the future.

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PART I – INTRODUCTION

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

1. WHAT IS THE PURPOSE OF THIS BY-LAW?

- 1.1 The purpose of this By-law is to provide guidelines for the protection of the health, safety and well being of all Basketball Australia members and those who participate in the activities of Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs.
- 1.2 This By-law 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 By-law provides a procedure for informal and formal resolution of complaints and a procedure for the appeal of such complaints. It also sets out a procedure for protection of minors in basketball by the establishment of proper screening procedures for persons working with minors and the establishment of a Prohibited Person's Register for proscribing certain persons from being in regular contact with minors.
- 1.3 This policy and/or its attachments may be amended from time to time. Copies of the policy and its attachments can be obtained from the Basketball Australia website (www.basketball.net.au).
- 1.4 There are a number of legislative requirements, which may differ from state to state, that apply in situations also dealt with by this By-law. In some situations compliance with this By-law may not fully discharge obligations under legislation and organisations and individuals bound by this By-law should also ensure they take the necessary steps to comply with any legislative requirement.

2. WHO DOES THIS BY-LAW APPLY TO?

- 2.1 This By-law applies to the following organisations and individuals:
 - (a) persons appointed or elected to boards of directors, executives and/or committees (including sub-committees) of Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs;
 - (b) employees of Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs;
 - (c) officials appointed or elected by Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs in relation to players and/or teams which represent such organisations including coaches, team management personnel such as managers and physiotherapists;
 - (d) referees, umpires and other officials involved in the regulation of the sport appointed by Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs;
 - (e) players who enter any tournament, activity or events (including camps, training sessions, etc) which are held or sanctioned by Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs;
 - (f) Constituent Association
 - (g) League Associations;
 - (h) Affiliated Associations
 - (i) Clubs;
 - (j) any other person or organisation, who or which is, a member of, or affiliated to, Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs; (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, conditions of entry displayed at a venue etc) to be bound by this By-law.

3. WHAT IS THE STATUS OF THIS BY-LAW?

- 3.1 This By-law is issued by the Board of Basketball Australia under Rule 22 of the Constitution.
- 3.2 Except to the extent outlined in **clause 3.4**, this By-law comes into force on **1 July 2004**.
- 3.3 Affiliated Associations and Clubs shall not be required to comply with **clauses 7, 8 and 10** (screening and Member Protection Declaration) of this By-law until **1 July 2005** except where otherwise required by law.
- 3.4 The reference to Complaints in Part IV shall only include complaints, which arise out of incident(s) occurring on or after **1 July 2004**.
- 3.5 This By-law may be changed from time to time by the Board of Basketball Australia under Rule 22 of the Constitution.

4. WHAT DO WORDS IN THIS BY-LAW MEAN?

Unless the context otherwise requires, in this By-law the following words shall mean:

“Abuse” means a form of Harassment and includes physical abuse, emotional abuse, sexual abuse, neglect and abuse of power. Examples of abusive behaviour include bullying, humiliation, verbal abuse and insults.

“Affiliated Associations” means those basketball associations which are members of a Constituent Association or a League Association in accordance with the provisions of the constitution of the relevant Constituent Association or League Association, or otherwise affiliated with Basketball Australia directly from time to time.

“By-law” and **“this By-law”** means this Member Protection By-law.

“Chairperson” shall mean the Chairperson of a Member Protection Tribunal.

“Clubs” means those clubs or organisations (howsoever described), which are members of, or affiliated to, an Affiliated Association, Constituent Association or League Association.

“CEO” means the chief executive officer of an organisation, howsoever described (may include the executive officer, general manager or other similar title).

“Child” means a person who is under the age of 18 years.

“Child Abuse” relates to children at risk of harm (usually by adults, sometimes by other children and often by those they know and trust). It can take many forms. Children may be harmed by both verbal and physical actions and by people failing to provide them with basic care. Child abuse may include:

- Physical abuse by hurting a child or a child’s development (eg hitting, shaking or other physical harm; giving a child alcohol or drugs; giving bad nutritional advice; or training that exceeds the child’s development and maturity).
- Sexual abuse by adults or other children where a child is encouraged or forced to watch or engage in sexual activity or where a child is subject to any other inappropriate conduct of a sexual nature.
- Emotional abuse by ill-treating a child (eg humiliation, taunting, sarcasm, yelling, negative criticism, name calling, ignoring or placing unrealistic expectations on a child).
- Neglect (eg failing to give food, water, shelter or clothing or to protect a child from danger or foreseeable risk of harm or injury).

“Codes of Behaviour” means the codes of behaviour developed and issued by Basketball Australia as set out in **Attachment D**.

“Complaint” means a complaint made under this By-law.

“Complainant” means the person making a complaint

“Constituent Associations” means those basketball associations recognised under the Constitution as the representative body for the sport of basketball in each state and territory of Australia.

“Constitution” means the statement of purposes and rules or constitution of Basketball Australia as amended from time to time.

“Discrimination” means a form of Harassment, as more specifically set out in **Part IV** of this By-law.

“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 **Part IV** of this By-law.

“League Associations” means and includes the National Basketball League, Women's National Basketball League, Australian Basketball Association and any other organised basketball competitions recognised as a League Association by Basketball Australia under its constitution from time to time.

“Mediator” means a person appointed to mediate disputes and concerns in relations to Complaints under this By-law.

“Member Protection” is a term used by the Australian sport industry to describe the practices and procedures that protect members – both individual members such as players, coaches and officials and the member organisations. Member protection involves:

- protecting those that are involved in sport activities from harassment, abuse, discrimination and other forms of inappropriate behaviour
- adopting appropriate measures to ensure the right people are involved in an organisations, particularly in relation to those involved with juniors, and
- providing education

“Member Protection Declaration” means a declaration as set out in **Attachment E**.

“Member Protection Officer” means a person who may be the first point of contact for someone bringing a Complaint under this By-law.

“Member Protection Tribunal” means the tribunal of Basketball Australia, a Constituent Association, League Association or Affiliated Association (if applicable) established to hear and determine matters and appeals under this By-law.

“Police Check” means a police records check, which conducts a search on a national basis.

“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” means a person whose name has been entered on the Prohibited Persons Register.

“Prohibited Person Register” means the register of Prohibited Persons maintained by Basketball Australia in accordance with this By-law.

“Registrar” shall mean the Registrar of a Member Protection Tribunal.

“their Nominee” means the person who is, empowered to act in the President’s or the CEO’s absence or at their request.

“Vilification” may constitute a form of Harassment or Discrimination, as more specifically set out in **clauses 12.3, 14.22 and 14.23.**

5. RESPONSIBILITIES UNDER THIS BY-LAW

5.1 Basketball Australia, Constituent Associations and League Associations must:

- (a) adopt and comply with this By-law;
- (b) promote appropriate standards of conduct at all times;
- (c) promptly deal with any breaches of, or complaints made under this, policy in an impartial, sensitive, fair, timely and confidential manner;
- (d) recognise and enforce any penalty imposed under this By-law;
- (e) publish, distribute and promote this By-law (and any amendments made to it from time to time) to persons under the jurisdiction of this By-law in the manner required by Basketball Australia and make this By-law available for inspection, or provide a copy;
- (f) make such amendments to their constitution, rules or by-laws in order for this By-law to be enforceable, as required by Basketball Australia;
- (g) use any forms, contracts and clauses prescribed by Basketball Australia in order to give effect to this By-law in such documents as contracts, entry forms and player registration forms, as directed by Basketball Australia;
- (h) appoint at least one Member Protection Officer and one Mediator to fulfil the functions set out in this By-law, and to publish and display the names and contact details of such persons to persons under the jurisdiction of this By-law;
- (i) appoint a Registrar to fulfil the functions set out in this By-law and publish and display the name of such person to their members; and
- (j) establish a Member Protection Tribunal in accordance with **clause 6**, to fulfil the functions set out in this By-law.

5.2 Affiliated Associations and Clubs must:

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

5.3 It is not mandatory for Affiliated Associations and Clubs to establish procedures for dealing with Complaints and hearings under this By-law. However, if an Affiliated Association wishes to establish procedures for dealing with Complaints and hearings under this By-law, it must:

- (a) appoint at least one Member Protection Officer and one Mediator to fulfil the functions set out in this By-law, and to publish and display the names and contact details of such persons to their members.
- (b) appoint a Registrar to fulfil the functions set out in this By-law and to publish and display the name of such person to their members; and

- (c) establish a Member Protection Tribunal in accordance with this **clause 6**, to fulfil the functions set out in this By-law.

5.4 All other organisations and persons (for example, administrators, employees, officials, coaches, players, parents) to which this By-law applies, must:

- (a) comply with this By-law;
- (b) comply with the Codes of Behaviour (as applicable);
- (c) consent to a national police check if they hold or apply for a role of the type set out in **clause 8.1**.

5.5 The Board of Basketball Australia, the Constituent Associations, the League Associations, the Affiliated Associations and the Clubs are responsible for taking all reasonable steps to ensure implementation, compliance and enforcement of this By-law.

PART II - MEMBER PROTECTION TRIBUNAL

6. ESTABLISHMENT OF MEMBER PROTECTION TRIBUNAL

- 6.1 Basketball Australia, Constituent Associations, Leagues and Affiliated Associations (if applicable) shall each establish a Member Protection Tribunal, the purposes of which are to:
- (a) decide on the insertion of a person's name onto or removal from, the Member Protection Register in accordance with **clauses 9 and 10** of this By-law; and
 - (b) hear and determine complaints and allegations of discrimination, harassment, child abuse or vilification referred to it in accordance with this By-law.
- 6.2 For each Member Protection Tribunal there shall be appointed a Registrar who should preferably be a barrister or solicitor 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.
- 6.3 A hearing of the Member Protection Tribunal shall be conducted by three (3) persons appointed from a panel of tribunal members established by Basketball Australia, its Constituent Associations, Leagues or Affiliated Associations, if applicable and shall consist of:
- (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.
- 6.4 The Member Protection Tribunal may conduct its hearings in whatever manner it believes appropriate and may set its own procedures and without limiting the manner in which the hearings may be conducted, may conduct them by teleconference, video conference or otherwise.
- 6.5 To the extent that the rules of natural justice are inconsistent with this By-law they do not apply to a hearing of the Member Protection Tribunal.
- 6.6 The parties to a hearing shall include the complainant, the person complained about and the relevant organisation (being Basketball Australia, the relevant Constituent Association, League Association, Affiliated Association or Club).
- 6.7 Each member of each Member Protection 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 function as a member of the Member Protection Tribunal under this By-law.
- 6.8 Except as otherwise provided in this By-law or for the purposes of it, all members of the Member Protection Tribunal shall keep all matters relating to the hearing (including but not limited to the nature of the matter, information obtained before and during the hearing and the decision of the Hearings Tribunal) confidential.
- 6.9 To the extent of any inconsistency between the hearing procedure set out in the constitution of Basketball Australia or the Constituent Association, League 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 matters under this By-law.

PART III – PREVENTATIVE ACTION

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

7. WHAT IS SCREENING?

- 7.1 One of the ways Basketball Australia, the Constituent Associations, the League Associations, the Affiliated Associations and the Clubs seek to protect the health, safety and well being of children participating in their activities is to screen people for certain roles.
- 7.2 For the purposes of this By-law, screening shall mean:
- (a) Where practicable, checking the Preferred Applicant's referees;
 - (b) Checking the Prohibited Person Register to verify that the Preferred Applicant is not a Prohibited Person; and
 - (c) Subject to **clauses 8.4 and 8.5**, obtaining a Police Check of Preferred Applicants and Existing Appointees (provided the person is eligible to have such a Police Check conducted).
- 7.3 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.
- 7.4 An individual who is required to be screened, shall arrange to have the Police Check conducted. The Police Check must be forwarded to the requesting organisation directly from the relevant police department. The cost of the Police Check shall, unless otherwise agreed to, be borne by the person who is being screened.
- 7.5 It is noted that in some jurisdictions the police department may only forward the Police Check to the individual being screened. In this situation, the individual being screened must forward it to the requesting organisation. Organisations should be careful to sight the original and keep a copy of it.

8. WHO IS REQUIRED TO BE SCREENED?

- 8.1 Subject to **clauses 3.3, 8.4 and 8.5**, screening is mandatory for Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs for Preferred Applicants and Existing Appointees in the following types of roles:
- (a) coaches (including assistant coaches) who are appointed or seeking appointment (whether employed or contracted) by Basketball Australia, Constituent Associations, League Associations, Affiliated Associations or Clubs for reward;
 - (b) personnel appointed or seeking appointment by Basketball Australia, Constituent Associations, League Associations, Affiliated Associations or Clubs, who will or are likely to travel away with persons **under** 18 years of age; and
 - (c) persons (including coaches) appointed or seeking appointment by Basketball Australia, Constituent Associations, League Associations, Affiliated Associations or Clubs to a role in which that person is likely at any time to have individual and unsupervised contact with persons under 18 years of age.
- 8.2 Screening is highly recommended, but not mandatory, for Preferred Applicants and Existing Appointees for volunteer coaches and team managers appointed or seeking appointment by Basketball Australia, Constituent Associations, League Associations, Affiliated Associations or Clubs who will or are likely to travel away with teams of players over 18 years of age.
- 8.3 All persons to whom this By-law applies must agree to Basketball Australia, the Constituent Association, League Association, Affiliated Association or Club obtaining a Police Check of them if they apply for or currently hold a role of the type set out in **clause 8.1**.
- 8.4 For Preferred Applicants, the Police Check must be carried out:

- (a) in the case of Basketball Australia, Constituent Associations and League Associations, as well as coaches of Affiliated Associations and Club teams participating in representative competitions conducted by these bodies, prior to the appointment;
- (b) in the case of Affiliated Associations and Clubs, at their discretion, however Basketball Australia strongly recommends that all persons being appointed to roles set out in **clause 8.1** be subjected to a Police Check, prior to the appointment.

8.5 For Existing Appointees, the Police Check must be carried out:

- (a) in the case of Basketball Australia, Constituent Associations and League Associations, as well as coaches of Affiliated Associations and Club teams participating in representative competitions conducted by these bodies, by **30 June 2005**;
- (b) in the case of Affiliated Associations and Clubs, at their discretion, however Basketball Australia strongly recommends that all persons occupying roles set out in **clause 8.1** be subjected to a Police Check.

8.6 For the avoidance of doubt, in order to comply with this By-law, Affiliated Associations and Clubs must secure the consent to undergo a Police Check of all Preferred Applicants and Existing Appointees for positions set out in **clause 8.1**. It is highly recommended, but **not mandatory** for such Police Checks to be carried out unless:

- (a) the person is being appointed as coach of a representative team participating in competitions conducted by Basketball Australia, a Constituent Association or League Association; or
- (b) the Police Check is otherwise required by state screening legislation.

9. RESULTS OF POLICE CHECKS

9.1 Where a Police Check has been obtained under this By-law:

- (a) the same organisation may rely on the Police Check; or
- (b) another organisation which is required to screen may, for the purposes of **clause 7.2**, obtain a copy of the Police Check from the original requesting organisation,

provided the consent of the person is obtained and the Police Check was obtained in the last 2 years.

9.2 The purpose of a Police Check is to see whether the person has any previous criminal convictions.

9.3 If the Police Check reveals that the person has been convicted of any criminal offence a copy of the screening result must be forwarded immediately to the Registrar and in the meantime:

- (a) in the case of a Preferred Applicant, they must not be appointed to the role;
- (b) in the case of an Existing Appointee, steps must be taken to transfer the person to another role which does not involve regular contact with persons under 18 years of age or if no such alternatives exist to suspend the person from the role.

Note: legal advice should be sought before the process of termination begins

9.4 The Registrar, upon receiving the police check may require that the person who is subject to the check provide any further information about the conviction which the Registrar believes is necessary to make a decision on whether the person is a fit person to be appointed or continue in a role as outlined in **clause 8.1**.

9.5 If the Registrar believes that the person who is subject to the screening should not be precluded from performing the role he or she shall immediately notify the requesting organisation, which may appoint to or allow the person to resume the role.

- 9.6 If the Registrar believes that the person who is subject to the screening is not fit for the role he or she shall immediately notify the requesting organisation and the person, who may by notice in writing no later than seven (7) days after receiving advice, request that the matter be heard by the Member Protection Tribunal.
- 9.7 In relation to determinations made pursuant to clause 9.5 or 9.6, it is noted that some state legislation sets out that certain convictions mean that a person cannot continue in a role as outlined in clause 8.1. The Registrar must not make a determination pursuant to clause 9.5 or 9.6 that would be contrary to any applicable state legislation.
- 9.8 If the person notified of the Registrar's decision that he or she is not considered fit for the role fails within seven (7) days to request that the matter be heard by the Member Protection Tribunal, the Registrar shall notify the requesting organisation and Basketball Australia and:
- (a) in the case of a Preferred Applicant, the requesting organisation shall 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 does not involve regular contact with children 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; and**
- (c) Basketball Australia shall enter the person's name on the Prohibited Person's Register.
- 9.9 If a Preferred Applicant or Existing Appointee is not willing to agree to screening, Basketball Australia, the relevant Constituent Association, League Association, Affiliated Association or Club shall:
- (a) in the case of a Preferred Applicant, not appoint the person to any of the roles outlined in **clause 8.1;**
 - (b) in the case of an Existing Appointee, steps must be taken to transfer the person to another role which does not involve regular contact with children 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.**
- (c) forward the name of the person to Basketball Australia which shall enter the person's name on the Prohibited Person's Register.
- The person must be warned that this will be the result of his or her refusal to undergo the screening**
- 9.10 All information obtained during the course of screening (including any Police Check) must be kept confidential to the persons or committee within Basketball Australia, the Constituent Association, League Association, Affiliated Association or Club who has been delegated the task of investigating and/or making the appointment for the role, other than is required by or for the purposes of this By-law.
- 9.11 Successful Preferred Applicants or Existing Appointees must immediately advise, in writing, the President or the CEO (or in their absence their Nominee) of the organisation that appointed them if they are convicted of a criminal offence.
- 9.12 At a hearing of the Member Protection Tribunal to decide upon a screening issue, the person appearing before the Tribunal may be represented by a legal practitioner or an advocate.
- Upon hearing a screening matter the Member Protection Tribunal may:
- (a) rule that the person should not be precluded from the role for which they are seeking appointment; or
 - (b) rule that the person is not fit for the role and require that the person not be appointed and that the person's name be entered in the Prohibited Persons Register; and

all persons shall give effect to the ruling.

- 9.13 A person whose name is on the Prohibited Person's Register may apply at any time to the Member Protection Tribunal that his or her name be removed from the Register. The Tribunal may refuse or grant the application and all persons will give effect to the Tribunal's decision. No person may make a second or subsequent such application within six (6) months of the previous application.
- 9.14 There shall be no appeal from a decision of the Member Protection Tribunal on a screening or Prohibited Persons Register matter.
- 9.15 Screening under this By-law 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 By-law, the requirement to screen under this By-law need not be followed as it would be superseded by requirements prescribed by law. Accordingly if a person is prohibited under State or territory law from acting in roles involving persons under 18 years of age, that person's name shall also be entered in the Prohibited Person's Register, upon Basketball Australia being notified of this fact.

10. MEMBER PROTECTION DECLARATION

- 10.1 In addition to screening, Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs require a Member Protection Declaration of all Preferred Applicants and Existing Appointees appointed to a role set out in **clause 8.1**.
- Subject to **clause 3.3**, it is mandatory for Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs to obtain a Member Protection Declaration from Preferred Applicants and Existing Appointees from the persons who are required by these By-laws to be screened.
- 10.2 It is a breach of this By-law for Basketball Australia, a Constituent Association, League Association, Affiliated Association or Club to:
- (a) in the case of a Preferred Applicant, appoint the Preferred Applicant who is required by these By-laws to be screened without first obtaining a Member Protection Declaration or to appoint a Preferred Applicant who is a Prohibited Person;
 - (b) in the case of an Existing Appointee, to continue to appoint a Prohibited Person in the roles set out in **clause 8.1**.
- 10.3 The Member Protection Declaration must be obtained, in the case of:
- (a) a Preferred Applicant, prior to the appointment;
 - (b) an Existing Appointee:
 - (i) in the case of Basketball Australia, Constituent Associations and League Associations, by **31 December 2004**;
 - (ii) in the case of Affiliated Association and Clubs, **30 June 2005**.
- 10.4 If the person required to be screened is unable to sign the Member Protection Declaration he or she may within seven (7) days of being requested to sign the declaration advise the Registrar in writing why the declaration cannot be signed.
- 10.5 If the Member Protection Declaration is not provided and the person fails to provide to the Registrar an explanation of why it cannot be signed within seven (7) days of being required to provide the declaration, Basketball Australia, the relevant Constituent Association, League Association, Affiliated Association or Club must:
- (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 not involving contact with children 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; and

- (c) forward the name of the person to Basketball Australia which shall enter the person's name in the Prohibited Person's Register.

- 10.6 If the person required to sign the Member Protection Declaration provides the Registrar with an explanation as to why he or she is unable to sign the declaration the matter shall be dealt with in the same manner as if the police check has revealed a conviction and the Registrar and the Member Protection Tribunal shall have the same powers and the person the same rights.
- 10.7 Successful Preferred Applicants or Existing Appointees must immediately advise, in writing, the President or the CEO (or in their absence their Nominee) of the organisation that appointed them, upon a matter arising, which would prohibit them from signing the Member Protection Declaration.
- 10.8 Obtaining a Member Protection Declaration under this By-law is not a replacement for any similar requirement prescribed by law. If State legislation sets an equivalent or higher standard to that set under this By-law the requirement to obtain a Member Protection Declaration under this By-law need not be followed, as it would be superseded by any similar requirement prescribed by law. If State legislation sets a lower standard, the Member Protection Declaration would be required to be signed.

11. CHILD PROTECTION – STATE/TERRITORY REQUIREMENTS

- 11.1 Child Protection is about keeping children safe from abuse and protecting them from people who are unsuitable to work with children. Child abuse is illegal in all states and territories of Australia, with each having their own child protection laws that cover the reporting and investigation of cases of child abuse.
- 11.2 Many states and territories have child protection legislation which places specific requirements upon individuals and organisations involved in a range of areas including sport and recreation. Compliance with clauses **7 – 10 (inclusive)** of this By-law does not necessarily comply with those specific legislative requirements.
- 11.3 State and territory child protection requirements also apply to individuals and organisations that compete in a state with the legislation in place. For example, if a Victorian team were to travel to NSW for a training camp or competition, those travelling with the team must comply with NSW legislative requirements.
- 11.4 Attachment F to this By-law sets out the specific requirements for state/territories with legislative requirements and this will be added to as legislation is introduced or changed. In addition to compliance with **clauses 7-10 (inclusive)** of this By-law, Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs must comply with those attachments when conducting activities in those states.

PART IV – HARASSMENT, DISCRIMINATION AND VILIFICATION

Basketball Australia is committed to a policy of a sport, which is free of harassment, discrimination and vilification.

12. WHAT CONSTITUTES HARASSMENT, DISCRIMINATION OR VILIFICATION?

- 12.1 Harassment is any behaviour by a person or organisation 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 recognise 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.
- 12.2 Discrimination is treating or proposing to treat a person less favourably than someone else on the basis of an attribute or personal characteristic they have.
- 12.3 Vilification involves a person inciting hatred towards, serious contempt for, or severe ridicule of, a person or group of persons 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.
- 12.4 Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs prohibit all forms of harassment and discrimination not only because it is against the law, but because it is extremely distressing, offensive, humiliating and/or threatening and creates an uncomfortable and unpleasant environment.

13. TYPES OF HARASSMENT, DISCRIMINATION OR VILIFICATION

- 13.1 Any form of harassment, discrimination or vilification based on the following grounds is prohibited by this By-law:
 - (a) Age;
 - (b) Disability;
 - (c) Marital status;
 - (d) Parental/Carer status;
 - (e) Physical features;
 - (f) Political belief/activity;
 - (g) Pregnancy;
 - (h) Race;
 - (i) Religious belief/activity;
 - (j) Sex or gender;
 - (k) Sexual orientation;
 - (l) Sexual identity;
 - (m) Any other ground prohibited by Commonwealth or relevant State or Territory law.
- 13.2 It shall not be a breach of this By-law to discriminate against a person where discrimination is permitted by the relevant law of the Commonwealth or State or Territory law or where the safety of the person or other persons may be placed in jeopardy if the person was not discriminated against. For example, relevant law may permit the prohibition of males playing sport against females above a certain age or persons of a certain age playing with older persons because of physical differences which may imperil persons playing. Similarly, persons in wheel chairs may constitute a danger to able bodied athletes.

14. EXAMPLES OF HARRASMENT, DISCRIMINATION AND VILIFICATION

14.1 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.

14.2 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.

14.3 Examples of Sexual Harassment may include:

- (a) Uninvited touching, kissing, embracing, massaging;
- (b) Staring, leering, ogling;
- (c) Smutty jokes and comments;
- (d) Persistent or intrusive questions about people's private lives;
- (e) Repeated invitations to go out, especially after prior refusal;
- (f) The use of promises or threats to coerce someone into sexual activity;
- (g) The display of sexually explicit material, eg Internet use, computer screen savers, calendars, posters;
- (h) Getting undressed in front of others of the opposite sex;
- (i) Invading the privacy of others while showering or toileting;
- (j) Photographing others while undressing, showering or toileting.
- (k) Encouragement or coercion of a person to change sexual orientation or practices.

14.4 Sexual Harassment may be a criminal offence, for example indecent assault, rape, obscene telephone calls or letters. If you believe that a criminal offence may have been committed you should seek legal advice and/or notify the police. You can do this without divulging the name or identity of the complainant.

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

14.6 Examples of Racial Harassment include:

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

- 14.7 Sexuality Harassment includes harassment based on actual or assumed homosexuality, heterosexuality, bi-sexuality or transsexuality.
- 14.8 Examples of Sexuality Harassment include:
- (a) Jokes in which sexuality is a significant characteristic of the ‘butt’ of the joke;
 - (b) Hostile comments about assumed sexual practices or social activities;
- 14.9 In severe cases, such as threats or acts of violence against a homosexual person, Sexuality Harassment may be a criminal offence. If you believe that a criminal offence may have been committed you should seek legal advice and/or notify the police. The name or identity of the complainant need not be divulged.
- 14.10 Disability Harassment includes harassment based on physical, mental or psychological disability or harassment of an associate or aide of a person with a disability.
- 14.11 Examples of Disability Harassment include:
- (a) Jokes where a particular disability is a significant characteristic of the ‘butt’ of the joke;
 - (b) Interfering with a disability aid, (eg hearing aid);
 - (c) 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);
 - (d) Mocking a person’s disability;
 - (e) Hostility based on assumed AIDS or HIV infection.
- 14.12 Abuse may be a form of Harassment. It includes:
- (a) Physical abuse, (eg assault);
 - (b) Emotional abuse, (eg blackmail, repeated requests or demands, excluding someone or ‘bastardisation’ practices);
 - (c) Neglect, (eg failure to provide the basic physical and emotional necessities of life);
 - (d) Abuse of power, which the harasser holds over the harassed.
- 14.13 Examples of relationships in **clause 14.12(d)** 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.
- 14.14 Examples of abusive behaviour include:
- (a) Bullying and humiliation of players by coaches, spectators and parents;
 - (b) Verbal abuse and insults directed by players or parents at opposing participants;
 - (c) Verbal and/or physical abuse of coaches by players, spectators, umpires or parents;
 - (d) Verbal and/or physical abuse of umpires by players, coaches and spectators.
- 14.15 Some forms of Abuse may constitute a criminal offence, for example assault and child abuse. If you believe that a criminal offence may have been committed you should seek legal advice and/or notify the police. You can do this without divulging the name or identity of the complainant.
- 14.16 Basketball 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.

- 14.17 Whilst not necessarily constituting harassment, it is an offence under 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 where that player is directly or indirectly under the control or supervision of that coach, official or other person.
- 14.18 The areas in which Discrimination under this By-law are not permitted are in:
- (a) employment (including unpaid employment) by Basketball Australia, a Constituent Association, League Association, Affiliated Association or Club;
 - (b) the provision of goods and services by Basketball Australia, a Constituent Association, League Association, Affiliated Association or Club;
 - (c) the selection or otherwise of any person for competition or a team (domestic or international) by or on behalf of Basketball Australia, a Constituent Association, League Association, Affiliated Association or Club;
 - (d) the entry or otherwise of any player or other person to any competition held or sanctioned by Basketball Australia, a Constituent Association, League Association, Affiliated Association or Club;
 - (e) obtaining or retaining membership (including the rights and privileges of membership) of Basketball Australia, a Constituent Association, League Association, Affiliated Association or Club.
- 14.19 Not only is Discrimination unlawful, but Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs 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.
- 14.20 Discrimination includes direct Discrimination and indirect Discrimination. Direct Discrimination occurs if a person treats, or proposes to treat, someone with an attribute or characteristic less favourably than someone else without the same 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.
- 14.21 Requesting, assisting, instructing, inducing or encouraging another person to engage in Discrimination, is also Discrimination.
- 14.22 Discrimination also includes victimisation. Victimisation is 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 legislation or under this By-law.
- 14.23 Some forms of Vilification may be a criminal offence, for example where harm is threatened. If you believe that a criminal offence may have been committed you should seek legal advice and/or notify the police. You can do this without divulging the name or identity of the complainant.

15. CHILD PROTECTION

- 15.1 Every person and organisation bound by this policy must always place the safety and welfare of children above all other considerations.
- 15.2 Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs acknowledges that our staff and volunteers provide a valuable contribution to the positive experiences of our juniors and aims to protect the safety and welfare of junior participants. Several measures will be used to achieve this such as:
- (a) prohibiting any form of abuse against children;

- (b) providing opportunities for juniors to contribute to and provide feedback on program development;
 - (c) carefully selecting and screening people whose roles require them to have unsupervised contact with children. Screening procedures are outlined in **Part III** of this By-law;
 - (d) ensuring our codes of behaviour, particularly for roles associated with junior sport, are promoted, enforced and reviewed;
 - (e) providing procedures for raising concerns or complaints. Complaint procedures are outlined in **Part V** of this By-law;
 - (f) Providing education and/or information to those involved in our sport on child abuse and child protection.
- 15.3 Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs require that any child who is abused or anyone who reasonably suspects that a child has been or is being abused by someone within our sport, to report it immediately to the police or relevant government agency and to the appropriate person under **Part V** of this By-law.
- 15.4 All allegations of child abuse will be dealt with promptly, seriously, sensitively and confidentially. A person will not be victimised for reporting an allegation of child abuse and the privacy of all persons concerned will be respected. Procedures for handling allegations of child abuse are outlined in **Part V** of this By-law.
- 15.5 If anyone bound by this policy reasonably suspects that a child is being abused by his or her parent/s, they are advised to contact the relevant government department for youth, family and community services in their state/territory.

16. CODES OF BEHAVIOUR

- 16.1 To protect the health, safety and well being of all the people participating in the activities of Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs, Basketball Australia and others have developed and issued Codes of Behaviour.
- 16.2 Basketball Australia, Constituent Associations, League Associations, Affiliated Associations and Clubs require every individual and organisation bound by this policy to:
- (a) Be ethical, fair and honest in all their dealings with other people;
 - (b) Treat all persons with respect and courtesy and have proper regard for their dignity, rights and obligations;
 - (c) Always place the safety and welfare of children above other considerations;
 - (d) Operate within the rules and spirit of the sport;
 - (e) Comply with all relevant Australian laws (Federal and State), particularly anti-discrimination and child protection laws;
 - (f) Be responsible and accountable for their conduct; and
 - (g) Abide by the relevant Role-Specific Codes of Behaviour outlined in **Attachment D** to this policy.

17. WHAT IS A BREACH OF THIS BY-LAW?

- 17.1 It is a breach of this By-law for any person or organisation to whom this By-law applies to:
- (a) Fail to comply with any of the responsibilities with respect to screening or the Member Protection Declaration;
 - (b) Appoint, or continue to appoint a person to a role set out in **clause 8.1**:

- (i) without first undertaking screening; and
 - (ii) obtaining a Member Protection Declaration; or
 - (iii) where the person's name is on the Prohibited Persons Register.
- (c) Where the person's name is on the Prohibited Person Register, to work or seek work in any role which involves contact with children;
- (d) Engage in any form of harassment, discrimination, vilification or abuse against children;
- (e) Make a frivolous, vexatious or malicious complaint under this By-law;
- (f) Fail to enforce a penalty imposed by or comply with a direction of the Member Protection Tribunal or an appeal body.

17.2 Any circumstances that may be a breach may be the subject of a Complaint and/or referred to a hearing of the Member Protection Tribunal.

PART V - COMPLAINTS

18. WHO MAY COMPLAIN?

- 18.1 Any person or organisation may make a complaint about a person or organisation to whom this By-law applies, if they consider that person or organisation has, or may have, committed a breach of any part of this By-law (a “Complaint”).

19. COMPLAINT RESOLUTION PROCEDURE

- 19.1 It is not necessary to provide a written Complaint under this clause.
- 19.2 A person or organisation that has a Complaint (“a complainant”) may make an initial approach to:
- (a) a Member Protection Officer;
 - (b) the CEO or President (or in his absence his or her Nominee) of Basketball Australia, a Constituent Association, League Association, Affiliated Association or an Club; or
 - (c) another appropriate person within the organisation (eg team manager, coach etc).
- 19.3 If the person approached is not a Member Protection Officer then that person should advise the complainant of the procedures and of his or her rights under this By-law or refer the complainant to a Member Protection Officer.
- 19.4 If the person approached is a Member Protection Officer, they may:
- (a) listen to and inform the complainant about their possible options; and/or
 - (b) act as a support person for the complainant, including supporting them through any mediation process undertaken to resolve the Complaint.
- 19.5 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;
 - (b) inform the relevant governmental authority, if required by law.
- 19.6 The complainant or the Member Protection Officer or other person to whom the complaint is made shall refer the matter to the Registrar if the complainant is not satisfied with the initial response to the complaint and wishes the complaint to be taken further. The complaint at this stage must be presented in writing to the Registrar.
- 19.7 If the complaint alleges harassment, discrimination or vilification, the Registrar will determine if the matter is suitable for mediation, taking into account the seriousness of the complaint and the wishes of the complainant.
- 19.8 If the Registrar believes the complaint may be able to be resolved by mediation, the Registrar shall immediately notify the Mediator of Basketball Australia, or the relevant Constituent Association, League Association or Affiliated Association (if applicable) that a complaint has been made and provide them with a copy of the written complaint.
- 19.9 If the Registrar does not believe the matter is suitable for mediation he or she shall refer the matter to a hearing of the Member Protection Tribunal.
- 19.10 The Mediator shall:
- (a) notify the person complained about, in writing, that a complaint has been made and provide them with a copy of the written complaint;
 - (b) attempt to mediate a resolution between the complainant and the person complained about.

- 19.11 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 By-law.
- 19.12 If the parties fail to reach an agreed resolution at the mediation the Mediator shall refer the complaint back to the Registrar for a hearing of the Member Protection Tribunal.
- 19.13 If a complainant withdraws the complaint (which alleges harassment, discrimination or vilification), no further action in relation to that complaint may be taken (unless required by law) under this By-law.
- 19.14 To avoid any doubt, any complaint relating to:
- (a) a Constituent Association or a League Association, shall be referred to the Member Protection Officer and/or Registrar of the Constituent Association or League Association. If a Constituent Association or League Association has not appointed at least one Member Protection Officer and/or Registrar, the complaint shall be referred to the Member Protection Officers and/or Registrar of Basketball Australia;
 - (b) an Affiliated Association or Club, shall be referred to the Member Protection Officer of the Affiliated Association. If the complaint is not resolved at this level it is then to be referred to the Registrar of the Constituent Association for resolution in accordance with this By-law. If the Affiliated Association or club has not appointed at least one Member Protection Officer the complaint shall be referred to the Member Protection Officer of the relevant Constituent Association.
- 19.15 Nothing in this By-law prevents the complainant taking action under State or Federal legislation.

20. INVESTIGATION PROCEDURE - CHILD ABUSE

- 20.1 An allegation of child abuse is a very serious matter and must be handled with a high degree of sensitivity. A complaint made under **clauses 18 or 19** or a referral of a suspected breach made under **clause 21.2** of this By-law that raises an allegation of abuse against a child shall be investigated pursuant to this **clause 20**.
- 20.2 The initial response to a complaint that a child has allegedly been abused should be immediate if the incident/s are serious or criminal in nature while less serious/urgent allegations should be actioned as soon as possible, preferably within 24 hours.
- 20.3 The following is a basic outline of the key processes to follow. More information can be obtained from your relevant State or Territory government agency.
- 20.4 Any complaints, concerns or allegations of child abuse should be made or referred to:
- (a) a Member Protection Officer;
 - (b) the CEO or President (or in his absence his or her Nominee) of Basketball Australia, a Constituent Association, League Association, Affiliated Association or a Club; or
 - (c) another appropriate person within the organisation (eg team manager, coach etc)
- 20.5 If the person approached is not a Member Protection Officer then that person should advise the complainant of the procedures and of their rights under this By-law or refer them to a Member Protection Officer.
- 20.6 The initial response of the person that receives the complaint from the child (or person on behalf of the child) is crucial to the well-being of the child. It is important for the person receiving the information to:
- (a) Listen to, be supportive and do not dispute what the child says;
 - (b) Reassure the child that what has occurred is not the fault of the child;
 - (c) Ensure the child is safe;

- (d) Be honest with the child and explain that other people may need to be told in order to stop what is happening; and
 - (e) Ensure that what the child says is quite clear but do not elicit detailed information about the abuse. You should avoid suggestive or leading questions.
- 20.7 The person receiving the complaint should obtain and clarify basic details (if possible) such as:
- (a) Child's name, age and address;
 - (b) Person's reason for suspecting abuse (observation, injury or other); and
 - (c) Names and contact details of all people involved, including witnesses.
- 20.8 Any individual or organisation to which this policy applies, should immediately report any incident of a serious or criminal nature to the police and other appropriate authority.
- 20.9 If the allegation involves a child at risk of harm, the incident should be immediately be reported to the police or other appropriate government agency. You may need to report to both the police and the relevant government agency.
- 20.10 The relevant State or Territory authority should be contacted for advice if there is any doubt about whether the complaint should be reported.
- 20.11 If the child's parent/s are suspected of committing the abuse, report the allegation to the relevant government agency.
- 20.12 The Member Protection Officer should assess the risks and recommend any interim action to ensure the child's safety. Some options that can be taken include redeployment of the alleged offender to a non-child related position, supervision of the alleged offender or removal/suspension from their duties until the allegations are finally determined. Note: it is not the MPO's role to undertake action such as redeploying someone and the MPO should only recommend possible action.
- 20.13 The Member Protection Officer should also address the support needs of the person against whom the complaint is made. Supervision of the person should ideally occur with the knowledge of the person. If stood down, it should be made clear to all parties that are aware of the incident that this does not mean the person is guilty and a proper investigation still needs to be undertaken.
- 20.14 For allegations of serious or criminal nature (for example, sexual abuse) seek advice from the police and relevant government agency as to whether the organisation should carry out its own internal investigation (in addition to any police or relevant government agency investigation).
- 20.15 If allegations are of a less serious nature (for example, verbal abuse) or the police and/or relevant government agency advises that it is appropriate for the organisation to conduct an investigation into allegations of serious or criminal nature, the Registrar will appoint an independent person with appropriate expertise to conduct an investigation. The investigator should:
- (a) Contact the parents/carers of the child at an appropriate time and as directed by the police or relevant government agency.
 - (b) If appropriate, meet with parents/carers and the child to clarify the incident and offer support on behalf of the organisation if required (for example, professional counselling).
 - (c) Meet with the person against whom the allegation refers at an appropriate time and as directed by the relevant authority and give the person an opportunity to explain or respond to the allegation and identify any witnesses and supporting evidence. The person should have an opportunity to invite a support person/adviser to attend at a meeting and should be offered support (for example, professional counselling) if necessary. The person against whom the allegations are made must be given sufficient information to enable them to properly respond to the complaint.
 - (d) Obtain a signed statement from the person against whom the complaint is made.

- (e) Make contact with any witnesses and obtain signed statements outlining details of the allegation (what happened, when, how). This should **only** occur following advice from the relevant authority.
 - (f) Obtain other information that could assist in making a decision on the allegation.
- 20.16 Strict confidentiality, impartiality, fairness and due process must be maintained at all times during an investigation.
- 20.17 The information collected during an investigation regarding allegations of serious or criminal nature should be made available to the relevant authorities.
- 20.18 Upon concluding their investigation into allegations of a less serious nature, the investigator will:
- (a) Provide a report documenting the complaint, investigation, process, and evidence to the Registrar;
 - (b) Provide to the Registrar an opinion as to whether the complaint is:
 - (i) substantiated (there is sufficient evidence to support the complaint);
 - (ii) inconclusive (there is insufficient evidence either way);
 - (iii) unsubstantiated (there is sufficient evidence to show that the complaint is unfounded);
 - (iv) mischievous, vexatious or knowingly untrue.
- 20.19 If the investigator's opinion is that the complaint is substantiated or inconclusive, the Registrar shall refer it for a hearing of the Member Protection Tribunal under **clause 22** of this By-law.
- 20.20 If the investigator's opinion is that the complaint is unsubstantiated, the Registrar shall provide a copy of the investigator's report and opinion to the complainant and the person complained about, advising that the matter is not being referred for hearing.
- 20.21 If within 48 hours of sending a notice under **clause 20.20**, the Registrar receives a request in writing from the complainant for the matter to be referred to the Member Protection Tribunal:
- (a) The Chairperson shall determine whether or not such complaint ought to be referred for hearing.
 - (b) The Chairperson shall determine this issue as soon as practicable and in whatever manner the Chairperson considers appropriate in the circumstances and in doing so is not bound by the principles of natural justice.
 - (c) If the Chairperson determines that the matter shall be referred to hearing, the Registrar shall act in accordance with **clause 22**.
 - (d) The decision of the Chairperson shall be final and there shall be no appeal from that decision.
- 20.22 If the investigator's opinion is that the complaint is mischievous, vexatious or knowingly untrue it shall be referred to the Chairperson to determine whether or not the complainant ought to be referred to the Member Protection Tribunal for breach of this By-law.

21. SUSPECTED BREACHES

- 21.1 If a Complaint is not received, but the CEO or President (or in their absence their Nominee) or a Member Protection Officer of Basketball Australia, a Constituent Association, League 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 By-law 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 procedure under this By-Law.

21.2 Basketball Australia, its Constituent Associations, League Associations, Affiliated Associations, or any official of them may refer a suspected instance of harassment, discrimination or vilification to the relevant Registrar to be dealt with under this By-law, whether or not the person the subject of the harassment, discrimination or vilification has lodged a complaint and the Registrar shall deal with the matter as if a complaint had been made.

21.3 Except as otherwise provided in this By-law, all information obtained by the CEO, President, their Nominee, the Member Protection Officer, the Mediator or the Registrar in accordance with this **clause 21** must be kept confidential.

22. HEARINGS

22.1 Where a matter is referred for a hearing of the Member Protection Tribunal the Registrar shall as soon as possible do the following:

- (a) Determine the composition of the Member Protection Tribunal;
- (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/or the person referring the matter to the Registrar and the Chairperson of the Member Protection Tribunal a copy of the Notice of Alleged Breach.

22.2 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 Registrar that a 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 Registrar shall provide to the other parties to the hearing 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 and in doing so is not bound by the principles of natural justice.
- (d) The decision of the Chairperson shall be final and there shall be no appeal from that decision.

22.3 The purpose of the hearing shall be to determine whether the person complained about has committed a breach of this By-law. If the Member Protection 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 or make directions as allowed in this By-law.

- 22.4 If upon receipt of the Notice of Alleged Breach, the Member Protection 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 Basketball Australia, the relevant Constituent Association, League Association, Affiliated Association or Club; and/or
 - (b) banned from any event or activities held by or sanctioned by Basketball Australia, the relevant Constituent Association, League Association, Affiliated Association or Club; 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.
- 22.5 There is no right of appeal of the decision by a Member Protection Tribunal under **clause 22.4**.
- 22.6 Any party to the hearing may be represented at the hearing by any person, including a legal representative.
- 22.7 Each party to the hearing shall bear their own costs in relation to the hearing.
- 22.8 The Member Protection Tribunal shall give its decision as soon as practicable after the hearing and will deliver to the following a statement of its written reasons:
- (a) the President or the CEO of the organisation which established the Member Protection Tribunal;
 - (b) the complainant;
 - (c) the person complained about; and
 - (d) any other party represented in the hearing.

23. WHAT PENALTIES MAY BE IMPOSED?

- 23.1 If the Member Protection Tribunal considers that a person or organisation to whom this By-law applies, has breached this By-law, it may impose any one or more of the following penalties:
- (a) **For breaches committed by organisations:** If the Member Protection Tribunal considers that Basketball Australia, a Constituent Association, League Association, Affiliated Association, Club or any other organisation has breached this By-law, it may impose any one or more of the following penalties on the organisation:
 - (i) direct that any funding granted or given to it by Basketball Australia, a Constituent Association, League Association or Affiliated Association cease from a specified date;
 - (ii) impose a monetary fine for an amount determined by the Member Protection Tribunal;
 - (iii) impose a warning;
 - (iv) recommend to Basketball Australia and/or the relevant Constituent Association, League 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 Basketball Australia, a Constituent Association, League Association or Affiliated Association be suspended for a specified period and/or terminated;

- (vi) direct that Basketball Australia and/or a Constituent Association, League 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.
- (b) **For breaches committed by individual persons:** If the Member Protection Tribunal considers that an individual person to whom this By-law applies has breached this By-law, it may impose any one or more of the following penalties on the organisation:
- (i) direct that the offender attend counselling to address their conduct;
 - (ii) recommend that Basketball Australia, the relevant Constituent Association, League Association, Affiliated Association or the relevant Club terminate the appointment to any role which the offender holds with such organisation;
 - (iii) direct that Basketball Australia, the relevant Constituent Association, League Association, Affiliated Association or the relevant Club suspend and/or ban the individual from participating in further activities, fixtures, competitions or events of the relevant Basketball Australia member, Constituent Association, League Association, Affiliated Association or the relevant Club for a period determined appropriate by the Member Protection Tribunal;
 - (iv) where there has been damage to property, direct that the offender pay compensation to the relevant organisation which controls or has possession of the property,
 - (v) impose a monetary fine for an amount determined by the Member Protection Tribunal;
 - (vi) impose a warning;
 - (vii) in the case of a coach, direct the relevant organisation to de-register 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 Basketball Australia, a Constituent Association, League Association, Affiliated Association or an Club;
 - (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, Basketball Australia, a Constituent Association, League Association, Affiliated Association, an Club or any other organisation which has provided funding;
 - (x) If the nature of the offence is such that the Member Protection Tribunal considers it appropriate, direct that the person's name be entered on the Prohibited Persons Register;
 - (xi) any other such penalty as the Member Protection Tribunal considers appropriate.

23.2 If an organisation or individual commits a second or subsequent breach under this By-law then the Member Protection 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.

23.3 If a penalty is imposed by the Member Protection Tribunal under **clause 23**, the President or the CEO of the organisation from which the Member Protection Tribunal is established shall as soon as possible notify in writing Basketball Australia or their relevant Constituent Association of such penalty and, if directed by the Member Protection Tribunal, Basketball Australia shall enter the details of the person found to have breached this By-law and the penalty handed down to that person on the Prohibited Person Register in accordance with **clause 25**.

23.4 Every organisation to which this By-law applies shall recognise and enforce any decision and penalty imposed by a Member Protection Tribunal under this By-law.

24. HOW CAN A DECISION BE APPEALED?

24.1 Any person (including an organisation) about whom an adverse finding has been made by the Member Protection Tribunal may appeal a decision of the Member Protection Tribunal.

24.2 The appeal shall be made to an Appeals Tribunal established by Basketball Australia or the relevant Constituent Association or League Association and it shall be established and constituted in the same manner as the Member Protection Tribunal.

24.3 There is only one right of appeal following the decision of the initial Member Protection Tribunal. Any appeal must be solely and exclusively resolved by the Appeals Tribunal and the decision of such Appeals Tribunal 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 Appeals Tribunal. Note: This provision does not prevent any person or organisation taking action under State or Federal legislation.

24.4 The process for such appeal is as follows:

- (a) the party wishing to appeal (“the Appellant”) shall within 72 hours of the Member Protection Tribunal delivering its decision to all parties involved advise, in writing, the Registrar of the organisation of the relevant Appeals Tribunal of their intention to appeal (“Notice of Intention to Appeal”).
- (b) for all appeals as soon as possible after receipt of the Notice of Intention to Appeal, the Registrar shall appoint and convene an Appeals Tribunal to hear and determine the appeal; and
- (c) within 5 days of lodging the Notice of Intention to Appeal, (or such shorter time as determined by the Appeals Tribunal if there is urgency) the Appellant shall:
 - (i) pay the appeal fee to the Registrar, which shall be \$110.00 (including GST) which is non-refundable; and
 - (ii) submit to the Registrar the grounds of the appeal in writing and the Registrar shall make available copies to all relevant persons.

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 Appeals Tribunal 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 Member Protection Tribunal.

24.5 Upon hearing the appeal, the Appeals Tribunal 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 or directions within the power of the Member Protection Tribunal;
- (d) reduce, increase or otherwise vary any penalty imposed by the initial Member Protection Tribunal.

24.6 The Appeals Tribunal has no power to award costs and each party shall bear their own costs in relation to any appeal.

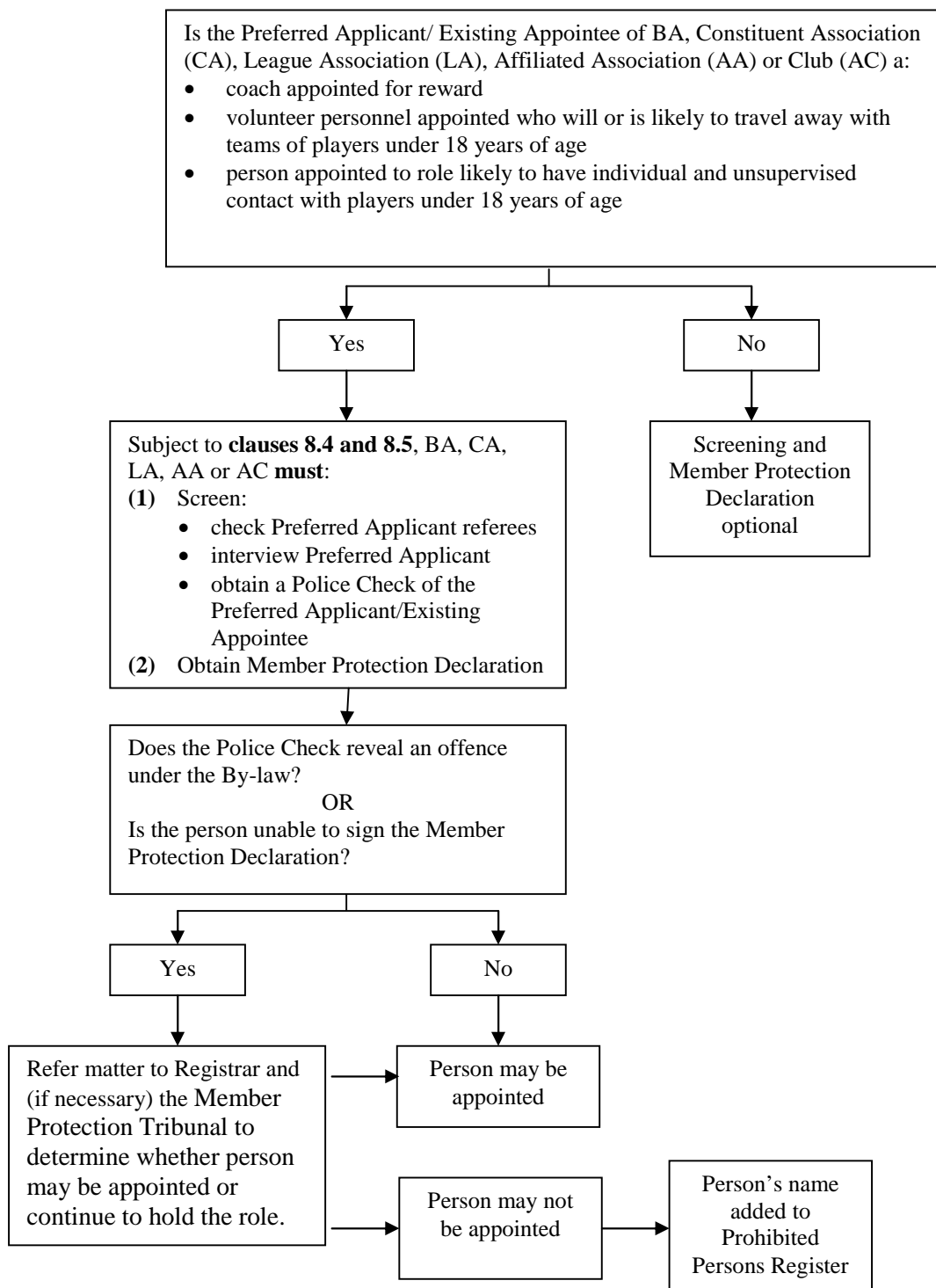
- 24.7 The President or the CEO of the organisation from which the Appeal Body is established shall as soon as possible notify in writing Basketball Australia, each Constituent Association, each League Association and each Affiliated Association of the outcome of the appeal. Notification to the Affiliated Association shall be deemed to be notification to all Clubs which are members of the Affiliated Association.
- 24.8 To the extent of any inconsistency between the hearing appeal procedure set out in the constitution of Basketball Australia, a Constituent Association, League 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.
- 25. PROHIBITED PERSON REGISTER**
- 25.1 Basketball Australia shall establish and maintain a Prohibited Person Register for the purpose of giving effect to the objectives of this By-law.
- 25.2 The Prohibited Person Register shall be maintained in an electronic form accessible by authorised representatives of Constituent Associations, League Associations, affiliated associations and clubs via a secure intranet service.

ATTACHMENT A

PREVENTATIVE ACTION - FLOW DIAGRAM

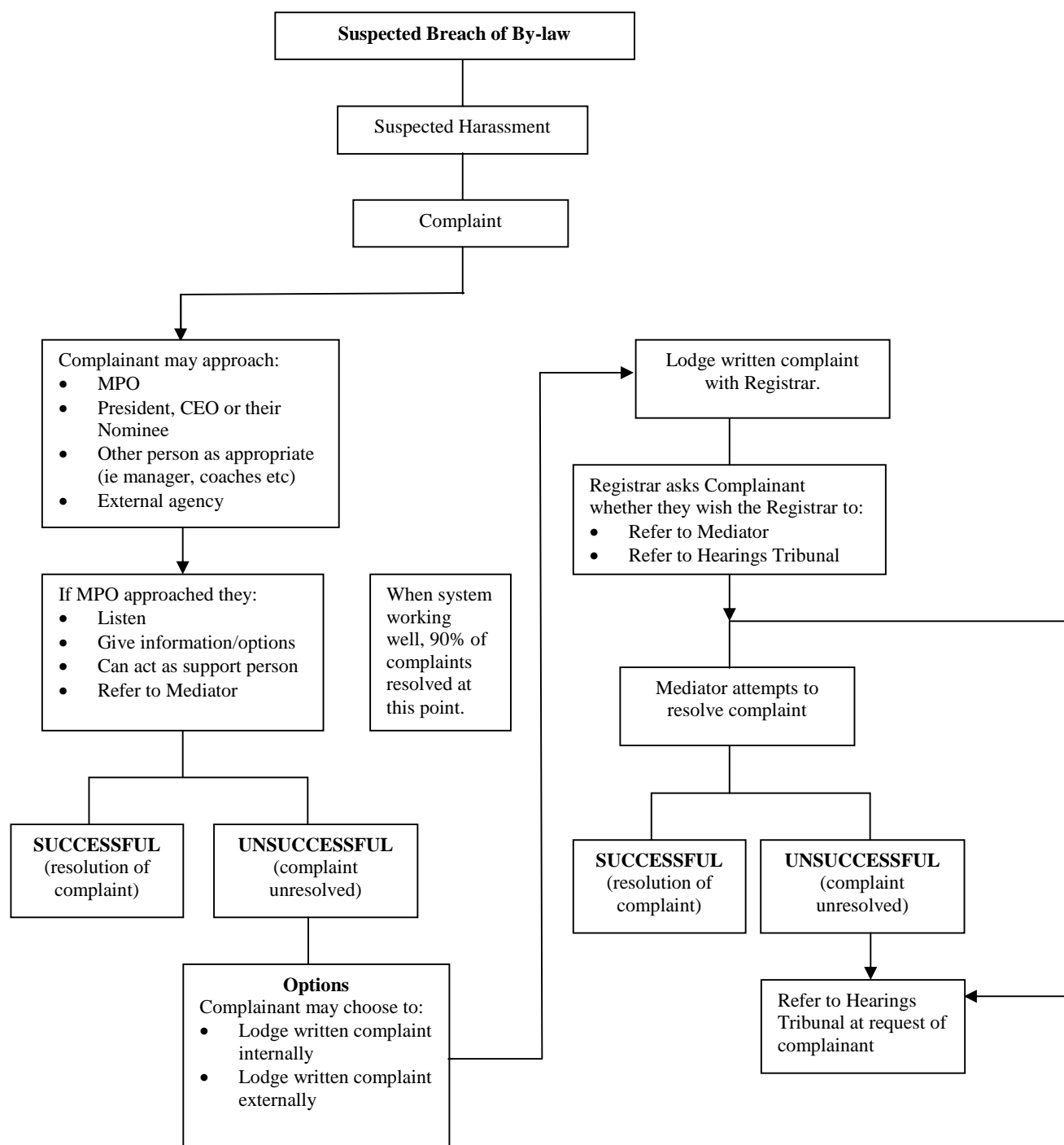
Attachment A has been included in this By-law by way of summary and it is not to be used for the interpretation of this By-law.

Organisations must refer to Attachment F for specific state/legislative requirements in regards to screening.



ATTACHMENT B1

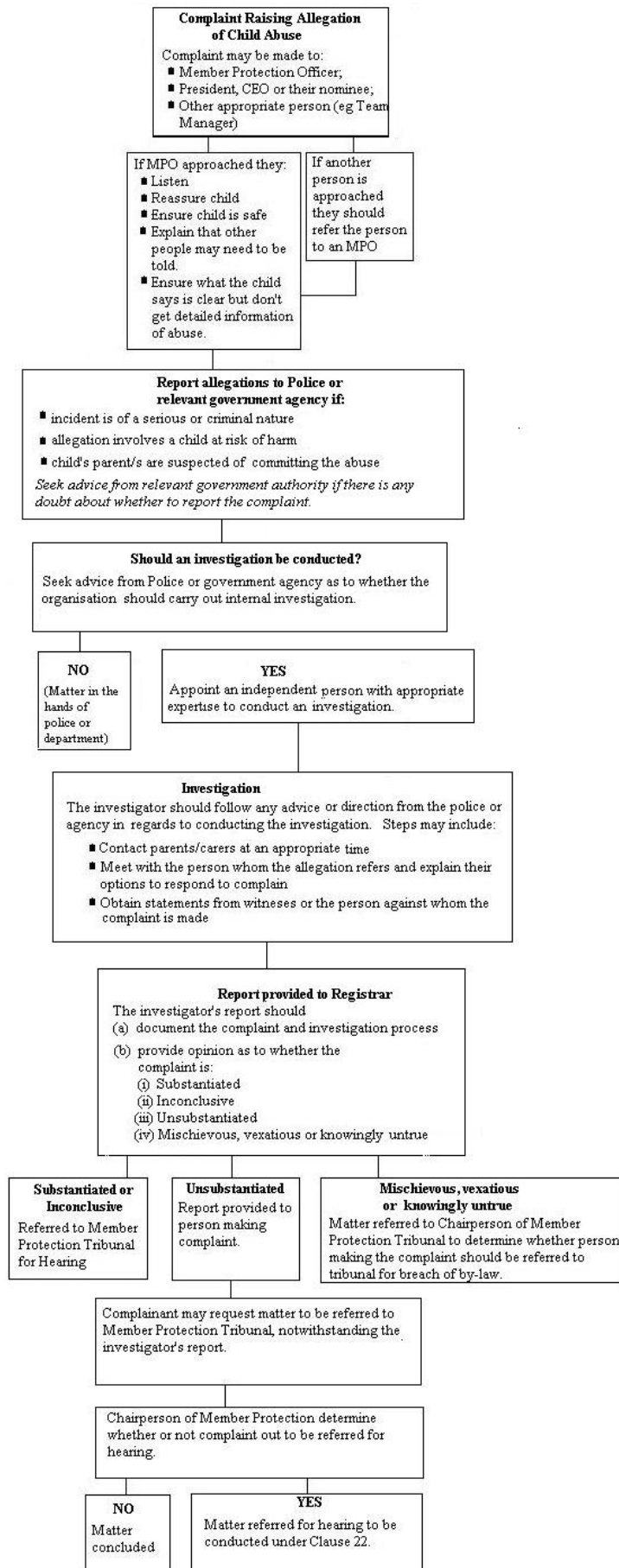
COMPLAINT RESOLUTION PROCEDURE



ATTACHMENT B2

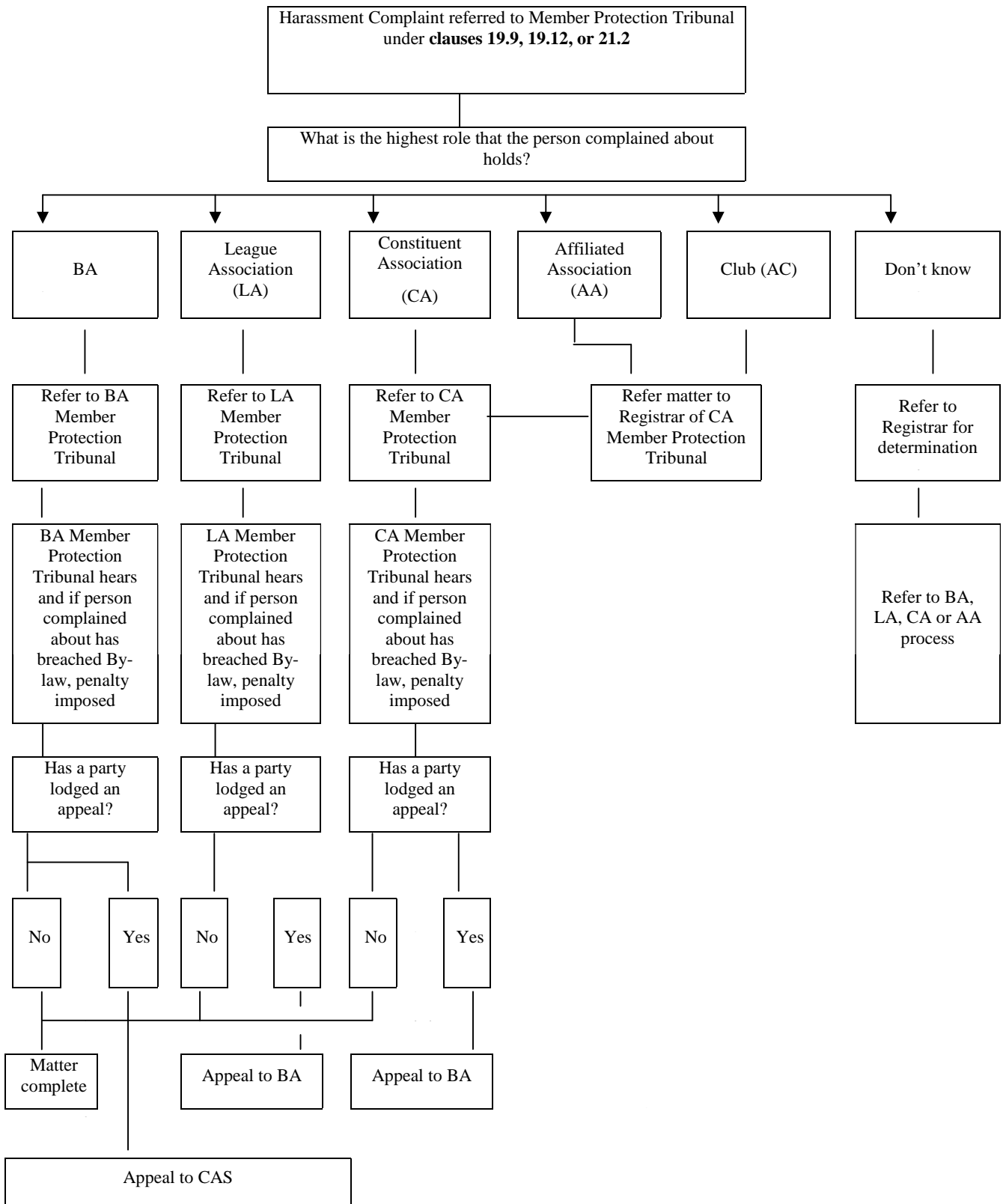
COMPLAINT RESOLUTION PROCEDURE WHERE CHILD ABUSE IS RAISED

*An allegation of child abuse is a very serious matter and must be handled with a high degree of sensitivity.
Refer to the definition of "child abuse" in Clause 4.*



ATTACHMENT C

HEARING TRIBUNAL PROCESS (CLAUSE 18) FLOW DIAGRAM



ATTACHMENT D
CODES OF BEHAVIOUR (ASC CODES ENDORSED BY BA)

Players

- Play by the rules.
- Never argue with an official. If you disagree, have your captain, coach or manager approach the official during a break or after the competition.
- Control your temper. Verbal abuse of officials and sledging other players, deliberately distracting or provoking an opponent are not acceptable or permitted behaviours in any sport.
- Work equally hard for yourself and/or your team. Your team's performance will benefit, so will you.
- Be a good sport. Applaud all good plays whether they are made by your team or the opposition.
- Treat all participants in your sport as you like to be treated. Do not bully or take unfair advantage of another competitor.
- Cooperate with your coach, team-mates and opponents. Without them there would be no competition.
- Participate for your own enjoyment and benefit, not just to please parents and coaches.
- Respect the rights, dignity and worth of all participants regardless of their gender, ability, cultural background or religion.

Parents

- Remember that children participate in sport for their enjoyment, not yours.
- Encourage children to participate, do not force them.
- Focus on the child's efforts and performance rather than winning or losing.
- Encourage children always to play according to the rules and to settle disagreements without resorting to hostility or violence.
- Never ridicule or yell at a child for making a mistake or losing a competition.
- Remember that children learn best by example. Appreciate good performances and skilful plays by all participants.
- Support all efforts to remove verbal and physical abuse from sporting activities.
- Respect officials' decisions and teach children to do likewise.
- Show appreciation for volunteer coaches, officials and administrators. Without them, your child could not participate.
- Respect the rights, dignity and worth of every young person regardless of their gender, ability, cultural background or religion.

Coaches

- Remember that young people participate for pleasure and winning are only part of the fun.
- Never ridicule or yell at a young player for making a mistake or not coming first.
- Be reasonable in your demands on players' time, energy and enthusiasm.
- Operate within the rules and spirit of your sport and teach your players to do the same.
- Ensure that the time players spend with you is a positive experience. All young people are deserving of equal attention and opportunities.
- Avoid overplaying the talented players; the just average need and deserve equal time.

- Ensure that equipment and facilities meet safety standards and are appropriate to the age and ability of all players.
- Display control, respect and professionalism to all involved with the sport. This includes opponents, coaches, officials, administrators, the media, parents and spectators. Encourage your players to do the same.
- Show concern and caution toward sick and injured players. Follow the advice of a physician when determining whether an injured player is ready to recommence training or competition.
- Obtain appropriate qualifications and keep up to date with the latest coaching practices and the principles of growth and development of young people.
- Any physical contact with a young person should be appropriate to the situation and necessary for the player's skill development.
- Respect the rights, dignity and worth of every young person regardless of their gender, ability, cultural background or religion.

Administrators

- Involve young people in planning, leadership, evaluation and decision making related to the activity.
- Give all young people equal opportunities to participate.
- Create pathways for young people to participate in sport not just as a player but as a coach, referee, administrator etc.
- Ensure that rules, equipment, length of games and training schedules are modified to suit the age, ability and maturity level of young players.
- Provide quality supervision and instruction for junior players.
- Remember that young people participate for their enjoyment and benefit. Do not overemphasise awards.
- Help coaches and officials highlight appropriate behaviour and skill development, and help improve the standards of coaching and officiating.
- Ensure that everyone involved in junior sport emphasises fair play, and not winning at all costs.
- Give a code of behaviour sheet to spectators, officials, parents, coaches, players and the media, and encourage them to follow it.
- Remember, you set an example. Your behaviour and comments should be positive and supportive.
- Support implementation of the National Junior Sport Policy.
- Make it clear that abusing young people in any way is unacceptable and will result in disciplinary action.
- Respect the rights, dignity and worth of every young person regardless of their gender, ability, cultural background or religion.

Officials

- Modify rules and regulations to match the skill levels and needs of young people.
- Compliment and encourage all participants.
- Be consistent, objective and courteous when making decisions.
- Condemn unsporting behaviour and promote respect for all opponents.
- Emphasise the spirit of the game rather than the errors.
- Encourage and promote rule changes, which will make participation more enjoyable.

- Be a good sport yourself. Actions speak louder than words.
- Keep up to date with the latest trends in officiating and the principles of growth and development of young people.
- Remember, you set an example. Your behaviour and comments should be positive and supportive.
- Place the safety and welfare of the participants above all else.
- Give all young people a 'fair go' regardless of their gender, ability, cultural background or religion.

Spectators

- Remember that young people participate in sport for their enjoyment and benefit, not yours.
- Applaud good performance and efforts from all individuals and teams. Congratulate all participants on their performance regardless of the game's outcome.
- Respect the decisions of officials and teach young people to do the same.
- Never ridicule or scold a young player for making a mistake. Positive comments are motivational
- Condemn the use of violence in any form, whether it is by spectators, coaches, officials or players.
- Show respect for your team's opponents. Without them there would be no game.
- Encourage players to follow the rules and the officials' decisions.
- Do not use foul language, sledge or harass players, coaches or officials.
- Respect the rights, dignity and worth of every young person regardless of their gender, ability, cultural background or religion.

Basketball Australia

I, (***name***) of
 (***address***) born / /
 solemnly and sincerely declare:

1. I am, or wish to be appointed as, a coach/administrator/official for basketball in the competition conducted by.....
[association or league].
2. I have never been charged with any criminal offence relating to narcotics, violence or abuse including sexual abuse.
3. No person has ever sought or obtained any intervention order, injunction or other restraining order against me alleging dishonesty or verbal or physical abuse (including sexual abuse).
4. I am not currently the subject of any sanction issued by a basketball association against me which prohibits me from holding a position of the type set out in clause 1 above.
5. No application submitted on my behalf has been rejected for, nor have I been suspended or dismissed from, a position in sport, volunteer organisation, business, educational or other Government or semi-government organisation where that rejection, suspension or dismissal relates to my conduct with persons aged under eighteen (18) years of age or to violence, drug use or to dishonesty.
6. There are no other matters, which a reasonable person would consider relevant to the fitness of a person to be a coach of a team of players aged under eighteen or an administrator with frequent contact with persons aged under eighteen.
7. I will notify the President or CEO of the organisations appointing me to my position immediately upon becoming aware that any of the matters set out in clauses 2 to 6 above has changed for whatever reason.

I make this declaration that the information contained in it is true and correct and I make it understanding that a person making a false declaration is liable to the penalties of perjury.

Declared at _____, in the State of _____ this _____ day of _____ 20____

.....

Signature

Before me:

(to be witnessed by a person qualified to take statutory declarations)

MEMBER PROTECTION DECLARATION

..... (*address*) born / /

solemnly and sincerely declare:

1. I am, or wish to be appointed as, a coach/administrator/official for basketball in the
..... competition conducted by.....
[association or league].
2. I have never been charged with any criminal offence relating to narcotics, violence or abuse including sexual abuse.
3. No person has ever sought or obtained any intervention order, injunction or other restraining order against me alleging dishonesty or verbal or physical abuse (including sexual abuse).
4. I am not currently the subject of any sanction issued by a basketball association against me which prohibits me from holding a position of the type set out in clause 1 above.
5. No application submitted on my behalf has been rejected for, nor have I been suspended or dismissed from, a position in sport, volunteer organisation, business, educational or other Government or semi-government organisation where that rejection, suspension or dismissal relates to my conduct with persons aged under eighteen (18) years of age or to violence, drug use or to dishonesty.
6. There are no other matters, which a reasonable person would consider relevant to the fitness of a person to be a coach of a team of players aged under eighteen or an administrator with frequent contact with persons aged under eighteen.
7. I will notify the President or CEO of the organisations appointing me to my position immediately upon becoming aware that any of the matters set out in clauses 2 to 6 above has changed for whatever reason.

I make this declaration that the information contained in it is true and correct and I make it understanding that a person making a false declaration is liable to the penalties of perjury.

Declared at _____, in the State of _____ this _____ day of _____ 20____

.....

Signature

Before me:

(to be witnessed by a person qualified to take statutory declarations)

Parent/Guardian Consent (in respect of person under the age of 18 years)

I have read and understood the declaration provided by my child. I confirm and warrant that the contents of the declaration provided by my child are true and correct in every particular.

Name:.....

Signature:..... Date:.....

ATTACHMENT F1

Queensland Child Protection Requirements

This information is subject to change at any time. Refer to the Queensland Commission for Children and Young People and Child Guardian's website (www.bluecard.qld.gov.au) or contact 1800 113611 if you have any queries about your obligations under their legislation. This information was updated on 1 April 2006.

This information is not and should not be considered as legal advice. It is provided as a guide only.

In Queensland the *Commission for Children and Young People and Child Guardian Act 2000* requires people who work with children under 18 years of age in certain categories of employment regulated by the Act, and people carrying on certain categories of business regulated by the Act to hold a blue card, unless specifically exempt.

When a person applies for a blue card the Commission conducts a Working with Children Check which is an assessment of a person's eligibility to work with children based on their criminal history, certain disciplinary information (if any) and investigative information (if any) held by the police commissioner. If a person is eligible for a blue card, the Commission issues a positive notice letter and a blue card which remains current for a period of 2 years.

Association/club requirements

[QLD State Association and affiliated clubs] are responsible for applying for a blue card on behalf of their paid employees and volunteers where the nature of their work falls under one of the categories regulated by the Act.

Interstate sporting organisations, associations and clubs visiting Queensland for sporting training camps, competition or other activities taking place in Queensland may also need to apply for a blue card if the nature of their activities falls under one of the categories in the Act.

People carrying on a regulated business are responsible for applying for a blue card if the activities of the business are regulated under one of the categories in the Act.

Note: These requirements apply despite the existence or absence of our member protection policy.

Relevant categories of employment regulated by the Act

Note: Only those categories of employment relevant to the activities of the sporting and recreation industries have been listed below.

Paid employees who commenced work in one of the following categories of employment after 1 May 2001 will need to apply for a blue card unless exempt under the relevant category:

- private teaching, coaching or tutoring
- sport and active recreation
- clubs and associations involving children
- child accommodation services (which incorporates billets).

Paid employees commencing employment in the following category need a blue card irrespective of when they commenced their employment – i.e. before or after 1 May 2001:

- schools - employees other than teachers and parents

Paid employees

Paid employees falling under one of the above listed categories of employment regulated by the Act need a blue card, unless exempt, if they work or are likely to work over a period of 12 months for at least:

- eight consecutive days, or
- once a week, each week, over four weeks, or
- once a fortnight, each fortnight, over eight weeks, or
- once a month, each month over six months

Once a blue card application has been lodged, a paid employee can commence or continue to work in regulated employment while waiting for the outcome of their blue card application.

Volunteers

Volunteers working with children who fall under one of the above listed categories of employment regulated by the Act need a blue card, unless exempt, **before** they can commence the child related activity, regardless of how often they come into contact with children and young people.

Exemptions

The following people are exempt from the Working with Children Check and do not need a blue card:

- children under 18 who are volunteers (except trainee students required to work in regulated employment as part of their studies with an education provider such as a registered training organization, or university);
- a volunteer guest of a school or a registered charity, corporation or incorporated association:
 - for the purpose of observing, supplying information or entertainment to 10 or more people, and
 - the activity is for 10 days or less on no more than two occasions per year, and
 - the person is unlikely to be physically present with a child without another adult being present, or
- an event volunteer performing the function of employment at a national or state event organised by a school or a registered charity, corporation or incorporated association (operating at a state or national level) for:
 - a sporting, cultural or skill based activity, and
 - the event is attended by more than 100 people, and
 - the work is for 10 days or less on no more than two occasions per year; and
 - the person is unlikely to be physically present with a child without another adult being present.

In addition, the following specific exemptions apply under each category regulated by the Act. It is critical to note that the exemptions below apply to the specific categories of regulated employment and business as stated, and therefore are not transferable.

For example, a 'registered teacher' is only exempt in the first two categories of regulated employment mentioned below, as that specific exemption does not apply to the remaining three identified categories of employment.

1. Schools - employees other than teachers and parents

- a 'registered teacher'; and
- a volunteer parent of a child attending the school.

2. Private teaching, coaching or tutoring

- a 'registered teacher'; or
- a person carrying out work in their capacity as an employee of an 'education provider'.

3. Sport and active recreation

- the employment takes place at an 'amusement park'; or
- the person provides the service or conducts the activity in their capacity as an employee of a 'government entity'; or
- a volunteer parent of a child to whom the services are provided; or
- a volunteer parent of a child in relation to whom the activities are conducted
- the services are provided, or the activities are conducted by or within a club or association or similar entity and are regulated under that category (See Item 4).

4. Clubs and associations involving children

- the person carries out the work in their capacity as an employee of a 'government entity'; or
- a volunteer parent of a child who receives the same or similar services to which the employment relates; or
- a volunteer parent of a child who participates in the same or similar activities to which the employment.

5. Child accommodation services (including billets)

- the 'child accommodation service' is being provided to a relative of the home stay provider;
- the work is carried out for a 'government service provider' that carries on a business which includes arranging a 'child accommodation service'; or
- the employment is organised by a school or a registered charity, corporation or incorporated association and is for 10 days or less and provided on no more than two occasions per year.

Relevant categories of business regulated by the Act

Note: Only those categories of business relevant to the activities of the sporting and recreation industries have been listed below.

A person or a corporation carrying on the following regulated businesses in Queensland must also apply for a blue card:

- private teaching, coaching or tutoring
- child accommodation services including homestays (including billets)
- Sport and active recreation (which may include recreational activities such as sporting camps and programs (excluding amusement parks))

Exemptions

1. Private teaching, coaching or tutoring
 - If the business is conducted by an education provider
2. Child accommodation services including homestays (including billets)
 - If the business is conducted at a:
 - boarding facility; or
 - residential facility funded by the Commonwealth government, or the Department of Child Safety, Disabilities Services Queensland, Department of Communities, Qld Health; or licensed by the Child Protection Act; or
 - or another place mainly providing accommodation for children which is funded by the Commonwealth government or Education Queensland.
3. Sport and active recreation
 - If the business takes place at an amusement park; or
 - The activities are conducted by or within a club, association or similar entity and are regulated under that category (See Item 4 above).

Where the business is a corporation, **each person** whose principal place of residence is in Australia, who takes part in the management of the corporation needs a blue card.

A person carrying on a regulated business must hold a blue card **before** they commence the regulated activity regardless of how often they come into contact with children and young people.

Application forms

Blue card application forms to apply for a paid employee, volunteer, or person carrying on a regulated business can be downloaded from www.ccypcg.qld.gov.au. Volunteers applications are processed free of charge; there is a \$40 processing fee for paid employees and business applications.

The fee is to be paid by *[insert relevant information e.g. individual or organisation]*.

Change in criminal history

If *[SO]* knows or reasonably suspects that an employee who commenced employment prior to 1 May 2001 and therefore does not require a blue card, has a criminal history relevant to their work with children or young people, the *[SO]* can apply for a blue card for that person. In such a case, the relevant application form to submit is a 'Current Employee blue card application form'.

This requirement also applies to interstate *[SOs]* that visit Queensland and apply to CCYPCG for a Working with Children Check.

Risk management

Amendments to the Act effective January 2005 require organisations engaging paid employees or volunteers that need a blue card, and persons or organisations carrying on a business for which a blue card is required to develop and implement annually, a risk management strategy to promote the well-being of children in their care and protect them from harm.

The key elements an organisation needs to consider in creating a risk management strategy includes:

- a child protection policy, which outlines:
 - a Code of Conduct
 - recruitment, training and management procedures for staff
 - reporting guidelines and directions for handling disclosures or suspicions of harm, and
 - consequences to staff for non-compliance with the policy
- communication and support strategies, such as:
 - information sheets for staff, volunteers and parents about policies, procedures and Codes of Conduct, and
 - training materials and communication strategies which help staff, volunteers and parents identify risks of harm
- documentation of risk management processes including:
 - registers of staff
 - strategies and plans for high-risk and special events
 - complaints registers, and
 - forms to ensure consistent handling of incidents, disclosures of harm, permissions and approvals for related activities.

ATTACHMENT F2

New South Wales Requirements to Check People Working With Children

This information will change during 2006 once the Commission for Children and Young People Amendment Act 2005 is proclaimed. Refer to the NSW Commission for Children and Young People website: www.kids.nsw.gov.au or contact 02 9286 7219 to ensure you have up to date information.

This information was updated 27 April 2006

All NSW clubs and associations who engage/employ people in child-related activities (in a paid or voluntary capacity) must meet the requirements of the Working With Children Check. This is a legal requirement. Interstate clubs and organisations that visit NSW and engage/employ people in child-related activities (in a paid or voluntary capacity) may also be required to complete a Working with Children Check with the NSW Commission for Children and Young People. We are required to:

1. Register with the NSW Department of Sport and Recreation Employment Screening Unit;
2. Identify positions (paid and voluntary) which are **child-related positions**;
3. Obtain a Prohibited Employment Declaration (PED) from all existing employees in child-related positions. PED forms can be downloaded from www.kids.nsw.gov.au/check/resources.html. If the person is a **prohibited person** we must remove him/her from the child-related employment;
4. Keep the PED in a secure place for as long as the person is employed;
5. Ask preferred applicants for paid child-related positions to sign a Consent Form for a background check;
6. Include advice about the Working With Children Check in information being provided about child-related positions (e.g. coach of junior team);
7. Request a background check for preferred applicants for paid child-related employment before they start work;
8. Decide whether to offer the applicant the position, taking into account the result of the Working With Children Check and any other information we have available;
9. Where it is not practical to complete the background check prior to employment commencing, we must still complete the check as soon as possible. We must advise employees that their ongoing employment is conditional upon the satisfactory outcome of the check;
10. Notify the NSW Commission for Children and Young People of any person whose application for child-related employment has been rejected primarily because of a risk assessment in the Working With Children Check. We must do this even if we offer the person an alternative position;
11. Advise the person if their application was rejected primarily because of an adverse risk assessment in the Working With Children Check;
12. Notify the NSW Commission for Children and Young People of any person against whom **relevant employment proceedings** have been completed; and
13. Protect the privacy of any person who is checked and the confidentiality of any information obtained through the checking process.

Child-related employment is any work (paid or unpaid) that involves direct and unsupervised contact with children in several types of areas such as sporting and recreation clubs and associations that have a significant child membership or involvement.

Employment includes work done:

- under a contract of employment;
- as a sub-contractor;

BA Policies: BA Member Protection By-Law

- as a volunteer for an organisation;
- as a minister of religion (whether or not ordained); and
- undertaking practical training as part of an educational or vocational course

Prohibited person is a person convicted of committing a serious sex offence or is a registrable person.

Registrable person is someone who has been found guilty of the following offences against children:

- murder
- sexual offences
- indecency offences
- kidnapping
- child prostitution
- child pornography

Relevant employment proceedings are disciplinary proceedings completed in NSW, or elsewhere, where an employer or professional body that supervises the conduct of the employee has found that ‘**reportable conduct**’ or an act of violence occurred, or there is some evidence that it occurred. An act of violence will be relevant only if it was committed by an employee in the course of employment and in the presence of a child.

Reportable conduct is:

- any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence);
- any assault, ill treatment or neglect of a child; or
- any behaviour that causes psychological harm to a child.

ATTACHMENT F3

Western Australia Child Protection Requirements

This information is subject to change at any time. Refer to the Department of Community Development Working with Children Screening Unit website (www.checkwwc.wa.gov.au) or contact 1800 883 979.

This information was updated on 1 April 2006

From 1 January 2006, certain people working with children in Western Australia will be required to have a national criminal history check and assessment of any record that appears as part of this check – a Working with Children Check. The Working with Children Check is compulsory under the *Working With Children (Criminal Record Checking) Act 2004*, and will be introduced progressively to different sectors over the next 5 years.

The Check will take into account convictions for any offence and charges for serious sexual and violent offences and will cost \$10.00 for volunteers and unpaid workers and \$50.00 for paid workers and self-employed people. These fees will be paid by the *[SO / member]*.

Applicants whose check is “successful” will be issued with either an ‘assessment notice’ in the form of an ID card which allows that person to work or volunteer with children across different types of ‘child-related work’. Applicants whose check is “unsuccessful” will be issued with a ‘negative notice’, which prohibits any child-related work. In some cases an Interim Negative Notice may be issued while the screening process is completed. This means that you must not start or continue that person in ‘child-related work’ while the notice is current, and you can only start or continue that person in child-related work if they are later issued an Assessment Notice.

The Screening Unit must notify the employer, where known, of the outcome of applications for a Working with Children Check.

Assessment notices will be valid for three years, unless the person has a “relevant change” in criminal record. If this occurs, the person is required to report this to their employer, who must then inform the Screening Unit, and a reassessment of the record takes place. The Police may also inform the Screening Unit where a person in child-related work has had a relevant change in criminal record.

Who needs to apply for a Check

People doing **child-related work** must have a Working with Children Check by the date required under the [phasing-in arrangements](http://www.checkwwc.wa.gov.au). The definition of **child-related work**, under Section 6 of the *Working with Children (Criminal Record Checking) Act 2004* includes:

“Work is **child-related work** if the **usual duties** of the work involve, or are likely to involve, contact with a child in connection with:

- an educational institution for children;
- a coaching or private tuition service of any kind, but not including an informal arrangement entered into for private or domestic purposes;
- a club, association or movement (including of a cultural, recreational or sporting nature and whether incorporated or not) with a significant membership or involvement of children, but not including an informal arrangement entered into for private or domestic purposes;
- an overnight camp]

Note that categories of work not relevant to the activities of our sport have not been listed above. A full list of the categories of child-related work is available on the Working with Children website (www.checkwwc.wa.gov.au) or by calling the Screening Unit on (08) 6217 8100.

General exemptions

The following people are exempt from the legislation and will not need to have a Check:

- volunteers under 18 years;
- employers of and fellow employees working with young people, so long as they are not otherwise in child-related work;
- parents volunteering where their child is also involved (This exemption does not apply to parents volunteering in connection with overnight camps);
- Short-term visitors to WA, for 2 weeks after their arrival, and for no more than 2 weeks in a 12 month period;
- People who carry out child-related work on no more than 5 days in a calendar year (except those working in child care services).

Specific exemptions from certain categories of child-related work

Category	Parent Exemption	Other exemptions
Educational institution for children	Work carried out on a voluntary basis by a parent of a child who is enrolled at the educational institution	WA College of Teaching members (for 2006 only)
Coaching or private tuition service of any kind	Work carried out on a voluntary basis by a parent of a child to whom the service is being provided in connection with an activity in which the child is participating or ordinarily participates	<ul style="list-style-type: none"> • An informal arrangement entered into for private or domestic purposes • Coaching or private tuition provided to a class of 2 or more students that is not provided primarily for children
Club, association or movement (including of a cultural, recreational or sporting nature and whether incorporated or not) with a significant membership or involvement of children	Work carried out on a voluntary basis by a parent of a child who is involved or is ordinarily involved in some or all of the activities of the club, association or movement	An informal arrangement entered into for private or domestic purposes
an overnight camp, regardless of the type of accommodation or how many children are involved	No parent exemption.	WA College of Teaching members, where overnight camp is in connection with: <ul style="list-style-type: none"> • Community kindergarten; • Educational institution for children; or • Coaching or private tuition service

Obligations of employers, including organisations using volunteers include:

- You must not employ a person in child-related employment on more than five days in a calendar year unless he or she:
 - has applied for a Working with Children Check, or
 - already holds a current Assessment Notice
 by the date they are required to under the phasing-in arrangements.
- You must not employ someone in child-related employment if you are aware that he or she holds a Negative Notice or Interim Negative Notice.
- You must not employ a person in child-related employment if you are aware that the person has withdrawn his or her Working with Children Check application.
- You must not employ a person in child-related employment if you are aware that he or she:
 - has a conviction or pending charge for a [Class 1 or Class 2 offence](#), and

- does not have a current Assessment Notice or an application for one that is still being considered.
- If an employee or volunteer reports a relevant change in criminal record to you, you must report this (in writing) to the Working with Children Screening Unit, as soon as practicable.
- If you receive a written request from the Working with Children Screening Unit, you must provide information or documents to show your compliance with your obligations as an employer.

It is okay for employers to start someone in child-related work once they have applied for a check in line with the phasing-in arrangements (outlined below) and while the check is being processed. The employer does not have to wait until the card is issued. Safeguards are in place to ensure that the Screening Unit notifies the employer if, in the mean time, a Negative Notice or Interim Negative Notice is issued, or if the person subsequently withdraws their application.

Phasing-in Arrangements

Working with Children Checks are being phased-in over 5 years. If a person is carrying out child-related work and needs to apply for a Check, they must apply by the date required under the phasing-in arrangements.

The information provided below about phasing-in arrangements is general information only. Only those categories of child-related work relevant to our sport are listed below. For full details of the phasing-in arrangements for Working with Children Checks please see Factsheet 2 “When to apply for a Working with Children Check”, available at www.checkwwc.wa.gov.au, or by calling (08) 6217 8100.

Commencing in 2006

- Volunteers working with children aged 0 – 7 years in any category of child-related work.
- Self-employed people working with children in connection with **any category** of child-related work, **EXCEPT**
 - child care licensees and “managerial officers”
 - registered teachers working in educational settings
 - persons with an F or T drivers licence endorsement who carry out a transport service specifically for children
 - people providing coaching or private tuition services for a TAFE or a Registered Training Organisation.
- “New” paid employees (who are not [public sector employees](#)) who commence child-related work after 1 January 2006 in the following categories of child-related work:
 - coaching or private tuition services
 - clubs, associations or movements with a significant membership or involvement of children
 - overnight camps
 - children’s entertainment or party services

Commencing in 2007

- Volunteers working with children aged 8 – 12 years in any category of child-related work.
- “New” public sector employees who commenced child-related work after 1 January 2006.
- “New” paid employees who commenced work after 1 January 2006 in the following categories of child-related work:
 - Educational institutions for children
 - People providing coaching and private tuition services for a TAFE, Registered Training Organisation or education service provider registered under the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991*.

Commencing in 2008

- Volunteers Working with Children aged 13 – 17 years in any category of child-related work.

Commencing in 2009-2010

- “Continuing” paid employees (including public sector employees) who have remained in the same child-related work they were in before 1 January 2006, and are still in that position.

ATTACHMENT F4

Victorian Child Protection Requirements

This information is subject to change at any time. Refer to the Department of Justice website: <http://www.justice.vic.gov.au> and follow the Working with Children Check link under Business Units or contact 1300 652 879.

This information was updated 1 April 2006.

Under the [Working with Children Bill](#) (2005) the Victorian Working with Children Check (Check) will require individuals who work or volunteer with children in certain capacities in identified occupations and activities to undergo screening for criminal offences.

A person who has no relevant criminal or professional disciplinary history will be granted an assessment notice. That notice will entitle the person to undertake child-related work. A person deemed unsuitable to work or volunteer with children will be given a negative notice and cannot work in [child-related work](#). A negative notice can be appealed to Victorian Civil and Administrative Tribunal (VCAT) provided the individual is not listed on the Sex Offenders Register or subject to an extended supervision order.

Who needs to apply for a Check

Any person who works in, or in connection with, in a paid or voluntary capacity, any of the 20 child-related occupational fields listed in the Act. This work must also usually involve (or be likely to involve) regular, direct contact with a child where that contact is not directly supervised. The following child-related categories are relevant to our sport.

- educational institutions for children (such as schools and some TAFE programs);
- clubs, associations or movements that provide services or conduct activities for or directed at children or whose membership is mainly comprised of children;
- coaching or private tuition services of any kind for children; and
- direct commercial provision (and not incidental or in support of other business activities) of gym or play facilities specifically for children.

Exemptions

The following people will not need to have a Check:

- individuals aged under 18
- volunteers involved in an activity in which their child ordinarily participates
- individuals working only with children who are close family relations
- secondary school students aged under 20 performing volunteer work arranged through the school where they are studying
- sworn members of Victoria Police
- teachers registered with the Victorian Institute of Teaching
- a visiting worker who does not ordinarily reside and perform child-related work in Victoria.

Phasing-in Arrangements

Checks are being phased in over the next five years, commencing in April 2006. The type of child-related work determines when people need to apply for a check. **At this stage it is anticipated that the sport sector will be phased in 2008/09.** More information on the phasing-in of Checks is available from www.justice.vic.gov.au.

Employer requirements

As an employer or volunteer organisation you must:

- ensure all employees or volunteers who are required to get a Check do so at the correct time, which is indicated in the phasing plan.
- where your employees or volunteers are not required to get a Check because their contact with children is directly supervised, ensure the supervisor has a Check unless an exemption applies. For

example, the supervisor may be a registered teacher with the Victorian Institute of Teaching, making them exempt

- ensure that employees or volunteers issued with a Negative Notice do not undertake child-related work as defined by the Working With Children Act 2005.

As an employer or volunteer organisation you should:

- record your employee's and volunteer's unique Application Receipt Number received when they submit their application. The Act enables a person to continue or commence work while their application is pending
- confirm that your employees and volunteers have been issued with an Assessment Notice after Check applications have been assessed by the Department of Justice
- sight your employee's or volunteer's Working with Children Check Card and confirm the status of their Card Number to verify that they have passed the Check. You can do this online from 1 July 2006, or by calling 1300 652 872
- record your employee's or volunteer's Card Number, which is different from their Application Receipt Number
- develop internal processes in the event of an existing employee or volunteer being issued with an Interim Negative Notice or Negative Notice.

ATTACHMENT F5

South Australian Child Protection Requirements

This information is subject to change at any time. Refer to the Department of Families and Communities website www.familiesandcommunities.sa.gov.au or the South Australian Office for Recreation and Sport's website www.resport.sa.gov.au if you have any queries about your obligations under the legislation.

This information was updated on 1 May 2006.

Recent amendments to the *Children's Protection Act 1993*, in South Australia as per the *Children's Protection (Miscellaneous) Amendment Act 2005*, promote a whole of community responsibility to the care and protection of children and young people. Whilst yet to be proclaimed, new provisions relating to the establishment of child safe environments, facilitating effective criminal history checks and the extension of mandated notifiers, will all have an impact upon sporting and recreational organisations.

The new provisions will require government, non-government and volunteer organisations that are entrusted with the care of children or regularly come into contact with children to have strategies in place to prevent and minimise opportunities for abuse and to appropriately respond when abuse occurs or is suspected. Organisations will also be required to implement guidelines and processes that clearly outline effective and timely responses to child protection issues and steps of action.

Standards will be developed to assist organisations move towards creating safer environments for children. Requirements under the standards are likely to include:

- Codes of conduct and principles of good practice for working with children;
- Guidance on standards of conduct for adults in dealing with children;
- Advice on how to deal with cases of bullying or harassment of a child;
- Guidance on informing on cases of child abuse and neglect, or suspected abuse or neglect;
- Advice on the recruitment and supervision of staff of Government and non-government organisations;
- Guidance on how to handle procedures for complaints, and making the complaints process easier for children;
- Monitoring progress of child safe environments in Government and non-government sectors and periodic reporting; and
- Developing and issuing standards in dealing with information about the criminal history of employees and volunteers.

The amendments to the *Children's Protection Act 1993* **may** also require sport and recreation organisations to develop or comply with new criminal history check provisions. This **may** mean undertaking a criminal history check for any person in a prescribed position (including employees, volunteers, agents, subcontractors and contractors) who has:

- Regular contact/close proximity to children; or
- Supervision of such a person; or
- Access to children's records;
- Or else as prescribed by regulation.

Mandatory reporting is currently a requirement by law in South Australia. Mandatory reporting means that those people covered by the law must report reasonable suspicions of child abuse or neglect. Those currently mandated under the law include teachers, medical practitioners, health professionals, child care workers, day care providers, social workers and workers, volunteers and managers within government departments or non-government agencies that provide services to children. **Under the new legislation a person employed by, or volunteering in, organisations that provide sporting or recreational services for children will also be mandated.**

Throughout the year, further information and advice relating to proclamation and implementation of these provisions will be provided by the Office for Recreation and Sport in South Australia. Once proclaimed, penalties of up to \$10,000 will apply for non-compliance with the requirements under the legislation. *Until this time recreation and sport organisations should continue to follow the generic child protection requirements and the risk management process set out in 'Child Protection in Sport - National Overview' document provided by the Australian Sports Commission.*