

MANLY WARRINGAH DISTRICT

BASEBALL ASSOCIATION

- STATE LEAGUE -



COMPLAINTS HANDLING PROCEDURES POLICY

COMPLAINT HANDLING PROCEDURES

COMPLAINTS PROCEDURE

All complaints will be kept confidential and will not be disclosed to another person without the complainant's consent except if law requires disclosure or if disclosure is necessary to effectively deal with the complaint.

Individuals and organisations may also pursue their complaint externally under anti-discrimination, child protection or other relevant legislation.

If you wish to remain anonymous, MWBDA State League may have difficulty assisting you to resolve your complaint. Procedural fairness (natural justice) means that MWDBA State League is required to provide the person/people you have complained about with full details of the complaint so they have a fair chance to respond.

INFORMAL APPROACHES

Step 1: Talk with the other person (where this is reasonable and appropriate)

In the first instance, you (the Complainant) should try to sort out the problem with the person or people involved (respondent) if you feel able to do so.

Step 2: Contact a Member Protection Information Officer

Talk with one of our Member Protection Information Officers (MPIOs) or to our Complaints Officer if:

- the first step is not possible/reasonable;
- you are not sure how to handle the problem by yourself;
- you want to talk confidentially about the problem with someone and obtain more information about what you can do; or
- the problem continues after you tried to approach the person or people involved.

[A list of our sport's MPIOs is - insert where this information can be found].

The Member Protection Information Officers (MPIOs) or to our Complaints Officer will:

- take confidential notes about your complaint;
- try to find out the facts of the problem;
- ask what outcome/how you want the problem resolved and if you need support;
- provide possible options for you to resolve the problem;
- act as a support person if you so wish;
- refer you to an appropriate person (e.g. Mediator) to help you resolve the problem, if necessary;
- inform the relevant government authorities and/or police if required by law to do so;
- maintain confidentiality.

Step 3: Outcomes from initial contact

After talking with the Member Protection Information Officers (MPIOs) or to our Complaints Officer

you may decide:

- there is no problem;
- the problem is minor and you do not wish to take the matter forward;
- to try and work out your own resolution (with or without a support person such as a MPIO); or
- to seek a mediated resolution with the help of a third person (such as a mediator); or
- to seek a formal approach.

FORMAL APPROACHES

Step 4: Making a Formal complaint

If your complaint is not resolved or informal approaches are not appropriate or possible, you may:

- make a formal complaint in writing to MPIO or Complaints Officer
- or
- approach a relevant external agency such as an anti-discrimination commission, for advice.

On receiving a formal complaint and based on the material you have provided, the Complaints Officer will decide whether:

- they are the most appropriate person to receive and handle the complaint;
- the nature and seriousness of the complaint warrants a formal resolution procedure;
- to appoint a person to **investigate** (gather more information on) the complaint;
- to refer the complaint to mediation;
- to refer the complaint to a hearings tribunal;
- to refer the matter to the police or other appropriate authority; and/or
- to implement any interim arrangements that will apply until the complaint process set out in these Procedures is completed.

In making the decision(s) outlined above, the Complaints Officer will take into account:

- whether they have had any personal involvement in the circumstances which means that someone else should handle the complaint;
- your wishes, and the wishes of the respondent, regarding the manner in which the complaint should be handled;
- the relationship between you and the respondent (for example an actual or perceived power imbalance between you and the respondent);
- whether the facts of the complaint are in dispute; and
- the urgency of the complaint, including the possibility that you will be subject to further unacceptable behaviour while the complaint process is underway.

If Complaints Manager is the appropriate person to handle the complaint they will, to the extent that these steps are necessary:

- put the information they've received from you to the person/people you're complaining about and ask them to provide their side of the story;
- decide if they have enough information to determine whether the matter alleged in your complaint did or didn't happen; and/or
- determine what, if any, further action to take. This action may include disciplinary action in accordance with this policy.

Step 5: Investigation of the complaint

A person appointed under Step 3 will conduct an investigation and provide a written report to MPIO who will determine what further action to take;

If the complaint is referred to mediation, it will be conducted in accordance with [Attachment D2] or as otherwise agreed by you and the respondent and the mediation provider;

If the complaint is referred to a hearings tribunal, the hearing will be conducted in accordance with [Attachment D5];

If the complaint is referred to the police or other appropriate authority, the MWDBA State League will use its best endeavours to provide all reasonable assistance required by the police or other authority.

Step 6: Reconsideration of initial outcome/investigation or appeal

If, under the formal complaint process, mediation is unsuccessful, you may request that the MPIO or Complaints Officer reconsider the complaint in accordance with **Step 3**.

You or the respondent(s) may be entitled to appeal. The grounds and process for appeals under this Policy are set out in [Attachment D5].

Step 7: Documenting the resolution

The Complaints Handler will document the complaint, the process and the outcome. This document will be stored in a confidential and secure place. If the complaint was dealt with at a state/district level, the information will be stored in the state association office. If the matter is of a serious nature, or if the matter was escalated to and/or dealt with at the national level, the original document will be stored at the national office with a copy stored at the state office.

EXTERNAL APPROACHES

There are a range of other options available depending on the nature of your complaint. If you feel that you have been harassed or discriminated against, you can seek advice from your State or Territory anti-discrimination commission without being obliged to make a formal complaint. If the commission advises you that the problem appears to be harassment within its jurisdiction, you may lodge a formal complaint with the commission.

Once a complaint is received by an anti-discrimination commission, it will investigate. If it appears that unlawful harassment or discrimination has occurred, the commission will conciliate the complaint confidentially. If this fails, or is inappropriate, the complaint may go to a formal hearing where a finding will be made. The tribunal will decide upon what action, if any, will be taken. This could include financial compensation for such things as distress, lost earnings or medical and counselling expenses incurred.

If you do lodge a complaint under anti-discrimination law, you may use an appropriate person (e.g. an [MPIO]) as a support person throughout the process. It is also common to have a legal representative, particularly at the hearing stage of a complaint.

You could also approach another external agency such as the police

Attachment D2: MEDIATION

Mediation is a process during which people in conflict are helped to communicate with each other to identify the areas of dispute and to make decisions about resolving it. This attachment outlines the general procedure of mediation that will be followed by MWDBA State League

If mediation is chosen, the MPIO will, under the direction of the Baseball Australia and in consultation with the complainant and the respondent(s), arrange for a mediator.

The mediator's role is to assist the complainant and respondent(s) reach an agreement on how to resolve the problem. The mediator, in consultation with the complainant and respondent(s), will choose the procedures to be followed during the mediation. At a minimum, an agenda of issues for discussion will be prepared by the mediator.

The mediation will be conducted confidentially and without prejudice to the rights of the complainant and the respondent(s) to pursue an alternative process if the complaint is not resolved.

At the end of a successful mediation the mediator will prepare a document that sets out the agreement reached which will be signed by them as their agreement.

If the complaint is not resolved by mediation, the complainant may:

- Write to the MWDBA President to request that the MWDBA President reconsider the complaint in accordance with **Step 3**; or
- Approach an external agency such as an anti-discrimination commission.

Mediation will **not** be recommended if:

- The respondent has a completely different version of the events and will not deviate from these;
- The complainant or respondent are unwilling to attempt mediation;
- Due to the nature of the complaint, the relationship between the complainant and the respondent (s) or any other relevant factors, the complaint is not suitable for mediation; or
- The matter involves proven serious allegations, regardless of the wishes of the Complainant.

Attachment D3: INVESTIGATION PROCESS

If an investigation needs to be conducted to gather more information the following steps will be followed:

1. We will provide a written brief to the investigator clarifying terms of engagement and roles and responsibilities. The investigator will:
 - 1.1 Interview the complainant and record the interview in writing.
 - 1.2 Convey full details of the complaint to the respondent (s) so that they can respond.
 - 1.3 Interview the respondent to allow them to answer the complaint, and record the interview in writing.
 - 1.4 Obtain statements from witnesses and other relevant evidence to assist in a determination, if there is a dispute over the facts
 - 1.5 Make a finding as to whether the complaint is:
substantiated (there is sufficient evidence to support the complaint);
inconclusive (there is insufficient evidence either way);
unsubstantiated (there is sufficient evidence to show that the complaint is unfounded); and/or
mischievous, vexatious or knowingly untrue.
- 1.6 Provide a report to MWDBA documenting the complaint, investigation process, evidence, finding and, if requested, recommendations.
2. We will provide a report to the complainant and the respondent(s) documenting the complaint, the investigation process and summarising key points that are substantiated, inconclusive, unsubstantiated and/or mischievous.
3. The complainant and the respondent(s) will be entitled to support throughout this process from their chosen support person/adviser (e.g. [MPIO] or other person).
4. The complainant and the respondent(s) may have the right to appeal against any decision based on the investigation. Information on our appeals process is in [Attachment D5].

Attachment D4: PROCEDURE FOR HANDLING ALLEGATIONS OF CHILD ABUSE

An allegation of child abuse is a very serious matter and must be handled with a high degree of sensitivity. It is not the responsibility of anyone working in the MWDBA in a paid or unpaid capacity to decide whether or not child abuse has taken place. However, there is a responsibility to act on any concerns by reporting these to the appropriate authorities. The following outlines the key steps to follow. More information can be obtained from State or Territory government agencies.

Step 1 – Initial Receipt of an Allegation

If a child or young person discloses an allegation involving harm or abuse to them or another child, then it is crucial that you:

Stay calm;

Listen, be supportive and do not dispute what the child says;

Reassure the child that what has occurred is not the fault of the child;

Be honest with the child and explain that other people may need to be told in order to stop what is happening;

Ensure you are clear about what the child has said but do not elicit detailed information, ask leading questions or offer an opinion;

Act promptly to accurately record the discussion in writing;

Do not discuss the details with any person other than those detailed in these procedures; and

Do not contact the alleged offender.

Step 2 – Report allegations

Immediately report any allegation or disclosure of child abuse or situation involving a child at risk of harm, to the police and/or government child protection agency. You may need to report to both.

Contact the relevant child protection agency or police for advice if there is **any** doubt about whether the complaint should be reported (for example, the allegation may relate to poor/inappropriate practice).

If the child's parent/s is suspected of committing the abuse, you should report the allegation to the relevant government agency.

If the allegation involves anyone to whom our policy applies, then also report the allegation to the CEO of the Baseball Australia and Baseball NSW so that they can manage the situation (e.g. contact the parents following advice from the authorities, deal with any media enquiries and manage steps 3 and 4).

Step 3 – Protect the child and manage the situation

The CEO will assess the risks and take interim action to ensure the child's/children's safety. Action the Baseball Australia and Baseball NSW may implement includes 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.

The CEO will consider the kind of support that the child/ren and parents may need (e.g. counselling, helplines, support groups).

The MPIO will address the support needs of the alleged offender.

The MPIO will also put in place measures to protect the child and the person against whom the complaint is made from victimisation and gossip. If the person is stood down, it should be made clear to any persons aware of the incident that this does not mean the respondent is guilty and a proper investigation will be undertaken.

Step 4 – Internal action

Where there is an allegation made against a person to whom this policy applies, there may be three types of investigations:

Criminal (conducted by police)

Child protection (conducted by child protection authority)

Disciplinary or misconduct (conducted by Baseball Australia and Baseball NSW)

Irrespective of the findings of the child protection and/or police inquiries, the Baseball Australia and Baseball NSW will assess the allegation to decide whether the person should be reinstated, banned, have their employment or position terminated or any other action.

The decision-maker(s) will be Baseball Australia and Baseball NSW and it will consider all the information, including the findings of the police, government agency and/or court, and determine a finding, recommend action and explain its rationale for the action. This may be a difficult decision particularly where there is insufficient evidence to uphold any action by the police.

If disciplinary action is to be taken, the procedures outlined in [Clause 9] of the policy will be followed.

If disciplinary action is taken, Baseball Australia and Baseball NSW will advise and provide a report to the relevant government authority should this be required (e.g. the NSW Commission for Children and Young People requires notification of relevant employment proceedings).



Attachment D5: HEARINGS & APPEALS TRIBUNAL PROCEDURE

The following will be followed by hearings tribunals established by the Baseball Australia to hear national member protection related complaints.

Preparation for Tribunal Hearing

A Tribunal Panel will be constituted following the rules outlined in Baseball Australia Constitution, to hear a complaint that has been referred to it by Complaints Officer. The number of Tribunal members required to be present throughout the hearing will be MWDBA Constitution.

The Tribunal members will be provided with a copy of all the relevant correspondence, reports or information received and sent by Complaints Officer relating to the complaint/allegations.

The Tribunal will be scheduled as soon as practicable, but must allow adequate time for the person being complained about (respondent(s)) to prepare their case for the hearing.

The Tribunal will not include any person who has any actual or perceived conflict of interest, or bias regarding the matter.

The Complaints Officer will inform the respondent(s) in writing that a tribunal hearing will take place. The notice will outline:

That the person has a right to appear at the tribunal hearing to defend the complaint/allegation;

Details of the complaint, and details of all allegations and the clause of any policy or rule allegedly breached;

The date, time and venue of the tribunal hearing;

That they can make either verbal or written submissions to the Tribunal;

That they may arrange for witnesses to attend the Tribunal in support of their position (statutory declarations of witnesses not available or from character witnesses may also be provided to the Tribunal);

An outline of any possible penalties that may be imposed if the complaint is found to be true; and

That legal representation will not be allowed. If the respondent is a minor, they should have a parent or guardian present.

A copy of any information / documents that have been given to the Tribunal (e.g. investigation report findings) will also be provided to the respondent.

The respondent(s) will be allowed to participate in all Baseball Australia activities and events, pending the decision of the Tribunal, including any available appeal process, unless the Complaints Officer believes it is necessary to exclude the respondent(s) from all or some Baseball Australia activities and events, after considering the nature of the complaint.

The Complaints Officer will notify the complainant in writing that a tribunal hearing will take place. The notice will outline:

That the person has a right to appear at the tribunal hearing to support their complaint;

Details of the complaint, including any relevant rules or regulations the respondent is accused of breaching

The date, time and venue of the tribunal hearing;

That they can make either verbal or written submissions to the Tribunal;

That they may arrange for witnesses to attend the Tribunal in support of their position (or provide statutory declarations from witnesses unable to attend); and

That legal representation will not be allowed. If complainant is a minor, they should have a parent or guardian present.

A copy of any information / documents that have been given to the Tribunal (e.g. investigation report findings) will also be provided to the complainant.

If the complainant believes the details of the complaint are incorrect or insufficient they should inform the Complaints Officer as soon as possible so that the respondent and the Tribunal Panel members can be properly informed of the complaint.

It is preferable that the Tribunal include at least one person with knowledge or experience of the relevant laws/rules (e.g. Discrimination).

Tribunal Hearing Procedure

The following people will be allowed to attend the Tribunal Hearing:

The Tribunal members;

The respondent(s);

The complainant;

Any witnesses called by the respondent;

Any witnesses called by the complainant;

Any parent / guardian or support person required to support the respondent or the complainant.

If the respondent(s) is not present at the set hearing time and the Tribunal Chairperson considers that no valid reason has been presented for their absence, the Tribunal Hearing will continue subject to the Tribunal Chairperson being satisfied that all Tribunal notification requirements have been met.

If the Tribunal Chairperson considers that a valid reason for the non-attendance of the respondent(s) has been presented, or the Tribunal Chairperson does not believe the Tribunal notification requirements have been met, then the Tribunal will be rescheduled to a later date.

The Tribunal Chairperson will inform the [insert relevant person] of the need to reschedule, and the [insert relevant person] will organise for the Tribunal to be reconvened.

The Tribunal Chairperson will read out the complaint, ask the respondent(s) if they understand the complaint and if they agree or disagree with the complaint.

If the respondent agrees with the complaint, he or she will be asked to provide any evidence or witnesses that should be considered by the Tribunal Panel when determining any disciplinary measures (penalty). [Ensure the Tribunal has the powers / authorisation to impose any disciplinary measures under your Constitution.]

If the respondent disagrees with the complaint, the complainant will be asked to describe the circumstances that lead to the complaint being made.

Reference may be made to brief notes.

The complainant may call witnesses.

The respondent(s) may question the complainant and witnesses.

The respondent(s) will then be asked to respond to the complaint.

Reference may be made to brief notes.

The respondent may call witnesses.

The respondent(s) will then be asked to respond to the complaint.

Reference may be made to brief notes.

The respondent may call witnesses.

The complainant may ask questions of the respondent and witnesses.

Both the complainant and respondent may be present when evidence is presented to the Tribunal. Witnesses may be asked to wait outside the hearing until required.

The Tribunal may:

consider any evidence, and in any form, that it deems relevant.

question any person giving evidence.

limit the number of witnesses presented to those who provide any new evidence.

Require the attendance of any witness it deems relevant;

Act in an inquisitorial manner in order to establish the truth of the issue/case before it.

Video evidence, if available, may be presented. The arrangements must be made entirely by the person/s wishing to offer this type of evidence.

If the Tribunal considers that at any time during the Tribunal Hearing that there is any unreasonable or intimidatory behaviour from anyone the Chairperson may stop further involvement of the person in the hearing.

After all of the evidence has been presented the Tribunal will make its decision in private. The Tribunal must decide whether the complaint has been substantiated on the balance of probabilities (i.e. more probable than not). As the seriousness of the allegation increases, so too must the level of satisfaction of the Tribunal that the complaint has been substantiated. The respondent will be given an opportunity to address the Tribunal on disciplinary measures which might be imposed. Disciplinary measures imposed must be reasonable in the circumstances.

All Tribunal decisions will be by majority vote.

The Tribunal Chairperson will announce the decision in the presence of all those involved in the hearing and will declare the hearing closed, or may advise those present that the decision is reserved and will be handed down in written form.

Within 48 hours, the Tribunal Chairperson will:

Forward to MWDBA a copy of the Tribunal decision including any disciplinary measures imposed.

Forward a letter to the respondent(s) reconfirming the Tribunal decision and any disciplinary measures imposed. The letter should also outline, if allowed, the process and grounds for an appeal. Where the matter is of unusual complexity or importance, the Tribunal Chairperson may inform the parties in writing within 48 hours that the decision will be delayed for a further 48 hours.

25. The Tribunal does not need to provide written reasons for its decision.

Appeals Procedure

26. A complainant or a respondent(s) who is not satisfied with the decision of a Complaints Manager, the outcome of mediation or a Tribunal decision can lodge one appeal to the Baseball Australia on one or more of the following bases:

26.1 That a denial of natural justice has occurred; or

26.2 That the disciplinary measure(s) imposed is unjust and/or unreasonable.

26.3 That the decision was not supported by the information/evidence provided to the Complaints Manager/Mediator/Tribunal;

27. A person wanting to appeal in accordance with clause 25 must lodge a letter setting out the basis for their appeal with the President or a Secretary within 7 days of the relevant decision.

28. If the letter of appeal is not received by the President or a Secretary within the time period the right of appeal lapses.

29. The letter of appeal and copy of tribunal decision report will be forwarded to the MWDBA RSA or MWDBA Tribunal to review and decide whether there are sufficient grounds for the appeal to proceed. The MWDBA RSA or Tribunal may invite any witnesses to the meeting it believes are required to make an informed decision. 3

30. If the appellant has not shown sufficient grounds for appeal in accordance with clause 25, then the appeal will be rejected. The appellant will be notified with reasons.

30. If the appeal is accepted an Appeal Tribunal with a new panel will be convened to rehear the complaint

The Tribunal Procedure shall be followed for the appeal.

The decision of an Appeal Tribunal will be final.

Judiciary Process

