

## **PART D: COMPLAINT HANDLING PROCEDURES**

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We will deal with all complaints in a fair, timely and transparent manner. All complaints will be treated seriously.

We will provide individuals with an informal and informal process to resolve the matter, along with access to an external complaint handling body, based on their preferences and the nature of the complaint.

We also provide an appeals process for those matters where it is required.

We will maintain confidentiality as far as possible and ensure that no one is victimised for making, supporting or providing information about a complaint.

### **ATTACHMENT Final D - Including**

- Attachment D1. Complaints procedure
- Attachment D2. Mediation
- Attachment D3. Tribunal procedure

## **Attachment D1:**

### **COMPLAINTS PROCEDURE**

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AUSRAPID aims to support people associated with our sport to make and resolve any complaints they may have in a fair, timely and effective way.

**We will keep all complaints confidential.** We will not provide information about the complaint to another person without the complainant's consent, except if the law requires us disclose this information or if it is necessary to properly resolve the complaint.

To ensure **fairness for everyone involved**, we will provide the full details of the complaint to the person or people against whom the complaint has been made and ask for their response. As a result, it may be difficult for us to resolve complaints made anonymously.

We will provide **informal and formal procedures** to resolve complaints. Individuals and organisations can also **complain to external organisations** under anti-discrimination, child protection and other relevant laws.

#### **Informal approaches**

##### **Step 1: Talk with the other person** (if safe, reasonable and appropriate)

If you feel confident to do so, you can approach the other person to discuss the issues and try and resolve the problem directly.

##### **Step 2: Contact a Member Protection Information Officer/CEO**

We encourage you to talk with our Member Protection Information Officer (MPIO) or CEO if:

- the first step is not possible or reasonable
- you are not sure how to handle the problem by yourself
- you want to talk confidentially with someone and find out what options are available to resolve the problem, or
- the problem continues after you approached the other person.

The name and contact details for our MPIO/CEO can be obtained by contacting the AUSRAPID office on 03 5762 7494 or email [mail@ausrapid.org.au](mailto:mail@ausrapid.org.au)

The MPIO/CEO will:

- take confidential notes about your complaint
- try to find out the facts of your complaint
- ask how you would like the problem to be resolved and if you need support
- provide different options for you to resolve the problem
- act as a support person, if you wish
- refer you to an appropriate person (e.g. a 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: Decide how to resolve the problem**

After talking with the MPIO/CEO, you may decide:

- there is no problem
- the problem is minor and you do not wish to take the matter forward
- to try and resolve the problem yourself, with or without a support person
- to resolve the problem with the help of someone impartial, such as a mediator
- to resolve the matter through a formal process.

## Formal approaches

### Step 4: Making a formal complaint

If it is not possible or appropriate to resolve your complaint through an informal process, you may:

- make a formal complaint in writing to the CEO or
- approach a relevant external agency, such as an anti-discrimination or equal opportunity commission, for advice.

After receiving a formal complaint, and based on the material you provide, the *CEO* will decide whether:

- he or she is the most appropriate person to receive and handle the complaint
- the nature and seriousness of the complaint requires a formal resolution procedure
- to refer the complaint to **mediation**
- to appoint a person to **investigate** the complaint
- to refer the complaint to a **tribunal hearing**
- 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 is completed.

In making this decision, the *CEO* will take into account:

- whether he or she has had any personal involvement in the circumstances and if someone else should handle the complaint
- your wishes, and the wishes of the respondent, regarding how the complaint should be handled
- the relationship between you and the respondent (e.g. an actual or perceived power imbalance between you and the respondent)
- whether the facts of the complaint are in dispute
- the urgency of the complaint, including the possibility that you might face further unacceptable behaviour while the complaint process is underway.

If the CEO is the appropriate person to handle the complaint, he or she will, if these steps are necessary:

- provide the information received from you to the other person(s) involved and ask for their side of the story
- decide if there is 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, including disciplinary action in accordance with this policy.

### Step 5: Investigating the complaint

In some cases, an investigation may be required to determine the facts surrounding the complaint. Our investigations procedure is outlined in [\[Attachment D3\]](#).

Following the investigation, a written report will be provided to CEO who will determine what further action to take.

- If the complaint is referred to **mediation**, we will follow the steps outlined in [\[Attachment D2\]](#) or as agreed by you, the respondent and the mediator.
- If the complaint is referred to a **tribunal hearing**, the hearing will be conducted according to the steps outlined in [\[Attachment D4\]](#).
- If the complaint is referred to the **police or another external agency**, we will endeavour to provide all reasonable assistance required by the police or the agency.

*[Any costs relating to the complaint process set out in this policy (e.g. investigation, mediation and/or a tribunal hearing) are to be met by complainant, unless otherwise stated.]*

### **Step 6: Reconsidering a complaint or appealing a decision**

If mediation is unable to resolve the matter, you may request that CEO reconsider the complaint in accordance with Step 3.

You or the respondent(s) may also appeal a decision made by at a tribunal hearing. The grounds and process for appeals are set out in *[Attachment D4]*.

### **Step 7: Documenting the resolution**

The CEO will record the complaint, the steps taken to resolve it and the final outcome. This information will be stored in a confidential and secure place. If the complaint was dealt with at the state/district level, the information will be stored by the state association. If the matter is of a serious nature, or if it was dealt with at the national level, the original document will be stored by AUSRAPID and a copy stored by the state association.

### **Approaching external organisations**

If you feel that you have been harassed or discriminated against, you can seek advice from your state or territory anti-discrimination or equal opportunity commission. There is no obligation to make a formal complaint. However, if the commission advises you that the issues appear to be within its jurisdiction, you may choose to lodge a formal complaint with the commission.

Once a complaint is received by the commission, it will investigate the matter. If it appears that unlawful harassment or discrimination has occurred, the commission will attempt to conciliate the complaint on a confidential basis. If this fails, or if it is not appropriate, the complaint may go to a formal hearing. The tribunal will make a finding and decide what action, if any, will be taken. This could include an apology or financial compensation for distress, lost earnings or medical and counselling expenses incurred.

If you do lodge a complaint with the commission, an appropriate person from our organisation (e.g. an MPIO) will be available to support you during the process. It is also common to have a legal representation, particularly if the complaint goes to a formal hearing.

**Contact details for the state and territory anti-discrimination and equal opportunity commissions** are available on the Play by the Rules website:

<http://www.playbytherules.net.au/resources/quick-reference-guide>.

Serious incidents, such as assault or sexual assault, should be reported to the police.

## Attachment D2: MEDIATION

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Mediation is a process that allows the people involved in a complaint to talk through the issues with an impartial person – the mediator – and work out a mutually agreeable solution.

The mediator does not decide who is right or wrong and does not tell either side what they must do. Instead, he or she helps those involved to talk through the issues and makes sure that the process is as fair as possible for all concerned.

Our approach to mediation follows the steps set out below.

1. The CEO will appoint a mediator to help resolve the complaint. This will be done under the direction of AUSRAPID and in consultation with the complainant and the respondent(s).
2. The mediator will talk with the complainant and respondent(s) about how the mediation will take place and who will participate. At a minimum, the mediator will prepare an agenda of issues to be discussed.
3. All issues raised during mediation will be treated confidentially. We also respect the rights of the complainant and the respondent(s) to pursue an alternative process if the complaint is not resolved.
4. If the complaint is resolved by mediation, the mediator will prepare a document that sets out the agreement that has been reached. This agreement will be signed by the complainant and the respondent(s). We expect the parties involved to respect the terms of the agreement.
5. If the complaint is not resolved by mediation, the complainant may:
  - write to CEO to request that the CEO reconsider the complaint in accordance with **Step 3**
  - approach an external agency, such as an anti-discrimination or equal opportunity commission, to resolve the matter.

We recognise that there are some **situations where mediation will not be appropriate**, including:

- when the people involved have completely different versions of the incident
- when one or both parties are unwilling to attempt mediation
- when the issues raised are sensitive in nature
- when there is a real or perceived power imbalance between the people involved
- matters that involve serious, proven allegations.

## Attachment D4: TRIBUNAL PROCEDURES

We will follow the steps set out below to hear formal complaints made under our Member Protection Policy.

### Preparing for a Tribunal hearing

1. A Tribunal panel will be established, according to the rules set out in our Constitution, to hear a complaint that has been referred to it by *CEO*. The number of Tribunal panel members required to be present throughout the hearing will be *three*.
2. The Tribunal panel members will be provided with a copy of all the relevant correspondence, reports or information received and sent by *MPIO/CEO* relating to the complaint/allegations.
3. The Tribunal hearing will be held as soon as practicable. However, adequate time must be provided for the respondent(s) to prepare for the hearing.
4. The Tribunal panel will not include any person who has any actual or perceived conflict of interest or bias regarding the complaint/allegations.
5. The *CEO* 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/allegations
  - the details of the complaint and of all allegations, as well as the clause of any policy or rule that has allegedly been breached
  - the date, time and venue of the Tribunal hearing
  - that either verbal or written submissions can be presented at the Tribunal hearing
  - that witnesses may attend the Tribunal hearing to support the position of the respondent/s (statutory declarations of witnesses not available to attend and from character witnesses may also be provided to the Tribunal hearing)
  - an outline of any possible penalties that may be imposed if the complaint is found to be true
  - that legal representation will not be allowed, but a person with an intellectual disability may be represented by an advocate or in the case of a minor, he/she should have a parent or guardian present.

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

The respondent(s) will be allowed to participate in all AUSRAPID activities and events, pending the decision of the Tribunal, including any available appeal process, unless the *MPIO/CEO* believe it is necessary to exclude the respondent/s from all or some activities and events because of the nature of the complaint.

6. The *CEO* 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
  - the 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 either verbal or written submissions can be presented at the Tribunal hearing
  - that witnesses may attend the Tribunal hearing to support the complainant's position (statutory declarations of witnesses not available to attend may also be provided to the Tribunal Hearing)
  - that legal representation will not be allowed, but a person with an intellectual disability may be represented by an advocate or in the case of a minor, he/she should have a parent or guardian present.

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

7. If the complainant believes the details of the complaint are incorrect or insufficient, he or she should inform the *MPIO/CEO* as soon as possible so that the respondent(s) and members of the Tribunal panel can be properly informed of the complaint.
8. If possible, the Tribunal panel should include at least one person with knowledge or experience of the relevant laws/rules (e.g. anti-discrimination).

### **Tribunal hearing procedure**

9. The following people will be allowed to attend the Tribunal hearing:
  - Tribunal panel members
  - the respondent(s)
  - the complainant
  - any witnesses called by the respondent(s)
  - any witnesses called by the complainant
  - any parent/guardian or support person required to support the respondent or the complainant.
10. 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 this absence, the Tribunal hearing will continue subject to the chairperson being satisfied that all Tribunal notification requirements have been met.
11. If the Tribunal chairperson considers that there is a valid reason for the non-attendance of the respondent(s), or the chairperson does not believe the Tribunal notification requirements have been met, then the Tribunal hearing will be rescheduled to a later date.
12. The Tribunal chairperson will inform the *CEO* of the need to reschedule the hearing and the *CEO* will arrange for the Tribunal to be reconvened.
13. The Tribunal chairperson will read out the complaint, ask each respondent if he or she understands the complaint and if he or she agrees or disagrees with the complaint.
14. 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 when determining any disciplinary measures or penalties.
15. 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 may question the complainant and any witnesses.
16. The respondent 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 any witnesses.
17. The complainant and respondent(s) may be present when evidence is presented to the Tribunal hearing. Witnesses may be asked to wait outside the hearing until they are required.
18. 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 new evidence
  - require (to the extent it has power to do so) the attendance of any witness it deems relevant
  - act in an inquisitorial manner in order to establish the truth of the issue/complaint before it.
19. Video evidence, if available, may be presented. Arrangements must be made entirely by the person(s) wishing to offer this type of evidence.

20. If the Tribunal panel considers that at any time during the hearing there is any unreasonable or intimidatory behaviour from anyone, the Tribunal chairperson may deny further involvement of that person in the hearing.
21. After all the evidence has been presented, the Tribunal will make its decision in private. It must decide whether the complaint has, on the balance of probabilities, been substantiated. 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(s) have the opportunity to address the Tribunal on disciplinary measures which may be imposed. Any disciplinary measures imposed must be reasonable in the circumstances.
22. All Tribunal decisions will be by majority vote.
23. The Tribunal chairperson will announce the decision in the presence of all those involved in the hearing and will declare the hearing closed. Alternatively, he or she may advise those present that the decision is reserved and will be handed down in written form at a later time.
24. Within 48 hours, the Tribunal chairperson will:
  - forward a notice of the Tribunal's decision to the *CEO*, including any disciplinary measures imposed.
  - forward a letter reconfirming the Tribunal's decision to the respondent(s), including any disciplinary measures imposed. The letter should also outline the process and grounds for an appeal, if allowed. If matter is especially complex or important, 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. If a complainant or a respondent(s) is not satisfied with the outcome of a mediation process or a Tribunal decision, he or she can lodge an appeal to AUSRAPID on one or more of the following grounds:
  - 26.1 that a denial of natural justice has occurred
  - 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 at the mediation or to the Tribunal Hearing
27. A person wanting to appeal must lodge a letter setting out the basis for their appeal with the CEO within five days of the decision being made. An appeal fee of \$50 amount shall be included with the letter of intention to appeal.
28. If the letter of appeal is not received by the CEO within this time, the right of appeal will lapse. If the letter of appeal is received but the appeal fee is not received within this time, the appeal will also lapse.
29. The letter of appeal and the notice of the Tribunal's decision (clause 24) will be forwarded to the AUSRAPID Board to review and to decide whether there are sufficient grounds for the appeal to proceed. The AUSRAPID Board may invite any witnesses to the meeting that he or she believes are required to make an informed decision.
30. If the appellant has not shown sufficient grounds for an appeal in accordance with clause 26, then the appeal will be rejected. The appellant will be notified in writing, including the reasons for the decision. The appeal fee will be forfeited.
31. If the appeal is accepted, an Appeal Tribunal with new panel members will be convened to rehear the complaint, and the appeal fee will be refunded.
32. The Tribunal hearing procedure shall be followed for the Appeal Tribunal.
33. The decision of the Appeal Tribunal will be final.