



**masters**  
**swimming**  
AUSTRALIA

MEMBER PROTECTION POLICY

VERSION 12  
October 2017

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## REVIEW HISTORY OF MASTERS SWIMMING AUSTRALIA

### MEMBER PROTECTION POLICY

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Masters Swimming Australia - [www.mastersswimming.org.au](http://www.mastersswimming.org.au)

Masters Swimming NSW - [www.mastersswimmingnsw.org.au](http://www.mastersswimmingnsw.org.au)

Masters Swimming NT - [www.mastersswimmingnt.org.au](http://www.mastersswimmingnt.org.au)

Masters Swimming QLD - [www.mastersswimmingqld.org.au](http://www.mastersswimmingqld.org.au)

Masters Swimming SA - [www.mastersswimmingsa.org.au](http://www.mastersswimmingsa.org.au)

Masters Swimming Tasmania - [www.mastersswimmingtasmania.com.au](http://www.mastersswimmingtasmania.com.au)

Masters Swimming Victoria - [www.mastersswimmingvic.org.au](http://www.mastersswimmingvic.org.au)

Masters Swimming WA - [www.mswa.asn.au](http://www.mswa.asn.au)

## PREFACE

*Masters Swimming Australia is committed to creating a safe, fair and inclusive sporting environment.*

- *We seek to prevent all forms of harassment, discrimination and abuse and to promote positive behaviour and values*
- *inappropriate or unlawful behaviour will not be tolerated by the organisation*
- *our policy sets out codes of behaviour with which everyone associated with the organisation is expected to abide*
- *disciplinary action will be taken against individuals if there is a breach of the policy.*

*Gerry Tucker*

*President - Masters Swimming Australia*

*15/10/2017*

## **PART A: MASTERS SWIMMING AUSTRALIA MEMBER PROTECTION POLICY**

### **1. INTRODUCTION**

Masters Swimming Australia (MSA) is the parent body that represents the interests of seven branches, 190 clubs and currently around 6500 adult swimming members across Australia.

The entry point for the members is through the clubs that are run predominantly by volunteers. The clubs offer various programs, such as regular training and stroke correction with qualified coaches, fun events and social activities. Most are separate entities from age group swimming clubs, and provide a localised structure in the community for adult swimmers. The motto of the organisation is fitness, friendship and fun through regular swimming.

Those who want to compete can take part in club, branch, national and international events. Competitive opportunities are also available through postal swims, the Vorgee Endurance 1000 competition and the Vorgee Million Metres Awards.

The National Board of Management is responsible for the governance and overall direction of the organisation, with the day-to-day running of the organisation the responsibility of the staff in the National Office. Decision making rests with branch delegates, who meet at a National General Meeting twice a year.

There are three permanent national committees that serve the organisation: Coaching, Swim Meets and Technical. These volunteer committees are the engine room of the national organisation, providing the necessary skills to develop and deliver programs appropriate for the organisation to conduct its affairs and support its membership.

#### **Our Mission:**

To offer an environment at club, branch and national level that encourages all adults, regardless of ability, to swim regularly and to compete in order to promote fitness and improve their general wellbeing.

#### **Our Vision:**

To position masters swimming as a leading sporting and recreational activity in the community.

### **2. PURPOSE OF THIS POLICY**

MSA's Member Protection Policy will work towards maintaining ethical and informed decision-making and encouraging responsible behaviours within our sport. It outlines our commitment to a person's right to be treated with respect and dignity and to be safe and protected from abuse. This policy details the responsibilities and the standards of behaviour that are expected of everyone involved in our sport.

The policy attachments outline the procedures that support our commitment to minimising the occurrence of discrimination, harassment and other forms of inappropriate behaviour from within masters swimming. As part of this commitment, the policy allows MSA to take disciplinary action against any person or organisation bound by this policy in the event of a proven breach.

This policy has been endorsed by the National Board of Management. The policy starts on 26/10/17 and will operate until replaced. Copies of the current policy and its attachments can be obtained from the MSA website at [www.mastersswimming.org.au](http://www.mastersswimming.org.au) or by contacting the MSA National Office:

Level 2  
Sports House  
375 Albert Rd  
Albert Park 3206  
Ph: 03 9682 5666

### 3. Who this Policy Applies to

This policy applies to the following people whether or not they act in a paid or unpaid capacity of MSA, branches and clubs:

- volunteers;
- persons appointed or elected to National boards, committees and sub-committees;
- employees of MSA and its Branches;
- members of the MSA National Board of Management;
- Club coaches and Club assistant coaches;
- athletes;
- MSA referees and other officials involved in the regulation of the sport;
- club members including life members of MSA coaches, officials and other personnel participating in events and activities, including camps and training sessions, held or sanctioned by MSA; and
- any other person including spectators, parents/guardians and sponsors, who agrees in writing (whether on a ticket, entry form or otherwise) to be bound by this policy; and
- persons to whom disciplinary proceedings have been commenced, whether or not they have ceased their association with MSA during the disciplinary process.

This policy also applies to the following associations:

- branches of the Association; and
- affiliated clubs and associated organisations.

Branches are required to adopt and implement this policy and to provide proof to MSA of the approval of the policy by the relevant board or committee in accordance with its constitution. Branches must also undertake to ensure that affiliated clubs and individual members are made aware of this policy and are bound by what it says.

### 4. Responsibilities of the Organisation

MSA, branches and affiliated clubs must:

- 4.1 adopt, implement and comply with this policy;
- 4.2 make such amendments to its/their Constitution, Rules or Policies necessary for this policy to be enforceable;
- 4.3 publish, distribute and promote this policy and the consequences of breaches;
- 4.4 promote and model appropriate standards of behaviour at all times;
- 4.5 deal promptly with any breaches or complaints made under this policy in a sensitive, fair, timely and confidential manner;
- 4.6 apply this policy consistently;
- 4.7 recognise and enforce any penalty imposed under this policy;
- 4.8 ensure that a copy of this policy is available or accessible to the persons and associations to whom this policy applies;
- 4.9 use appropriately trained people to receive and manage complaints and allegations e.g. Member Protection Information Officers (MPIOs); and
- 4.10 monitor and review this policy at least biennially.

## 5. Individual Responsibilities

Individuals bound by this policy are responsible for:

- 5.1 making themselves aware of the policy and complying with its standards of behaviour;
- 5.2 complying with our screening requirements and any state/territory “Working with Children” requirements;
- 5.3 placing the safety and welfare of children above other considerations;
- 5.4 being accountable for their behaviour;
- 5.5 following the procedures outlined in this policy if they wish to make a complaint or report a concern about possible child abuse, discrimination, harassment or other inappropriate behaviour; and
- 5.6 complying with any decisions and/or disciplinary measures imposed under this policy.

## 6. Position Statements

### 6.1 Child Protection

MSA is an organisation for adult swimmers, but we acknowledge that children are sometimes involved in activities conducted by our organisation; therefore, we are committed to the safety and wellbeing of all children and young people accessing our services.

We support the rights of the child and will act without hesitation to ensure a child safe environment is maintained at all times when children are involved in activities conducted by our organisation.

#### 6.1.1 Safe Environment

We also support the rights and wellbeing of our staff and volunteers and encourage their active participation in building and maintaining a safe, fair and inclusive environment for all participants.

#### 6.1.2 Develop Codes of Behaviour

We will develop and promote a code of behaviour that sets out the conduct we expect of adults when they deal and interact with children involved in our sport, especially those in our care. We will also implement a code of behaviour to promote appropriate conduct between children.

These codes will clearly describe professional boundaries, ethical behaviour and unacceptable behaviour. (Refer to the attachments in Part B of this policy.)

#### 6.1.3 Taking Images of Children

MSA prohibits the taking of images of children without gaining consent from the child’s parent/guardian.

## 6.2 Anti-Discrimination and Harassment

MSA opposes all forms of harassment, discrimination and bullying. This includes treating or proposing to treat someone less favourably because of a particular attribute; imposing or intending to impose an unreasonable requirement, condition or practice which has an unequal or disproportionate effect on people with a particular attribute; or any behaviour that is offensive, abusive, belittling, intimidating or threatening – whether this is face-to-face, indirectly or via communication technologies such as mobile phone and computers.

Any person who feels they are being harassed or discriminated against by another person or organisation bound by this policy is at liberty to make a complaint following the procedure outlined in attachment D1 to this policy.

**6.2.1 Discrimination** Unlawful discrimination involves the less favourable treatment of a person on the basis of one or more of the personal characteristics protected by state or federal anti-discrimination laws.

The personal characteristics protected by anti-discrimination laws include attributes such as race, age, disability, gender and race. The full list of protected personal characteristics is in the “Definitions” set out in the Dictionary of Terms. (See Clause 10)

Discrimination can be either direct or indirect.

**Direct** discrimination occurs if a person treats, or proposes to treat, a person with a protected personal characteristic unfavourably because of that personal characteristic.

**Indirect** discrimination occurs if a person imposes, or proposes to impose, a requirement, condition or practice that will disadvantage a person with a protected personal characteristic and that requirement, condition or practice is not reasonable.

For the purposes of determining discrimination, the offender’s awareness and motive are irrelevant.

### 6.2.2 Harassment

Harassment is any unwelcome conduct, verbal or physical, that intimidates, offends or humiliates another person and which happens because a person has a certain personal characteristic protected by State or Federal anti-discrimination legislation.

The offensive behaviour does not have to take place a number of times, a single incident can constitute harassment.

Sexual harassment is one type of harassment. Sexual harassment is unwelcome conduct, remarks or innuendo of a sexual nature. It covers a wide range of behaviours and can be verbal, written, visual or physical. Sexual harassment is not limited to members of the opposite sex.



### **6.2.3 Prohibition against discrimination and harassment**

We prohibit all forms of harassment and discrimination based on the personal characteristics listed in the “Definitions” set out in the Dictionary of Terms [see clause 10].

Any person who believes they are being, or have been, harassed or discriminated against by another person or organisation bound by this policy is encouraged to raise their concerns with us. A person may make an internal complaint, and in some circumstances, they may also be able to make a complaint to an external organisation. (Refer to the attachments in Part D of this policy).

### **6.3 Intimate relationships**

MSA understands that consensual intimate relationships (including, but not limited to sexual relationships) between coaches or officials and adult athletes may take place legally.

Coaches and officials are required to conduct themselves in a professional and appropriate manner in all interactions with athletes. In particular, they must ensure that they treat athletes in a respectful and fair manner and that they do not engage in sexual harassment, bullying, favoritism or exploitation.

If a coach, official or athlete believes they are being, or have been, harassed they are encouraged to seek information and support from *the Member Protection Information Officer, Complaints Manager or other official*. Our complaints procedure is outlined in Part D of this policy.

### **6.4 Pregnancy**

Everyone bound by this policy must treat pregnant women with dignity and respect and any unreasonable barriers to participation by them in our sport should be removed. MSA will not tolerate any discrimination or harassment against pregnant women.

Masters swimming will not exclude pregnant women from participation.

Pregnant women are encouraged to advise their relevant club so that the club or club coaches can discuss any individual requirements with the swimmer.

### **6.5 Gender Identity**

Gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person. This includes the way people express or present their gender and recognises that a person’s gender identity may be an identity other than male or female. Some terms used to describe a person’s gender identity include trans, transgender and gender diverse.

#### **6.5.1 Gender identity discrimination and harassment**

Federal, state and territory anti-discrimination laws provide protection from discrimination against people on the basis of their gender identity. (See definition in Dictionary of terms).

MSA is committed to providing a safe, fair and inclusive sporting environment where all people can contribute and participate. We will not tolerate any unlawful discrimination or harassment of a person because of their gender identity.

All persons, regardless of gender identity, are entitled to be treated fairly and with dignity and respect at all times. We will not tolerate any unlawful discrimination or harassment of a person because of their gender identity. This includes discrimination or harassment of a person who is transgender or transsexual, who is assumed to be transgender or transsexual or has an association with someone who has or is assumed to be transgender or transsexual. (Refer to the attachments in Part D of this policy).

We expect all people bound by this policy to act with sensitivity when a person is undergoing gender transition/affirmation.

If any person believes that they are being, or have been, harassed or discriminated against by another person or organisation bound by this policy because of their gender identity, they may make a complaint.

### **6.5.2 Participation in sport**

MSA recognises that excluding people from participating in sporting events and activities because of their gender identity may have significant implications for their health, wellbeing and involvement in community life. We are committed to supporting participation in our sport on the basis of the gender with which a person identifies.

If issues of performance advantage arise, we will consider whether the established discrimination exceptions for participation in sport are relevant in the circumstances. Discrimination is unlawful unless an exception applies.

Drug testing procedures and prohibitions also apply to people who identify as transgender. A person receiving treatment involving a Prohibited Substance or Method, as described on the World Anti-Doping Agency's Prohibited List, should apply for a standard Therapeutic Use Exemption.

### **6.5.3. Intersex status**

Federal anti-discrimination law, and some state and territory anti-discrimination laws, provide protection from discrimination against a person on the basis of their intersex status. (See Dictionary of terms).

MSA is committed to providing a safe, fair and inclusive sporting environment where all people can contribute and participate. We will not tolerate any unlawful discrimination or harassment of a person because of their intersex status.

## **6.6 Responsible Service and Consumption of Alcohol**

MSA recommends that branches and their member clubs adhere to strict guidelines regarding the responsible consumption of alcohol. Food and no/low alcohol drinks and safe transport options should be available at functions. Alcohol should not be available nor be consumed during a swimming competition.

## **6.7 Smokefree**

Smoking shall be governed by the law, rules, or practices of any individual venue that is attended. Coaches and officials should refrain from smoking while acting in an official capacity, regardless of venue requirements.

## 6.8 Bullying

MSA is committed to providing an environment that is free from bullying. We understand that bullying has the potential to result in significant negative consequences for an individual's health and wellbeing, and we regard bullying in all forms as unacceptable in our sport.

Bullying is characterised by repeated, unreasonable behaviour directed at a person, or group of persons, that creates a risk to health and safety. Bullying behaviour is that which a reasonable person in the circumstances would expect to victimise, humiliate, undermine, threaten, degrade, offend or intimidate a person. Bullying behaviour can include actions of an individual or a group.

Whilst generally characterised by repeated behaviours, one-off instances can amount to bullying.

The following types of behaviour, where repeated or occurring as part of a pattern of behaviour, would be considered bullying:

- verbal abuse including shouting, swearing, teasing, making belittling remarks or persistent unjustified criticism;
- excluding or isolating a group or person;
- spreading malicious rumours; or
- psychological harassment such as intimidation.

Bullying includes cyber-bullying which occurs through the use of technology. New technologies and communication tools, such as smart phones and social networking websites, have greatly increased the potential for people to be bullied through unwanted and inappropriate comments. MSA will not tolerate abusive, discriminatory, intimidating or offensive statements being made online. Frustration at a referee, teammate, coach or sporting body should never be communicated on social networking websites. These issues should instead be addressed – in a written or verbal statement or a complaint – to the relevant controlling club, branch or peak sporting body.

If any person believes they are being, or have been, bullied by another person or organisation bound by this policy, he or she may make a complaint. (Refer to the attachments in Part D of this policy).

## 6.9 Social Networking

MSA acknowledges the enormous value of social networking to promote our sport and celebrate the achievements and success of the people involved in our sport.

Social networking refers to any interactive website or technology that enables people to communicate and/or share content via the internet. This includes social networking websites such as Facebook and Twitter.

We expect all people bound by this policy to conduct themselves appropriately when using social networking sites to share information related to our sport.

In particular, social media activity including, but not limited to, postings, blogs, status updates, and tweets:

- must not contain material which is, or has the potential to be, offensive, aggressive, defamatory, threatening, discriminatory, obscene, profane, harassing,

embarrassing, intimidating, sexually explicit, bullying, hateful, racist, sexist or otherwise inappropriate;

- must not contain material which is inaccurate, misleading or fraudulent;
- must not contain material which is in breach of laws, court orders, undertakings or contracts;
- should respect and maintain the privacy of others; and
- should promote the sport in a positive way.

## 7. Complaints Procedures

### 7.1 Complaints

MSA aims to provide a simple procedure for complaints. Any person (a complainant) may make a complaint about a person/s or organisation bound by this policy (respondent). Such complaints must be notified to MSA.

MSA reporting hierarchy is as follows:

- club level or involves people operating at the club level, then the complaint is to be reported to and handled by the relevant club in the first instance.
- branch level or involves people operating at the branch level, then the complaint is to be reported to and handled by the relevant state/territory association (Branch) in the first instance.

Only matters that relate to, or which occurred at, the national level, as well as serious cases referred from the state and club level, should be dealt with by the national body

A complaint may be handled informally or formally. The complainant may indicate his or her preferred option and the General Manager should consider whether that is an appropriate way to handle the particular complaint. For example, the law may require that the complaint/allegation be reported to an appropriate authority.

All complaints will be dealt with promptly, seriously, sensitively and confidentially. Our complaint procedures are outlined in attachment D1.

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

### 7.2 Improper complaints and victimisation

MSA aims to ensure that our complaints procedure has integrity and is free of unfair repercussions or victimisation against any person making a complaint.

We will take all necessary steps to make sure that people involved in a complaint are not victimised. Disciplinary measures may be undertaken in respect of a person who harasses or victimises another person for making a complaint or supporting another person's complaint.

If at any point in the complaint handling process the Member Protection Information Officer or General Manager considers that a complainant has knowingly made an untrue complaint, or the complaint is malicious or inappropriately intended to cause distress to the respondent, the matter may be referred in writing to the Tribunal for review and appropriate action, including possible disciplinary action against the complainant.

### **7.3 Mediation**

MSA aims to resolve complaints quickly and fairly. Complaints may be resolved by agreement between the people involved with no need for disciplinary action. Mediation allows those involved to be heard and to come up with mutually agreed solutions.

Mediation may occur before, during or after the investigation of a complaint. If a complainant wishes to resolve the complaint with the help of a mediator, the General Manager or appropriate person at Branch/Club level) will, in consultation with the complainant, arrange for a neutral third party mediator where possible.

More information on the mediation process is outlined in Attachment [D2].

### **7.4 Tribunals**

In accordance with MSA rules, a Tribunal may be convened to hear a formal complaint:

- referred to it by General Manager;
- referred to it or escalated by a Branch because of the serious nature of the complaint, or unable to be resolved at the branch level, or the branch policy directs it to be;
- for an alleged breach of this policy.

Our Tribunal procedure is outlined in attachment D5.

A complainant or respondent may lodge an appeal only to the Appeal Tribunal in respect of a Tribunal decision. The decision of the Appeal Tribunal is final and binding on the people involved. Our appeals process is outlined in attachment D5.

Every organisation bound by this policy will recognise and enforce any decision of a Tribunal or Appeal Tribunal under this policy.

## **8. What is a Breach of this policy**

It is a breach of this policy for any person or organisation to which this policy applies to do anything contrary to this policy, including but not limited to:

- 8.1 breaching the Codes of Behaviour (attachment B to this policy);
- 8.2 bringing the sport and/or MSA into disrepute, or acting in a manner likely to bring the sport and/or MSA into disrepute;
- 8.3 failing to follow MSA policies (including this policy) and procedures for the protection, safety and welfare of children;
- 8.4 discriminating against, harassing or bullying (including cyber bullying) any person;
- 8.5 victimising another person for reporting a complaint;
- 8.6 engaging in a sexually inappropriate relationship with a person that they supervise, or have influence, authority or power over;
- 8.7 verbally or physically assaulting another person, intimidating another person or creating a hostile environment within the sport;
- 8.8 disclosing to any unauthorised person or organisation any MSA information that is of a private, confidential or privileged nature;
- 8.9 making a complaint they know to be untrue, vexatious, malicious or improper;
- 8.10 failing to comply with a penalty imposed after a finding that the individual or organisation has breached this policy; or
- 8.11 failing to comply with a direction given to the individual or organisation during the discipline process.

## 9. Disciplinary Measures

If an individual or organisation to which this policy applies breaches this policy, one or more forms of discipline may be imposed. Any disciplinary measure imposed under this policy must be:

- applied consistent with any contractual and employment rules and requirements;
- fair and reasonable;
- based on the evidence and information presented and the seriousness of the breach; and
- determined in accordance with our Constitution, By Laws, this policy; and
- the Rules of the Association.

### 9.1 Individual

Subject to contractual and employment requirements, if a finding is made by a Tribunal that an individual has breached this policy, one or more of the following forms of discipline may be imposed.

- 9.1.1 A direction that the individual makes a verbal and/or written apology;
- 9.1.2 A written warning;
- 9.1.3 A direction that the individual attend counselling to address their behaviour;
- 9.1.4 A withdrawal of any awards, scholarships, placings, records, achievements bestowed in any events or activities held or sanctioned by MSA;
- 9.1.5 A demotion or transfer of the individual to another location, role or activity;
- 9.1.6 A suspension of the individual's membership or participation or engagement in a role or activity;
- 9.1.7 Termination of the individual's membership, appointment or engagement;
- 9.1.8 A recommendation that MSA terminate the individual's membership, appointment or engagement;
- 9.1.9 In the case of a coach or official, a direction that the relevant organisation de-register the accreditation of the coach or official for a period of time or permanently;
- 9.1.10 a financial penalty;
- 9.1.11 any other form of discipline that the Tribunal considers appropriate.

### 9.2 Organisation

If a finding is made that an MSA member or affiliated organisation has breached its own or this national Member Protection Policy, one or more of the following forms of discipline may be imposed by a Tribunal.

- 9.2.1 A written warning;
- 9.2.2 A financial penalty;
- 9.2.2 A direction that any rights, privileges and benefits provided to that organisation by the national body or other peak association be suspended for a specified period;
- 9.2.3 A direction that any funding granted or given to it by MSA cease from a specified date;
- 9.2.4 A direction that the MSA cease to sanction events held by or under the auspices of that organisation;
- 9.2.5 A recommendation to MSA that its membership of MSA be suspended or terminated in accordance with the relevant constitution or rules;
- 9.2.6 Any other form of discipline that MSA considers to be reasonable and appropriate.

### 9.3 Factors to consider

The form of discipline to be imposed on an individual or organisation will depend on factors, such as:

- the nature and seriousness of the breach;
- if the person knew, or should have known, that the behaviour was a breach of the policy;
- the person's level of contrition;
- the effect of the proposed disciplinary measures on the person, including any personal, professional or financial consequences;
- if there have been any relevant prior warnings or disciplinary action;
- the ability to enforce disciplinary measures if the person is a parent or spectator (even if they are bound by the policy);
- any other mitigating circumstances.

## 10. Dictionary

This Dictionary sets out the meaning of words used in this policy and its attachments without limiting the ordinary and natural meaning of the words. State/Territory specific definitions and more detail on some of the words in this dictionary can be sourced from the relevant State/Territory child protection commissions or equal opportunity and anti-discrimination commissions.

**Abuse** is a form of harassment and includes physical abuse, emotional abuse, sexual abuse, neglect and abuse of power. Types of abuse include physical abuse, psychological or emotional abuse, sexual abuse, constraints and restrictive practices, financial abuse, legal or civil abuse and systemic abuse.

**Affiliated club** means a club affiliated with a Masters Swimming Branch.

**Branch** means the association of clubs, in a state or territory of Australia that is affiliated with MSA.

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

**Child abuse** involves conduct which puts a child at risk of harm and may include:

- **physical abuse**, which occurs when a child has suffered, or is at risk of suffering, non-accidental physical trauma or injury. This may include, but is not limited to, hitting, shaking or other physical harm; giving a child alcohol or drugs; or training that exceeds the child's development or maturity.
- **sexual abuse**, which occurs when an adult, other child, or adolescent uses their power or authority to involve a child in a sexual activity or any other inappropriate conduct of a sexual nature (e.g. sexual intercourse, masturbation, oral sex, pornography, including child pornography, or inappropriate touching or conversations).
- **emotional abuse**, which occurs when a child's social, emotional, cognitive or intellectual development is impaired or threatened. Emotional abuse can include, but is not limited to, emotional deprivation due to persistent rejection or criticism, hostility, teasing/bullying, humiliation, taunting, sarcasm, yelling, name-calling or placing unrealistic expectations on a child.
- **neglect**, which occurs when a child's basic necessities of life are not met and their health and development are affected. Basic needs include food, water, shelter, adequate clothing, personal hygiene, timely provision of medical treatment and adequate supervision.

**Complaint** means a complaint made under clause 7.1

**Complainant** means a person making a complaint.

**Complaints Manager** means a person appointed under this policy to investigate a complaint.

**Discrimination** includes both direct and indirect discrimination. To treat someone less favourably because of a particular characteristic in the same or similar circumstances in certain areas of public life is direct discrimination. To or impose or intend to impose an unreasonable requirement, condition or practice that is the same for everyone, but which has an unequal or disproportionate effect on individuals or groups with particular characteristics is indirect discrimination.

**General Manager** is the General Manager of Masters Swimming Australia.

**Harassment** is any type of behaviour that the other person does not want and that is offensive, abusive, belittling or threatening. The behaviour is unwelcome and a reasonable person would recognise it as being unwelcome and likely to cause the recipient to feel offended, humiliated or intimidated.

Unlawful harassment is sexual or targets a person because of their race, sex, pregnancy, marital status, sexual orientation or some other personal characteristic protected by law.

It does not matter whether the harassment was intended: the focus is on the impact of the behaviour.

Public acts of racial hatred which are reasonably likely to offend, insult, humiliate or intimidate are also prohibited. This applies to spectators, participants or any other person who engages in such an act in public. Some states and territories also prohibit public acts that vilify people on other grounds such as homosexuality, gender identity, HIV/AIDS, religion and disability (see also "Vilification").

**Image** is an artefact that depicts or records visual perception.

**Individual** is a person or a specific object.

**Masters Swimming Australia (MSA)** is the governing body for masters swimming in Australia.

**Mediator** means an impartial/neutral person appointed to mediate complaints.

**Member** means registered and financial individual with Masters Swimming Australia.

**Member Protection Information Officer (MPIO)** means a person trained to be the first point of contact for a person reporting a complaint under, or a breach of, this Policy. The MPIO provides impartial and confidential support to the person making the complaint.

**Natural justice (also referred to as procedural fairness)** incorporates the following principles.

- The Respondent must know the full details of what is being said against them and have the opportunity to respond.
- All relevant submissions must be considered.
- No person may judge their own case.
- The decision maker/s must be unbiased, fair and just.
- The penalties imposed must be fair.

**Organization (or organisation)** is a social entity that has a collective goal and is linked to an external environment.

**Police check** means a national criminal history record check conducted as a pre-employment, pre-engagement or current employment background check on a person.

**Policy, policy and this policy** means this Member Protection Policy.

**Respondent** means the person whose behaviour is being complained about.



**Role-specific codes of conduct (or behaviour)** means standards of conduct required of certain roles (e.g. coaches, officials, administrators).

**Sexual harassment** means unwanted, unwelcome or uninvited behaviour of a sexual nature which could reasonably be anticipated to make a person feel humiliated, intimidated or offended. Sexual harassment can take many different forms and may include unwanted physical contact, oral comments, jokes, propositions, display of pornographic or offensive material or other behaviour that creates a sexually hostile environment. Sexual harassment does not have to be intentional.

**Sexual offence** means a criminal offence involving sexual activity or acts of indecency. Because of differences under state and territory laws, this can include but is not limited to:

- rape
- indecent assault
- sexual assault
- assault with intent to commit sexual acts
- incest
- sexual penetration of child under the age of 16 years
- indecent act with child under the age of 16 years
- sexual relationship with child under the age of 16 years
- sexual offences against people with impaired mental functioning
- abduction and detention
- procuring sexual penetration by threats or fraud
- procuring sexual penetration of child under the age of 16 years
- bestiality
- soliciting a child under the age of 16 years to take part in an act of sexual penetration, or an indecent act
- promoting or engaging in acts of child prostitution
- obtaining benefits from child prostitution
- possession of child pornography
- publishing child pornography and indecent articles.

**Transgender** 'Transgender' is an umbrella term that refers to a person whose gender identity is different to their physical sex as recorded at birth. Transitioning refers to the process where a transgender person commences living as a member of another sex. This is sometimes referred to as the person 'affirming' their gender because transitioning means they start living in what they identify as their true gender. For people who are transitioning/affirming their gender, having their identity fully recognised in all areas of life is a crucial part of the experience of living as their affirmed gender.

**Sexual orientation:** The term 'sexual orientation' refers to a person's emotional or sexual attraction to another person, including, amongst others, the following identities: heterosexual, gay, lesbian, bisexual, pansexual, asexual or same-sex attracted.

**Gender identity:** The term 'gender identity' refers to a person's deeply held internal and individual sense of gender.

**Gender expression:** The term 'gender expression' refers to the way in which a person externally expresses their gender or how they are perceived by others.

**Intersex:** The term 'intersex' refers to people who have genetic, hormonal or physical characteristics that are not exclusively 'male' or 'female'. A person who is intersex may identify as male, female, intersex or as being of indeterminate sex.

**Victimisation** means treating someone unfairly or unfavorably, or threatening to do so, because that person has, or intends to, pursue their right to make any complaint, including a complaint under government legislation (e.g. anti-discrimination legislation) or under this policy, or for supporting another person to make complaint.

**Vilification** means behaviour that occurs in public which incites hatred towards, serious contempt for, or revulsion or severe ridicule of a person or group of people because that person or persons have a particular personal characteristic. Anti-discrimination laws in Australia make it unlawful to vilify a person or group of persons on the basis of race, religion, homosexuality, transgender status and HIV/AIDS status.

**NOTE:** Additional obligations may apply under relevant/applicable state or territory anti-discrimination laws.

## **PART B: CODES OF BEHAVIOUR**

**Attachment B1: General Code of Behaviour**

**Attachment B2: Coaches Code of Behaviour**

**Attachment B3: Officials Code of Ethics**

**Attachment B4: Swimmer/Athlete Code of Behaviour**

**Attachment B5: Administrator Code of Behaviour**

**Attachment B6: Board Member Code of Behaviour**

**Attachment B7: Spectator Code of Behaviour**

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### **B1: General Code of Behaviour**

As a member of MSA, a Member Association or an affiliated club or a person required to comply with this Policy, you must meet the following requirements in regard to your conduct during any activity held or sanctioned by MSA, a Member Association or an affiliated club and in any role you hold within MSA, a Member Association or an affiliated club:

1. Respect the rights, dignity and worth of others.
2. Be fair, considerate and honest in all dealings with others.
3. Be professional in, and accept responsibility for, your actions.
4. Make a commitment to providing quality service.
5. Be aware of, and maintain an uncompromising adherence to, MSA's standards, rules, regulations and policies.
6. Operate within the rules of the sport including national and international guidelines which govern MSA, the Member Associations and the affiliated clubs.
7. Do not use your involvement with MSA, a Member Association or an affiliated club to promote your own beliefs, behaviours or practices where these are inconsistent with those of MSA, a Member Association or an affiliated club.
8. Demonstrate a high degree of individual responsibility especially when dealing with persons under 18 years of age, as your words and actions are an example.
9. Avoid unaccompanied and unobserved activities with persons under 18 years of age, wherever possible.
10. Refrain from any form of harassment of others.
11. Refrain from any behaviour that may bring MSA, a Member Association or an affiliated club into disrepute.
12. Provide a safe environment for the conduct of the activity.
13. Show concern and caution towards others who may be sick or injured.
14. Be a positive role model.
15. Understand the repercussions if you breach, or are aware of any breaches of, this code of behaviour.

**B2: Coaches' Code of Behaviour**

- 1. Respect the rights, dignity and worth of every human being.**
  - Within the context of the activity, treat everyone equally regardless of gender, ability, disability, ethnic origin or religion.
- 2. Demonstrate appropriate teaching and learning philosophy.**
  - While respecting the opinions of others demonstrate an understanding of the human rights/social model and of its application.
  - Infuse a human rights/disabling environment perspective throughout each course or assessment task and refrain from endorsing a charity/medical model approach.
- 3. Ensure each participant's time spent with you is a positive experience.**
  - All participants are deserving of equal attention and opportunities.
  - Treat each person as an individual.
  - Respect the opinion talent, developmental stage and goals of each individual person.
- 4. Be fair, considerate and honest with participants.**
- 5. Be professional and accept responsibility for your actions.**
  - Language, manner, punctuality, preparation and presentation should display high standards.
  - Display control, respect, dignity and professionalism to all involved.
  - Encourage your participants to demonstrate the same qualities.
- 6. Make a commitment to providing a quality service to your participants.**
  - Maintain or improve your current National Coach Accreditation Scheme (NCAS) accreditation.
  - Seek continual improvement through performance appraisal and ongoing coach education.
  - Provide a training program which is planned and sequential.
  - Maintain appropriate records.
- 7. Operate within the rules and spirit of your sport.**
  - The guidelines of MSA should be followed. Please go to the MSA website for a copy of the constitution, rules, by-laws, relevant policies, eg. Heat Policy, selection procedures etc.
  - Coaches should educate their participants on drugs in sport issues using the information and guidelines provided by the Australian Sports Anti-Drug Agency (ASADA).
- 8. Any physical contact with participants should be:**
  - appropriate to the situation;
  - necessary for the participant's skill development; and
  - with the permission of the participant
- 9. Refrain from any form of personal abuse towards participants.**
  - This includes verbal, physical and emotional abuse and negative stereotyping. Be alert to any forms of abuse directed towards your participants from other sources whilst they are under your supervision.
- 10. Refrain from any form of harassment towards participants.**
  - This includes sexual and racial harassment, racial vilification and harassment on the grounds of disability
- 11. Provide a safe environment for your participants.**
  - Ensure equipment and facilities meet safety standards.
  - Equipment, rules, training and the environment need to be appropriate for the age and ability of the participants.
- 12. Show concern and caution towards sick and injured participants.**
  - Provide a modified training program where appropriate.
  - Allow further participation in training and competition only when appropriate.
  - Encourage participants to seek medical advice when required.
  - Maintain the same interest and support towards sick and injured swimmers.

**13. Be a positive role model for your sport and participants.**

- Consider behaviour and conduct in informal periods as well as during the training sessions.

**B3: Officials' Code of Ethics**

1. To act responsibly at all times.
2. Place safety and welfare of all participants above all else.
3. Be impartial.
4. To avoid any situation which may lead to a conflict of interest.
5. Be courteous, respectful and open to discussion and interaction.
6. To value the individual in sport.
7. To seek continual self-improvement through study, performance appraisal and regular updating of competencies.
8. Encourage inclusive practices.
9. Be a positive role model in behaviour and personal appearance.
10. Respect and encourage other officials.
11. Refrain from any form of personal abuse towards all participants.
12. Refrain from any form of sexual harassment towards all participants.
13. Show concern and caution towards sick and/or injured participants.

**B3: Swimmer/Athlete Code of Behaviour**

1. Participate for your own enjoyment and benefit.
2. Respect the rights, dignity and worth of fellow participants, coaches, officials and spectators.
3. Do not tolerate acts of aggression.
4. Respect the talent, potential and development of fellow participants and competitors.
5. Care for and respect the equipment provided to you as part of your program.
6. Be frank and honest with your coach concerning illness and injury and your ability to train fully within the program requirements.
7. At all times avoid inappropriate intimate relationships with your coach.
8. Conduct yourself in a professional manner relating to language, temper and punctuality.
9. Maintain high personal behaviour standards at all times.
10. Abide by the rules and respect the decision of the officials, making all appeals through the formal process and respecting the final decision.
11. Be honest in your attitude and preparation to training. Work equally hard for yourself and your club.
12. Cooperate with coaches and staff in the development of programs to adequately prepare you for events and activities.

**B5: Administrator Code of Behaviour**

1. Respect the rights, dignity and worth of every person regardless of their gender, ability, cultural background or religion.
2. Involve people in planning, leadership, evaluation and decision making.
3. Give all people equal opportunities to participate.
4. Ensure quality supervision and instruction for swimmers.
5. Support coaches and officials to improve their skills and competencies.
6. Act honestly, in good faith and in the best interests of the sport as a whole.
7. Ensure that any information acquired or advantage gained from the position is not used improperly.
8. Conduct responsibilities with due care, competence and diligence.

**B6: Board Member Code of Behaviour**

1. Respect the rights, dignity and worth of every person regardless of their gender, ability, cultural background or religion.
2. Acknowledge that they represent only the Board of MSA and do not and cannot represent others or individual constituents, including any with which they have been previously been involved and/or associated.
3. Undertake fiduciary responsibilities in a fair, open, honest and accountable way for the benefit of the whole of MSA and its registered members;
4. Exercise all due care and diligence in the performance of duties and functions;
5. Disclose any material of personal interest in any matter being discussed, and subsequently abstain from any discussion or vote on the issue;
6. Attend all National Board of Management Meetings, or, if obliged to miss a meeting, pass on all relevant papers for the meeting;
7. Submit all reports required for National Board of Management meetings and on behalf of the National Board of Management as required and in a timely manner;
8. Read all meeting papers prior to each meeting and seek clarification on any issue that is unclear;
9. Ensure that any motion submitted for consideration at a General Meeting by the National Board of Management complies with the MSA constitution;
10. Treat all material provided as "confidential to the National Board of Management" as completely confidential unless otherwise agreed by the National Board of Management.

**B7: Spectator Code of Behaviour**

1. Respect the rights, dignity and worth of others, regardless of their gender, ability, cultural background or religion
2. Respect the effort and performances of swimmers and officials.
3. Reject the use of harassment, bullying or violence in any form, whether by other spectators, coaches, officials or athletes.
4. Be aware of the repercussions that any breaches of this code of behaviour may incur.

## **PART C: SCREENING / WORKING WITH CHILDREN CHECK REQUIREMENTS** **(last update August 2017)**

### **Background**

MSA are committed to providing a safe environment for children. As part of this, we will recruit staff and volunteers who do not pose a risk to children.

Employment screening and Working with Children Checks can involve criminal history checks, signed declarations, referee checks and other appropriate checks that assess a person's suitability to work with children and young people.

Working with Children Check laws are currently in place in New South Wales, Queensland, Western Australia, Victoria, the Northern Territory, the Australian Capital Territory, Tasmania and South Australia.

MSA, including our state associations and clubs, will meet the requirements of the relevant state or territory Working with Children Check laws.

Individuals travelling with children and young people to another state or territory in a work-related capacity must comply with the screening requirements of that particular state or territory.

### **ATTACHMENTS**

- Attachment C1: Member Protection Declaration
- Attachment C2: Working with Children Check requirements

**Attachment C1: MEMBER PROTECTION DECLARATION**

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Masters Swimming Australia has a duty of care to all those associated with the sport at the national, branch and/or club level and to the individuals and organisations to whom our national Member Protection Policy applies. As a requirement of our national Member Protection Policy, Masters Swimming Australia must enquire into the background of those who undertake any work, coaching or regular unsupervised contact with people under the age of 18 years.

I ..... (name) of .....  
..... (address) DOB ...../...../.....

sincerely declare:

1. I do not have any criminal charge pending before the courts.
2. I do not have any criminal convictions or findings of guilt for sexual offences, offences related to children or acts of violence, narcotics and certain driving offences.
3. I have not had any disciplinary proceedings brought against me by an employer, sporting organisation or similar body involving child abuse, sexual misconduct or harassment, other forms of harassment or acts of violence, narcotics and certain driving offences
4. I am not currently serving a sanction for an anti-doping rule violation under an ASADA approved anti-doping policy applicable to me.
5. I will not participate in, facilitate or encourage any practice prohibited by the World Anti-Doping Agency Code or any other ASADA approved anti-doping policy applicable to me.
6. To my knowledge there is no other matter that Masters Swimming Australia may consider to constitute a risk to its members, employees, volunteers, athletes or reputation by engaging me.
7. I will notify the General Manager of the organisation(s) engaging me immediately upon becoming aware that any of the matters set out in clauses [1 to 6] above has changed.

Declared in the State/Territory of .....  
on ...../...../.....(date) Signature .....

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**Parent/Guardian Consent (in respect of a 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 C2: WORKING WITH CHILDREN CHILD PROTECTION REQUIREMENTS**

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The following information was updated in August 2017. It is subject to change at any time.

Working with Children Checks aim to create a child-safe environment and to protect children and young people involved in our sport from physical and sexual harm.

They assess the suitability of people to work with children and young people and can involve:

- criminal history checks;
- signed declarations;
- referee checks; and
- other relevant background checks to assess a person's suitability to work with children and young people.

Working with Children Check requirements vary across Australia. [Fact Sheets](#) for each state and territory are available on the Play by the Rules website: [www.playbytherules.net](http://www.playbytherules.net)

Detailed information, including the forms required to complete a Working with Children Check, are available from the relevant agencies in each state and territory.

### **Australian Capital Territory**

Contact the Office of Regulatory Services

Website: [www.ors.act.gov.au/community/working\\_with\\_vulnerable\\_people\\_wwvp](http://www.ors.act.gov.au/community/working_with_vulnerable_people_wwvp)

Phone: 02 6207 3000

### **New South Wales**

Contact the Office of the Children's Guardian

Website: [www.kidsguardian.nsw.gov.au/check](http://www.kidsguardian.nsw.gov.au/check)

Phone: 02 9286 7276

### **Northern Territory**

Contact the Northern Territory Screening Authority

Website: <http://www.pfes.nt.gov.au/Police/Community-safety/SAFE-NT.aspx>

Phone: 1800 SAFE NT (1800 723 368)

### **Queensland**

Contact the Queensland Government Blue Card Services

Website: [www.bluecard.qld.gov.au](http://www.bluecard.qld.gov.au)

Phone: 1800 113 611

### **South Australia**

Contact the Department for Education and Child Development

Website: <https://www.decd.sa.gov.au/child-protection/child-safe-environments>

National Police Check: [www.police.sa.gov.au/services-and-events/apply-for-a-police-record-check](http://www.police.sa.gov.au/services-and-events/apply-for-a-police-record-check)

DCSI Child Related Work Screening: <http://www.dcsi.sa.gov.au/services/screening>

### **Tasmania**

Contact the Department of Justice

Website: [www.justice.tas.gov.au/working\\_with\\_children](http://www.justice.tas.gov.au/working_with_children)

Phone: 1300 13 55 13

**Victoria**

Contact the Department of Justice

Website: [www.workingwithchildren.vic.gov.au](http://www.workingwithchildren.vic.gov.au)

Phone: 1300 652 879

**Western Australia**

Contact the Department for Child Protection

Website: [www.checkwwc.wa.gov.au](http://www.checkwwc.wa.gov.au)

Phone: 1800 883 979

**Travelling to other states or territories**

It is important to remember that when travelling to other states or territories, representatives of sporting organisations must comply with the legislative requirements of that particular state or territory.

In certain jurisdictions, temporary, time limited exemptions from working with children checks may be available for interstate visitors with a Working with Children Check in their home state.

The laws providing interstate exemptions are not consistent across Australia.

If an employee or volunteer for your organisation is travelling interstate to do work that would normally require a working for children check, you will need to check the relevant requirements of that state or territory.

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

### **Attachment D1: COMPLAINTS PROCEDURE**

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MSA is committed to supporting people associated with our sport to make and resolve any complaints they may have in a fair, timely and effective way

All complaints will be kept confidential and will not be disclosed to another person without the complainant's consent except if the law requires disclosure or if disclosure is necessary to deal effectively 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, MSA may have difficulty assisting you to resolve your complaint. Procedural fairness (natural justice) means that MSA 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, safe 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 Officer's (MPIOs)* 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 MPIOs can be obtained by contacting your Branch or Masters Swimming Australia.

The *MPIO / General Manager* will:

- take confidential notes about your complaint;
- 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; and
- maintain confidentiality.

##### **Step 3: Outcomes from initial contact**

After talking with the *MPIO or General Manager* 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 *the General Manager/President*
- approach a relevant external agency, such as an anti-discrimination or equal opportunity commission, for advice.

If the complaint is against the *General Manager or President*, then the complaint should be lodged with a member of the Board, who should follow the complaints procedure.

On receiving a formal complaint and based on the material you have provided, the *General Manager/President* or will decide whether:

- they are the most appropriate person to receive and handle the complaint;
- the nature and seriousness of the complaint warrant a formal resolution procedure;
- to refer the complaint to **mediation**;
- to appoint a person to **investigate** (gather more information on) the complaint;
- to refer the complaint to a **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 dealing with your formal complaint, the *General Manager/President* 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 *the General Manager /President* is the appropriate person to handle the complaint they will, to the extent that these steps are necessary:

- put the information they have received from you to the person/people you are complaining about and ask them to provide a response.;
- decide if they have enough information to determine whether the matter alleged in your complaint did or did not happen; and/or
- determine what further action to take, if any. This action may include disciplinary action in accordance with this policy, the relevant Constitution and by-laws, appointing a person to investigate the Complaint, referring the complaint to mediation session or a Tribunal or referring the complaint to the police or other appropriate authority.

### Step 5: Investigation of the complaint

- A person appointed under Step 3 will conduct an investigation and provide a written report to *the General Manager/President or Tribunal* 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 **tribunal**, the hearing will be conducted in accordance with *Attachment D5*;
- If the complaint is referred to the **police or other appropriate authority**, Masters Swimming Australia will use its best endeavours to provide all reasonable assistance required by the police or other authority;
- It must be made clear to all parties that the investigator is not seeking to resolve the matter, nor to decide whether any breach of this Policy has occurred, nor to impose any penalty. Any decision about Policy breach must be referred to an independent tribunal, and wherever possible, mediations should be conducted by an independent mediator.

### Step 6: Reconsideration of initial outcome/investigation or appeal

If, under the formal complaint process, mediation is unsuccessful, you may request that *the General Manager/President* 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 General Manager/President* 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 branch/Club level, the information will be stored in the branch office or Club files. 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 branch office.

### EXTERNAL APPROACHES

There is 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.

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**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 through 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 MSA. For additional information refer to MSA Constitution C19.

1. If mediation is chosen, the *General Manager / President* will, under the direction of MSA and in consultation with the complainant and the respondent(s), arrange for a mediator.
2. 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.
3. 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.
4. At the end of a successful mediation the mediator will prepare a document that sets out the agreement reached by the complainant and the respondent(s), which will be signed by them as their agreement.
5. If the complaint is not resolved by mediation, the complainant may:
  - a. write to *the General Manager / President* to request that *the General Manager or President* reconsider the complaint in accordance with **Step 3**; or
  - b. approach an external agency such as an anti-discrimination commission.
6. Mediation will **not** be recommended if:
  - a. the respondent has a completely different version of the events and will not deviate from these;
  - b. the complainant or respondent is unwilling to attempt mediation;
  - c. 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
  - d. the matter involves proven serious allegations, regardless of the wishes of the complainant.

### **Attachment D3: INVESTIGATION PROCESS**

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

1. MSA will provide a written brief to the investigator clarifying terms of engagement and roles and responsibilities. The investigator may:
  - 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 if there is a dispute over the facts, obtain statements from witnesses and other relevant evidence to assist in a determination;
  - 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; and
  - 1.6 provide a report to *the General Manager/President/Tribunal* documenting the complaint, investigation process, evidence, finding and, if requested, recommendations.
2. MSA 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.

More detailed information on conducting internal investigations can be found at:

<https://www.playbytherules.net.au/complaints-handling/dealing-with-a-complaint>



## **Attachment D4: PROCEDURE FOR HANDLING ALLEGATIONS OF CHILD ABUSE**

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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 Masters Swimming in Australia 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 challenge or undermine 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; and
- 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 General Manager of Masters Swimming Australia 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 *General Manager* will assess the risks and take interim action to ensure the child's/children's safety. Action Masters Swimming Australia, the branch or the club 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. Please be aware it is not the MPIO's role to undertake action such as redeploying someone and seek legal advice if person is in a paid employment.
- The *General Manager* will consider the kind of support that the child/ren and parents may need (e.g. counselling, help lines, support groups).
- The *General Manager* will address the support needs of the alleged offender.
- The *General Manager* 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); and
  - disciplinary or misconduct conducted by MSA.
- Irrespective of the findings of the child protection and/or police inquiries, MSA 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 *the General Manager or/* Hearing Tribunal of MSA 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, MSA 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**

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The procedures below will be followed by tribunals established by Masters Swimming Australia to hear national member protection related complaints.

### **Preparation for Tribunal Hearing**

1. A Tribunal Panel will be constituted following the rules outlined in Masters Swimming Australia's Constitution, to hear a complaint that has been referred to it by *the General Manager/President*. The number of tribunal members required to be present throughout the hearing will be three.
2. The Tribunal members will be provided with a copy of all the relevant correspondence, reports or information received and sent by *the General Manager/President* relating to the complaint/allegations.
3. The Tribunal hearing 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.
4. The Tribunal Panel will not include any person who has any actual or perceived conflict of interest, or bias regarding the matter.
5. The *General Manager/President* 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 MSA, branch and/or club activities and events, pending the decision of the Tribunal, including any available appeal process, unless the *General Manager or President*, after considering the nature of the complaint, believes it is necessary to exclude the respondent(s) from all or some MSA, branch and/or club activities and events.

6. The *General Manager or President* 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 oral 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. However, a person cannot be a support person if he or she has been admitted to practice as a lawyer or worked as a trainee lawyer.

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.

7. If the complainant believes the details of the complaint are incorrect or insufficient they should inform the *General Manager or President* as soon as possible so that the respondent and the Tribunal Panel members can be properly informed of the complaint.
8. 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**

9. 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; and
  - 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 Chairman considers that no valid reason has been presented for their absence, the Tribunal Hearing will continue subject to the Tribunal Chairman being satisfied that all Tribunal notification requirements have been met.
11. If the Tribunal Chairman considers that a valid reason for the non-attendance of the respondent(s) has been presented, or the Tribunal Chairman does not believe the Tribunal notification requirements have been met, then the Tribunal will be rescheduled to a later date.
12. The Tribunal Chairman will inform the *General Manager or President* of the need to reschedule, and the *General Manager or President* will organise for the Tribunal to be reconvened.
13. The Tribunal Chairman will read out the complaint, ask the respondent(s) if they understand the complaint and ask if they agree or disagree 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 (penalty).
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(s) may question the complainant and witnesses.
16. 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.
17. 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.
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 including only those who provide new evidence;
  - to the extent it has power to do so, 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.
19. Video evidence, if available, may be presented. The arrangements must be made entirely by the person/s wishing to offer this type of evidence.
  20. If the Tribunal considers that at any time during the tribunal hearing there is any unreasonable or intimidating behaviour from anyone, the Chairman may deny further involvement of that person in the hearing.
  21. 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). 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.
  22. All Tribunal decisions will be by majority vote.
  23. The Tribunal Chairman may 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 at a later time.
  24. Within 48 hours, the Tribunal Chairman will:
    - Forward to the General Manager a notice 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 Chairman 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 MSA on one or more of the following bases:
  - 26.1 that a denial of natural justice has occurred;
  - 26.2 that the disciplinary measure(s) imposed is unjust and/or unreasonable; and/or
  - 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 26 must lodge a letter setting out the basis for their appeal with the General Manager/President within *three business days* of the relevant decision. *[An MSA appeal fee of \$110 shall be included with the letter of intention to appeal.]*
28. If the letter of appeal is not received by the General Manager/President within the time period the right of appeal lapses. *If the letter of appeal is received but the appeal fee is not received by the relevant time, the appeal lapses.*
29. The letter of appeal and notice of tribunal decision (clause 24) will be forwarded to the General Manager/President to review and decide whether there are sufficient grounds for the appeal to proceed. The General Manager may invite any witnesses to the meeting they believe are required to make an informed decision.

30. If the appellant has not shown sufficient grounds for appeal in accordance with clause 26, then the appeal will be rejected. The appellant will be notified in writing with reasons for the decision. The appeal fee will be forfeited.
31. If the appeal is accepted by an Appeal Tribunal a new panel will be convened to rehear the complaint *and the appeal fee will be refunded.*
32. The Tribunal procedure shall be followed for the appeal.
33. The decision of an Appeal Tribunal will be final and binding.

**PART E: REPORTING REQUIREMENT AND DOCUMENTS**

The following information was updated in November 2017. It is subject to change at any time.

Contact details for advice or to report an allegation of child abuse:

<b>Australian Capital Territory</b>	
ACT Police Non-urgent police assistance Ph: 131 444 <a href="http://www.police.act.gov.au">www.police.act.gov.au</a>	Child and Youth Protection Services <a href="http://www.communityservices.act.gov.au/ocyfs/child-and-youth-protection-services">http://www.communityservices.act.gov.au/ocyfs/child-and-youth-protection-services</a>  Ph: 1300 556 729
<b>New South Wales</b>	
New South Wales Police Non-urgent police assistance Ph: 131 444 <a href="http://www.police.nsw.gov.au">www.police.nsw.gov.au</a>	Family and Community Services <a href="http://www.facs.nsw.gov.au">www.facs.nsw.gov.au</a>  Ph: 132 111
<b>Northern Territory</b>	
Northern Territory Police Non-urgent police assistance Ph: 131 444 <a href="http://www.pfes.nt.gov.au">www.pfes.nt.gov.au</a>	Office of Children and Families <a href="https://nt.gov.au/community">https://nt.gov.au/community</a>  Ph: 1800 700 250
<b>Queensland</b>	
Queensland Police Non-urgent police assistance Ph: 131 444 <a href="http://www.police.qld.gov.au">www.police.qld.gov.au</a>	Department of Communities, Child Safety and Disability Services  <a href="https://www.communities.qld.gov.au/childsafety/child-safety-services">https://www.communities.qld.gov.au/childsafety/child-safety-services</a>  Ph: 1800 811 810 (Queensland only)
<b>South Australia</b>	
South Australia Police Non-urgent police assistance Ph: 131 444 <a href="http://www.police.sa.gov.au">www.police.sa.gov.au</a>	Department for Child Protection <a href="http://www.sa.gov.au/topics/education-and-learning/health-wellbeing-and-special-needs">www.sa.gov.au/topics/education-and-learning/health-wellbeing-and-special-needs</a>  Ph: 131 478
<b>Tasmania</b>	
Tasmania Police Non-urgent police assistance Ph: 131 444 <a href="http://www.police.tas.gov.au">www.police.tas.gov.au</a>	Department of Health and Human Services <a href="http://www.dhhs.tas.gov.au/children">www.dhhs.tas.gov.au/children</a>  Ph: 1300 737 639
<b>Victoria</b>	
Victoria Police Non-urgent police assistance Ph: (03) 9247 6666 <a href="http://www.police.vic.gov.au">www.police.vic.gov.au</a>	Department of Human Services <a href="http://www.dhs.vic.gov.au">www.dhs.vic.gov.au</a>  Ph: 131 278 (afterhours and weekends)
<b>Western Australia</b>	
Western Australia Police Non-urgent police assistance Ph: 131 444 <a href="http://www.police.wa.gov.au">www.police.wa.gov.au</a>	Department for Child Protection <a href="http://www.dcp.wa.gov.au">www.dcp.wa.gov.au</a> After Hours Crisis care: Ph: (08) 9223 1111 or 1800 199 008 (Country)

## Key contact details in swimming and anti-discrimination / equal opportunity agencies:

Masters Swimming Australia	General Manager,	(03) 96825666
Masters Swimming Queensland	MSQ Office	(07) 3245 1571
Masters Swimming New South Wales	MSNSW Office	(02) 8736 1232
Masters Swimming Victoria	MSV Office	(03) 9682 5666
Masters Swimming Tasmania	MST Secretary	0418 389 245
Masters Swimming SA	MSSA Secretary	08 8270 4180
Masters Swimming WA	MSWA Office	(08) 9328 9469
Masters Swimming NT	MSNT Secretary	(08) 8981 5919
Australian Sports Commission	General Enquiries	(02) 6214 11111
Australian Human Rights Commission		(02) 9284 9600
Equal Opportunity Commission South Australia		(08) 8207 1977 Freecall: 1800 188 163
Anti Discrimination Commission Queensland		1300 130 670
ACT Human Rights Commission		(02) 6205 2222
VIC Equal Opportunity Commission		(03) 9032 3583 9281 7111
Equal Opportunity Commission WA		(08) 9216 3900 1800 198 149
Anti Discrimination Board of NSW		(02) 9268 5544 1800 630 812 (Regional NSW only)
NT Anti Discrimination Commission		(08) 8999 1444
Equal Opportunity Tasmania		(03) 6165 7515 1300 305 062





**Attachment E2: CONFIDENTIAL RECORD OF FORMAL COMPLAINT**

Complainant's Name	<input type="checkbox"/> Over 18 <input type="checkbox"/> Under 18	Date Formal Complaint Received:    /    /
Complainant's contact details	Phone: Email:	
Complainant's role/status	<input type="checkbox"/> Administrator (volunteer) <input type="checkbox"/> Parent <input type="checkbox"/> Athlete/player <input type="checkbox"/> Spectator <input type="checkbox"/> Coach/Assistant Coach <input type="checkbox"/> Support Personnel <input type="checkbox"/> Employee (paid) <input type="checkbox"/> Other <input type="checkbox"/> Official .....	
Name of person complained about (respondent)	<input type="checkbox"/> Over 18 <input type="checkbox"/> Under 18	
Respondent's role/status	<input type="checkbox"/> Administrator (volunteer) <input type="checkbox"/> Parent <input type="checkbox"/> Athlete/player <input type="checkbox"/> Spectator <input type="checkbox"/> Coach/Assistant Coach <input type="checkbox"/> Support Personnel <input type="checkbox"/> Employee (paid) <input type="checkbox"/> Other <input type="checkbox"/> Official .....	
Location/event of alleged issue/incident		
Description of alleged issue/incident		
Nature of complaint (category/basis/grounds)  Can tick more than one box	<input type="checkbox"/> Harassment or <input type="checkbox"/> Discrimination <input type="checkbox"/> Sexual/sexist <input type="checkbox"/> Selection dispute <input type="checkbox"/> Coaching methods <input type="checkbox"/> Sexuality <input type="checkbox"/> Personality clash <input type="checkbox"/> Verbal abuse <input type="checkbox"/> Race <input type="checkbox"/> Bullying <input type="checkbox"/> Physical abuse <input type="checkbox"/> Religion <input type="checkbox"/> Disability <input type="checkbox"/> Victimization <input type="checkbox"/> Pregnancy <input type="checkbox"/> Child Abuse <input type="checkbox"/> Unfair decision <input type="checkbox"/> Other .....	
Methods (if any) of attempted informal resolution		

Formal resolution procedures followed (outline)	
If investigated: Finding -	
If went to hearing tribunal: Decision -  Action recommended -	
If mediated: Date of mediation - Were both parties present - Terms of Agreement -  Any other action taken -	
If went to appeals tribunal: Decision  Action recommended	
Resolution	<input type="checkbox"/> Less than 3 months to resolve <input type="checkbox"/> Between 3 – 8 months to resolve <input type="checkbox"/> More than 8 months to resolve
Completed by	Name: Position: Signature: / /
Signed by:	Complainant:  Respondent:

This record and any notes must be kept in a confidential and safe place. If the complaint is of a serious nature, or is escalated to and/or dealt with at the national level, the original must be forwarded to the national body and a copy kept at the branch/club level (whatever level the complaint was made).

**Attachment E3: CONFIDENTIAL RECORD OF CHILD ABUSE ALLEGATION**

Before completing, ensure the procedures outlined in attachment C4 have been followed and advice has been sought from the relevant government agency and/or police.

Complainant's name (if other than the child)		Date Formal Complaint Received:    /    /
Role/status in sport		
Child's name		Age:
Child's address		
Person's reason for suspecting abuse (e.g. observation, injury, disclosure)		
Name of person complained about		
Role/status in sport	<input type="checkbox"/> Administrator (volunteer) <input type="checkbox"/> Parent <input type="checkbox"/> Athlete/player <input type="checkbox"/> Spectator <input type="checkbox"/> Coach/Assistant Coach <input type="checkbox"/> Support Personnel <input type="checkbox"/> Employee (paid) <input type="checkbox"/> Other <input type="checkbox"/> Official    .....	
Witnesses (if more than 3 witnesses, attach details to this form)	Name (1): Contact details: Name (2): Contact details: Name (3): Contact details:	
Interim action (if any) taken (to ensure child's safety and/or to support needs of person complained about)		
Police contacted	Who: When: Advice provided:	
Government agency contacted	Who: When: Advice provided:	

General Manager and/or MPIO contacted	Who: When:
Police and/or government agency investigation	Finding:
Internal investigation (if any)	Finding:
Action taken	
Completed by	Name: Position: Signature: / /
Signed by	Complainant (if not a child)

This record and any notes must be kept in a confidential and safe place and provided to the relevant authorities (police and government) should they require them.