

TRIATHLON AUSTRALIA LIMITED



Supported by

Triathlon Queensland
Triathlon New South Wales
Triathlon Victoria
Triathlon ACT
Triathlon Tasmania
Triathlon South Australia
Triathlon Western Australia
Triathlon Northern Territory

MEMBER PROTECTION BY-LAW

Updated January 2010

CONTENTS	PAGE
PREFACE	5
PART A – TRIATHLON AUSTRALIA MEMBER PROTECTION BY-LAW	6
1. Triathlon Australia's Core Values.....	6
2. Purpose of this By-law.....	6
3. Who this By-law Applies To.	7
4. Code Of Conduct.....	7
4.1 Be ethical, fair and honest in all their dealings with other people and Triathlon Australia;	7
4.2 Treat all persons with respect and courtesy and have proper regard for their dignity, rights and obligations;.....	7
4.3 Always place the safety and welfare of children above other considerations;.....	7
4.4 Comply with Triathlon Australia's constitution, rules and policies including this member protection By-law;	7
4.5 Operate within the rules and spirit of the sport;.....	7
4.6 Comply with all relevant Australian laws (Federal, State and Territory), particularly anti-discrimination and child protection laws;	7
4.7 Be responsible and accountable for their conduct; and	7
4.8 Abide by the relevant Codes of Conduct outlined in Part D of this By-law or otherwise developed by TA.	7
5. Organisational Responsibilities.	8
5.1 Adopt, implement and comply with this By-law;	8
5.2 Publish, distribute and otherwise promote this By-law and the consequences for breaching it;	8
5.3 Promote appropriate standards of conduct at all times;	8
5.4 Promptly deal with any breaches of or complaints made under this By-law in an impartial, sensitive, fair, timely and confidential manner;.....	8
5.5 Apply this By-law consistently without fear or favour;	8
5.6 Recognise and enforce any penalty imposed under this By-law;	8
5.7 Ensure that a copy of this By-law is available or accessible to the persons to whom this By-law applies	8
5.8 Appoint or have access to appropriately trained people to receive and handle complaints and allegations e.g. Member Protection Officers and display the names and contact details in a way that is readily accessible; and	8
5.9 Monitor and review this By-law at least annually.....	8
6. Individual Responsibilities.	8
6.1 Making themselves aware of the By-law and complying with the standards of conduct outlined in this By-law;.....	8
6.2 Consenting to a national police check if the individual holds or applies for a role that involves regular contact with people under the age of 18 years;	8
6.3 Complying with all other requirements of this By-law;.....	8
6.4 Co-operating in providing a discrimination, child abuse & harassment free sporting environment;....	8
6.5 Understanding the possible consequences of breaching this By-law.....	8
7. By-law Position Statements.	8
7.1 Child Protection By-law.....	8
7.2 Taking Images of Children.....	9
7.3 Anti-Discrimination and Harassment By-law.....	9
7.4 Sexual Relationships By-law.....	10
7.5 Pregnancy Policy	10
7.6 Transgender Athletes By-law.....	11
7.7 Other relevant policies.	13
8. Complaints Procedures.....	13
8.1 Complaints.....	13
8.2 Vexatious Complaints & Victimisation.....	13
8.3 Mediation.....	13
8.4 Tribunals.....	14
9. What is a Breach of this By-law.	14
10. Forms of Discipline.....	14

11. Dictionary	14
PART B – ATTACHMENTS - ROLE-SPECIFIC CODES OF CONDUCT	19
E1. <u>General Code of Behaviour</u>	19
E2. <u>Competitor/Athlete Code of Behaviour</u>	20
E3. <u>Parent/Guardian Code of Behaviour</u>	21
E4. <u>Spectator Code of Behaviour</u>	22
E5. <u>Administrator/Director/Officer/Employee/Contractor/Race Director Code of Behaviour</u>	23
E6. <u>Coaches Code of Ethics</u>	24
PART C - ATTACHMENTS - CHILD PROTECTION REQUIREMENTS	25
C1. <u>Mandatory Reporting Requirements</u>	27
C2. <u>NSW Working with Children Requirements</u>	28
C3. <u>QLD Working with Children Requirements</u>	29
C4. <u>WA Working with Children Requirements</u>	29
C5. <u>VIC Working with Children Requirements</u>	30
C6. <u>SA Child Safe Environments Requirements</u>	31
C7. <u>NT Child Protection Requirements</u>	31
C8. <u>Screening Requirements (ACT and TAS)</u>	32
C9. <u>Member Protection Declaration</u>	33
PART D – ATTACHMENTS - HARASSMENT LEGISLATION.....	34
1. <u>Sexual Harassment</u>	34
2. <u>Disability Harassment</u>	34
3. <u>Racial Harassment</u>	34
PART E – ATTACHMENTS - COMPLAINT HANDLING PROCEDURES	36
E1. <u>Complaints Procedure</u>	37
E2. <u>Mediation</u>	41
E3. <u>Investigation Procedure</u>	43
E4. <u>Investigation Procedure - Child Abuse</u>	44
E5. <u>Triathlon Australia's Disciplinary Rules & Procedures By-Law - Hearings and Appeals Procedure</u>	47
1. <u>Definitions and Interpretation</u>	47
1.1 <u>Definitions</u>	47
1.2 <u>Interpretation</u>	48
2. <u>Investigation of Complaints</u>	48
2.1 <u>Receipt of Complaints</u>	48
2.2 <u>Conduct of Investigation</u>	49
2.3 <u>Investigations Officer's power to suspend</u>	50
2.4 <u>Notice of Charges and Investigation Report</u>	51
3. <u>Disciplinary Tribunal</u>	51
3.1 <u>Composition of the Tribunal</u>	51
3.2 <u>Proceedings of the Tribunal</u>	52
4. <u>Hearings</u>	53
4.1 <u>Conduct of hearings</u>	53
4.2 <u>General rules governing the Tribunal</u>	54
4.3 <u>Powers of the Tribunal & Penalties</u>	55
4.4 <u>Effect of Tribunal determinations</u>	56
4.5 <u>Notification to persons affected by determination</u>	56
4.6 <u>Publication of determinations</u>	57
4.7 <u>Keeping Complainant informed</u>	57
4.8 <u>Legal Proceedings</u>	57

5. Appeals Procedure.....	58
PART F – ATTACHMENTS - REPORTING DOCUMENTS/FORMS.....	59
ATTACHMENT F1: Confidential Record of Informal Complaint.....	60
ATTACHMENT F2: Confidential Record of Formal Complaint	62
ATTACHMENT F3: Confidential Record of Child Abuse Allegation.....	65
ATTACHMENT F4: Record of Mediation	67
ATTACHMENT F5: Record of Tribunal Decision	68

PREFACE

The protection of our members and the participants in our sport, whether they are competitors, volunteers, technical officials, race directors or committee members, is of paramount importance to TA. If we do not look after those involved with our sport, the sport will not continue to grow.

Member protection is now a legal requirement that administrators of the sport have to comply with, but more importantly this By-law is recognition of Triathlon Australia's commitment to the essence of Australian sport providing a safe environment for children, that is free from harassment and abuse for everyone, and promotes fair, respectful, responsible and positive behaviour and values.

This By-law adopts a proactive and preventative approach to dealing with inappropriate behaviour and TA sees it as an important part of our overall management of the sport of triathlon in Australia.

This By-law has been made under TA's Constitution and provides guidance for the protection of the health, safety and well being of all of TA's members and those who participate in the activities of TA and its STTAs and affiliated clubs. It sets out the procedures to be followed in dealing with harassment and other forms of inappropriate behaviour in an effective and timely way, and provides a procedure for the informal and formal resolution of complaints.

As caretakers of our sport for those that will follow us it is of paramount importance that we all comply with both the letter and spirit of this important policy. I ask for, and look forward to your assistance in doing so.

Peter Hedge
President
Triathlon Australia Limited

January 2010

Triathlon Australia Limited



PART A – TRIATHLON AUSTRALIA MEMBER PROTECTION BY-LAW

1. Triathlon Australia's Core Values

Triathlon Australia (TA) and its member associations, the State and Territory Triathlon Associations (STTAs) share a common vision for the sport of triathlon in Australia,

“To provide a quality service for Australian triathletes using best practices in leadership and management to ensure Australia is the world's leading triathlon nation”.

This vision aims to ensure -

- Our management and leadership practices are of the highest quality and ethical standard;
- Our members are provided with support and assistance programs to develop to their maximum potential;
- Our sponsors and peak bodies are supported and serviced to the best of our resources;
- Our members and participants are provided with safe, fair, quality and enjoyable sporting opportunities;
- Our culture, heritage and values are maintained;
- TA is widely regarded within the Australian Sports industry as one of the best managed and performing sports in Australia;
- TA is widely identified by national governing bodies for Triathlon around the world as the best managed and performing triathlon federation in the world.

2. Purpose of this By-law

This Member Protection By-law (By-law) aims to ensure our core values, good reputation and positive behaviours and attitudes are maintained. It assists us in ensuring that every person involved in our sport is treated with respect and dignity, and is safe and protected from abuse. This By-law also ensures that everyone involved in our sport is aware of their legal and ethical rights and responsibilities. This policy also reflects our support and implementation of the sport industry principles and values outlined in The Essence of Australian Sport – principles of fairness, respect, responsibility and safety.

The By-law attachments provide the procedures that support our commitment to eliminating discrimination, harassment, child abuse and other forms of inappropriate behaviour from our sport. This By-law is made under Clause 37.1 of TA's constitution and is therefore binding on

all members. TA is therefore able to take disciplinary action against any person or organisation bound by this By-law if they breach it.

The By-law commenced on 1 January 2006, and will continue to operate until replaced. This By-law and/or its attachments may be amended from time to time by the Board of TA. Copies of the By-law and its attachments can be obtained from the TA website, www.triathlon.org.au or from the TA office.

3. Who this By-law applies to

This By-law applies to the following, whether they are in a paid or unpaid/voluntary capacity -

- Individuals sitting on boards, committees and sub-committees;
- Employees and volunteers;
- Support personnel (e.g. managers, physiotherapists, psychologists, masseurs, sport trainers);
- Coaches and assistant coaches;
- Athletes and competitors;
- Technical officials, race directors and other officials;
- Members, including life members;
- STTAs;
- Affiliated clubs and associated organisations;
- Peak associations and the national body;
- Any other person or organisation that is a member of or affiliated to Triathlon Australia;
- Parents, guardians, spectators and sponsors to the full extent that is possible.

This By-law will continue to apply to a person even after they have stopped their association or employment with Triathlon Australia if disciplinary action, relating to an allegation of child abuse against that person, has commenced.

4. Code of Conduct

Triathlon Australia requires every individual and organisation bound by this By-law to -

- 4.1 Be ethical, fair and honest in all their dealings with other people and Triathlon Australia;**
- 4.2 Treat all persons with respect and courtesy and have proper regard for their dignity, rights and obligations;**
- 4.3 Always place the safety and welfare of children above other considerations;**
- 4.4 Comply with Triathlon Australia's constitution, rules and policies including this member protection By-law;**
- 4.5 Operate within the rules and spirit of the sport;**
- 4.6 Comply with all relevant Australian laws (Federal, State and Territory), particularly anti-discrimination and child protection laws;**
- 4.7 Be responsible and accountable for their conduct; and**
- 4.8 Abide by the relevant Codes of Conduct outlined in Part B of this By-law or otherwise developed by TA.**

5. Organisational Responsibilities

TA, STTAs and affiliated clubs must -

- 5.1 Adopt, implement and comply with this By-law;**
- 5.2 Publish, distribute and otherwise promote this By-law and the consequences for breaching it;**
- 5.3 Promote appropriate standards of conduct at all times;**
- 5.4 Promptly deal with any breaches of or complaints made under this By-law in an impartial, sensitive, fair, timely and confidential manner;**
- 5.5 Apply this By-law consistently without fear or favour;**
- 5.6 Recognise and enforce any penalty imposed under this By-law;**
- 5.7 Ensure that a copy of this By-law is available or accessible to the persons to whom this By-law applies;**
- 5.8 Appoint or have access to appropriately trained people to receive and handle complaints and allegations e.g. Member Protection Officers and display the names and contact details in a way that is readily accessible; and**
- 5.9 Monitor and review this By-law at least annually.**

6. Individual Responsibilities

Individuals bound by this By-law are responsible for -

- 6.1 Making themselves aware of the By-law and complying with the standards of conduct outlined in this By-law;**
- 6.2 Consenting to a national police check if the individual holds or applies for a role that involves regular contact with people under the age of 18 years;**
- 6.3 Complying with all other requirements of this By-law;**
- 6.4 Co-operating in providing a discrimination, child abuse & harassment free sporting environment;**
- 6.5 Understanding the possible consequences of breaching this By-law.**

7. By-law Position Statements

7.1 Child Protection By-law

Every person and organisation bound by this By-law must always place the safety and welfare of children above all other considerations.

Triathlon Australia acknowledges that our staff and volunteers provide a valuable contribution to the positive experiences of our juniors. Triathlon Australia aims to ensure this continues and to protect the safety and welfare of its junior participants. Several measures will be used to achieve this such as -

- Prohibiting any form of abuse against children;
- Providing opportunities for our juniors to contribute to and provide feedback on our program development;
- Carefully selecting and screening people whose role requires them to have regular contact with children. (Screening procedures are outlined in Part C of this By-law);
- Ensuring our codes of conduct, particularly for roles associated with junior sport, are promoted, enforced and reviewed;
- Providing procedures for raising concerns or complaints (our complaints procedure is outlined in Part E of this By-law);
- Providing information and education to those involved in the sport of triathlon regarding member protection and this By-law; and
- Providing education and/or information to those involved in our sport on child abuse and child protection.

Triathlon Australia requires that any child who is abused or anyone who reasonably suspects that a child has been or is being abused by someone within our sport, to report it immediately to the police or relevant government agency and the Chief Executive Officer (CEO) of TA. Descriptions of the sorts of activity that may be abuse are in the Dictionary at Clause 11.

All allegations of child abuse will be dealt with promptly, seriously, sensitively and confidentially. A person will not be victimised for reporting an allegation of child abuse and the privacy of all persons concerned will be respected. Our procedures for handling allegations of child abuse are outlined in Attachment E4 of this By-law.

If anyone bound by this By-law reasonably suspects that a child is being abused by their parent/s, they are advised to contact the relevant government department for youth, family and community services in their state/territory.

7.2 Taking Images of Children

Images of children can be used inappropriately or illegally. TA requires that individuals and associations, wherever possible, obtain permission from a child's parent/guardian before taking an image of a child that is not their own and ensure that the parent knows the way the image will be used. We also require the privacy of others to be respected and disallow the use of camera phones, videos and cameras inside changing areas, showers and toilets.

If TA uses an image of a child it will avoid naming or identifying the child or it will, wherever possible, avoid using both the first name and surname. We will not display personal information such as residential address, email address or telephone numbers without gaining consent from the parent/guardian. We will not display information about hobbies, likes/dislikes, school, etc as this information can be used as grooming tools by paedophiles or other persons. We will only use appropriate images of a child, relevant to our sport and ensure that the child is suitably clothed in a manner that promotes the sport, displays its successes, etc.

We require our members, member associations and clubs to do likewise.

7.3 Anti-Discrimination and Harassment By-law

Triathlon Australia aims to provide a sport environment where all those involved in its activities are treated with dignity and respect, and without harassment or discrimination.

Triathlon Australia recognises that all those involved in its activities cannot enjoy themselves, perform to their best, or be effective or fully productive if they are being treated unfairly,

discriminated against or harassed because of their age, disability, family responsibilities or parental status, gender or transgender identity, homosexuality or sexual orientation, irrelevant medical or criminal record, marital status, political belief, pregnancy or breastfeeding, race, religion, sex, social origin and/or trade union membership/activity.

Triathlon Australia prohibits all forms of harassment and discrimination based on personal characteristics listed in the Dictionary. Discrimination and harassment are extremely distressing, offensive, humiliating and/or threatening and create an uncomfortable and unpleasant environment. In most circumstances discrimination and harassment are against the law.

Descriptions of some of the types of behaviour, which could be regarded as harassment or discrimination, are provided in the Dictionary at Clause 11.

If any person feels they are being harassed or discriminated against by another person or organisation bound by this By-law, please refer to our complaints procedure outlined in Attachment E1 of this By-law. This will explain what to do about the behaviour and how Triathlon Australia will deal with the problem.

7.4 Sexual Relationships By-law

Triathlon Australia takes the position that sexual relationships between coaches and the adult athletes that they coach should be avoided. Triathlon Australia takes the view that such relationships while not necessarily constituting unlawful harassment can have harmful effects on the individual athlete involved, on other athletes and coaches, and on the sport's public image. Such relationships tend to be intentionally or unintentionally exploitative because there is usually a disparity between coaches and athletes in terms of authority, power, maturity, status and dependence. Given there is always a risk that the relative power of the coach has been a factor in the development of such relationships, they should be avoided by coaches at all levels. Triathlon Australia's By-law position is similar to other organisations that disallow professionals such as teachers, doctors and counsellors to have sexual relationships with their clients or students.

Should a sexual relationship develop between an athlete and coach, Triathlon Australia may investigate whether any action against the coach is necessary. Factors that may be relevant to consider are the age and maturity of the athlete relative to the coach, the financial or emotional dependence of the athlete on the coach, and the likelihood of the relationship having any adverse impact on the athlete and/or other athletes. If it is determined that the sexual relationship is inappropriate, action may be taken to stop the coaching relationship with the athlete. Action may include transfer, a request for resignation or dismissal from coaching duties.

In the event that an athlete attempts to initiate an intimate sexual relationship, the coach must take personal responsibility for discouraging such approaches, explaining the ethical basis for such action. The coach may wish to approach the Member Protection Officer of TA or their relevant STTA, or the CEO of TA if they feel harassed.

The law is always the minimum standard for behaviour within Triathlon Australia and therefore sex with a child is a criminal offence.

7.5 Pregnancy Policy

Triathlon Australia is committed to providing an inclusive sporting environment for pregnant women involved in its activities. Triathlon Australia expects everyone bound by this policy to treat pregnant women with dignity and respect and to remove any unreasonable barriers to

participation in our sport that disadvantage them. We will not tolerate any unlawful discrimination or harassment against pregnant women or women who may become pregnant.

Descriptions of some of the types of behaviour which could be regarded as pregnancy discrimination or harassment are provided in the Dictionary at clause 11.

If any person feels they are being harassed or discriminated against by another person or organisation bound by this policy, please refer to our complaints procedure outlined in Attachment E1 of this policy. This will explain what to do about the behaviour and how Triathlon Australia will deal with the problem.

While many sporting activities are safe for pregnant women to participate in, there may be particular risks that apply to some women during pregnancy. Those risks will depend on the nature of the particular sporting activity and the particular pregnant woman's circumstances.

Triathlon Australia will take reasonable care to ensure the safety, health and well being of pregnant women and their unborn children. We will advise pregnant women that there may be risks involved, and encourage them to obtain medical advice about those risks. Pregnant women should be aware that their own health and wellbeing, and that of their unborn children, are of utmost importance in their decision making about the extent and manner in which they participate in our sport.

We encourage all pregnant women to consult with their medical advisers, make themselves aware of the facts about pregnancy in sport, and ensure that they make informed decisions about participation in particular sporting activities.

We will only require pregnant women to sign a disclaimer if we require other participants to sign one in similar circumstances. We will not require women to undertake a pregnancy test.

7.6 Transgender Athletes By-Law

The sex reassignment process for a transgender person is extremely complex and lengthy and involves surgeons, gynaecologists, endocrinologists, plastic surgeons, psychiatrists, speech therapists and lawyers. Once a person has a sex change, they live the rest of their life as a member of that sex. It is not something someone decides overnight nor something someone would do in order to play women's sport.

Triathlon Australia is committed to providing an inclusive sporting environment where transgender or transsexual people involved in its activities are able to contribute and participate. Triathlon Australia expects everyone who is bound by this policy to treat people who identify as transgender or transsexual fairly and with dignity and respect. This includes acting with sensitivity and respect where a person is undergoing gender transition. We will not tolerate any unlawful discrimination or harassment against a person who identifies as transgender or transsexual or who is thought to be transgender or transsexual.

Descriptions of some of the types of behaviour which could be regarded as transgender or transsexual discrimination or harassment are provided in the Dictionary at clause 11.

If any person feels they are being harassed or discriminated against by another person or organisation bound by this policy, please refer to our complaints procedure outlined in Attachment E1 of this policy. This will explain what to do about the behaviour and how Triathlon Australia will deal with the problem.

Triathlon Australia recognises that the exclusion of transgender or transsexual people from participation in sporting events has significant implications for their health, well-being and

involvement in community life. In general Triathlon Australia will facilitate transgender or transsexual persons participating in our sport of the sex with which they identify.

Triathlon Australia also recognises there is debate over whether a male to female transgender person obtains any physical advantage over other female participants. This debate is reflected in the divergent discrimination laws across the country. If issues of performance advantage arise, Triathlon Australia will seek advice on the application of those laws in the particular circumstances.

Triathlon Australia is aware that the International Olympic Committee (IOC) has established criteria for selection and participation in the Olympic Games. Where a transgender or transsexual person intends competing at an elite level, we will encourage them to obtain advice about the IOC's criteria which may differ from the position taken by Triathlon Australia.

Triathlon Australia notes that drug testing procedures and prohibitions also apply to people who identify as transgender or transsexual. 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.

Any transgendered (male-to-female) person wishing to compete in Triathlon competition sanctioned by TA may do so under the following conditions -

1. Compete as a male, and be eligible for prizes offered to participants in the applicable category (ie. elite or age group); or
2. Upon satisfaction of certain criteria, compete as a female, however any placing in the applicable category will not be recognised and the competitor will not be eligible for prizes. The criteria that must be satisfied in order to compete in this way are -
 - (a) The competitor must provide written verification from a source approved by TA (eg. a certificate from a suitably qualified medical practitioner) that they have undergone a medical or surgical procedure to alter the gender characteristics of a male, so as to be identified as a female; and
 - (b) Provide a statutory declaration from the competitor that -
 - (i) They believe that their true gender is that of a female; and
 - (ii) They have adopted the lifestyle of a female.
3. Upon satisfying the criteria set out in 2 above, and the extra criteria set out below, the competitor may compete as a female and have their placing in the applicable category recognised, and be eligible for prizes. The extra criteria they must satisfy to compete in this way is -
 - (a) They must provide a medical opinion from a suitably qualified medical practitioner or exercise physiologist (the person must be independent and authoritative in this field of assessment) which verifies to TA's reasonable satisfaction that having regard to the competitive nature of the sport of triathlon, that the competitor would have no significant performance advantage in competing as a female consequent to their medical history and gender background.
 - (b) Provide the identity and qualification of the suitably qualified medical practitioner or exercise physiologist providing the opinion to TA.
4. The above are subject to the following conditions -
 - (a) It applies only to TA sanctioned events. Events sanctioned by other bodies may adopt other criteria or procedures.
 - (b) This By-law is subject to change by TA at any time.
 - (c) It is subject to any legislative provisions that override this By-law and any changes in the law.
 - (d) A competitor's position as stated under Clauses 2 and 3 above must not alter. This may require periodic verification or guidance by a suitably qualified medical practitioner or exercise physiologist on the extra criteria referred to in Clause 3.

5. Any queries or concerns should be sent to the CEO of TA or a MPO.

7.7 Other relevant policies

Other Triathlon Australia relevant policies can be found at www.triathlon.org.au. Some of the policies which contribute to the welfare of all those involved in our activities include the *Anti-doping Policy*.

8. Complaints Procedures

8.1 Complaints

Triathlon Australia aims to provide an easy to use, confidential and trustworthy procedure for complaints based on the principles of natural justice. Any person may report a complaint (complainant) about a person/s or organisation bound by this By-law if they reasonably believe that a person/s or a sporting organisation has breached this By-law. A complaint should be reported to the Member Protection Officer of TA or a STTA or the CEO of TA.

A complaint may be reported as an informal or formal complaint. The complainant decides whether the complaint will be dealt with informally or formally unless the relevant Member Protection Officer of TA or a STTA, or the CEO of TA considers that the complaint falls outside the parameters of this By-law and would be better dealt with another way.

All complaints will be dealt with promptly, seriously, sensitively and confidentially. Our complaint procedures are outlined in Attachment E1 of this By-law.

8.2 Vexatious Complaints & Victimisation

Triathlon Australia aims to ensure our complaints procedure has integrity and is free of unfair repercussions or victimisation. If at any point in the complaint process the Member Protection Officer of TA or a STTA, or the CEO of TA, as the case may be, considers that a complainant has knowingly made an untrue complaint or the complaint is vexatious or malicious, the matter may be referred to the TA Board for appropriate action under Clause 17 of the TA Constitution which may include disciplinary action against the complainant.

Triathlon Australia will also take all necessary steps to make sure that people involved in a complaint are not victimised by anyone for coming forward with a complaint or for helping to sort it out. Disciplinary measures will be imposed on anyone who victimises another person for making a complaint.

8.3 Mediation

Triathlon Australia aims to sort out complaints with the minimum of fuss wherever possible. In many cases, complaints can be sorted out by agreement between the people involved with no need for disciplinary action. The people involved in a formal complaint - the complainant and the person complained about (respondent) - may also seek the assistance of a neutral third person or a mediator. Lawyers are permitted to negotiate on behalf of the complainant and/or respondent.

Mediation may occur either before or after an investigation of a complaint. If a complainant wishes to try and resolve the complaint with the assistance of a mediator, the Member Protection Officer of TA or a STTA, or the CEO of TA, in consultation with the complainant, may arrange for a mediator to mediate the complaint. More information on the mediation process is outlined in Attachment E2 of this By-law.

8.4 Tribunals

A hearings tribunal may be formed to hear a formal complaint that has been referred by the Member Protection Officer of TA or a STTA, or the CEO of TA, or for an alleged breach of the By-law. Our tribunal hearings procedure is outlined in Attachment E5 of this By-law.

A respondent may lodge one appeal only to the appeals tribunal in respect of a decision of a hearing tribunal. The decision of the appeal tribunal is final and binding on the people involved to the appeal. Our appeals process is outlined in Attachment E5 of this By-law.

Every organisation bound by this By-law will recognise and enforce any decision made, and form of discipline imposed, by an appeals tribunal under this By-law.

9. What is a Breach of this By-law

It is a breach of this By-law for any person or organisation to which this By-law applies, to have been found to have -

- Done anything contrary to this By-law;
- Breached any Code of Conduct made under this By-law or a provision of TA's Constitution;
- Brought the sport or TA into disrepute in relation to a matter covered by this By-law;
- Failed to follow Triathlon Australia's policies and procedures for the protection, safety and welfare of children;
- Appointed or continued to appoint a person to a role that involves working with children and young people contrary to this By-law;
- Discriminated against, harassed or bullied (including cyber bullying) any person;
- Victimised another person for reporting a complaint;
- Engaged in a sexually inappropriate relationship with a person that the person supervises, or has influence, authority or power over;
- Disclosed to any unauthorised person or organisation any Triathlon Australia information that is of a private, confidential or privileged nature;
- Made a complaint they knew to be untrue, vexatious, malicious or improper;
- Failed to comply with a penalty imposed after a finding that the individual or organisation has breached this By-law;
- Failed to comply with a direction given to the individual or organisation during the discipline process.

10. Forms of Discipline

If an individual or organisation to which this By-law applies breaches this By-law, one or more forms of discipline may be imposed. These may include making a verbal or written apology, paying a fine, being suspended or de-registered or having a person's appointment or employment terminated. More information on the range of disciplinary measures and the factors that will be considered before imposing discipline is at Attachment E5 of this By-law.

11. Dictionary

This Dictionary sets out the meaning of words used in this By-law 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. Any word or expression used in this By-law that is not defined in this dictionary, but is defined in TA's Constitution, has the meaning provided in TA's Constitution, unless the contrary intention applies.

Abuse is a form of harassment and includes physical abuse, emotional abuse, sexual abuse, neglect, and abuse of power. Examples of abusive behaviour include bullying, humiliation, verbal abuse and insults.

Affiliated club has the same meaning as in Clause 2.1 of TA's Constitution.

CEO means the person appointed to the position of Chief Executive Officer of TA from time to time or such other person nominated by the TA Board.

Child means a person who is under the age of 18 years (see also definition of young person)

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

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

Complaint means a complaint made under Clause 8 of this By-law.

Complainant means the person making a complaint.

Discrimination means treating or proposing to treat a person less favourably than someone else because of a particular characteristic in the same or similar circumstances in certain areas of public life (this is Direct Discrimination). The law also covers **Indirect Discrimination**. This is imposing or intending 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. The relevant attributes or characteristics are -

- Age;
- Disability;
- Gender identity/transgender status;
- Homosexuality and sexual orientation;
- Irrelevant medical record;
- Irrelevant criminal record;
- Marital status;
- Parental/carer status;
- Physical features;
- Political belief/activity;
- Pregnancy and breastfeeding;
- Race;
- Religious belief/activity;
- Sex or gender;
- Sexual orientation;

- Trade union membership/activity;
- Transgender orientation.

Requesting, assisting, instructing, inducing or encouraging another person to engage in discrimination may also be discriminatory conduct. Discrimination may be direct or indirect.

Some States and Territories include additional characteristics such as physical features or association with a person with one or more of the characteristics listed above.

Examples of Discrimination

- **Age:** A club refuses to allow an older person to coach a team simply because of their age.
- **Breastfeeding:** A member of the club who is breastfeeding her baby in the club rooms is asked to leave.
- **Disability:** A junior player is overlooked because of her mild epilepsy.
- **Family responsibilities:** A club decides not to promote an employee because he has a child with a disability even though the employee is the best person for the job.
- **Gender Identity:** A transgender contract worker is harassed when employees refuse to call her by her female name.
- **Homosexuality:** An athlete is ostracised from her team after she tells a team mate that she is a lesbian.
- **Marital Status:** A player is deliberately excluded from team activities and social functions because she is single.
- **Pregnancy:** A woman is dropped from her squad when she becomes pregnant.
- **Race:** An Italian referee is not permitted to referee games with a high proportion of Italian players on one team because of his race.
- **Sex:** Specialist coaching is only offered to male players in a mixed team.

Harassment is any type of behaviour that the other person does not want and does not return and that is offensive, abusive, belittling or threatening. The behaviour is unwelcome and of a type that a reasonable person would recognise as being unwelcome and likely to cause the recipient to feel offended, humiliated or intimidated. Unlawful harassment includes the above but is either sexual or targets a person because of their race, sex, pregnancy, marital status, sexuality or other characteristic (see characteristic list under discrimination). Whether or not the behaviour is harassment is determined from the point of view of the person receiving the harassment. The basic rule is if someone else finds it harassing then it could be harassment. Harassment may be a single incident or repeated. It may be explicit or implicit, verbal or non-verbal.

Under this policy discrimination and harassment are not permitted in employment (including volunteer and unpaid employment); when providing sporting goods and services including access to sporting facilities; when providing education and accommodation; the selection or otherwise of any person for competition or a team (domestic or international); the entry or otherwise of any player or other person to any competition and the obtaining or retaining membership of clubs and organisations (including the rights and privileges of membership).

Some exceptions to state and federal anti-discrimination law apply. Examples include:

- holding a competitive sporting activity for females only who are 12 years of age or over where strength, stamina or physique is relevant; or
- not selecting a participant if the person's disability means he or she is not reasonably capable of performing the actions reasonably required for that sporting activity.

Requesting, assisting, instructing, inducing or encouraging another person to engage in discrimination or harassment may also be against the law.

It is also against discrimination law to victimise a person who is involved in making a complaint of discrimination or harassment. Example: a player is ostracised by her male coach for complaining about his sexist behaviour to another club official or for supporting another player who has made such a complaint.

Public acts of racial hatred which are reasonably likely in the circumstances 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 on other grounds such as homosexuality, gender identity, HIV/AIDS, religion and disability – see vilification.

Junior means a person under the age of eighteen (18) years who is participating in an activity of Triathlon Australia.

Mediator means a person appointed to mediate complaints made under this By-law.

Member has the same meaning as in Clause 2.1 of TA's Constitution.

Member protection is a term used to describe the practices and procedures that protect Members and TA. Member protection involves -

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

Member Protection Officer or MPO means a person trained to be the first point of contact for a person reporting a complaint under, or a breach of, this By-law. The MPO provides confidential information and moral support to the person with the concern or who is alleging harassment or a breach of this By-law. They help the complainant deal with any emotions they may have about what has happened and operate as a sounding board as the complainant decides what they want to do. The MPO may accompany the complainant in anything they decide to do, if it feels appropriate and they are happy to do it.

Natural justice incorporates the following principles -

- A person who is the subject of a complaint must be fully informed of the allegations against them;
- A person who is the subject of a complaint must be given full opportunity to respond to the allegations and raise any matters in their own defence;
- All parties need to be heard and all relevant submissions considered;
- Irrelevant matters should not be taken into account;
- No person may judge their own case;
- The decision maker/s must be unbiased, fair and just; and

- The penalties imposed must not outweigh the breach.

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

By-law and **this By-law** mean this Member Protection By-law.

Respondent means the person who is being complained about.

Sexual harassment means unwanted, unwelcome or uninvited behaviour of a sexual nature that makes a person feel humiliated, intimidated or offended. Sexual harassment can take many different forms and may include unwanted physical contact, verbal comments, jokes, propositions, display of pornographic or offensive material or other behaviour that creates a sexually hostile environment. Sexual harassment is not behaviour based on mutual attraction, friendship and respect. If the interaction is between consenting adults, it is not sexual harassment.

Sexual offence means a criminal offence involving sexual activity or acts of indecency, including but not limited to (subject to differences/variances under state/territory legislation) -

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

TA or Triathlon Australia means Triathlon Australia Limited.

Victimisation means subjecting a person or threatening to subject a person to any detriment or unfair treatment because that person has or intends to pursue their rights to make a complaint under government legislation (e.g. anti-discrimination) or under this By-law, or for supporting another person to make a complaint.

Vilification involves a person or organisation doing public acts to incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons having any of the attributes or characteristics within the meaning of discrimination. Public acts that may amount to vilification include any form of communication to the public and any conduct observable by the public.

Young People/person means people in the 13 – 18 year age group.

PART B – ATTACHMENTS: CODES OF BEHAVIOUR

B1. General Code of Behaviour

Triathlon Australia endorses the following code of conduct for Members, service providers and employees, particularly those responsible for activities involving persons under the age of 18 years.

Triathlon Australia Members, service providers and employees should meet the following standard of conduct -

- Respect the rights, dignity and worth of others;
- Be fair, considerate and honest in all dealings with others;
- Be professional in, and accept responsibility for their actions;
- Make a commitment to providing quality service;
- Be aware of, and maintain an uncompromising adherence to, Triathlon Australia standards, rules and policies;
- Operate within the rules of triathlon including national and international guidelines and procedures that govern the sport.

Triathlon Australia expects all members, service providers and employees to abide by this code of conduct, which upholds the principles and values of the organisation. They should recognise that at all times they have a responsibility, and a duty of care to other members, service providers and Triathlon Australia employees.

Specifically, they should -

- Understand the possible consequences of breaching Triathlon Australia's member protection By-law;
- Immediately report and breaches of Triathlon Australia's member protection By-law to the appropriate authority;
- Refrain from any form of abuse towards others;
- Refrain from any form of harassment toward others;
- Refrain from any form of discrimination toward others;
- Refrain from intimate relations with persons with whom they have a supervisory role or power over;
- Refrain from any form of victimisation toward others;
- provide a safe environment for the conduct of activities in accordance with any Triathlon Australia policy;
- Show concern and caution toward others that may be sick or injured;
- Be a positive role model.

B2. Competitor/Athlete Code of Behaviour

- Play by the rules.
- Never argue with an official and comply with the Race Competition Rules. Always use the appropriate rules and guidelines to resolve a dispute.
- Control anger and tempers. Verbal abuse of officials and sledging other player, deliberately distracting or provoking an opponent are not acceptable or permitted behaviours in any sport.
- Work equally hard for yourself and/or any team.
- Be a good sport. Applaud all good performances whether they are made by your team or the opposition.
- Treat all participants in your sport as you like to be treated. Do not bully or take unfair advantage of another competitor or athlete.
- Cooperate with your coach, team mates and opponents.
- Participate for your own enjoyment and benefit, not just to please parents and coaches.
- Respect the rights, dignity and worth of all participants regardless of their gender, ability, cultural background or religion.

B3. Parent/Guardian Code of Behaviour.

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

B4. Spectator Code of Behaviour

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

B5. Administrator/Director/Officer/Employee/Contractor/Race Director Code of Behaviour

- Agree to abide by the code of behaviour.
- Be fair, considerate and honest with others.
- Operate within the rules and By-laws of Triathlon Australia.
- Be professional in actions, language, presentation, manner and punctuality in order to reflect high standards.
- Maintain confidentiality in regards to sensitive and/or commercial information.
- Resolve conflicts fairly and promptly through established procedures.
- Maintain strict impartiality in matters relating to the Member Protection By-law.
- Maintain a safe environment for others.
- Show concern and caution towards others.
- Be a positive role model for others.

B6. Coaches Code of Ethics

Triathlon Australia uses a standard Coach's Code of Ethics form for all coaches wishing to apply for accreditation or reaccreditation to the Australian Sports Commission's National Coaching Accreditation Scheme.

Coaches should be aware that signing this form is a commitment to maintain the highest possible ethical standards as a triathlon coach and that breaches of the Code may lead to disciplinary action under Triathlon Australia's By-laws, including de-registration.

1. On accreditation and re accreditation coaches are asked to read the Code of Ethics and sign the Code of Ethics agreement form in addition to other accreditation / reaccreditation requirements, e.g. completing written assessment tasks, attending a coach education course, completing practical hours under the guidance of a mentor / tutor coach.
2. All coaches should read the Code of Ethics thoroughly and if necessary contact Triathlon Australia, the Australian Sports Commission or consult independent legal advice for further explanation prior to signing. Coaches should also refer to the Australian Sports Commission's Harassment Free Sport web page <http://www.activeaustralia.org/hfs/>.
3. Coaches should then submit the signed Code of Ethics agreement form together with their other accreditation / reaccreditation requirements to their applicable STTA for level one accreditation / reaccreditation or to Triathlon Australia for level two and level three accreditation / reaccreditation.

Triathlon Australia Coach's Code of Ethics

- Respect the rights, dignity and worth of every human being. Within the context of the activity, treat everyone equally regardless of sex, disability, ethnic origin or religion.
- Ensure the athlete's time spent with you is a positive experience. All athletes are deserving of equal attention and opportunities.
- Treat each athlete as an individual and respect the talent, developmental stage and goals of each athlete. Help each athlete reach their full potential.
- Be fair, considerate and honest with athletes.
- Be professional and accept responsibility for your actions. Display high standards in your language, manner, punctuality, preparation and presentation.
- Display control, respect, dignity and professionalism to all involved with the sport: this includes opponents, coaches, officials, administrators, the media, parents and spectators. Encourage your athletes to demonstrate the same qualities.
- Make a commitment to providing a quality service to your athletes. Maintain or improve your current NCAS accreditation. Seek continual improvement through performance appraisal and ongoing coach education. Provide a training program which is planned and sequential. Maintain appropriate records.
- Operate within the rules and spirit of triathlon. The guidelines of Triathlon Australia and the International Triathlon union (ITU) should be followed. Please contact Triathlon Australia for a copy of its rule book, constitution, by-laws, relevant policies, eg. anti-doping policy, selection procedures, etc.
- Coaches should educate their athletes on drugs in sport issues in consultation with the Australian Sports Anti-Drug Agency (ASADA).
- Any physical contact with athletes should be -
 - appropriate to the situation; and
 - necessary for the athlete's skill development.
- Refrain from any form of personal abuse towards your athletes. This includes verbal,

physical and emotional abuse. Be alert to any forms of abuse directed toward your athletes from other sources while they are in your care.

- Refrain from any form of harassment towards your athletes. This includes sexual and racial harassment, racial vilification and harassment on the grounds of disability.
- You should not only refrain from initiating a relationship with an athlete, but should also discourage any attempt by an athlete to initiate a sexual relationship with you, explaining the ethical basis of your refusal.
- Provide a safe environment for training and competition. Ensure equipment and facilities meet safety standards. Ensure equipment, rules, training and the environment are appropriate for the age and ability of the athletes.
- Show concern and caution toward sick and injured athletes. Provide a modified training program where appropriate. Allow further participation in training and competition only when appropriate. Encourage athletes to seek medical advice when required. Maintain the same interest and support toward sick and injured athletes.
- Be a positive role model for triathlon and athletes.

Coaches should...

- Be treated with respect and openness.
- Have access to self-improvement opportunities.
- Be matched with a level of coaching appropriate to their level of competence.

A copy of the Coaches Code of Ethics Agreement Form can be obtained from the Triathlon Australia website or by going to the following link.

PART C – ATTACHMENTS - CHILD PROTECTION REQUIREMENTS

The following information is sourced from the Australian Sports Commission (ASC) website - www.ausport.gov.au/supporting/ethics. For up to date information refer to the ASC website.

Triathlon Australia acknowledges the assistance of the Australian Sport Commission in the provision of the following information.

Background

Child Protection is about keeping children safe from abuse and protecting them from people who are unsuitable to work with children. Child abuse is illegal in all states and territories of Australia, with each having their own child protection laws that cover the reporting and investigation of cases of child abuse.

In New South Wales, Queensland, Western Australia, Victoria and South Australia child protection legislation places specific requirements upon individuals and organisations involved in a range of areas including sport and recreation.

The Northern Territory government has passed new law and screening will be compulsory from January 2010.

The Australian Capital Territory and Tasmanian governments are currently reviewing their child protection legislation. We will add new requirements or any amendments to existing requirements to this By-law as they are introduced.

Please be aware that state and territory child protection requirements may apply to individuals and organisations originating outside of the states with the legislation in place. For example, if one of our state associations or affiliated clubs takes junior players into New South Wales for training camps, competition or other activities, those travelling with the teams must comply with the NSW legislative requirements.

Please note that the state specific child protection requirements apply despite the existence or absence of this By-law.

As part of Triathlon Australia's commitment to protecting the safety and welfare of children and young people involved in triathlon activities, Triathlon Australia requires the following measures to be met:

- Provide opportunities for juniors to contribute to and provide feedback on program development;
- Provide education and/or information on child abuse and child protection to those involved in our sport such as coaches, juniors, parents and officials; and
- Where applicable meet the requirements outlined in:
 - C1. Mandatory Reporting Requirements
 - C2. NSW Working with Children Check Requirements
 - C3. QLD Working with Children Check Requirements
 - C4. WA Working with Children Check Requirements
 - C5. VIC Working with Children Check Requirements
 - C6. SA Child Safe Environments Requirements

- C7. NT Child Protection Requirements
- C8. Screening Requirements (Other Jurisdictions)
- C9. Member Protection Declaration

Note: The information contained in the following state specific attachments has been provided and/or endorsed by the relevant state government authority. Although this information is not and should not be considered as legal advice, it is strongly recommended that the wording in each attachment is not modified or condensed as it may result in non-compliance with the legislation.

C1. Mandatory Reporting Requirements

Legislation which specifies who is required by law to report suspected cases of child abuse and neglect is known as mandatory reporting. The people mandated to report varies across the different states and territories. The introduction of mandatory reporting aims to overcome the reluctance of some professionals to become involved in suspected cases of child abuse by imposing a public duty to do so. Laws governing mandatory reporting differ from state to state. The following guidelines provide a summary of which groups of people within each state and territory are mandated to report suspected cases of child abuse.

Australian Capital Territory

Mandatory reporting was introduced into the Australian Capital Territory in 1997. Doctors, nurses, police officers, teachers, school counsellors, public servants working in the child welfare field, and licensed child care providers are mandated to report suspected cases of sexual abuse and non-accidental physical injuries to the ACT Office for Children, Youth and Family Services.

New South Wales

The state of New South Wales has had mandatory reporting legislation since 1977 when medical practitioners were mandated. In 2000, the legislation was extended to include those who, in the course of their professional work or other paid employment, deliver health care, welfare, education, children's services, residential services or law enforcement to children under the age of 16 years.

It also mandates those who hold a management position and supervise workers in the above categories, and who have reasonable grounds to suspect a child is at risk of harm. Mandated professionals must report physical or sexual abuse as well as medical neglect, physical neglect or psychological harm caused to a child by witnessing domestic violence. Reports are made to the NSW Department of Community Services.

Northern Territory

In the Northern Territory, any person who believes a child is being or has been maltreated is required to notify the NT Family and Children's Services Office, Child and Family Protective Services, or a police station.

Queensland

Under the *Health Act 1937*, medical practitioners in Queensland are required by law to notify all suspected cases of physical, psychological, or emotional abuse or neglect, as well as sexual abuse or exploitation, to the QLD Department of Child Safety.

School principals and teachers are not mandated by law, but Education Queensland policy requires teachers to report suspected cases to authorities. The *Child Protection Act 1999* requires that Department of Families' officers and licensed care officers are to report when they suspect harm to children who are in residential care.

Tasmania

In Tasmania, mandatory reporting requirements are outlined in the *Children, Young Persons and Their Families Act 1997*. The Act emphasises the responsibilities for all members of the community to make sure children are protected. Those mandated to report child abuse or neglect include medical practitioners, nurses, dentists, police officers, psychologists, probation officers, child welfare officers, school principals, teachers, kindergarten teachers, people who manage child care services and people employed by or volunteering in government agencies or organisations funded by the Crown that provide health, welfare, education or care for children. Instances of suspected child abuse are reported to the Tasmanian Department of Children and Families (Commissioner for Children).

Victoria

Mandatory reporting was legislated in Victoria in 1993 via an amendment to the *Children and Young Persons Act 1989* which mandates professionals to report suspected cases of physical and sexual abuse. Professionals mandated are doctors, nurses, police, teachers and school principals. Reports are made to the Victorian Department of Human Services (Community Care).

South Australia

Under Sections 11(1) and (2) of the *Children's Protection Act 1993*, people in a range of positions are obliged by law to notify Families SA if they suspect on reasonable grounds that a child/young person has been or is being, abused and/or neglected and the suspicion is formed in the course of the person's work (whether paid or voluntary) or in carrying out official duties. The positions include any person who is an employee of, or volunteer in, a government department, agency or instrumentality, or local government or non-government agency that provides health, welfare, education, sporting or recreational, child care or residential services wholly or partly for children, being a person who is engaged in the actual delivery of those services to children; or holds a management position in the relevant organisation the duties of which include direct responsibility for, or direct supervision of, the provision of services to children. For more information on mandatory reporting information visit:

www.familiesandcommunities.sa.gov.au/DesktopModules/SAHT_DNN2_Documents/Download/633988218692085000/Guidelines%20for%20Mandated%20Notifiers.pdf

Child Abuse Report Line (phone 13 14 78)

Western Australia

Western Australia does not currently have any mandatory reporting legislation. However the state does have a series of reciprocal protocols between government departments and non-government agencies that are based on the idea that professionals in the areas of health, welfare and police have a duty of care to report any concerns. Reports can be made to the WA Department of Community Development.

C2. NSW Working with Children Check Requirements

All organisations within NSW that employ people in child-related employment (in a paid or unpaid capacity) must meet the requirements of the Working with Children Check (WWCC). Child related employment is work which primarily involves direct unsupervised contact with children. The WWCC involves three components:

1. **Ensuring** all paid and unpaid employees sign a [Prohibited Employment Declaration](#) which states they are not prohibited from working with children.
2. **Submitting** all applicants for **paid** employment to NSW Sport and Recreation for a WWCC background check. NSW Sport and Recreation only carries out checks for paid employees.

3. **Reporting** relevant employment proceedings for any paid and unpaid employees to the Commission for Children and Young People. A relevant employment proceeding involves any reportable conduct committed outside of work as well as in the workplace with or in the presence of a child/ren.

Sporting organisations are responsible for managing the WWCC process. Individuals cannot apply for a WWCC directly. Sporting organisations should register with [NSW Sport and Recreation](#), providing a contact who will receive the information on the background checks.

A WWCC is valid for employment in that position within the organisation. Short-term employees (where that person is being employed for periods of less than six months and returning for short periods throughout a 12 month period) only need to be checked **once** every 12 months.

For more information, including the required forms:

- www.kids.nsw.gov.au or 02 9286 7219
- www.dsr.nsw.gov.au/children/resources.asp or 02 9006 3700

C3. QLD Working with Children Check Requirements

A person will need a Working with Children Check, also known as the **blue card**, if they propose to work in a paid or voluntary capacity or to carry on a business in a child-related area regulated by the *Commission for Children and Young People and Child Guardian Act 2000*. Once a person is checked and approved they are issued with a “blue card.” Volunteers and paid employees employed in sporting organisations generally fall under the ‘churches, clubs and associations’ category of regulated employment. Volunteers and paid employees employed in private businesses may fall under the ‘sport and active recreation’ category of regulated employment. The check is a detailed national criminal history check including charges and investigations relating to children.

People such as those with previous convictions involving children are disqualified from applying for or renewing a blue card (refer to website below for details).

A blue card remains current for two years. Existing card holders will be notified by the Queensland Commission for Children and Young People and Child Guardian before their card expires.

In addition to obligations regarding the blue card, **employers** must develop and implement a written child protection risk management strategy and review it each year.

For more information on the blue card, including current forms:

- www.ccytg.qld.gov.au
- 1800 113 611

C4. WA Working with Children Check Requirements

The Working with Children Check (WWC Check) is a compulsory and rigorous criminal record check for certain people who carry out ‘child-related work’ in WA. A person is in ‘child-related work’ if the usual duties of their work involves, or is likely to involve contact with a child in connection with specified categories of work (see the website below for further details) It includes child-related work carried out by paid employees, volunteers, unpaid people and the self-employed. Parents volunteering in connection with their child’s activity are

exempt (although this does not apply to overnight camps); however they should still be required to complete the non-WWC Check screening process. There are other exemptions, for example volunteers under 18 years old. Further details about exemptions can be found on the website below. Only those in child-related work under the Act may apply.

Applicants will be issued with either:

- An Assessment Notice in the form of a WWC Card enabling them to be in all types of child-related work for three years unless there are new offences of concern.
- An Interim Negative Notice, which prohibits them from child-related work until a final decision is made on their application.
- A Negative Notice, which prohibits them from child-related work.

There are set obligations and strong penalties for non-compliance including for employers and volunteer co-coordinators.

For more information:

- www.checkwwc.wa.gov.au or call 1800 883 979 (toll free)

C5: VIC Working with Children Check Requirements

The Working with Children (WWC) Check creates a mandatory minimum checking standard across Victoria. The *Working with Children Act 2005* requires that some people who work or volunteer in child-related work require a WWC Check. The check involves a national police records check and a review of relevant findings from prescribed professional disciplinary bodies (currently only the Victorian Institute of Teaching). There is an exemption for volunteers whose own children are involved in the particular activity; however they should still be required to complete the screening process.

A person who has no criminal or professional disciplinary history will be granted an *assessment notice*. This notice will entitle the person to undertake child-related work in Victoria and is valid for five years (unless revoked). A person deemed unsuitable to work or volunteer with children will be given a *negative notice* and cannot work in child-related work in Victoria.

For more information:

- www.justice.vic.gov.au/workingwithchildren or 1300 652 879

C6: SA Child Safe Environment Requirements

There are provisions under the *Children's Protection (Miscellaneous) Amendment Act 2005* that apply to non-government and volunteer organisations that are entrusted with the care of children or who regularly come into contact with children. Part of the Government's regulations are 'Seven Principles of Good Practice' which clubs and organisations are expected to adopt as proactive and preventative strategies. These principles are to help prevent and minimise opportunities for abuse and to appropriately respond when abuse occurs or is suspected. The principles can be assessed at the following link:

http://www.recsport.sa.gov.au/training-development/documents/Keep_Children_Safe_Guidelines.pdf

Criminal history assessments (checks) are likely to be mandatory for most positions in sporting

organisations from 2010/2011. Some exemptions could apply.

Staff and volunteers who work with children are mandated notifiers and have a legal obligation to report any suspected child abuse and/or neglect.

For more information:

- <http://www.dfc.sa.gov.au/pub/Default.aspx?tabid=281>

C7. NT Child Protection Requirements

From January 2010, all persons employed in child related work, either paid or as a volunteer, must hold a valid clearance notice issued by the SAFE NT Screening Authority. There are penalties for failure to comply. Sports coaches, trainers, team administrators, officials and volunteers of Sporting Organisations that deal with children are caught.

Clearance notices are valid for two years from date of issue unless revoked, and are transferable within employment fields. As a part of the assessment process, SAFE NT will consider the applicant's criminal history record and other relevant information.

For more information contact 1800 SAFE NT (1800 723 368)

C8. SCREENING REQUIREMENTS For states/territories without Working With Children Checks such as ACT and Tasmania

This attachment sets out the screening process for people in Triathlon who work, coach, supervise or have regular unsupervised contact with people under the age of 18 years.

TA will, and also requires state associations and clubs to:

1. Identify positions that involve working, coaching, supervising or regular unsupervised contact with people under the age of 18 years.
2. Obtain a completed *Member Protection Declaration (MPD)* (Attachment C2) from all people who are identified in the above step and keep it in a secure place.
3. Provide an opportunity for a person to give an explanation if a MPD isn't provided or it reveals that the person doesn't satisfactorily meet any of the clauses in the MPD. We will then make an assessment as to whether the person may be unsuitable to work with people under the age of 18 years. If unsatisfied we will not appoint them to the role/position.
4. Where possible, check a person's referees (verbal or written) about his/her suitability for the role.
5. Ask the people identified in step 1 to sign a consent form for a national police check.
6. Possibly request (or ask the person to request) a national 'Part Exclusion' police check from our relevant police jurisdiction. This check excludes irrelevant records. If the police check indicates a relevant offence, we will provide an opportunity for the person to give an explanation, and then we will make an assessment as to whether the person may pose a risk to or be unsuitable to work with people under the age of 18 years. If unsatisfied we will not appoint them to the role/position.
7. Make an assessment as to whether the person may be unsuitable to work with people under the age of 18 years if the person does not agree to a national police check after explaining why it is a

requirement under our policy. If unsatisfied, we will not appoint them.

8. Decide whether to offer the person the position taking into account the result of the police check and any other information the club has available to it. Where it is not practical to complete the police check prior to the person commencing in the position, we will complete the check as soon as possible, and if necessary, act immediately on the outcome.
9. Protect the privacy of any person who is checked and maintain confidentiality of any information obtained through the checking process.
10. Return information collected during screening (such as a completed MPD form, police records and referee reports) to the relevant person if that person is not appointed to the position, or otherwise be destroyed within 28 days of the date of the decision or the expiry of any appeal period, unless within that time the person requests that the documents be returned to them. For appointed persons, information will be kept on file in a secure location.

C9. Member Protection Declaration

**TRIATHLON AUSTRALIA
MEMBER PROTECTION DECLARATION**

TA has a duty of care to its members and to the general public who interact with its employees, volunteers, members and others involved with TA's activities. As part of this duty of care and as a requirement of TA's Member Protection By-law, TA must enquire into the background of those applying for work (paid or voluntary) that involves regular contact with people under the age of 18 years.

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

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.
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, acts of violence, intimidation or other forms of harassment.
4. I have never been sanctioned for an anti-doping rule violation under any anti-doping policy applicable to me.
5. I have never participated in, facilitated or encouraged any practice prohibited by the World Anti-Doping Agency Code or any other anti-doping policy applicable to me.
6. To my knowledge there is no other matter that TA may consider to constitute a risk to its members, employees, volunteers, athletes or reputation by engaging me.
7. I will notify the President or CEO 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 for whatever reason.

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

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

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

Name:.....

Signature:.....

Date:

PART D – ATTACHMENTS - HARASSMENT LEGISLATION

Several state and federal laws directly relate to harassing behaviour. Extracts relating to harassment from relevant federal legislation are summarised below.

1. Sexual Harassment

The law recognises and prohibits sexual harassment. Sexual harassment is defined in the *Sex Discrimination Act 1984* (Cwlth), section 28A as -

‘...a person sexually harasses another person (the “person harassed”) if the person -

- *makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or*
 - *engages in other unwelcome conduct of a sexual nature in relation to the person harassed,*
- in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.*

“Conduct of a sexual nature” includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.”

Each of the states and territories also have legislation prohibiting sexual harassment, all very similar to the federal one, although the precise definition of sexual harassment varies from state to state and from the definition in the federal legislation.

2. Disability Harassment

The *Disability Discrimination Act 1992* (Cwlth), s35, makes harassment in relation to a disability unlawful. Section 36 of the Act prohibits harassment of a relative or associate of a person with a disability. While the Act does not define harassment in relation to people with a disability, it is generally understood to consist of offensive, abusive, threatening or exclusive behaviour.

Disability is defined broadly in the Act to include -

- total or partial loss of the person’s bodily or mental functions;
- total or partial loss of a part of the body;
- the presence in the body of organisms capable of causing disease or illness;
- the malfunction, malformation or disfigurement of a part of the person’s body;
- a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction;
- a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

It covers disability that presently exists, previously existed but no longer exists, may exist in the future, or is imputed to a person even if the person does not have a disability.

3. Racial Harassment

The *Racial Discrimination Act 1975* (Cwlth) does not deal directly with racial harassment. However, instances of harassment on the basis of race may constitute racial discrimination, which is specifically prohibited by the following provisions.

Section 9(1) states that it is unlawful for a person to do any act involving a distinction,

exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin of a person which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life. Racial harassment, such as racist comments, would constitute discrimination under this section.

Section 15(1) makes it unlawful for an employer to refuse to offer or afford a person the same terms of employment, conditions of work and opportunities for training and promotion as are made available for other persons having the same qualifications and employed in the same circumstances on work of the same description by reason of the race, colour or national or ethnic origin of that person, or of any relative or associate of that person.

Section 16 states that it is unlawful for a person to publish or display, or cause or permit to be published or displayed, an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful by reason of a provision of the Act.

Section 17 states that it is unlawful for a person to incite the doing of an act that is unlawful by reason of a provision of the Act, or to assist or promote, whether by financial assistance or otherwise, the doing of such an act.

For more information and links to equal opportunity and anti-discrimination legislation visit the Australian Sports Commission website (www.ausport.gov.au).

PART E – ATTACHMENTS - COMPLAINT HANDLING PROCEDURES

To ensure consistency and that the principles of natural justice are followed in all aspects of handling or conducting complaints, allegations, investigations, tribunals and disciplinary measures, TA will follow and implement the following procedures -

E1. Complaints Procedure

E2. Mediation

E3. Investigation Procedure

E4. Investigation Procedure - Child Abuse

E5. Triathlon Australia's Disciplinary Rules & Procedures By-Law - Hearings and Appeals Procedure

E1. Complaints Procedure

A complaint can be about an act, behaviour, omission, situation or decision that someone thinks is unfair, unjustified, unlawful and/or a breach of this policy. Complaints will always vary. They may be about individual or group behaviour, they may be extremely serious or relatively minor, they may be about a single incident or a series of incidents, and the person about who the allegation is made may admit to the allegations or emphatically deny them.

Given all of the variables that can arise, a complaint received by TA from any person, including but not limited to any Member, in relation to conduct of a Member, will be referred directly to an Investigations Officer in accordance with Rule 2.1.2 of TA's Disciplinary Rules & Procedures By-law. A complaint may be received and acted upon regardless to its origin or form, and regardless of whether the complainant is identified in the complaint.

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

If at any point in the complaint process an Investigations Officer considers that a complainant has knowingly made an untrue complaint or the complaint is vexatious or malicious, the matter will be referred to the Disciplinary Tribunal for appropriate action. All complaints will be kept confidential and will not be disclosed to another person without the complainant's consent except if law requires disclosure, or if disclosure is necessary to effectively deal with the complaint.

Step 1

As a first step the complainant should try to sort out the problem with the person or people involved if they feel able to do so.

Step 2

If -

- the first step is not possible/reasonable; or
- the complainant is not sure how to handle the problem by themselves; or
- the complainant just wants to talk confidentially about the problem with someone and get some more information about what they can do; or
- the problem continues after the complainant tried to approach the person or people involved, then talk with the Member Protection Officer of TA or a STTA, or the CEO of TA.

The Member Protection Officer of TA or a STTA, or the CEO of TA, as the case may be, will -

- take notes about the complaint (which will be kept in a secure and confidential place);
- try to sort out the facts of the problem;
- ask what outcome/how the complainant wants the problem resolved and if they need support;
- provide possible options for the complainant to resolve the problem;
- explain how our complaints procedure works;
- act as a support person if the complainant so wishes;
- refer the complainant to an appropriate person to help them resolve the problem, if necessary;
- inform the relevant government authorities and/or police if required by law to do so; and
- maintain strict confidentiality.

Step 3

After talking with the Member Protection Officer of TA or a STTA, or the CEO of TA, as the case may be, a complainant may decide -

- there is no problem;
- the problem is minor and does not wish to take the matter forward;
- to try and work out their own resolution (with or without a support person such as a Member Protection Officer); or
- to seek an informal mediated resolution with the help of a third person (such as a mediator or a manager).

If a complainant wishes to remain anonymous, TA can't assist to resolve a complaint. TA has to follow the principles of natural justice and be fair to both sides. This means that the TA or the complainant may be required to provide the person/people complained about with full details of the complaint so they have a fair chance to respond to all the allegations.

Step 4

If the complaint is not resolved to the complainant's satisfaction, the complainant may -

- make a formal complaint in writing to an Investigations Officer in accordance with Rule 2.1.2 of TA's Disciplinary Rules & Procedures By-law; or
- approach a relevant external agency such as an equal opportunity commission, for advice.

TA may impose an application fee (determined by the TA Board from time to time) payable by a complainant for the submission and processing of a complaint, where the complaint is referred to the Investigations Officer. The fee must be paid before the Investigations Officer will take any action in relation to the complaint.

Step 5

If the complainant decides to make a formal complaint in writing under Step 4, the Investigations Officer will, on receiving the formal complaint and based on the material the complainant has provided, decide whether -

- they are the most appropriate person to receive and handle the complaint, and to then conduct an investigation;
- the nature and seriousness of the complaint warrants a formal resolution procedure. Some complaints may be of a minor and/or purely personal nature with no connection to the activities of TA. In these cases, the Investigations Officer may determine that the complaint does not warrant a formal resolution procedure;
- to refer the complaint to an informal or formal mediation session;
- it is more appropriate that the complaint be dealt with by a court or another independent complaints, disciplinary, conciliation or arbitration body or procedure;
- to refer the complaint to a Disciplinary Tribunal under TA's Disciplinary Rules & Procedures By-law;
- to refer the matter to the police or other appropriate authority; and/or
- to implement any interim administrative or other arrangements that will apply until the complaint process set out in this By-law is completed.

In making the decision(s) outlined above, the Investigations Officer will take into account -

- the matters referred to in Rule 2.1.3 of TA's Disciplinary Rules & Procedures By-law;
- whether they have had any personal involvement in the circumstances giving rise to the complaint and, if so, whether their ability to impartially manage the complaint is compromised or may appear to be compromised;
- whether, due to the nature of the complaint, specific expertise or experience may be required to manage the complaint;
- the wishes of the complainant, and the wishes of the respondent, regarding the manner in which the complaint should be handled;

- whether, due to the nature of the complaint, the relationship between the complainant and the respondent and any other relevant factors, the complaint should be referred (or should not be referred) to informal or formal mediation or to a hearings tribunal. Relevant factors may include an actual or perceived power imbalance between the complainant and the respondent, the nature of any ongoing working relationship between the complainant and the respondent, and the personal attributes of the complainant and the respondent (for example, if one party does not speak English fluently, some of the possible complaints resolution mechanisms may not be appropriate);
- the nature and sensitivity of any information or other material that must be provided by the complainant, the respondent, and any of the other people involved in the complaint;
- whether the facts of the complaint are in dispute; and
- the urgency of the complaint, including the likelihood and the consequences (if the complaint is ultimately proven) that the complainant will be subject to further unacceptable behaviour while the complaint process set out in this By-law is being conducted.

If the Investigations Officer is the appropriate person to handle the complaint they will, to the extent that these steps are necessary -

- get full information from the complainant about the complaint and how the complainant wants it resolved (if this information has not already been obtained through earlier steps);
- put the information they've received from the complainant to the respondent and ask them to provide their side of the story;
- decide whether they have enough information to determine whether the matter alleged in the complaint did or didn't happen; and/or
- determine what, if any, further action to take.

Step 6

If -

- Investigations Officer decides to conduct an investigation under **Step 5**, they will conduct the investigation in a manner that they consider fit to fully investigate the matter (in accordance with Rule 2.2 of TA's Disciplinary Rules & Procedures By-law. If the Investigations Officer determines that a person should be charged they will provide a written Notice of Charges and a written Investigation Report to the Chairperson of the Disciplinary Tribunal under Rule 2.4.1 of TA's Disciplinary Rules & Procedures By-law. The Chairperson will determine what, if any, further action to take in accordance with TA's Disciplinary Rules & Procedures By-law.
- the complaint is referred to an informal or a formal mediation session under **Step 5**, the mediation session will be conducted in accordance with Attachment E2 or as otherwise agreed by the complainant and the respondent;
- the complaint is referred to Disciplinary Tribunal under **Step 5**, the hearing will be conducted in accordance with Attachment E5;
- the complaint is referred to the police or other appropriate authority under **Step 5**, Triathlon Australia will use its best endeavours to provide all reasonable assistance lawfully required by the police or other appropriate authority; and
- interim administrative or other arrangements are implemented under **Step 5**, Triathlon Australia will periodically review these arrangements to ensure that they are effective.

Any costs relating to the complaint process set out in this Policy (e.g. investigation and/or mediation and/or hearings tribunal) are to be met by TA unless otherwise stated in the relevant Attachment.

Step 7

If, under **Step 6**, an informal or formal mediation session is conducted, and the complainant and the respondent(s) cannot reach a mutually acceptable mediated solution to the complaint, the complainant may request that the Investigations Officer reconsider the complaint in accordance with

Step 5.

The complainant or the respondent(s) may be entitled to appeal where -

- under **Step 5**, a decision was made by the Investigations Officer -
 - not to take any action; or
 - to take disciplinary action; or
- under **Step 6**, a decision was made by the Disciplinary Tribunal -
 - not to take any action; or
 - to take disciplinary action.

The grounds for appeal and the process for appeals under this Policy are set out in Attachment E5.

If the internal complaints processes set out in this By-law do not achieve a satisfactory resolution/outcome for the complainant, or if the complainant believes it would be impossible to get an impartial resolution within TA, the complainant may choose to approach an external agency such as an equal opportunity commission to assist with a resolution.

Step 8

The Investigations Officer will document the complaint, the process followed and the outcome. This document, along with any written Notice of Charges and written Investigations report will be stored in a confidential and secure place. If the complaint was dealt with at a state/district level, the information will be stored in the state association office. If the matter is of a serious nature, or if the matter was escalated to and/or dealt with at the national level, the original document will be stored at the national office with a copy stored at the state office.

Step 9

There may be a range of external options available to the complainant depending on the nature of the complaint. If the complainant feels that they have been harassed or discriminated against, they can seek advice from their State or Territory equal opportunity commission without being obliged to make a formal complaint. If the commission advises the complainant that the problem appears to be a type of harassment that comes within its jurisdiction, the complainant may then make a decision as to whether or not to lodge a formal complaint with the commission.

Once a complaint is received by an anti-discrimination commission, an investigation may be conducted. If it appears that unlawful harassment or discrimination has occurred, there may be an attempt to conciliate the complaint confidentially first. If this fails, or is inappropriate, the complaint may go to a formal hearing where a finding will be made as to whether unlawful harassment or discrimination occurred. 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.

An anti-discrimination commission can decline to investigate a complaint, or dismiss a complaint at any point in the investigation, conciliation or public hearing stages.

If the complainant does lodge a complaint under anti-discrimination law, the complainant 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.

E2. Mediation

Mediation is a process by which people who are in conflict can be helped to communicate with each other about what is important for them and how to make decisions about resolving their dispute. Mediators provide a supportive atmosphere and method of talking to one another, to assist in sorting out the issues, coming up with acceptable solutions and making mutually satisfactory agreements.

This attachment outlines the general procedure of mediation that will be followed by TA.

The people involved in a formal complaint [the complainant and respondent(s)] may work out their own resolution of the complaint or seek the assistance of a neutral third person, or a mediator. Mediation may occur either before or after an investigation of the complaint.

Mediation will only be recommended -

- After the complainant and respondent have had their chance to tell their version of events to the Member Protection Officer of TA or a STTA, or the CEO of TA on their own; and
- The Member Protection Officer of TA or a STTA, or the CEO of TA does not believe that any of the allegations warrant any form of disciplinary action - proven serious allegations will not be mediated, no matter what the complainant desires; and
- Mediation looks like it will work (i.e. the versions given by the complainant and respondent tally or almost tally and/or at the very least, it looks as though it will be possible for each party to understand the other party's point of view).

Mediation will **not** be recommended if -

- The respondent has a completely different version of the events and they won't deviate from these;
- The complainant or respondent are unwilling to attempt mediation; or
- Due to the nature of the complaint, the relationship between the complainant and the respondent(s) and any other relevant factors, the complaint is not suitable for mediation.

If mediation is chosen to try and resolve the complaint, the Member Protection Officer of TA or a STTA, or the CEO of TA, as the case may be, will, in consultation with the complainant and the respondent(s), arrange for a mediator to mediate the complaint.

The Member Protection Officer of TA or a STTA, or the CEO of TA, as the case may be, will notify the respondent(s) that a formal complaint has been made, provide them with details of the complaint and notify them the TA has decided to refer the matter to mediation to resolve the complaint.

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

The mediation will be conducted confidentially and without prejudice to the rights of the complainant and the respondent(s) to pursue an alternative process if the complaint is not resolved. At the end of a successful mediation the mediator will prepare a document that sets out the agreement reached between the complainant and respondent(s) and it will be signed by them as their agreement.

If the formal complaint is not resolved by mediation, the complainant may -

- Write to the Investigations Officer to request that the Investigations Officer consider the complaint in accordance with **Step 5**; or
- Approach an external agency such as an anti-discrimination commission.

Mediation will **not** be recommended if:

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

E3. Investigation Procedure

If an investigation needs to be conducted the following steps are to be followed -

- A written brief will be provided to the Investigations Officer to ensure the terms of engagement and scope of the Investigations Officer's role and responsibilities are clear;
- The complainant will be interviewed and the complaint documented in writing;
- The details of the complaint will be conveyed to the person/people complained about [respondent(s)] in full. The respondent(s) must be given sufficient information to enable them to properly respond to the complaint;
- The respondent(s) will be interviewed and given the opportunity to respond. The respondent(s) response to the complaint will be documented in writing;
- If there is a dispute over the facts, then statements from witnesses and other relevant evidence will be obtained to assist in a determination;
- The Investigations Officer will 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;
- A written Investigation Report to the Chairperson of the Disciplinary Tribunal documenting the complaint, investigation process, evidence, finding and, if requested or required, recommendations and a Notice of Charges;
- A report documenting the complaint and summarising the investigation process and key points that were found to be substantiated, inconclusive, unsubstantiated and/or mischievous will be provided to the complainant and the respondent(s);
- Both the complainant and the respondent(s) are entitled to support throughout this process from their chosen support person/adviser (e.g. A Member Protection Officer or other person);
- 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 www.ausport.gov.au/ethics/policy.asp

E4. Investigation Procedure - Child Abuse

An allegation of child abuse is a very serious matter and must be handled with a high degree of sensitivity. The initial response to a complaint that a child has allegedly been abused should be immediate if the incident/s are serious or criminal in nature while less serious/urgent allegations should be actioned as soon as possible, preferably within 24 hours.

The following is a basic outline of the key processes to follow. More information can be obtained from the relevant State or Territory government agency.

Step 1 - Clarify basic details of the allegation

Any complaints, concerns or allegations of child abuse should be made or referred to a Member Protection Officer of TA or a STTA, or the CEO of TA.

The initial response of the person that receives the complaint from the child (or person on behalf of the child) is crucial to the well-being of the child. It is important for the person receiving the information to -

- Listen to, be supportive and do not dispute what the child says;
- Reassure the child that what has occurred is not the fault of the child;
- Ensure the child is safe;
- Be honest with the child and explain that other people may need to be told in order to stop what is happening; and
- Ensure that what the child says is quite clear but do not elicit detailed information about the abuse.

The person receiving the complaint should avoid suggestive or leading questions.

The person receiving the complaint should obtain and clarify basic details (if possible) such as -

- Child's name, age and address;
- Person's reason for suspecting abuse (observation, injury or other); and
- Names and contact details of all people involved, including witnesses.

Step 2 – Report allegations of a serious or criminal nature

Any individual or organisation to which this policy applies, should immediately report any incident of a serious or a criminal nature to the police and other appropriate authority. If the allegation involves a child at risk of harm, the incident should immediately be reported to the police or other appropriate government agency. The person receiving the complaint may need to report to both the police and the relevant government agency.

The relevant State or Territory authority should be contacted for advice if there is **any** doubt about whether the complaint should be reported. If the child's parent/s are suspected of committing the abuse, report the allegation to the relevant government agency.

Step 3 – Protect the child

The Member Protection Officer of TA or a STTA, or the CEO of TA, as the case may be, should assess the risks and take interim action to ensure the child's/children's safety. Some options could include redeployment of the alleged offender to a non-child related position, supervision of the alleged offender or removal/suspension from their duties until the allegations are finally determined.

The Member Protection Officer of TA or a STTA, or the CEO of TA, as the case may be, should also address the support needs of the person against whom the complaint is made. Supervision of the person should ideally occur with the knowledge of the person. If stood down, it should be made clear

to all parties that are aware of the incident that this does not mean the person is guilty and a proper investigation still needs to be undertaken.

Step 4 – Further clarify and investigate allegation

For allegations of a serious or criminal nature (for example, sexual abuse), seek advice from the police and relevant government agency as to whether TA should carry out its own internal investigation (in addition to any police or relevant government agency investigation).

If the police and/or relevant government agency advises that it is appropriate, then refer the matter to an Investigations Officer. The Investigations Officer should -

- Contact the parents/carers of the child at an appropriate time and as directed by the police or relevant government agency.
- If appropriate, meet with parents/carers and the child to clarify the incident and offer support on behalf of TA if required (example, professional counselling).
- Meet with the person against whom the allegation refers at an appropriate time and as directed by the relevant authority and give the person an opportunity to explain or respond to the allegation and identify any witnesses and supporting evidence. The person should have an opportunity to invite a support person/adviser to attend at a meeting and should be offered support (example, professional counselling) if necessary.
- Obtain a signed statement and record of interview from the person.
- Make contact with any witnesses and obtain written and signed statements outlining details of the allegation (what happened, when, how). This should only occur following advice from the relevant authority.
- Obtain other information that could assist in making a decision on the allegation.
- The information collected during the investigation should be made available to the relevant authorities.

Strict confidentiality, impartiality, fairness and due process must be maintained at all times.

For allegations of a less serious nature (e.g. verbal abuse), where possible, refer the matter to an Investigations Officer to make contact and meet with each of the people involved to obtain details of the allegation. The Investigations Officer should follow the procedure set out in Attachment E3. Strict confidentiality, impartiality, fairness and due process must be maintained at all times.

Step 5 – Record and analyse all information

If an internal investigation was conducted under **Step 4**, the Investigations Officer will provide a written Investigation Report to the Chairperson of the Disciplinary Tribunal under Rule 2.4.1 of TA's Disciplinary Rules & Procedures By-law, as well as a written Notice of Charges, if applicable.

The decision-maker(s) will be the Disciplinary Tribunal of TA and will remain separate and at arm's length from the Investigations Officer. The Disciplinary Tribunal will consider all the information and make a determination in accordance with TA's Disciplinary Rules & Procedures By-law.

Step 6 – Undertake disciplinary action

For incidents of a serious or criminal nature, consideration must be given to the findings of the police and/or the government agency before making a decision on disciplinary proceedings. If disciplinary action is to be taken, follow the procedures outlined in TA's Disciplinary Rules & Procedures By-law (Attachment D5).

Implement any disciplinary decision recommended by the Disciplinary Tribunal. The action should be immediate. Check with the relevant state government authority to see if TA needs to forward a

report to another body or organisation (e.g. the NSW Commission for Children and Young People requires notification of relevant employment proceedings).

Complete the relevant form in Part F of this policy. Retain the original in a secure place and forward a copy to the CEO of TA.

E5. Triathlon Australia's Disciplinary Rules & Procedures By-Law - Hearings and Appeals Procedure

1. Definitions and Interpretation

1.1 Definitions

In this By-law, unless the contrary intentions appear -

Applicant means a person who has lodged an application with TA or a State Association to be accepted as a Member of TA.

Business Day means a day not being a Saturday, Sunday or gazetted public holiday.

CEO means the person appointed to the position of Chief Executive Officer of TA from time to time or such other person nominated by the TA Board.

Chairperson means the chairperson of the Tribunal as constituted in respect of a particular proceeding.

Constitution means the Constitution of TA as amended from time to time.

Corporation means corporation as defined in the *Corporations Act 2001* (Cth).

Investigations Officer means a person appointed pursuant to Rule 2.1.1.

Member has the same meaning as in Clause 2.1 of TA's Constitution.

Misconduct means conduct by a Member referred to in Clause 17 of TA's Constitution.

Officer means officer as defined in the *Corporations Act 2001* (Cth).

Rules means the rules made under this Disciplinary Rules & Procedures By-law as amended from time to time.

State Association or STTA means a State or Territory Association as defined in the Constitution.

State Referral means a complaint referred by a State Association to TA pursuant to the Rules in connection with a complaint made about the conduct of a Member and which complaint specifically calls for disciplinary action permitted under the Rules.

TA or Triathlon Australia means Triathlon Australia Limited.

TA Board means the Board of TA as defined in the Constitution.

TA President means the President of TA as defined in the Constitution.

Tribunal means the Tribunal established by the TA Board pursuant to Rule 3.1.1.

Tribunal Chairperson means the person appointed to that position from time to time by the TA Board or otherwise made under Rule 3.1.8 and 3.1.9.

1.2 Interpretation

In the interpretation of the Rules -

- (i) any word or expression used in this By-law that is not defined in this dictionary, but is defined in TA's Constitution, has the meaning provided in TA's Constitution, unless the contrary intention applies.
- (ii) headings are disregarded;
- (iii) references to person or persons includes individuals, partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise;
- (iv) singular includes plural and vice versa and words importing any gender include all other genders;
- (v) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force;
- (vi) where the Rules provide for the provision of a notice in writing, that notice may be delivered to the recipient by way of post, hand delivery, facsimile transmission or email;
- (vii) references to time are construed as references to Sydney local time;
- (viii) where a time period is designated in Business Days, that period terminates at 5.00pm on the last Business Day of the period; and
- (ix) if there is an inconsistency between the provisions of the rules and the Constitution then the provisions of the Constitution prevail.

2. Investigation of Complaints

2.1 Receipt of Complaints

- 2.1.1 The TA Board will appoint one or more persons to the position of Investigations Officer. Each person appointed to the position of Investigations Officer must have qualifications, skills or experience to the satisfaction of the TA Board and must not be a member of the TA Board. The powers of an Investigations Officer may be exercised by each person so appointed.
- 2.1.2 A complaint received by TA from any person, including but not limited to any Member, in relation to conduct of a Member, will be referred directly to an Investigations Officer. A complaint may be received and acted upon regardless of its origin or form, and regardless of whether the complainant is identified in the complaint. TA may impose an application fee (determined by the TA Board from time to time) payable by a complainant for the submission and processing of a complaint, where the complaint is referred to the Investigations Officer. The fee, if any, must be paid before the Investigations Officer will take any action in relation to the complaint.
- 2.1.3 The Investigations Officer will within their discretion, elect whether or not to conduct an investigation upon a complaint in accordance with this By-law, provided that they must elect to not conduct or continue to conduct an investigation -
 - (a) unless they suspect on a bona fide basis that a Member may have committed Misconduct;
 - (b) if they are of the opinion that it is more appropriate that the complaint be dealt with by a court or another independent complaints, disciplinary, conciliation, or arbitration body or procedure;
 - (c) if the complainant seeks any compensation or reimbursement whatsoever;
 - (d) if the act or omission giving rise to the complaint occurred before the date of the commencement of this By-law;
 - (e) if the subject matter of the complaint was the basis of a complaint by the same

- person (or any one or more of them) previously considered by an Investigations Officer or the Tribunal unless the Investigations Officer is of the opinion that relevant new evidence is available;
- (f) if they are of the opinion that the complaint is frivolous or vexatious, is being pursued by the complainant in a frivolous or vexatious manner or for an improper purpose; or
 - (g) unless otherwise required by this or another TA By-law.

- 2.1.4 The Investigations Officer may, before electing whether to conduct an investigation, require that the complainant provide a complaint in written form and particulars of the complainant's identity and where in the Investigations Officer's opinion it is necessary to afford procedural fairness to the Member subject of the complaint, the complainant's written consent to the disclosure of his, her or its identity. In all cases, the Investigations Officer will keep the identity of the complainant confidential except where the complainant has consented in writing to the disclosure of his, her or its identity.
- 2.1.5 Where the Investigations Officer is of the opinion that disclosure of the identity of the complainant is necessary to afford procedural fairness to the Member the subject of the complaint, but the complainant refuses to provide such written consent, the Investigations Officer must not take any further action in relation to the complaint other than to advise the complainant that no further action will be taken in relation to the complaint.

2.2 Conduct of Investigation

- 2.2.1 The Investigations Officer may use all legal means to conduct the investigation of a complaint and may conduct the investigation in any manner that the Investigations Officer considers fit.
- 2.2.2 The Investigations Officer may inspect TA's membership register and other records.
- 2.2.3 The Investigations Officer may require a Member to produce to the Investigations Officer documents (including records kept in electronic form) within the possession, custody or control of the Member, by written notice to the Member specifying particular documents or categories of documents, provided that the documents required to be produced must in the Investigations Officer's reasonable opinion be potentially relevant to the subject matter of a current investigation being conducted by the Investigations Officer. A Member who receives such a notice must produce the documents required to the Investigations Officer immediately or, if that is not possible, within the shortest time that is practicable.
- 2.2.4 The Investigations Officer may require a Member who is a natural person to be interviewed, by telephone or other electronic means or in person by written notice to the Member specifying the date, time and place of the interview. A Member who receives such a notice must attend the interview and must answer all questions asked of them in the interview.
- 2.2.5 The Investigations Officer may issue a notice in writing to a member that is a Corporation requiring that the Member make available for interview any Officer of the Member, or requesting that the Member make available for interview any employee of the Member as specified in the notice. The Member must upon receiving such a notice cause the Officer specified to attend the interview.

2.3 Investigations Officer's power to suspend

- 2.3.1 If at any time in the course of an investigation the Investigations Officer suspects on reasonable grounds that a Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, the Investigations Officer may, by notice in writing forwarded to the Member, make an order suspending the Member from membership of the Association, and subject to Rule 2.3.8 such notice has effect from the date on which the Investigations Officer determines that it will have effect or, if the Investigations Officer does not specify such a date, immediately from the date on which the order is made.
- 2.3.2 An order for suspension made by an Investigations Officer pursuant to Rule 2.3.1 will remain in effect until revoked by that Investigations Officer or the Tribunal.
- 2.3.3 A Member who is the subject of an order for suspension made by an Investigations Officer pursuant to Rule 2.3.1 may, by notice in writing to the Investigations Officer, require that the Investigations Officer refer the subject matter of the order to the Tribunal.
- 2.3.4 Where the Investigations Officer has received a notice in writing pursuant to Rule 2.3.1, the Investigations Officer must forward the notice together with the notice containing the order for suspension and such supporting information as the Investigations Officer thinks fit, to the Tribunal Chairperson within two Business Days.
- 2.3.5 Where the Investigations Officer has made an order for suspension of a Member pursuant to Rule 2.3.1, the Investigations Officer may refer the subject matter of the order to the Tribunal of his or own volition, in which event the Investigations Officer must forward the notice containing the order for suspension and such supporting information as the Investigations Officer thinks fit, to the Tribunal Chairperson, and at the same time notify the Member who is the subject of the order that the Investigations Officer has done so.
- 2.3.6 Where the Investigations Officer has made an order for suspension of a Member pursuant to Rule 2.3.1, if the Investigations Officer subsequently forms the opinion that he no longer has reasonable grounds to suspect that the Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, whether or not the subject matter of the order has been referred to the Tribunal pursuant to Rule 2.3.4 or 2.3.5, Investigations Officer may by notice in writing to the Member revoke the order for suspension and that revocation will have immediate effect.
- 2.3.7 Where an order for suspension pursuant to Rule 2.3.1 has been made in respect of a Member, whether or not the subject matter of the order has been referred to the Tribunal pursuant to Rule 2.3.4 or 2.3.5, the Rule 2.3.4 or 2.3.5, who made the order for suspension must within five Business Days after making the order for suspension issue a Notice of Charges against that Member pursuant to Rule 2.4.1, failing which the order for suspension will automatically be deemed to have been revoked, and that revocation will take effect five Business Days after the order for suspension was made.
- 2.3.8 Notwithstanding any other provision of these Rules, no order for suspension of a Member shall take effect unless and until -
- (a) the Member concerned has been given an opportunity within the period of two Business Days prior to the date upon which the suspension order is to take

effect to make such representations and to provide such information to the Investigations Officer as that Member thinks fit in relation to the suspension order however the Investigations Officer is not bound by any representations made by the Member; and

- (b) 2 members of the Tribunal have signed an endorsement to the suspension order approving the making of it.

2.3.9 Unless an order for suspension has been made the member will be allowed to participate in all TA activities and events, pending the decision of the Tribunal, including any available appeal process.

2.4 Notice of Charges and Investigation Report

2.4.1 Where, upon investigation of a complaint, the Investigations Officer considers that a Member should be charged with Misconduct, the Investigations Officer must prepare a written Notice of Charges which must include particulars of the charges being made. The Investigations Officer must at the same time prepare a written Investigation Report, containing a detailed report in support of the Notice of Charges.

2.4.2 The Investigations Officer must provide copies of the Notice of Charges and Investigation Report at the same time to - the Member who is the subject of the Notice of Charges; and the Tribunal Chairperson.

2.4.3 The Investigations Officer must include with the Investigation Report copies of any correspondence received by the Investigations Officer from the Member who is the subject of the Notice of Charges, or any legal or other representative of the Member, and from the complainant except in the case where the written consent of the complainant under Clause 2.1.5 is not required.

2.4.4 Where pursuant to this Clause the Investigations Officer may issue a Notice of Charges, as the case may require the Investigations Officer may prepare and provide an amended Notice of Charges or a Notice of Further Charges as the case may require.

3. Disciplinary Tribunal

3.1 Composition of the Tribunal

3.1.1 There will be a Tribunal for the purposes of -

- (a) carrying out the functions of the Tribunal pursuant to these Rules; and
- (b) carrying out such other functions as are delegated to it by the TA Board.

3.1.2 The Tribunal will be referred to as the Disciplinary Tribunal.

3.1.3 The TA Board must appoint a Chairperson and a Deputy Chairperson of the Tribunal, each of whom is a legal practitioner of at least five years' standing and has the right to practice law within a State or Territory of Australia. Both persons must be appointed for such period or periods as are determined by the TA Board.

3.1.4 The Chairperson or Deputy Chairperson may, but need not, be Members of TA.

3.1.5 The CEO must maintain a Tribunal panel, consisting of a list of at least 5 persons appointed by the TA Board, each of whom is in the majority opinion of the TA

Board a person of good character and of good standing and with relevant experience. Persons selected to be on the Tribunal Panel may, but need not, be members of the TA Board or a State or Territory Association, Members, or Officers or employees of Members.

- 3.1.6 The TA Board will endeavour to ensure that the Tribunal panel includes persons resident in each State and Territory of Australia.
- 3.1.7 For the purposes of a hearing, the Tribunal must be comprised by -
- the Chairperson or, in the absence of the Chairperson, the Deputy Chairperson; and
 - two persons from the Tribunal Panel, selected by the President of TA; or
 - where both the Chairperson and Deputy Chairperson are unable or not prepared to sit on a particular hearing, three persons from the Tribunal Panel, selected by the President of TA, one of whom will be designated by the TA President, as chairperson for the purposes of that particular hearing.
- 3.1.8 In the absence of the Chairperson and the Deputy Chairperson, the person designated by the TA President as chairperson for the purposes of a particular hearing must be a legal practitioner of at least five years standing and who has the right to practice law within a State or Territory of Australia.
- 3.1.9 In selecting the composition of the Tribunal for any particular matter, the TA President will endeavour so far as possible to appoint any persons who are resident in the same State as the Member who is the subject of the relevant Notice of Charges.

3.2 Proceedings of the Tribunal

- 3.2.1 Upon receiving a Notice of Charges pursuant to Rule 2.4.2 or a notice pursuant to Rule 2.3.4 or 2.3.5, the TA President must appoint the Tribunal to deal with that particular proceeding. The Tribunal Chairperson must ensure each member of the Tribunal is provided with all of the documents provided to the Tribunal Chairperson by the Investigations Officer in connection with the proceeding. In addition -
- (a) a person that has made a complaint (the complainant), if applicable, has a right to appear at the Tribunal hearing to support their complaint;
 - (b) the person the subject of the Tribunal hearing must be notified -
 - (i) of the details of the complaint, including any relevant By-laws, rules or regulations the person(s) is accused of breaching;
 - (ii) of the date, time and venue of the tribunal hearing;
 - (iii) that they can make either verbal or written submissions to the Tribunal;
 - (iv) that they may arrange for witnesses to attend the Tribunal in support of their position; and
 - (v) that legal representation will not be allowed, other than with the consent of the Tribunal.
 - (c) a copy of any information / documents that have been given to the Tribunal (eg investigation report findings) will also be provided to the complainant, if applicable.
 - (d) if the complainant believes the details of the complaint are incorrect or insufficient they should inform the Investigations Officer or the CEO of TA as soon as possible so that the person the subject of the Tribunal hearing and the Tribunal Panel members can be properly informed of the complaint, if applicable.

- 3.2.2 The Chairperson of the Tribunal must convene the Tribunal as quickly as is practicable, which may be done in person or by telephone, audiovisual link or other electronic means as the chairperson considers fit, and -
- (a) where an order for suspension pursuant to Rule 2.3.1 is in effect, and whether or not a notice pursuant to Rule 2.3.4 or 2.3.5 has been received, the Tribunal may make an order that the order for suspension be continued until further order of the Tribunal, or an order that the order for suspension be revoked, without conducting a hearing or receiving evidence or submissions from any party to the proceeding;
 - (b) in any proceeding, if the Tribunal has reason to suspect that a Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, the Tribunal may make an order suspending the Member from membership of TA;
 - (c) in any proceeding, determine whether the proceeding will be dealt with and determined in the absence of the parties, or whether a hearing will be convened.
- 3.2.3 Where the Tribunal has made an order pursuant to Rule 3.2.1(a) or (b), the Tribunal may at any time in the proceeding, prior to issuing its final determination, on the motion of a party or on its own motion make an order revoking or varying its original order pursuant to Rule 3.2.1(a) or (b).
- 3.2.4 Where the Tribunal has made an order pursuant to Rule 3.2.1(a) or (b) in respect of a Member, the Tribunal must immediately notify the Investigations Officer of the order and Rule 2.3.7 will then apply as if the order had been made by the Investigations Officer.
- 3.2.5 Where the Tribunal has determined pursuant to Rule 3.2.1(c) that a proceeding will be dealt with in the absence of the parties, the chairperson must notify the Investigations Officer and the Member who is the subject of the proceeding of that determination, and that all parties may provide submissions and evidence in writing to the chairperson within such period as the chairperson designates.
- 3.2.6 Where the Tribunal is proceeding pursuant to Rule 3.2.1, the Tribunal must not proceed to determine the Notice of Charges until the period designated by the chairperson for the provision of submissions and evidence has expired and the Tribunal has considered all such material provided to it.
- 3.2.7 Where the Tribunal has determined pursuant to Rule 3.2.1(c) that a hearing will be convened in respect of a proceeding, the chairperson must appoint a date, time and place for the hearing and must give notice in writing of these particulars to the Investigations Officer and the Member who is the subject of the Notice of Charges. The period of notice must be not less than five Business Days prior to the date of the hearing.
- 3.2.8 The Tribunal may adjourn, postpone or reconvene a hearing as it thinks fit, provided that reasonable notice is given to the parties of any change to the hearing.

4. Hearings

4.1 Conduct of hearings

- 4.1.1 A hearing of the Tribunal must be held in private except that -
- (a) the Investigations Officer, and the Member (if the hearing relates to a Member who is a natural person), or two representatives of the Member (if the hearing

- relates to a Member that is a Corporation) are entitled to attend;
- (b) the Tribunal may allow other representatives of TA and the Member to attend and make submissions.

- 4.1.2 A party has no right to a legal representation. The Tribunal may permit a party to be legally represented before the Tribunal on terms that it thinks fit.
- 4.1.3 No party may be compelled to appear at a hearing of the Tribunal, but any party to a hearing may provide written submissions and evidence to the chairperson at least three Business Days before the hearing.
- 4.1.4 The Tribunal may make such procedural arrangements as it thinks fit, including directions for the provision of written submissions and evidence and the taking of a transcript of the hearing.
- 4.1.5 The Tribunal must conduct hearings with as little formality and technicality as possible and otherwise may conduct hearings as it considers fit, having regard to the necessity that adequate consideration be given to matters before it.

4.2 General rules governing the Tribunal

- 4.2.1 The laws and rules of evidence do not apply to proceedings before the Tribunal.
- 4.2.2 The Tribunal must act expeditiously in hearing and determining all proceedings before it.
- 4.2.3 The Tribunal must act without bias and treat all parties with fairness and in accordance with the rules of natural justice.
- 4.2.4 The Tribunal may obtain legal advice and have legal advisers in attendance at a hearing.
- 4.2.5 The Tribunal may conduct hearings or other meetings of the Tribunal in person or by other means provided that all members of the Tribunal are able to hear and speak to each other.
- 4.2.6 All determinations and decisions of the Tribunal must be made by simple majority vote of the members of the Tribunal.
- 4.2.7 All correspondence between a party and the Tribunal must be dealt with on the Tribunal's behalf by the chairperson or, in the chairperson's absence, by another member of the Tribunal with the consent of the chairperson.
- 4.2.8 The Tribunal may but is not required to issue written reasons for any determination made by it. Any such written reasons must be issued by the Tribunal to all parties to the proceeding within one month after the date on which the determination is made.
- 4.2.9 The Tribunal may proceed to determine any matter before it despite that the Member who is the subject of the Notice of Charges has failed to make submissions or provide documents or information or to appear at a hearing within the period specified by the Tribunal for this purpose.

4.3 Powers of the Tribunal & Penalties

Any disciplinary measure imposed by Disciplinary Tribunal under this policy must:

- Observe any contractual and employment rules and requirements;
- Conform to the principles of natural justice;
- Be fair and reasonable;
- Be based on the evidence and information presented;
- Be within the powers of the Disciplinary Tribunal to impose the disciplinary measure.

4.3.1 Any act or omission by an Officer, employee or contractor of a Member is deemed for the purposes of these Rules to be an act or omission by the Member.

4.3.2 If the Tribunal determines that a Member has engaged in Misconduct, the Tribunal may -

Individuals

- (a) Subject to contractual and employment requirements, if a finding is made that an individual has breached the TA Member Protection By-law (including the Codes of Conduct), one or more of the following forms of discipline may be imposed by the Disciplinary Tribunal -
- (i) A direction that the individual make a verbal and/or written apology;
 - (ii) A written warning;
 - (iii) A direction that the individual attend counselling to address their behaviour;
 - (iv) A withdrawal of any awards, placings, records, achievements bestowed in any tournaments, activities or events held or sanctioned by TA;
 - (v) A demotion or transfer of the individual to another location, role or activity;
 - (vi) A suspension of the individual's membership or participation or engagement in a role or activity for such period and on such terms or conditions as the Tribunal thinks fit (where the Member is already the subject of an order for suspension, continue that suspension for such period and on such terms or conditions as the Tribunal thinks fit);
 - (vii) Termination of the individual's membership, appointment or engagement;
 - (viii) Censure the individual;
 - (ix) Deny the individual the right to access such benefits and privileges of Membership for such time and on such terms and conditions as the Tribunal thinks fit;
 - (x) Require the individual to pay a fine to TA on such terms as it thinks fit;
 - (xi) Require the individual to undertake such education program as the Tribunal thinks fit, provided that the purpose of such program is to reduce the likelihood of future acts of Misconduct by the individual;
 - (xii) 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; and/or
 - (xiii) Any other form of discipline or remediation that the Disciplinary Tribunal considers appropriate.
- (b) When imposing any form of discipline, it will be accompanied by a warning that a similar breach of policy by that individual in the future may result in the imposition of a more serious form of discipline.

Organisations

- (c) If a finding is made that a STTA or affiliated club has breached TA's Member Protection By-law (including the Codes of Conduct), one or more of the

- following forms of discipline may be imposed by the Disciplinary Tribunal -
- (i) A written warning;
 - (ii) A monetary fine;
 - (iii) 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;
 - (iv) A direction that any funding granted or given to it by TA cease from a specified date;
 - (v) A direction that TA cease to sanction events held by or under the auspices of TA or a STTA;
 - (vi) A recommendation that the membership of a STTA or affiliated club with TA be suspended or terminated in accordance with the relevant constitution or rules; and/or
 - (vii) Any other form of discipline that the Disciplinary Tribunal considers appropriate.
- (d) When imposing any form of discipline, it will be accompanied by a warning that a similar breach of policy by the organisation in the future may result in more serious form of discipline.

Factors to consider when imposing discipline

- (e) The form of discipline to be imposed on an individual or organisation will depend on factors such as -
- (i) If the individual is a parent and/or spectator (ability to enforce a penalty may be difficult);
 - (ii) Nature and seriousness of the behaviour or incidents;
 - (iii) In a case where action is taken concurrently with or in lieu of a resolution of a formal complaint, the wishes of the complainant;
 - (iv) If the individual concerned knew or should have known that the behaviour was a breach of the policy;
 - (v) Level of contrition of the respondent(s);
 - (vi) The effect of the proposed disciplinary measures on the respondent(s) including any personal, professional or financial consequences;
 - (vii) If there have been relevant prior warnings or disciplinary action; and/or
 - (viii) If there are any mitigating circumstances such that the respondent(s) shouldn't be disciplined at all or not disciplined so seriously.

- 4.3.3 Prior to taking any action under Rule the Tribunal must provide such reasonable time as the Tribunal determines for the Member to make such representations and to provide such information to the Tribunal as the Member thinks fit in relation to the action proposed to be taken by the Tribunal.

4.4 Effect of Tribunal determinations

- 4.4.1 A determination, decision or order made by the Tribunal pursuant to this By-law has effect from the date on which the Tribunal determines that it will have effect or, if the Tribunal does not specify such a date, immediately from the date on which the order is made.
- 4.4.2 A determination, decision or order made by the Tribunal is final and binding on all parties to the proceeding. Neither TA, nor any constituent body of TA other than the Tribunal, has power to vary or overrule a determination, decision or order made by the Tribunal.

4.5 Notification to persons affected by determination

Where the Tribunal makes a determination, decision or order pursuant to this By-law (whether or not that determination, decision or order is then in effect) and the effect of that determination, decision or order is to cause the membership of the Member concerned to be suspended or for the Member to be expelled from membership of TA, the Tribunal -

- (a) may in any such determination, decision or order make such ancillary orders concerning Members who are members of, the Member concerned as the Tribunal thinks fit and every such ancillary order shall bind every such person; and
- (b) must as soon as practicable in such form and manner as it thinks fit notify each such person of the effect of the determination, decision or order and the terms of any ancillary order.

4.6 Publication of determinations

TA may, as it sees fit, publish or otherwise make available to Members, any other persons or the public generally the content of, or an extract from or précis of, any determinations by the Tribunal. All Members by this Rule provide their express consent to the publication of material encompassed within this Rule and waive and release forever any rights they may otherwise have to bring action with respect to such publication, whether by suit in defamation or other cause of action.

4.7 Keeping Complainant informed

The Investigations Officer and/or the Tribunal may keep a complainant informed of progress in handling the complainant's complaint provided always that the Investigations Officer or the Tribunal as the case may be must not provide any information to a complainant in relation to the progress of the complaint where in the opinion of the Investigations Officer or the Tribunal as the case may be -

- (a) to do so would expose the Investigations Officer, the Tribunal, TA or any Officer of TA to liability for civil damages;
- (b) to do so would or could prejudice, impede or in any other manner adversely affect the investigation of the complaint and the proceedings of the Tribunal; or
- (c) to do so would deny procedural fairness to the Member, the subject of the complaint.

4.8 Legal Proceedings

- 4.8.1 A Member, including a Member whose membership has been suspended or cancelled, may not bring any legal action or proceeding against TA, any member of the Tribunal or any employee or agent of the Association (including without limitation Directors of TA or an Investigations Officer), with respect to the publication or giving of access to any person of material pursuant to this By-law as a complete bar to the commencement or continuation of any such proceedings in any jurisdiction.
- 4.8.2 TA will indemnify each member of the Tribunal and employee, contractor and agent of TA against any claim, action or proceeding brought against that person by any other person arising out of or in connection with the conduct of an investigation by an Investigations Officer, a proceeding before the Tribunal or any order, determination or decision made by and Investigations Officer or the Tribunal, and this indemnity will extend to the conduct of the defence of any proceedings and the payment of any costs thereof.
- 4.8.3 The indemnity provided pursuant to Rule 4.8.2 does not extend to actions brought by TA against any person.

5. Appeals Procedure

- 5.1 A complainant or a respondent(s) who is not satisfied with a decision under TA's Disciplinary Rules & Procedures By-Law can lodge one appeal only on one or more of the following bases -
- that a denial of natural justice has occurred; or
 - that the disciplinary measure(s) imposed is unjust and/or unreasonable.
- 5.2 An appeal shall be made in accordance with the following -
- an appeal against a decision of a person or body, other than the Disciplinary Tribunal, under TA's Disciplinary Rules & Procedures By-Law shall be to the Disciplinary Tribunal;
 - an appeal against a decision of the Disciplinary Tribunal shall be made to the appeal division of the Court of Arbitration for Sport (Oceania Registry) (CAS).
- 5.3 The person wishing to appeal must lodge a letter stating their intention and the basis for their appeal with the Disciplinary Tribunal and the CEO of TA within 21 days of the relevant decision. An appeal fee prescribed by the Board of TA (if any) shall be included with the letter of intention to appeal. The appeal fee (if any) is not refundable in any circumstances.
- 5.4 In the case of an appeal to CAS from a decision of the Disciplinary Tribunal the person wishing to appeal must complete and file an application to appeal with CAS in accordance with the Code of Sports Related Arbitration and provide copies to the Disciplinary Tribunal and the CEO of TA.
- 5.5 If the letter of appeal is not received by the Disciplinary Tribunal and the CEO of TA within the relevant time period the right of appeal will lapse. If the letter of appeal is received but the prescribed appeal fee (if any) is not received by the relevant time, the appeal shall be deemed to be withdrawn.
- 5.6 For all appeals other than to CAS, upon receipt of the letter of appeal, the Chairperson of the Disciplinary Tribunal must convene a special meeting of the Disciplinary Tribunal to review the letter of appeal and decide whether there are sufficient grounds for the appeal to proceed. The Disciplinary Tribunal will be able to invite any witnesses to the meeting it believes are required to make an informed decision.
- If it is considered that the letter of appeal has not shown sufficient grounds for appeal in accordance with paragraph 25, then the appeal will not proceed and the person will be notified of this decision and the reasons for this decision. The appeal fee will be forfeited.
- If the appeal is considered to have sufficient grounds to proceed then a Tribunal with a new panel will be convened to rehear the complaint.
- 5.7 The Tribunal Hearing Procedure shall be followed for the appeal.
- 5.8 The decision of the Tribunal when hearing an appeal will be final and conclusive. No person that is a party to the appeal may institute or maintain proceedings in any court or tribunal other than to CAS or the Disciplinary Tribunal. This provision does not prevent any person or organisation taking action under State, Territory or Federal legislation.
-

PART F – ATTACHMENTS - REPORTING DOCUMENTS/FORMS

To assist in consistency and accuracy in following procedure and reporting on the issues covered by Triathlon Australia's member Protection By-law, the following documents are to be used -

F1 - Confidential Record of Informal Complaint – to be used by MPOs or the CEO or others who receive a complaint or allegation.

F2 - Confidential Record of Formal Complaint – to be used when a formal complaint is received by Triathlon Australia.

F3 - Confidential Record of Child Abuse Allegation – to be used by MPOs or the CEO or others who receive complaints/allegations of child abuse.

F4 - Record of Mediation – to be used by those who conduct a mediation.

F5 - Record of Tribunal Decision.

General principles to be followed when completing a report of a complaint -

- Treat all complaints seriously;
- Deal with complaints promptly, sensitively and confidentially;
- Maintain a calm attitude;
- Ask the complainant if they will consent to the taking of notes;
- Write the description of the complaint /problem using the complainants own words (as much as is possible);
- Find out the nature of the relationship between the complainant and the person complained about (for example, coach/competitor, team members, etc) and if there is any relevant history;
- Take a note of the facts and do not pre-judge the situation;
- Ask the complainant whether they fear victimisation or other consequences;
- Find out what outcome the complainant wants and if they need any support;
- Ask the complainant how they want the complaint to be dealt with under the policy;
- Keep the complaint confidential and do not disclose it to another person without the complainant's consent except if disclosure is required by law (for example, a report to government authorities) or if disclosure is necessary to effectively deal with the complaint.

<p>Nature of complaint (category/basis/grou nds)</p> <p>Can tick more than one box</p>	<p><input type="checkbox"/> Harassment or <input type="checkbox"/> Discrimination</p> <p><input type="checkbox"/> Sexual/sexist <input type="checkbox"/> Selection dispute</p> <p><input type="checkbox"/> Sexuality <input type="checkbox"/> Personality clash</p> <p><input type="checkbox"/> Race <input type="checkbox"/> Bullying</p> <p><input type="checkbox"/> Religion <input type="checkbox"/> Verbal abuse</p> <p><input type="checkbox"/> Pregnancy <input type="checkbox"/> Physical abuse</p> <p><input type="checkbox"/> Disability <input type="checkbox"/> Victimisation</p> <p><input type="checkbox"/> Child Abuse</p> <p><input type="checkbox"/> Other</p>
<p>Feelings expressed by complainant</p> <p>(completing this may help to separate emotional content from facts)</p>	
<p>What they want to happen to fix the issue</p>	
<p>What information I provided</p>	
<p>What they are going to do now</p>	

This record and any notes must be kept in a confidential place – do not enter it on a computer system. If the issue becomes a formal complaint, this record is to be sent to the Investigations Officer or CEO of TA.

ATTACHMENT F2: Confidential Record of Formal Complaint

Complainant's Name	<input type="checkbox"/> Over 18 <input type="checkbox"/> Under 18	Date Formal Complaint Received: / /
Role/status in Triathlon Australia	<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	<input type="checkbox"/> Over 18 <input type="checkbox"/> Under 18	
Role/status in Triathlon Australia	<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		
Description of alleged issue		

<p>Nature of complaint (basis/grounds/category) Can tick more than one box</p>	<p><input type="checkbox"/> Harassment or <input type="checkbox"/> Discrimination <input type="checkbox"/> Sexual/sexist <input type="checkbox"/> Selection dispute <input type="checkbox"/> Sexuality <input type="checkbox"/> Personality clash <input type="checkbox"/> Race <input type="checkbox"/> Bullying <input type="checkbox"/> Religion <input type="checkbox"/> Verbal abuse <input type="checkbox"/> Pregnancy <input type="checkbox"/> Physical abuse <input type="checkbox"/> Disability <input type="checkbox"/> Victimisation <input type="checkbox"/> Child Abuse <input type="checkbox"/> Other</p>
<p>Methods (if any) of attempted informal resolution</p>	
<p>Support person (if any)</p>	
<p>Formal resolution procedures followed (outline)</p>	
<p>If investigated: Finding -</p>	
<p>If went to hearing tribunal: Decision - Action recommended -</p>	

<p>If mediated:</p> <p>Date of mediation -</p> <p>Were both parties present -</p> <p>Terms of Agreement -</p> <p>Any other action taken -</p>	
<p>If went to appeals tribunal:</p> <p>Decision</p> <p>Action recommended</p>	
<p>Resolution</p>	<p><input type="checkbox"/> Less than 3 months to resolve</p> <p><input type="checkbox"/> Between 3 – 8 months to resolve</p> <p><input type="checkbox"/> More than 8 months to resolve</p>
<p>Completed by</p>	<p>Name:</p> <p>Position in Triathlon Australia:</p> <p>Signature: / /</p>
<p>Signed by:</p>	<p>Complainant:</p> <p>Respondent:</p>

This record and any notes must be kept in a confidential 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 club/state/district level (whatever level the complaint was made).

ATTACHMENT F3: 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 Triathlon Australia		
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 Triathlon Australia	<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:
CEO contacted	Who: When:
Police and/or government agency investigation	Finding:
Internal investigation (if any)	Finding:
Action taken	
Completed by	Name: Position in Triathlon Australia: Signature: / /
Signed by	Complainant (if not a child)

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

ATTACHMENT F4: Record of Mediation

Present at Mediation	
Date of mediation	
Venue of mediation	
Mediator	
Summary of mediation (minutes attached)	
Outcome of mediation	
Follow-up to occur (if required)	
Completed by: (signature)	
Signed by: Complainant (signature) Respondent (signature)	

All parties to the mediation are to receive a copy of the Record of Mediation. The original Record of Mediation is to be sent to the CEO of TA and retained as part of TA's records.

ATTACHMENT F5: Record of Tribunal Decision

Complainant's Name		Date Formal Complaint Received: / /
Role/status in Triathlon Australia	<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		
Role/status in Triathlon Australia	<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		
Description of alleged issue		

<p>Nature of complaint (basis/grounds/category)</p>	<p><input type="checkbox"/> Harassment or <input type="checkbox"/> Discrimination</p> <p><input type="checkbox"/> Sexual/sexist <input type="checkbox"/> Selection dispute</p> <p><input type="checkbox"/> Sexuality <input type="checkbox"/> Personality clash</p> <p><input type="checkbox"/> Race <input type="checkbox"/> Bullying</p> <p><input type="checkbox"/> Religion <input type="checkbox"/> Verbal abuse</p> <p><input type="checkbox"/> Pregnancy <input type="checkbox"/> Physical abuse</p> <p><input type="checkbox"/> Disability <input type="checkbox"/> Victimisation</p> <p><input type="checkbox"/> Child Abuse</p> <p>Other</p>
<p>Methods (if any) of attempted informal resolution</p>	
<p>Support person (if any)</p>	
<p>Tribunal Members</p>	
<p>Tribunal Hearing Date and venue</p>	
<p>Tribunal Decision (attach report)</p>	
<p>Action recommended and any follow up report required</p>	
<p>Decision Appealed Date of Appeal lodged</p>	
<p>Appeal Hearing Date</p>	
<p>Appeal Decision (attach report)</p>	
<p>Action Recommended</p>	
<p>Completed by</p>	<p>Name: Position in Triathlon Australia: Signature: / /</p>

Signed by:	Complainant Respondent
------------	-------------------------------

ACKNOWLEDGEMENTS

- Australian Sports Commission;
- All STTAs of Triathlon Australia.