

## **PART C: PROCEDURES**

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

- C1 Complaints Procedure
- C2 Not used
- C3 Investigation Procedure
- C4 Investigation Procedure for allegations of child abuse
- C5 Not used
- C6 Disciplinary Measures

## **Attachment C1: COMPLAINTS PROCEDURE**

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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, the AKR provides a step-by-step complaint procedure that people may use/enter at any stage. 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 Member Protection 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 National Executive Committee 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 you (the complainant) should try to sort out the problem with the person or people involved if you feel able to do so.

### **Step 2**

If:

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

talk with one of our Member Protection Officers (MPO). A list of MPO's is on our website [www.kendoaustralia.asn.au](http://www.kendoaustralia.asn.au)

The MPO will:

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

### **Step 3**

After talking with the MPO, you may decide:

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

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

#### **Step 4**

If your complaint is not resolved to your satisfaction, you may:

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

#### **Step 5**

If you decide to make a formal complaint in writing under Step 4, the MPO will, on receiving the formal complaint and based on the material you have provided, decide whether:

- they are the most appropriate person to receive and handle the complaint;
- the nature and seriousness of the complaint warrants a formal resolution procedure. Some complaints may be of a minor and/or purely personal nature with no connection to the activities of the AKR. In these cases, the MPO may determine that the complaint does not warrant a formal resolution procedure;
- to appoint a person to investigate the complaint;
- to refer the complaint to an informal or formal mediation session;
- to refer the complaint to a hearings tribunal;
- to refer the matter to the police or other appropriate authority; and/or
- to implement any interim administrative or other arrangements that will apply until the complaint process set out in these Procedures is completed.

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

- 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;
- your wishes, 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 you and the respondent and any other relevant factors, the complaint should be referred (or should not be referred) to the Executive of the relevant State Association. Relevant factors may

include an actual or perceived power imbalance between you and the respondent, the nature of any ongoing working relationship between you and the respondent, and the personal attributes of you 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 you, 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 you will be subject to further unacceptable behaviour while the complaint process set out in these Procedures is being conducted.

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

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

## Step 6

If:

- the matter is to be referred to the State Association under **Step 5**, the MPO must provide a written report to the executive of the relevant State Association who will determine what, if any, further action to take. This action may include a direction to the MPO to make further enquiries and obtain additional information, disciplinary action in accordance with Attachment C6, and referring the complaint to the National Executive Committee and/or the police or other appropriate authority;
- the complaint is referred to the National Executive Committee for hearing under **Step 5**, the matter will be dealt with in accordance with Attachment C4;
- the complaint is referred to the police or other appropriate authority under **Step 5**, the AKR 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**, the AKR 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 the person making the complaint.

## Step 7

You or the respondent(s) may be entitled to appeal where:

- under **Step 5**, a decision was made by the MPO:
  - not to take any action; or
  - to take disciplinary action; or
- under **Step 6**, a decision was made by the relevant State Association:
  - not to take any action; or
  - to take disciplinary action.

The bodies to which you are entitled to appeal are:

- (a) from a decision of the MPO – to the relevant State Association;
- (b) from the decision of the relevant State Association – to the National Executive Council.

If a complaint is referred to the National Executive Council, it will deal with it using the same procedure as that used by the State Association, except that the reports will be made to the National Executive Council by the relevant State Association rather than the MPO. If the complaint is in relation to the State Association, the relevant MPO can make the report to the National Executive Council.

The AKR feels that it is appropriate that these matters be dealt with at the level of the State Association unless they are extremely serious.

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

## **Step 8**

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

## **External procedure**

There may be a range of external options available to you depending on the nature of your complaint. If you feel that you have been harassed or discriminated against, you can seek advice from your State or Territory equal opportunity commission without being obliged to make a formal complaint. If the commission advises you that the problem appears to be a type of harassment that comes within its jurisdiction, you 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 will be conducted. If it appears that unlawful harassment or discrimination has occurred, there will usually 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 you do lodge a complaint under anti-discrimination law, you may use an appropriate person as a support person throughout the process. It is also common to have a legal representative, particularly at the hearing stage of a complaint.

**Attachment C2: Not used**

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## **Attachment C3: INVESTIGATION PROCESS**

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

1. A written brief will be provided to the investigator to ensure the terms of engagement and scope of the investigator's role and responsibilities are clear.
2. The complainant will be interviewed and the complaint documented in writing.
3. 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.
4. The respondent(s) will be interviewed and given the opportunity to respond. The respondent(s) response to the complaint will be documented in writing.
5. If there is a dispute over the facts, then statements from witnesses and other relevant evidence will be obtained to assist in a determination.
6. The investigator 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.
7. A report documenting the complaint, investigation process, evidence, finding and, if requested, recommendations, will be given to the relevant association.
8. 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).
9. Both the complainant and the respondent(s) are entitled to support throughout this process from their chosen support person/adviser.
10. The complainant and the respondent(s) may have the right to appeal against any decision based on the investigation.

More detailed information on conducting internal investigations can be found at [www.ausport.gov.au/ethics/policy.asp](http://www.ausport.gov.au/ethics/policy.asp)

## **Attachment C4: INVESTIGATION PROCEDURE - CHILD ABUSE**

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An allegation of child abuse is a very serious matter and must be handled with a high degree of sensitivity. 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 your 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 the MPO.
- 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. You 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. You 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 MPO should assess the risks and take interim action to ensure the child's/children's safety. Some options that the AKR could implement 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 MPO 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**

- Seek advice from the police and relevant government agency as to whether the AKR should carry out its own internal investigation (in addition to or in conjunction with any police or relevant government agency investigation).
- If the police and/or relevant government agency advises that it is appropriate, then appoint an independent person (where possible) with appropriate expertise to conduct an investigation. The investigator 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 the AKR 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.

#### **Step 5 – Record and analyse all information**

- If an internal investigation was conducted under **Step 4**, the investigator will provide a report to the relevant State Association.

- The decision-maker(s) will be the relevant State Association of the AKR and will remain separate and at arm's length from the investigator.
- The relevant State Association will consider all the information and determine a finding. It will also recommend action and its rationale for the action.

### **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 Attachment C6 of the policy.
- Implement any disciplinary decision recommended by the relevant State Association. The action should be immediate.
- Check with the relevant state government authority to see if you need to forward a report (e.g. the NSW Commission for Children and Young People requires notification of relevant employment proceedings).
- Complete the [ ] report form in Part E of this policy. Retain the original in a secure place and forward a copy to the President of the AKR.

**Attachment C5: Not used**

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## **Attachment C6: DISCIPLINARY MEASURES**

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Any disciplinary measure imposed 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;

### **Individual**

Subject to contractual and employment requirements, if a finding is made that an individual has breached the AKR's Member Protection Policy (including the Codes of Conduct), one or more of the following forms of discipline may be imposed by the relevant State Association or the National Executive Committee:

1. A direction that the individual make a verbal and/or written apology;
2. A written warning;
3. A direction that the individual attend counselling to address their behaviour;
4. A withdrawal of any awards, placings, records, achievements bestowed in any tournaments, activities or events held or sanctioned by the AKR or the relevant State Association
5. A demotion or transfer of the individual to another location, role or activity
6. A suspension of the individual's membership or participation or engagement in a role or activity;
7. Termination of the individual's membership, appointment or engagement;
8. Recommend that the AKR terminate the individual's membership, appointment or engagement;
9. In the case of a coach or official, a direction that the relevant organisation de-register the accreditation of the coach or official for a period of time or permanently;
10. Any other form of discipline that the AKR or the relevant State Association considers appropriate.

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**

If a finding is made that an AKR member or affiliated organisation or a member of that affiliated organisation has breached the AKR's Member Protection Policy (including the Codes of Conduct), one or more of the following forms of discipline may be imposed by the AKR or the relevant State Association

1. A written warning;
2. A monetary fine;
3. 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;

4. A direction that any funding granted or given to it by the AKR or the relevant State Association cease from a specified date;
5. A direction that the AKR or the relevant State Association cease to sanction events held by or under the auspices of that organisation;
6. A recommendation to the AKR or the relevant State Association that its membership of the the AKR or the relevant State Association be suspended or terminated in accordance with the relevant constitution or rules; and/or
7. Any other form of discipline that the national body or peak organisation considers to be appropriate.

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**

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

If the individual is a parent and/or spectator (ability to enforce a penalty may be difficult);

- Nature and seriousness of the behaviour or incidents;
- In a case where action is taken concurrently with or in lieu of a resolution of a formal complaint, the wishes of the complainant;
- If the individual concerned knew or should have known that the behaviour was a breach of the policy;
- Level of contrition of the respondent(s);
- The effect of the proposed disciplinary measures on the respondent(s) including any personal, professional or financial consequences;
- If there have been relevant prior warnings or disciplinary action; and/or
- If there are any mitigating circumstances such that the respondent(s) shouldn't be disciplined at all or not disciplined so seriously.