



**MOUNTAIN BIKE AUSTRALIA**

# P2: Member Protection Policy V2.0

## Review History of Mountain Bike Australia Member Protection Policy

| Version | Date reviewed | Date endorsed | Content reviewed/purpose                    |
|---------|---------------|---------------|---|
| One     | 2008          | 2008          | Policy created                              |
| Two     | June 2016     | July 2016     | Content revised & converted to ASC template |

### Next Scheduled Revision

July 2017

### Document Approval

All changes to this policy must be approved by the MTBA Management Committee.

### Distribution

- MTBA Management Committee
- MTBA Employees
- MTBA Clubs
- MTBA Private Promoters
- MTBA Members

### Authority



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## **Preface**

Mountain Bike Australia is committed to creating a safe, fair and inclusive sporting environment and this Member Protection Policy is an essential tool in the organisations risk management strategy. It outlines how Mountain Bike Australia will meet its commitment to safety, fairness and inclusiveness.

The policy has been developed using the Australian Sports Commission Member Protection Policy template and is a resource for the protection of members, member clubs, administrators, coaches and officials.

Through development and implementation of this policy, Mountain Bike Australia seeks to prevent all forms of harassment, discrimination and abuse and to promote positive behaviour and values. Inappropriate and unlawful behaviour will not be tolerated by Mountain Bike Australia.

This policy outlines:

1. Codes of behaviour with which everyone associated with the organisation is expected to abide;
2. Disciplinary to be taken against individuals if there is a breach of the policy.

Mountain Bike Australia takes all matters in relation to member protection seriously and will educate, enforce and assist with delivery and implementation of this policy.

## **PART A: MOUNTAIN BIKE AUSTRALIA MEMBER PROTECTION POLICY**

### **1. Introduction**

Mountain Bike Australia is the peak organisation for mountain biking in Australia. Mountain Bike Australia's mission is to:

To develop and promote mountain biking in Australia for the benefit and enjoyment of all.

To achieve this mission, Mountain Bike Australia strives to:

1. Provide services, trail advocacy and communications of value to members;
2. Promote, develop and advocate for mountain biking as a healthy sport and recreation activity;
3. Foster and maintain constructive relationships with cycling organisations and key stakeholders;
4. Provide a safe and fair environment for competitive mountain biking, appropriate and relevant to various levels across the sport; and
5. Manage and govern the organisation in a transparent, financially responsible and sustainable manner.

### **2. Purpose of this Policy**

This Mountain Bike Australia Member Protection Policy ("policy") aims to assist Mountain Bike Australia to uphold its core values and create a safe, fair and inclusive environment for everyone associated with our sport. It sets out our commitment to ensure that every person involved in our sport is treated with respect and dignity and protected from discrimination, harassment and abuse. It also ensures that everyone involved in our sport is aware of their legal and ethical rights and responsibilities, as well as the standards of behaviour expected of them.

The policy attachments describe the practical steps we will take to eliminate discrimination, harassment, child abuse and other forms of inappropriate behaviour from our sport. As part of this commitment, Mountain Bike Australia will take disciplinary action against any person or organisation bound by this policy if they breach it.

This policy has been endorsed by Mountain Bike Australia's Management Committee. And is to commence on 30 July 2016 and will operate until replaced.

The current policy and its attachments can be obtained from our website at:

[www.mtba.asn.au](http://www.mtba.asn.au)

### **3 Who is Bound by this Policy**

This policy applies to the following people operating as members or authorised representatives of Mountain Bike Australia, whether they are in a paid or unpaid/voluntary capacity:

- 3.1 persons appointed or elected to national boards, committees and sub-committees;
- 3.2 employees and contractors of Mountain Bike Australia;
- 3.3 support personnel, including managers, physiotherapists, psychologists, masseurs, sport trainers and others;
- 3.4 coaches and assistant coaches;
- 3.5 athletes;
- 3.6 commissaires and other officials;
- 3.7 members of Mountain Bike Australia (including all recognised forms of MTBA membership and affiliation);
- 3.8 athletes, coaches, officials and other personnel participating in events and activities, including skill development camps and training sessions, held or sanctioned by Mountain Bike Australia;

This policy will continue to apply to a person even after he or she has stopped their association or employment with Mountain Bike Australia if disciplinary action against that person has begun.

This policy also applies to:

- 3.9 clubs and organisations affiliated with Mountain Bike Australia

### **4. Organisational Responsibilities**

Mountain Bike Australia must:

- 4.1 adopt, implement and comply with this policy;
- 4.2 ensure this policy is enforceable;
- 4.3 publish, distribute and promote this policy and the consequences of any breaches;
- 4.4 promote and model appropriate standards of behaviour at all times;
- 4.5 deal with any breaches or complaints made under this policy in a sensitive, fair, timely and confidential manner;
- 4.6 apply this policy consistently;
- 4.7 recognise and enforce any penalty imposed under this policy;
- 4.8 ensure that a copy of this policy is available or accessible to all people and organisations to whom this policy applies;
- 4.9 use appropriately trained people to receive and manage complaints and allegations of inappropriate behaviour; and
- 4.10 monitor and review this policy at least annually.

### **5. Individual Responsibilities**

Individuals bound by this policy must:

- 5.1 make themselves aware of the contents of this policy;
- 5.2 comply with all relevant provisions of the policy, including any codes of conduct and the steps for making a complaint or reporting possible child abuse set out in this policy;

- 5.3 consent to our screening requirements set out in this policy, and any state/territory Working with Children Checks if the person holds or applies for a role that involves regular unsupervised contact with a child or young person under the age of 18 or where otherwise required by law;
- 5.4 place the safety and welfare of children above other considerations;
- 5.5 be accountable for their behaviour; and
- 5.6 comply with any decisions and/or disciplinary measures imposed under this policy.

## **6. Position Statements**

### **6.1 Child Protection**

Mountain Bike Australia is committed to the safety and well-being of all children and young people who participate in our sport or access our services. We support the rights of the child and will act at all times to ensure that a child-safe environment is maintained.

We acknowledge the valuable contribution made by our staff, members and volunteers and we encourage their active participation in providing a safe, fair and inclusive environment for all participants.

#### **6.1.1 Identify and analyse risk of harm**

We will develop and implement a risk management strategy, including a review of our existing child protection practices, to determine how child-safe our organisation is and to identify any additional steps we can take to minimise and prevent the risk of harm to children because of the actions of an employee, volunteer or another person.

#### **6.1.2 Develop codes of behaviour**

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

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

#### **6.1.3 Choose suitable employees and volunteers**

We will take all reasonable steps to ensure that our organisation engages suitable and appropriate people to work with children, especially those in positions that involve regular unsupervised contact with children. This will include using a range of screening measures.

We will ensure that Working with Children Checks are conducted for all employees and volunteers who work with children, where an assessment is required by law. If a criminal history report is obtained as part of their screening process, we will handle this information confidentially and in accordance with the relevant legal requirements. (Refer to the attachments in Part C of this policy.)

#### **6.1.4 Support, train, supervise and enhance performance**

We will ensure that all our employees and volunteers who work with children have ongoing supervision, support and training. Our goal is develop their skills and capacity and to enhance their performance so we can maintain a child-safe environment.

#### **6.1.5 Empower and promote the participation of children**

We will encourage children and young people to be involved in developing and maintaining a child-safe environment for our sport.

#### **6.1.6 Report and respond appropriately to suspected abuse and neglect**

We will ensure that all our employees and volunteers are able to identify and respond appropriately to children at risk of harm and that they are aware of their responsibilities under state laws to make a report if they suspect on reasonable grounds that a child has been, or is being, abused or neglected. (Refer to the attachments in Part E of this policy.)

Further, if any person believes that another person or organisation bound by this policy is acting inappropriately towards a child, or is in breach of this policy, he or she may make an internal complaint. (Refer to the attachments in Part D of this policy.)

### **6.2 Taking Images of Children**

There is a risk that images of children can be used inappropriately or illegally. Mountain Bike Australia 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. They should also make sure the parent/guardian understands how the image will be used.

To respect people's privacy, we do not allow camera phones, videos and cameras to be used inside changing areas, showers and toilets.

When using a photo of a child, we will not name or identify the child or publish personal information, such as residential address, email address or telephone number, without the consent of the parent/guardian. We will not provide information about a child's hobbies, interests, school or the like, as this can be used by pedophiles or other persons to "groom" a child.

We will only use images of children that are relevant to our sport and we will ensure that they are suitably clothed in a manner that promotes participation in the sport. We will seek permission from the parents/guardians of the children before using the images. We require our member associations and clubs to do likewise.

### **6.3 Anti-Discrimination and Harassment**

Mountain Bike Australia is committed to providing an environment in which people are treated fairly and equitably and that is, as far as practicable, free from all forms of discrimination and harassment.

We recognise that people may not be able to enjoy themselves or perform at their best if they are treated unfairly, discriminated against or harassed.

### 6.3.1 Discrimination

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

The personal characteristics protected by anti-discrimination laws include attributes such as race, age, disability, gender and race. The full list of protected personal characteristics is in the "Definitions" set out in the Dictionary of Terms.

Discrimination can be either direct or indirect.

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

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

### 6.3.2 Harassment

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

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

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

### 6.3.3 Prohibition against discrimination and harassment

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

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

## 6.4 Intimate relationships

MTBA reserves the right to apply stricter standards on intimate or personal relationships in special circumstances such as national teams, and junior development and training camps. These are detailed in the various coach/staff/athlete agreements for these activities.

Members need to be aware that for some activities they may also be required to comply with the policies of other organisations, for example when taking part in Commonwealth or Olympic Games.

Mountain Bike Australia understands that consensual intimate relationships as determined by State or Country law, (including, but not limited to sexual relationships) between coaches or officials and adult athletes may take place legally. However, this policy will help ensure that the expectations of MTBA appointed coaches or officials are clear and, to ensure that if an intimate relationship does exist or develop between a coach and an adult athlete, that relationship will be managed in an appropriate manner.

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

We recommend that if an athlete attempts to initiate an intimate relationship with a coach or official, the coach or official should discourage the athlete's approach and explain to the athlete why such a relationship is not appropriate.

If a consensual and legally recognised intimate relationship does exist or develop between an athlete and a coach or official, the coach or official is expected to ensure that the relationship is appropriate and that it does not compromise impartiality, professional standards or the relationship of trust the coach or official has with the athlete and/or other athletes. Relationships of this nature must be declared as a Conflict of Interest to the MTBA CEO and made available to the MTBA Management Committee and Selectors.

In assessing the appropriateness of an intimate relationship between a coach or an official and an adult athlete, relevant factors include, but are not limited to:

- the relative age and social maturity of the athlete;
- any potential vulnerability of the athlete;
- any financial and/or emotional dependence of the athlete on the coach or official;
- the ability of the coach or official to influence the progress, outcomes or progression of the athlete's performance and/or career;
- the extent of power imbalance between the athlete and coach or official; and the likelihood of the relationship having an adverse impact on the athlete and/or other athletes.

It will often be difficult for a coach or official involved in an intimate relationship with an adult athlete to make an objective assessment of its appropriateness and accordingly they are encouraged to seek advice from the Member Protection Information Officer to ensure that they have not involved themselves in inappropriate or unprofessional conduct.

If it is determined that an intimate relationship between an MTBA appointed coach and an adult athlete is inappropriate or unprofessional we may take disciplinary action against the coach including dismissal. Action may also be taken to stop the coaching relationship with

the athlete. This could include a transfer, a request for resignation or dismissal from coaching duties.

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

## **6.5 Pregnancy**

Pregnant women should be treated with respect and any unreasonable barriers to their full participation in our sport should be removed. We will not tolerate any discrimination or harassment against pregnant women.

Mountain Bike 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 well-being, and that of their unborn children, are of utmost importance in their decision-making about the extent they choose to participate in our sport.

We encourage all pregnant women to talk with their medical advisers, make themselves aware of the facts about pregnancy in sport and ensure that they make informed decisions about their participation in our sport. We will only require pregnant women to sign a disclaimer if all other participants are required to sign one in similar circumstances. We will not require women to undertake a pregnancy test.

If a pregnant woman feels she has been harassed or discriminated against by another person or organisation bound by this Policy, she may make a complaint. (Refer to the attachments in Part D of this policy.)

## **6.6 Gender Identity**

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

### **6.6.1 Gender identity discrimination and harassment**

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

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

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

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

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

### **6.6.2 Participation in sport**

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

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

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

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

### **6.6.3 Intersex status**

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

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

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

Mountain Bike Australia is committed to conducting sporting and social events in a manner that promotes the responsible service and consumption of alcohol. We also require that member clubs and organisations adhere to current legislation regarding the service and consumption of alcohol.

MTBA's policy is that:

- the consumption of alcohol at sporting events involving children and young people under the age of 18 will be contained within an appropriate area and positioned away from specific child related activities
- food and low-alcohol and non-alcoholic drinks will be available at events we hold where alcohol is served
- where practical, a staff and/or management committee member will be present at events we hold where alcohol is served to ensure appropriate practices are followed
- safe transport options will be promoted as part of any event we hold or endorse where alcohol is served
- officials responsible for the delivery of an event will not be under the influence of alcohol (0.02 or below) or drugs.

### **6.8 Smoke-free Environment**

Mountain Bike Australia is committed to providing a safe and healthy environment at all sporting and social events that we hold or endorse. The following rules apply. Landowner policies may impose stricter rules.

- No smoking shall occur at or near MTBA events due to the location of mountain biking events and that events involve children and young people under the age of 18. This policy shall apply to coaches, commissaires, other officials, volunteers and participants.
- Social events shall be smoke-free, with smoking permitted at designated outdoor smoking areas.
- Coaches, commissaires, other officials, volunteers and participants will refrain from smoking and remain smoke-free while they are involved in an official capacity in our sport, both on and off the field.

### **6.9 Bullying**

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

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

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

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

- verbal abuse including shouting, swearing, teasing, making belittling remarks or persistent unjustified criticism;

- excluding or isolating a group or person;
- spreading malicious rumours; or
- psychological harassment such as intimidation.

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

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

## **6.10 Social Networking**

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

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

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

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

- must not contain material which is, or has the potential to be, offensive, aggressive, defamatory, threatening, discriminatory, obscene, profane, harassing, embarrassing, intimidating, sexually explicit, bullying, hateful, racist, sexist or otherwise inappropriate;
- must not contain material which is inaccurate, misleading or fraudulent;
- must not contain material which is in breach of laws, court orders, undertakings or contracts;
- should respect and maintain the privacy of others; and
- should promote the sport in a positive way.

## **7. Complaints Procedures**

### **7.1 Handling Complaints**

Mountain Bike Australia aims to provide a simple, confidential and trustworthy procedure for resolving complaints based on the principles of procedural fairness.

Any person (a complainant) may report a complaint about a person, people or organisation bound by this policy (respondent) if they feel they have been harassed, bullied or discriminated against or there has been a breach of this policy.

In the first instance, complaints should be reported to the Member Protection Information Officer.

If a complaint relates to behaviour or an incident that occurred at the club level, or involves people operating at the club level, then the complaint should be reported to and handled by the relevant club in the first instance.

Only matters that relate to, or which occurred at, the national level, as well as serious cases referred from the state and club level, should be dealt with by the national body. A complaint may be handled informally or formally. The complainant will usually indicate his or her preferred option unless the Member Protection Information Officer considers that the complaint falls outside this policy and should be handled another way. For example, the law may require that the complaint/allegation be reported to an appropriate authority.

All complaints will be dealt with promptly, seriously, sensitively and confidentially. Our procedures for handling and resolving complaints are outlined in Attachment D1.

Individuals and organisations may also seek to have their complaint handled by an external agency under anti-discrimination, child protection, criminal or other relevant legislation.

## **7.2 Improper complaints and victimisation**

Mountain Bike Australia aims to ensure that our complaints procedure has integrity and is free of unfair repercussions or victimisation against the person making the complaint.

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

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

## **7.3 Mediation**

Mountain Bike Australia aims to resolve complaints quickly and fairly. Complaints may be resolved by agreement between the people involved with no need for disciplinary action.

Mediation is a confidential process that allows those involved in a complaint to discuss the issues or incident in question and come up with mutually agreed solutions. It may occur before or after the investigation of a complaint.

If a complainant wishes to resolve the complaint with the help of a mediator, the Member Protection Information Officer will, in consultation with the complainant, arrange for an

independent mediator where possible. We will allow lawyers to negotiate on behalf of the complainant and/or the respondent.

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

#### **7.4 Tribunals**

A Tribunal may be convened to hear a formal complaint:

- referred to it by the Member Protection Information Officer or CEO
- referred to it or escalated by an affiliated club because of the serious nature of the complaint or because it was unable to be resolved at the club level
- for an alleged breach of this policy

Our Tribunal procedure is outlined in Attachment D4.

A respondent may only lodge an appeal to the Tribunal in respect of a Tribunal decision. The decision of the Appeal Tribunal is final and binding on the people involved. Our appeals process is outlined in Attachment D4.

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

### **8. What is a breach of this policy?**

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

- 8.1** breaching the codes of behaviour (see Part B of this policy)
- 8.2** bringing the sport and/or the Mountain Bike Australia into disrepute, or acting in a manner likely to bring the sport and/or the Mountain Bike Australia into disrepute
- 8.3** failing to follow Mountain Bike Australia policies (including this policy) and our procedures for the protection, safety and well-being of children
- 8.4** discriminating against, harassing or bullying (including cyber-bullying) any person
- 8.5** victimising another person for making or supporting a complaint
- 8.6** engaging in a sexually inappropriate relationship with a person that he or she supervises, or has influence, authority or power over
- 8.7** verbally or physically assaulting another person, intimidating another person or creating a hostile environment within the sport
- 8.8** disclosing to any unauthorised person or organisation any Mountain Bike Australia information that is of a private, confidential or privileged nature
- 8.9** making a complaint that they know to be untrue, vexatious, malicious or improper
- 8.10** failing to comply with a penalty imposed after a finding that the individual or organisation has breached this policy
- 8.11** failing to comply with a direction given to the individual or organisation as part of a disciplinary process.

### **9. Disciplinary measures**

Mountain Bike Australia may impose disciplinary measures on an individual or organisation for a breach of this policy.

Any disciplinary measure imposed will be:

- fair and reasonable
- applied consistent with any contractual and employment rules and requirements
- be based on the evidence and information presented and the seriousness of the breach
- be determined in accordance with our Constitution, By-laws, this policy and/or the rules of the sport.

## **9.1 Individual**

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

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

## **9.2 Organisation**

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

- 9.2.1 A written warning;
- 9.2.2 A fine up to \$2,500;
- 9.2.3 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;
- 9.2.4 A direction that any funding granted or given to it by Mountain Bike Australia cease from a specified date;
- 9.2.5 A direction that Mountain Bike Australia cease to sanction events held by or under the auspices of that organisation;
- 9.2.6 A recommendation to Mountain Bike Australia that its affiliation to Mountain Bike Australia be suspended or terminated in accordance with the relevant constitution or rules;
- 9.2.7 Any other form of discipline that the Mountain Bike Australia considers reasonable and appropriate.

### 9.3 Factors to Consider

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

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

### 10. Dictionary of terms

This Dictionary sets out the meaning of words used in this policy and its attachments, without limiting the ordinary and natural meaning of the words. Further detail or definitions that are specific to different states and territories can be sourced from the relevant child protection authorities or equal opportunity and anti-discrimination commissions.

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| <b>Abuse</b>   | 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.   |
| <b>Adult</b>   | means a person aged 18 or greater.   |
| <b>Affiliated Club or Affiliated MTBA event/service provider</b> | means a mountain bike or other cycling club or a trail care organisation that is a member of Mountain Bike Australia.  |
| <b>Child</b>   | means a person who is under the age of 18. The age for sexual relationships is different to the age for defining a child. See the definitions of <i>Sexual Offence</i> .   |
| <b>Child abuse</b>   | involves conduct which puts a child at risk of harm and may include: <ul style="list-style-type: none"> <li>• <b>physical abuse</b>, by hurting a child or a child’s development (e.g. hitting, shaking or other physical harm; giving a child alcohol or drugs; or training that exceeds the child’s development or maturity)</li> <li>• <b>sexual abuse</b> 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)</li> <li>• <b>emotional abuse</b>, by ill-treating a child (e.g. humiliation, taunting, sarcasm, yelling, negative criticism, name-calling, ignoring or placing unrealistic expectations on a child)</li> <li>• <b>neglect</b> (e.g. failing to give a child food, water, shelter or</li> </ul> |

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|                                  | clothing or to protect a child from danger or foreseeable risk of harm or injury).   |
| <b>Complaint</b>                 | means a complaint made under clause [7] of this policy   |
| <b>Complainant</b>               | means the person making a complaint.   |
| <b>Complaint handler/manager</b> | means the person appointed under this policy to investigate a complaint.   |
| <b>Discrimination</b>            | <p>occurs when someone is treated unfairly or less favourably than another person in the same or similar circumstances because of a particular personal characteristic. This is known as direct discrimination. Indirect discrimination occurs when a rule, policy or practice disadvantages one group of people in comparison with others, even though it appears to treat all people the same.</p> <p>In Australia, it is against the law to discriminate against someone because of their:</p> <ul style="list-style-type: none"> <li>• age</li> <li>• sex or gender</li> <li>• gender identity</li> <li>• intersex status</li> <li>• race, colour, descent, national or ethnic origin, nationality, ethno-religious origin, immigration</li> <li>• disability, mental and physical impairment</li> <li>• family/carer responsibilities, status as a parent or carer</li> <li>• marital status</li> <li>• pregnancy, potential pregnancy, breastfeeding</li> <li>• sexual orientation and gender identity</li> <li>• physical features</li> <li>• irrelevant medical record</li> <li>• irrelevant criminal record, spent convictions</li> <li>• religion, religious beliefs or activities</li> <li>• national extraction or social origin</li> <li>• lawful sexual activity</li> <li>• profession, trade, occupation or calling</li> <li>• members association or organisation of employees or employers, industrial activity, trade union activity</li> <li>• defence service</li> <li>• personal association with someone who has, or is assumed to have, any of the above characteristics.</li> </ul> <p>Some states and territories include additional protected characteristics, such as physical features or association with a person with one or more of the characteristics listed above.</p> <p>Some exceptions to state and federal anti-discrimination law apply, such as:</p> <ul style="list-style-type: none"> <li>• holding a competitive sporting activity for boys and girls only who are under the age of 12, or of any age where</li> </ul> |

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|                                  | <p>strength, stamina or physique is relevant</p> <ul style="list-style-type: none"> <li>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 particular activity.</li> </ul>  |
| <b>Gender identity</b>           | The term 'gender identity' refers to a person's deeply held internal and individual sense of gender.   |
| <b>Gender expression</b>         | The term 'gender expression' refers to the way in which a person externally expresses their gender or how they are perceived by others.  |
| <b>Intersex</b>                  | The term 'intersex' refers to people who have genetic, hormonal or physical characteristics that are not exclusively 'male' or 'female'. A person who is intersex may identify as male, female, intersex or as being of indeterminate sex.   |
| <b>Harassment</b>                | <p>is any type of unwelcome behaviour which has the effect of offending, humiliating or intimidating the person harassed. Unlawful harassment can be based on any of the personal characteristics covered by the anti-discrimination law, such as a person's race, sex, pregnancy, marital status or sexual (see the list under "Discrimination").</p> <p>Public acts of racial hatred which are reasonably likely to offend, insult, humiliate or intimidate are also prohibited. This applies to spectators, participants or any other person who engages in such an act in public. Some states and territories also prohibit public acts that vilify people on other grounds such as homosexuality, gender identity, HIV/AIDS, religion and disability (see also "Vilification").</p> |
| <b>Mediator</b>                  | means an impartial person appointed to help those people involved in a complaint to talk through the issues and resolve the matter on mutually agreeable terms.  |
| <b>Member</b>                    | means any person that has joined Mountain Bike Australia by way of paying the relevant fee and their membership is current. This includes people who have purchased a temporary MTBA membership indirectly for the period the membership is current,   |
| <b>Member Protection Officer</b> | means a person trained to be the first point of contact for a person reporting a complaint under, or a breach of, this policy. He or she provides impartial and confidential support to the person making the complaint.   |
| <b>Natural justice</b>           | <p>(or procedural fairness) requires that:</p> <ul style="list-style-type: none"> <li>both the complainant and the respondent must know the full details of what is being said against them and have the opportunity to respond</li> <li>all relevant submissions must be considered</li> <li>no person may judge their own case</li> <li>the decision-maker(s) must be unbiased, fair and just</li> <li>the penalties imposed must be fair.</li> </ul>  |
| <b>Police check</b>              | means a national criminal history record check conducted as a pre-   |

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|  | employment, pre-engagement or current employment background check on a person.   |
| <b>Policy, policy and this policy</b>                | mean this Member Protection Policy.  |
| <b>Respondent</b>                                    | means the person whose behaviour is the subject of the complaint.  |
| <b>Role-specific codes of conduct (or behaviour)</b> | means standards of conduct required of people holding certain roles in our organisation (e.g. coaches, managers, commissaires).  |
| <b>Sexual harassment</b>                             | means unwanted, unwelcome or uninvited behaviour of a sexual nature which could reasonably be anticipated to make a person feel humiliated, intimidated or offended. Sexual harassment can take many different forms and may include unwanted physical contact, verbal comments, jokes, propositions, and displays 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.  |
| <b>Sexual offence</b>                                | means a criminal offence involving sexual activity or acts of indecency. Because of differences under state and territory laws, this can include but is not limited to: <ul style="list-style-type: none"> <li>• rape</li> <li>• indecent assault</li> <li>• sexual assault</li> <li>• assault with intent to have sexual intercourse</li> <li>• incest</li> <li>• sexual penetration of child under the age of 16</li> <li>• indecent act with child under the age of 16</li> <li>• sexual relationship with child under the age of 16</li> <li>• sexual offences against people with impaired mental functioning</li> <li>• abduction and detention</li> <li>• procuring sexual penetration by threats or fraud</li> <li>• procuring sexual penetration of child under the age of 16</li> <li>• bestiality</li> <li>• soliciting acts of sexual penetration or indecent acts</li> <li>• promoting or engaging in acts of child prostitution</li> <li>• obtaining benefits from child prostitution</li> <li>• possession of child pornography</li> <li>• publishing child pornography and indecent articles.</li> </ul> |
| <b>Sexual Orientation</b>                            | The term 'sexual orientation' refers to a person's emotional or sexual attraction to another person, including, amongst others, the following identities: heterosexual, gay, lesbian, bisexual, pansexual, asexual or same-sex attracted.  |
| <b>Transgender</b>                                   | is an umbrella term that refers to a person whose gender identity is different to their physical sex as recorded at birth. Transitioning refers to the process where a transgender person commences living as a member of another sex. This is sometimes referred to as the  |

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|                      | person 'affirming' their gender because transitioning means they start living in what they identify as their true gender. For people who are transitioning/affirming their gender, having their identity fully recognized in all areas of life is a crucial part of the experience of living as their affirmed gender.         |
| <b>Victimisation</b> | means subjecting a person, or threatening to subject a person, to any unfair treatment because that person has or intends to pursue their right to make any complaint, including a complaint under government legislation (e.g. anti-discrimination) or under this policy, or for supporting another person to make complaint. |
| <b>Vilification</b>  | involves a person or an organisation doing public acts to incite hatred towards, serious contempt for, or severe ridicule of a person or group of people having any of the characteristics listed under the definition of "Discrimination".  |

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

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

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We seek to provide a safe, fair and inclusive environment for everyone involved in our organisation and in our sport.

To achieve this, we require certain standards of behavior of players/athletes, coaches, officials, administrators, parents/guardians (of child participants) and spectators.

Our codes of behaviour are underpinned by the following core values.

- To act within the rules and spirit of our sport.
- To display respect and courtesy towards everyone involved in our sport and prevent discrimination and harassment.
- To prioritise the safety and well-being of children and young people involved in our sport.
- To encourage and support opportunities for participation in all aspects of our sport.

### **ATTACHMENTS**

Attachment B1: Mountain Bike Australia Code of Conduct

## **PART C: EMPLOYMENT SCREENING / WORKING WITH CHILDREN CHECK REQUIREMENTS**

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

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

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

Mountain Bike Australia including our clubs, will meet the requirements of the relevant state or territory Working with Children Check laws.

Employment screening requirements will also be followed in the Australian Capital Territory and Tasmania.

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

### **ATTACHMENTS**

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

## PART D: COMPLAINT HANDLING PROCEDURES

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

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

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

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

### ATTACHMENTS

- Attachment D1: Complaints procedure
- Attachment D2: Mediation
- Attachment D3: Investigation procedure
- Attachment D4: Tribunal procedure

## PART E: REPORTING REQUIREMENTS AND DOCUMENTS/FORMS

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We will ensure that all the complaints we receive, both formal and informal, are properly documented. This includes recording how the complaint was resolved and the outcome of the complaint.

This information, and any additional records and notes, will be treated confidentially and stored in a secure place.

We will treat any allegation of child abuse or neglect promptly, seriously and with a high degree of sensitivity.

We will ensure that everyone who works with our organisation in a paid or unpaid capacity understands how to appropriately receive and record allegations of child abuse and neglect and how to report those allegations to the relevant authorities in their state or territory.

### ATTACHMENTS

- Attachment E1: Record of informal complaint
- Attachment E2: Record of formal complaint

## **Attachment B1:**

# **MOUNTAIN BIKE AUSTRALIA CODE OF CONDUCT**

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### **1. Purpose**

The purpose of Code of Conduct (code) is to describe the type of behaviour that Mountain Bike Australia is seeking to promote and encourage its members and supporters to adopt. The code was developed by Cycling Australia and adopted by Mountain Bike Australia as part of affiliation with Cycling Australia and because it helps define what appropriate (and inappropriate) conduct is. Mountain Bike Australia is committed to the promotion of the sport of mountain biking as a positive life model; this code will help set the groundwork in that respect.

### **2. Application**

The code shall apply to all persons formally associated with mountain biking, within Australia. In particular, it shall apply to:

- 2.1. Persons acting for or on behalf of Mountain Bike Australia
- 2.2. Athletes, coaches, managers and support staff of Mountain Bike Australia
- 2.3. All persons participating in Mountain Bike Australia sanctioned events.
- 2.4. Officials, commissaires and support personnel assisting in or conducting Mountain Bike Australia events
- 2.5. Mountain Bike Australia appointed delegates and employees of Mountain Bike Australia.

### **3. Key Principles**

The key principles of the code of conduct are outlined below.

- 3.1. Mountain Bike Australia wishes to operate in an environment where people show respect for others and their property. <sup>1</sup>
- 3.2. Mountain Bike Australia wishes to operate in an environment that is free from harassment. <sup>2</sup>
- 3.3. Mountain Bike Australia wishes to operate in a non-discriminatory environment. Respect the right, dignity and worth of every human being - within the context of the activity, treat everyone equally regardless of gender, ethnic origin or religion.
- 3.4. Persons to whom this Code applies acknowledge and agree to comply with the disciplinary and grievance procedures as outlined in the Member Protection Policy

### **4. Key Elements**

All persons who are bound by this code shall:

- 4.1. Act in a manner that is compatible with the interests of Mountain Bike Australia;
- 4.2. Accord people involved in mountain biking (and cycling more generally) with the appropriate courtesy, respect and regard for their rights and obligations;
- 4.3. Treat people's property with respect and due consideration of its value;
- 4.4. Show a positive commitment to Mountain Bike Australia's policies, rules, procedures, guidelines and agreements;
- 4.5. Respect the confidentiality of information that they receive in the
- 4.6. Respect the law and customs of the places they visit;
- 4.7. Respect the confidentiality of information that they receive in the course of fulfilling their duties;

- 4.8. Uphold the standing and reputation of mountain biking (and cycling more generally) within Australia;
- 4.9. Not misuse provided funds or property belonging to another party; and
- 4.10. Observe and comply with the Anti-Doping Rules set out in the Cycling Australia Doping Policy.

## **5. Unacceptable Behaviour**

This list provides examples of behaviour deemed to be unsuitable and not in the best interests of the sport.

- 5.1. 'Sledging' other athletes, officials or event organisers. <sup>3</sup>
- 5.2. Excessive use of alcohol, acting in a way that becomes a public nuisance, or creating a public disturbance.
- 5.3. Damaging another person's property or depriving them of that property.
- 5.4. Sexual relations between an appointed official and a junior athlete (under the age of consent), irrespective of the wishes and desires of the athlete. In all other cases such relations are strongly discouraged.
- 5.5. Any physical contact with athletes shall be appropriate to the situation and be necessary for the further development of the athlete's skill.
- 5.6. The use or encouragement of the use of banned substances. <sup>4</sup>
- 5.7. Statements that are deemed to denigrate the group that an individual is representing.
- 5.8. Any type of gambling, betting or organisation of betting at any mountain bike event, while competing, officiating or undertaking a management role.
- 5.9. Any form of harassment.

## **6. Officials Code of Ethics**

The responsibility for the ethical conduct of mountain bike events rests equally with officials and participants as well as coaches, media, and spectators. The duties of an official carry with it an obligation to perform those duties with accuracy, consistency, objectivity and a high sense of integrity. To preserve and encourage confidence in the professionalism and integrity of mountain bike officiating all officials are expected to follow ethical behaviour.

- 6.1. MTBA officials expect that:
  - 6.1.1. Their health and safety will be considered of paramount importance;
  - 6.1.2. They will be treated with respect and openness;
  - 6.1.3. They will be appointed to a level of event appropriate to their level of competence; and
  - 6.1.4. They will have access to self-improvement opportunities.
- 6.2. MTBA officials will observe and adhere to the following code of ethics:
  - 6.2.1. Place safety and welfare of the participants above all else;
  - 6.2.2. Accept responsibility for their actions;
  - 6.2.3. Be impartial;
  - 6.2.4. Avoid and conflict of interest;
  - 6.2.5. Be courteous, respectful and open to discussion and interaction;
  - 6.2.6. Value the individual;
  - 6.2.7. Seek continual self-improvement through study, performance appraisal and regular updating of competencies;

- 6.2.8. Encourage inclusivity and access to all potential participants;
- 6.2.9. Be a positive role model in behaviour and personal appearance;
- 6.2.10. Refrain from any form of personal abuse to others;
- 6.2.11. Refrain from any form of sexual harassment to others; and
- 6.2.12. Show concern and caution towards sick and injured participants.

<sup>1</sup> Respect is defined as consideration for another's physical and emotional wellbeing and possessions, to ensure no damage or deprivation is caused to either.

<sup>2</sup> Harassment is defined as any action directed at an individual or group that creates a hostile, intimidating or offensive environment.

<sup>3</sup> Sledging is defined as a statement that is deemed to denigrate and/or intimidate another person, or behaviour likely to constitute emotional abuse.

<sup>4</sup> The banned substance list is as outlined under current Cycling Australia doping listings.

**Attachment C1:**  
**MEMBER PROTECTION DECLARATION**

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Mountain Bike Australia has a duty of care to all those associated with our organisation and our sport. It is a requirement of our Member Protection Policy that we check the background of each person who works, coaches or has regular unsupervised contact with children and young people under the age of 18.

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, other forms of harassment or acts of violence.
4. I am not currently serving a sanction for an anti-doping rule violation under an Australian Sports Anti-Doping Authority (ASADA) approved anti-doping policy applicable to me.
5. I will not participate in, facilitate or encourage any practice prohibited by the World Anti-Doping Agency Code or any other ASADA approved anti-doping policy applicable to me.
6. To my knowledge, there is no other matter that Mountain Bike Australia may consider to constitute a risk to its members, employees, volunteers, athletes or reputation by engaging me.
7. I will notify the CEO of the organisation/s engaging me immediately upon becoming aware that any matter set out above has changed.

Declared in the state/territory of .....

on ...../...../.....(date) Signature .....

**Consent of parent/guardian (on behalf of a person under the age of 18)**

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

Name: .....

Signature: .....

Date: .....

## **Attachment C3: WORKING WITH CHILDREN CHECK REQUIREMENTS**

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

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

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

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

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

### **Australian Capital Territory**

Contact the Office of Regulatory Services

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

Phone: 02 6207 3000

### **New South Wales**

Contact the Commission for Children and Young People

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

Phone: 02 9286 7276

### **Northern Territory**

Contact the Northern Territory Screening Authority

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

Phone: 1800 SAFE NT (1800 723 368)

### **Queensland**

Contact the Blue Card Services department.

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

Phone: 1800 113 611

### **South Australia**

Contact the Department for Communities and Social Inclusion

Website: [www.screening.dcsi.sa.gov.au](http://www.screening.dcsi.sa.gov.au)

Phone: 1300 321 592

### **Tasmania**

Contact the Department of Justice

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

Phone: 1300 13 55 13

### **Victoria**

Contact the Department of Justice

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

Phone: 1300 652 879

### **Western Australia**

Contact the Working with Children Check department

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

Phone: 1800 883 979

### **Travelling to other states or territories**

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

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

The laws providing interstate exemptions are not consistent across Australia.

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

## Attachment D1: COMPLAINTS PROCEDURE

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

**We will endeavour to deal with complaints on a confidential basis.** We will not provide information about the complaint to another person without the complainant's consent, except if the law requires us disclose this information or it is necessary to properly deal with the complaint. To ensure fairness for everyone involved, we will provide the full details of the complaint to the person or people against whom the complaint has been made and ask for their response. As a result, it may be difficult for us to resolve complaints made anonymously.

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

### Informal approaches

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

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

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

We encourage you to talk with one of our Member Protection Information Officers (MPIOs) if:

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

The names and contact details for our MPIOs are available at [www.mtba.asn.au](http://www.mtba.asn.au)

The MPIOs will:

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

#### **Step 3: Decide how to resolve the problem**

After talking with the MPIO, you may decide:

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

## Formal approaches

### Step 4: Making a formal complaint

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

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

The MPIO will refer a formal complaint to the CEO. After receiving a formal complaint, and based on the material you provide, the CEO will decide whether:

- he or she is the most appropriate person to receive and handle the complaint
- the nature and seriousness of the complaint requires a formal resolution procedure
- to refer the complaint to **mediation**
- to appoint a person to **investigate** the complaint
- to refer the complaint to a **tribunal hearing**
- to refer the matter to the **police or other appropriate authority**, and/or
- to implement any interim arrangements that will apply until the complaint process is completed.

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

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

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

- provide the information received from you to the other person(s) involved and ask for their side of the story
- decide if there is enough information to determine whether the matter alleged in your complaint did or didn't happen, and/or
- determine what, if any, further action to take, including disciplinary action in accordance with this policy.

### Step 5: Investigating the complaint

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

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

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

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

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

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

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

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

The CEO will record the complaint, the steps taken to resolve it and the final outcome. This information will be stored in a confidential and secure place. If the matter is of a serious nature, or if it was refer to Mountain Bike Australia by a club, the original document will be stored by Mountain Bike Australia and a copy stored by the club.

### **Approaching external organisations**

If you feel that you have been harassed or discriminated against, you can seek advice from your state or territory anti-discrimination or equal opportunity commission. There is no obligation to make a formal complaint. However, if the commission advises you that the issues appear to be within its jurisdiction, you may choose to lodge a formal complaint with the commission. Any cost incurred by taking such action is the sole responsibility of the individual making the approach.

The commission may investigate your complaint. The commission may also attempt to conciliate the complaint on a confidential basis. If this fails, or if it is not appropriate, the complaint may go to a formal hearing. The tribunal will make a finding and decide what action, if any, will be taken.

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

Contact details for the state and territory anti-discrimination and equal opportunity commissions are available on the Play by the Rules website: <http://www.playbytherules.net.au/resources/quick-reference-guide>.

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

## Attachment D2: MEDIATION

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Mediation is a process that seeks to resolve complaints with the assistance of an impartial person – the mediator.

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

Our approach to mediation follows the steps set out below.

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

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

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

## Attachment D3: INVESTIGATION PROCESS

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There will be times when a complaint will need to be investigated and evidence gathered.

An investigation helps determine the facts relating to the incident, as well as possible findings and recommendations.

Any investigation that we conduct will be fair to all people involved. The investigation process will be undertaken by an unbiased person.

If we decide that a complaint should be investigated, we will follow the steps outlined below.

1. We will provide a written brief to the investigator that sets out the terms of engagement and his or her roles and responsibilities. The investigator will:
  - interview the complainant and record the interview in writing
  - provide full details of the complaint to the respondent(s) so that they can respond
  - interview the respondent(s) to allow them to answer the complaint and record the interview in writing
  - obtain statements from witnesses and collect other relevant evidence, if there is a dispute over the facts
  - 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)
    - **mischievous, vexatious or knowingly untrue.**
  - provide a report to CEO documenting the complaint, the investigation process, the evidence, the finding(s) and, if requested, any recommendations.
2. We will provide a report to the complainant and the respondent(s) documenting the complaint, the investigation process and summarising key points that are substantiated, inconclusive, unsubstantiated and/or mischievous.
3. The complainant and the respondent(s) will be entitled to support throughout this process from their chosen support person or adviser (e.g. MPIO)
4. The complainant and the respondent(s) may have the right to appeal any decision based on the investigation. Information on our appeals process is in Attachment D5.

## Attachment D4: TRIBUNAL PROCEDURES

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

### **Preparing for a Tribunal hearing**

1. A Tribunal panel will be established, according to the rules set out in our Constitution, to hear a complaint that has been referred to it by the CEO. The number of Tribunal panel members required to be present throughout the hearing will be as nominated in our Constitution.
2. The Tribunal panel members will be provided with a copy of all the relevant correspondence, reports or information received and sent by the MPIO, CEO and other delegated persons relating to the complaint/allegations.
3. The Tribunal hearing will be held as soon as practicable. However, adequate time must be provided for the respondent(s) to prepare for the hearing.
4. The Tribunal panel will not include any person who has any actual or perceived conflict of interest or bias regarding the complaint/allegations.
5. The CEO and/or MPIO will inform the respondent(s) in writing that a Tribunal hearing will take place. The notice will outline:
  - that the person has a right to appear at the Tribunal hearing to defend the complaint/allegations
  - the details of the complaint and of all allegations, as well as the clause of any policy or rule that has allegedly been breached
  - the date, time and venue of the Tribunal hearing
  - that either verbal or written submissions can be presented at the Tribunal hearing
  - that witnesses may attend the Tribunal hearing to support the position of the respondent/s (statutory declarations of witnesses not available to attend and from character witnesses may also be provided to the Tribunal hearing)
  - an outline of any possible penalties that may be imposed if the complaint is found to be true
  - that legal representation will not be allowed. [If the respondent is a minor, he or she should have a parent or guardian present.]
6. The CEO and/or MPIO will notify the complainant in writing that a Tribunal hearing will take place. The notice will outline:
  - that the person has a right to appear at the Tribunal hearing to support their complaint
  - the details of the complaint, including any relevant rules or regulations the respondent is accused of breaching
  - the date, time and venue of the Tribunal hearing
  - that either verbal or written submissions can be presented at the Tribunal hearing
  - that witnesses may attend the Tribunal hearing to support the complainant's position (statutory declarations of witnesses not available to attend may also be provided to the Tribunal Hearing)
  - that legal representation will not be allowed. [If the complainant is a minor, he or she should have a parent or guardian present.]

A copy of the investigation report findings will be provide to the complainant.
7. If the complainant believes the details of the complaint are incorrect or insufficient, he or she should inform the CEO or MPIO as soon as possible so that the respondent(s) and members of the Tribunal panel can be properly informed of the complaint.

8. If possible, the Tribunal panel should include at least one person with knowledge or experience of the relevant laws/rules (e.g. anti-discrimination).

### **Tribunal hearing procedure**

9. The following people will be allowed to attend the Tribunal hearing:
  - Tribunal panel members
  - the respondent(s)
  - the complainant
  - any witnesses called by the respondent(s)
  - any witnesses called by the complainant
  - any parent/guardian or support person required to support the respondent or the complainant.
10. If the respondent(s) is not present at the set hearing time and the Tribunal chairperson considers that no valid reason has been presented for this absence, the Tribunal hearing will continue subject to the chairperson being satisfied that all Tribunal notification requirements have been met.
11. If the Tribunal chairperson considers that there is a valid reason for the non-attendance of the respondent(s), or the chairperson does not believe the Tribunal notification requirements have been met, then the Tribunal hearing will be rescheduled to a later date.
12. If the Tribunal chairperson wishes to reschedule the Tribunal hearing date, the Tribunal chairperson will inform the CEO of the need to reschedule the hearing and the CEO will arrange for the Tribunal to be reconvened.
13. The Tribunal chairperson will read out the complaint, ask each respondent if he or she understands the complaint and if he or she agrees or disagrees with the complaint.
14. If the respondent agrees with the complaint, he or she will be asked to provide any evidence or witnesses that should be considered by the Tribunal when determining any disciplinary measures or penalties.
15. If the respondent disagrees with the complaint, the complainant will be asked to describe the circumstances that lead to the complaint being made.
  - Reference may be made to brief notes.
  - The complainant may call witnesses.
  - The respondent may question the complainant and any witnesses.
16. The respondent will then be asked to respond to the complaint.
  - Reference may be made to brief notes.
  - The respondent may call witnesses.
  - The complainant may ask questions of the respondent and any witnesses.
17. The complainant and respondent(s) may be present when evidence is presented to the Tribunal hearing. Witnesses may be asked to wait outside the hearing until they are required.
18. The Tribunal may:
  - consider any evidence, and in any form, that it deems relevant
  - question any person giving evidence
  - limit the number of witnesses presented to those who provide new evidence
  - require (to the extent it has power to do so) the attendance of any witness it deems relevant

- act in an inquisitorial manner in order to establish the truth of the issue/complaint before it.
19. Video evidence, if available, may be presented. Arrangements must be made entirely by the person(s) wishing to offer this type of evidence.
  20. If the Tribunal panel considers that at any time during the hearing there is any unreasonable or intimidatory behaviour from anyone, the Tribunal chairperson may deny further involvement of that person in the hearing.
  21. After all the evidence has been presented, the Tribunal will make its decision in private. It must decide whether the complaint has, on the balance of probabilities, been substantiated. As the seriousness of the allegation increases, so too must the level of satisfaction of the Tribunal that the complaint has been substantiated. The respondent(s) have the opportunity to address the Tribunal on disciplinary measures, which may be imposed. Any disciplinary measures imposed must be reasonable in the circumstances.
  22. All Tribunal decisions will be by majority vote.
  23. The Tribunal chairperson may announce the decision of the Tribunal at the conclusion of the hearing. Alternatively, he or she may reserve the decision of the Tribunal at the conclusion of the hearing and deliver the decision at a later time.
  24. The respondent(s) will have the opportunity to make submissions to the Tribunal in relation to any sanctions that may be imposed.
  25. Within 48 hours, the Tribunal chairperson will:
    - forward a notice of the Tribunal's decision to the CEO and MPIO including any disciplinary measures imposed.
    - forward a letter reconfirming the Tribunal's decision to the respondent(s), including any disciplinary measures imposed. The letter should also outline the process and grounds for an appeal, if allowed. If matter is especially complex or important, the Tribunal chairperson may inform the parties in writing within 48 hours that the decision will be delayed for a further 48 hours.
  26. The Tribunal does not need to provide written reasons for its decision.

### **Appeals procedure**

27. A complainant or a respondent(s) may lodge Mountain Bike Australia an appeal in relation to the decision of a Tribunal] on one or more of the following grounds:
  - a. that a denial of procedural fairness has occurred;
  - b. that the sanction imposed is unjust and/or unreasonable;
  - c. that the decision was not supported by the information/evidence provided at the mediation or to the Tribunal Hearing;
28. A person wanting to appeal must lodge a letter setting out the basis for their appeal with the CEO within 7 (seven) days of the decision being made. An appeal fee of \$200.00 shall be included with the letter of intention to appeal.
29. If the letter of appeal is not received by the CEO within this time, the right of appeal will lapse. If the letter of appeal is received but the appeal fee is not received within this time, the appeal will also lapse.
30. The letter of appeal and the notice of the Tribunal's decision (clause 24) will be forwarded to the Management Committee to review and to decide whether there are sufficient grounds for the appeal to proceed. The Management Committee may invite any witnesses to the meeting that he or she believes are required to make an informed decision.

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

**Attachment E1:  
RECORD OF INFORMAL COMPLAINT**

|   |  |  |
|---|--|--|
| Name of person receiving complaint  |  | Date:     /     /  |
| Complainant's Name  | Over 18  | Under 18   |
| Role/status   | Administrator (volunteer)<br>Athlete/player<br>Coach/Assistant Coach<br>Employee (paid)<br>Official  | Parent<br>Spectator<br>Support Personnel<br>Other<br>.....   |
| When/where did the incident take place?   |  |  |
| What are the facts relating to the incident, as stated by complainant?                                      |  |  |
| What is the nature of the complaint?<br>(category/basis/grounds)<br><br>Tick more than one box if necessary | Harassment or Sexual/sexist methods<br><br>Sexuality<br>Race<br>Religion<br>Pregnancy<br>Other ..... | Discrimination Selection dispute<br><br>Personality clash<br>Bullying<br>Disability<br>Child Abuse |
| What does the complainant want to happen to resolve the issue?  | Coaching<br><br>Verbal abuse<br>Physical abuse<br>Victimisation<br>Unfair decision                   |  |
| What other information has the complainant provided?  |  |  |
| What is the complainant going to do now?  |  |  |

**This record and any notes must be kept confidential and secure.** If the issue becomes a formal complaint, this record is to be given to CEO.

**Attachment E2:  
RECORD OF FORMAL COMPLAINT**

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

|   |   |
|---|---|
| Formal resolution procedures followed (outline) |   |
| If investigated:                                | Finding   |
| If heard by Tribunal:                           | Decision<br><br>Action recommended  |
| If mediated:                                    | Date of mediation:<br><br>Both/all parties present<br><br>Agreement<br><br>Any other action taken |
| If decision was appealed                        | Decision<br><br>Action recommended  |
| Resolution                                      | Less than 3 months to resolve<br>Between 3 – 8 months to resolve<br>More than 8 months to resolve |
| Completed by                                    | Name:<br>Position:<br>Signature: <span style="float: right;">Date / /</span>                      |
| Signed by:                                      | Complainant:<br><br>Respondent:   |

**This record and any notes must be kept in a confidential and safe place.** If the complaint is of a serious nature, or if it is taken to and/or dealt with at the national level, the original record must be provided to Mountain Bike Australia and a copy kept with the organisation where the complaint was first made.