



All Sporting organisations have legal responsibilities in relation to harassment, discrimination and child protection. They also have moral obligations in relation to establishing standards of appropriate behaviour and providing safe and respectful sporting environments. To assist in the management of these issues, Basketball Queensland has developed a complaints handling procedure which provides individuals with a course of action should they be harassed, discriminated against or abused in the course of their sporting pursuits. As part of this process there may be the need for basketball Associations, clubs or individuals to seek assistance from outside the organisation.

This information sheet provides a summary of some of the different processes available to sporting organisations and individuals to assist in the resolution of complaints and disputes, including:

- The person with the complaint (the complainant) discussing the issue directly with the person/people involved in the issue or incident.
- The complainant lodging a formal or informal complaint with their Association or Basketball Queensland (BQ). This may result in a tribunal hearing and/or an investigation into the matter.
- The complainant lodging a complaint with an external agency such as the Equal Opportunity Commission (EOC) or Department of Sport and Recreation.
- The people involved in the complaint participating in mediation, conciliation, counselling, conferencing or arbitration.

The process most appropriate to resolve a conflict will depend upon the nature of the issue, versions of events presented by the complainant, respondent and witnesses, and resources available to the sporting organisation.

Complainant discusses issue with those involved

As a first step the complainant should try to sort out the problem (if they feel able to do so) by talking to the person(s) or organisation involved. They should explain from their point of view what occurred, how it made them feel and why it is unlawful, unfair, unjustified or a breach of the Basketball Australia Member Protection Policy. The person(s) complained about (the respondent(s)) may not have considered that their actions were inappropriate and hurtful and immediately regret their behaviour.

If the complainant wants to talk confidentially with someone about the problem and obtain information about what you can do, they can talk to a Member Protection Information Officer (MPIO). A MPIO will be able to assist by listening, providing information and clarifying the options available. If the complainant requires the services of a MPIO, they can contact Basketball Queensland and speak to Graham Burns or Marzena Clarke.

Lodging a complaint with Basketball Queensland

If the complainant decides to lodge a complaint with Basketball Queensland they can download a Formal Complaint Form from the Basketball Queensland website and forward this to the Basketball Queensland office by e-mail (admin@basketballqld.net.au) or by facsimile 07 3823 5655 or by post:

C/- The Sleeman Sports Complex, Cnr Old Cleveland & Tilley Rd Chandler 4155

The complainant may also write to BQ explaining what occurred, how it made them feel and why it is unlawful, unfair, unjustified or a breach of the Basketball Australia Member Protection Policy. It may also be appropriate for the complainant to state what outcome they would like to see occur as a result of their complaint.

In these instances the complaint will be treated as a formal complaint and will be registered on the BQ Formal Complaints Register and the progress of the complaint will be tracked.

The complainant may also call BQ to discuss the matter and in these instances the complaint will be treated as informal. This does not mean that the matter will be treated lightly and it may be escalated to a formal complaint if deemed necessary.

Board Hearing Procedure

If a formal complaint is lodged, the matter may be referred to the Board of BQ to examine the matter and decide on the most appropriate course of action. This may include conducting a hearing to determine guilt or innocence and a suitable penalty (if one should apply). The basic principles of natural justice, as outlined below, must be followed to ensure a fair and equitable process is achieved.

1. Notification of the Complaint

- The person/organisation accused will receive a written notice clearly outlining the allegation/s in sufficient detail so as to allow the person to properly prepare and respond. The notification will outline the rule, regulation or policy they have allegedly breached, and any possible penalty that may be imposed.
- The notification will clearly outline the date, time, venue and composition of the hearing and the expectations / rights of the accused.

2. Opportunity to Respond

- The person accused will be given the opportunity to respond to the allegations and sufficient time to prepare and state their case, including obtaining statements from witnesses.

3. Decision Makers to be Unbiased

- There should not be any perceived or actual preconceived opinions, vested interests, personal involvement or conflict of interest by the tribunal members.
- The Board members will ensure that the first two principles are followed.

Any hearing will be conducted in the manner set out in the BQ By-Laws.

Lodging a complaint with an external organisation

The complainant may feel it appropriate to report the matter to an external organisation such as the Equal Opportunity Commission (EOC) or the Human Rights and Equal Opportunity Commission. EOC can only hear formal complaints if the grounds of the complaint are covered by equal opportunity law. EOC's may also provide guidance or options to resolve complaints.

It is important to note that some inappropriate sexual behaviours constitute sexual assault or child abuse and are criminal offences. Any instance or suspicion of sexual assault or child abuse should be referred to the police, emergency services, child protection agencies or sexual assault support services.

Investigation

The purpose of an investigation is to:

- Develop a detailed understanding and knowledge of the incident;
- Provide a sound, factual basis for decisions by BQ; and
- Produce reliable documentation that can be used to support BQ actions.

BQ will conduct an investigation when a suspected breach of its Code of Behaviour, policy and/or procedure has occurred. Depending on the incident, BQ may also decide to conduct an investigation when a formal complaint has been received or when a concern regarding safety has occurred.

BQ may choose to conduct an investigation using a neutral member of the organisation or an external agency. Investigations undertaken by qualified, independent persons can assist in dealing with complaints in a fair, comprehensive and credible manner.

Investigation is a process to gather information and provide advice (but not a determination) on the facts of a complaint. An investigation of a formal complaint may involve interviewing the complainant(s), witnesses and the person(s) against whom the complaint has been made. An investigation will be undertaken in an objective, fair and timely manner and test all available information so that an informed recommendation as to the substance of the complaint can be made. The investigator may also make recommendations or identify options, in line with BQ's policies, as to the next steps to take in resolving the complaint. An investigation may result in one of three outcomes:

- Substantiated complaint leading to appropriate action;
- Unsubstantiated complaint leading to an explanation of the finding; or
- Fabricated complaint leading to possible action against the complainant(s).

Mediation

Mediation may occur either before or after an investigation into a complaint. Mediation is a confidential process where an independent/neutral dispute resolver assists the people involved in the complaint to negotiate and reach a decision about their complaint. The mediator cannot impose a decision upon the people involved and has no advisory role on the content of the complaint. The mediator is, however, able to assist the people to explore the issues being discussed reach the best possible joint decisions that the circumstances allow. Mediation is particularly useful in complex matters involving people in ongoing contact and where less formal communication may be helpful. Where privacy and confidentiality are important, mediation enables people to preserve these rights without public disclosure which can lead to more satisfactory outcomes for everyone.

The major benefit of mediation is that complaints can be resolved speedily and at considerably less cost than is likely with formal proceedings. People also have more control over the costs of the process.

It may be an option to contact the Department of Justice Dispute Resolution Centre for a free mediation service on 07 3239 6269 or 1800 017 288 (toll free outside Brisbane) or visit <http://www.justice.qld.gov.au/2411.htm>

Counselling

BQ may recommend that the complainant, respondent and/or witnesses involved in the complaint undergo counselling. Counselling refers to a wide range of processes designed to assist people to solve personal and interpersonal issues and problems. Counselling has a specific meaning under the Family Law Act, where it is included as a Primary Dispute Resolution process.

Conferencing

Conferencing is a facilitated conversation used when conflict seriously affects a system or relationships within a group of people. Participants share their views on what has happened and how each person has been affected. They then draw on their personal knowledge of the situation to collaboratively develop a written agreement. In the process, participants change the nature of their relationships to each other, from conflict to cooperation. The outcome is an action plan setting out individual and group accountabilities for future behaviours.

Arbitration

Arbitration is a process where the people involved in the complaint present arguments and evidence to an arbitrator who makes a determination. The process is governed by legislation. The process of arbitration can be varied by the people involved to suit the complexity of the complaint; however, the principles of natural justice must be followed. A small case, for example, may be heard on the basis of documentary submissions alone, which can reduce costs significantly. Other more complex cases may benefit from a more judicial style of hearing in which formal claims and defences are lodged and evidence is put forward by each person and tested by cross-examination etc. The result of the arbitration, known as the Award, is enforceable in the same manner as a Court judgment.