

Port Augusta Tabletennis Association

Complaint Policy 2018

Sporting organisations such as the Port Augusta Tabletennis Association has 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.

This complaints procedure will assist Port Augusta Tabletennis Association in managing these issues, should they arise, and provide 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 sporting organisations or individuals to seek assistance from outside the organisation.

This policy provides a summary of some of the different processes available to Port Augusta Tabletennis Association 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 the sporting organisation. The sport may decide to conduct 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 in their state or territory.
- 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 sport's 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 their national sporting organisation or state or territory department of sport and recreation, or use the member protection information officer database.

Lodging a complaint with the sporting organisation

If the complainant decides to lodge a complaint with Port Augusta Tabletennis Association they will need to put this in writing to the management Committee which is consistent with the Constitution, rules, by-laws and policies.

If the complainant feels the process is not adequate or suitable for their situation, they can still lodge a complaint with Tabletennis SA.

The complainant should lodge a complaint at the level (club, state or national) that the incident occurred. In their complaint (written or oral), the complainant should explain what occurred, how it made them feel and why it is unlawful, unfair, unjustified or a breach of the sport's 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.

Tribunal Hearing Procedure

If a formal complaint is lodged, a tribunal panel is formed by Management Committee to examine the matter and decide on the most appropriate course of action. 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 should 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 should outline the rule, regulation or policy they have allegedly breached, and any possible penalty that may be imposed.
- The notification should provide the option for admission of the allegation/s and acceptance of the advised penalty (if applicable) by a specified date, avoiding the need for a tribunal hearing.
- The notification should clearly outline the date, time, venue and composition of the hearing and the expectations / rights of the accused, including any entitlement to legal representation.

2. Opportunity to Respond

- The person accused should 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 tribunal members should ensure that the first two principles are followed.

The Tribunal hearing procedures will incorporate these key guidelines.

- Tribunal panel consists of people that do not have any actual or perceived conflict of interest, preconceived ideas, vested interests or personal involvement relating to the complaint;
- Tribunal hearing is scheduled as soon as practical and in accordance with prescribed rules, policies and by-laws, but allowing the respondent adequate time to prepare a response to the complaint;
- The complainant and the respondent are given the opportunity to provide a statement to the tribunal;
- The complainant and the respondent may be asked questions by the tribunal;
- Witnesses may be asked to attend and provide a statement;
- Tribunal will consider all the evidence presented and make a decision or determine its position based on the evidence;
- An announcement is made by the Tribunal Chairperson in the presence of all involved. The Chairperson will announce the decision or position of the tribunal or whether they need more time to consider or follow-up on the information they have before making a decision. Depending on the position and role of the tribunal, disciplinary measures may be outlined.
- A complainant or respondent not satisfied with the decision may be able to lodge an appeal. How and where to lodge an appeal will depend on the sport's appeal processes.

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) in their state or territory or the Human Rights and Equal Opportunity Commission. EOC's 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 an organisation; and
- produce reliable documentation that can be used to support organisational actions.

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

Port Augusta Tabletennis Association may choose to conduct an investigation using a neutral member of the club or an external agency. Investigations undertaken by qualified, independent persons can assist the club 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 must 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 the clubs 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;
- 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. However, the mediator is 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.

Mediation can take place either internally by a neutral member of the sporting organisation, or by an external agency. This will be determined by the nature of the complaint and resources available to the sporting organisation.

Conciliation

Conciliation is a process in which the people involved in the complaint, with the assistance of a conciliator, identify the issues in the complaint, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may have an advisory role on the content of the complaint or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an agreement.

Counselling

The club 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 in each state and territory. 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.

OFFICIALS DUTIES REGARDING COMPLAINTS

Coaches are important, not only in the development of athletes but also in the overall success of a team or a club. They have obligations to parents, leagues and associations as well as to their sport generally. In fulfilling these obligations coaches are bound by the law. They may also be bound by the policies and rules of their individual sporting organisations. This means coaches can be liable or legally responsible for a wide range of issues including those relating to negligence, sexual harassment and personal misconduct.

Negligence Claims

For a negligence claim to be successful, it must be proven that a coach has a duty of care, that they breached that duty and that this breach caused the injury. Considering the position of power, control and trust held by coaches it is not hard to see why coaches owe a duty of care to their athletes under the law of torts. (The law of torts addresses and provides remedies for issues arising out of civil wrongs and not out of contractual obligations)

Whether there has been a breach of care depends upon the standard of care necessary, which is a flexible concept. It is likely that a higher standard will be expected to professional coaches in comparison with volunteer coaches. It is also likely that a higher standard will be expected for a coach of a high risk activity. The test is whether a reasonable person in the position of the coach would have foreseen that the act/omission involved a degree of risk that was real.

It must also be shown that it was the act/omission that caused the injury. For a negligence claim to be successful it must be proven that a coach has a duty of care, that they breached that duty and that this breach caused the injury.

Avoiding Complaints

Coaches can be bound to the rules and policies of sporting organisations. Sporting organisations manage their own risk by introducing policies and codes of behaviour for people in specific roles including coaches, athletes and officials. Coaches have a greater chance of avoiding a breach of the rules if they know and understand the rules they will be judged against.

Codes do give hints to coaches on how they can manage risk. For example, the code of behaviour that accredited coaches are required to sign includes the following.

- Wherever practical, avoid unaccompanied and unobserved one-on-one activity (when in a supervisory capacity or where a power imbalance will exist) with people under the age of 18 years.
- Adopt appropriate and responsible behaviour in all interactions.
- Ensure your decisions and actions contribute to a harassment free environment.
- Any physical contact with a person should be appropriate to the situation and necessary for the person's skill development.

Coach take out: Coaches should not teach or encourage dangerous behaviour. They should discourage dangerous methods and communicate with athletes as to the risks involved in adopting such methods.

Coach take out: Sporting codes now include provisions which penalise conduct which has the potential to bring the sport into disrepute. This includes personal conduct. Coaches, like athletes, must act professionally and behave ethically at all times if they are to avoid complaints.

Ensuring a fair resolution after a complaint

An allegation, even if cleared, can leave a coach's reputation undermined. Therefore the best practice is to take steps to avoid allegations. However, it is not always possible and mistakes are a part of life.

If an allegation is made against you, your responsibilities in managing your risks continue. There are steps to take to ensure a fair hearing which mean you have to know your rights to be able to enforce them. Sporting disputes are heard outside the legal system and sporting tribunals do not always ensure a fair and transparent process and therefore coaches need to be aware of their own rights before it is too late.

The principles of natural justice generally prevail, which means you are to be afforded time to prepare and present your case. You are entitled to know the allegations against you and which rules have allegedly been breached. You are entitled to be heard by an unbiased tribunal. If penalised, your penalty is to be proportionate to your misconduct.

Coach take out: It is important coaches check that the standard of the complaints handling process is appropriate when you sign up to be bound by it, otherwise it may be too late once proceedings' commence.

SUMMARY

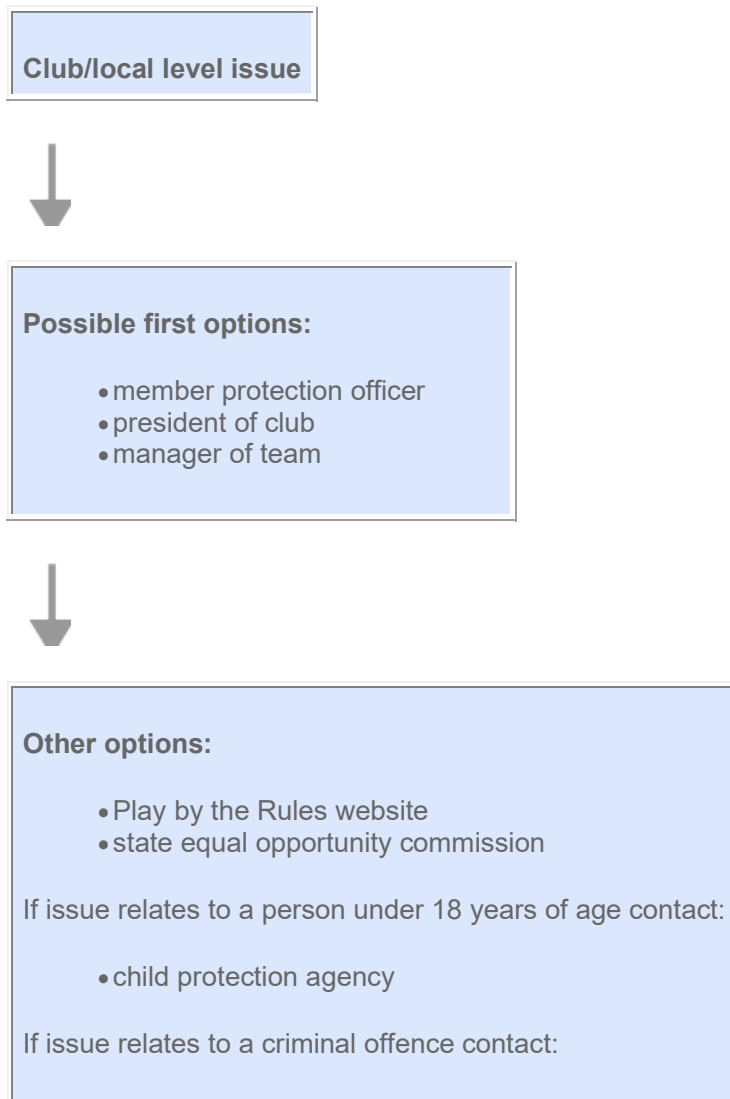
To make a complaint or to raise a concern in relation to inappropriate behaviour in sport (such as harassment, discrimination or abuse), this chart may assist in working out who to contact and how.

Start at the level (club, state or national) that the incident occurred.

There are three scenario's presented in this flowchart:

- Club/local level issue
- State level issue
- National level issue

Complaints and contact flowchart



- local or state police



If unsuccessful, unsatisfied or not resolved



State level issue



If not previously contacted, possible first options:

- member protection officer
- president of club
- manager of team



If not previously contacted, possible options:

- Play by the Rules website
- state department of sport and recreation
- state equal opportunity commission

If issue relates to a person under 18 years of age contact:

- child protection agency

If issue relates to a criminal offence contact:

- local or state police



If unsuccessful, unsatisfied or not resolved



National level issue



If not previously contacted, possible first options:

- member protection officer
- president, general manager or other national organisation executive member - see the Australian Sports Directory
- manager of team



Other options:

- Play by the Rules website
- Australian Sports Commission (Sport Services section)

If issue relates to a person under 18 years of age contact:

- child protection agency

If issue relates to a criminal offence contact:

- state police (of state incident occurred in)



If unsuccessful, unsatisfied or not resolved



Additional options:

- Human Rights and Equal Opportunity Commission
- [Court of Arbitration for Sport \(Oceania Registry\)](#)
- [ANZSLA – the sports law association](#)