NATIONAL MEMBER PROTECTION POLICY

PART D:
COMPLAINT HANDLING PROCEDURES

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Preface

All Complaints will be dealt with in a fair, timely, transparent manner. Complaints will be kept confidential and will not be disclosed to another person without the complainant’s consent except if law requires disclosure or if disclosure is necessary to effectively deal with the Complaint.

Individuals and organisations may also pursue their Complaint externally under anti-discrimination, child protection or other relevant legislation.

If, as a complainant, you wish to remain anonymous, AusCycling may have difficulty assisting you to resolve your Complaint. Procedural fairness (natural justice) means that AusCycling is required to provide the person or people you have complained about with full details of the complaint, so they have a fair chance to respond.

In accordance with clause 3 of this Policy, its application encompasses all of AusCycling, its Affiliated Clubs and individual members. In situations where the matter is relevant to an incident or event under direct responsibility or auspices of an Affiliated Club, then the Complaint should be first directed to the respective Affiliated Club (i.e. the organisation that has direct responsibility for the matter during which the incident occurred).

For the purposes of this policy and the application of the formal complaint procedure below, when a matter is being dealt with by an Affiliated Club all references to AusCycling or CEO of AusCycling shall be read as the relevant Affiliated Club or the principal administrator or Secretary of the relevant Affiliated Club.

Where an Affiliated Club deals with a complaint as an investigation or disciplinary matter, then the principles and procedures set out in the Affiliated Clubs equivalent of the AusCycling Disciplinary Policy, may also be applicable, depending on how the relevant Member Protection Information Officer (MPIO) (or other designated person) decides the Complaint shall be dealt with.
Attachment D1: Complaint Procedures

Informal Approaches
AusCycling aims to support 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 keep all complaints confidential. 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 if it is necessary to properly resolve 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 resolve complaints. Individuals and organisations can also complain to external organisations under anti-discrimination, child protection and other relevant laws.

Step 1: Talk with the other person (where this is reasonable, safe and appropriate)
If you feel comfortable to do so, you can approach the other person or people involved and try and resolve the problem directly.

Step 2: Contact a Member Protection Information Officer
We encourage you to talk with one of our MPIOs if:

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

The names and contact details for the AusCycling MPIOs are available from the AusCycling website www.auscycling.org.au. Please contact your affiliate club for your local contact.

The MPIO will:

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

Step 3: Decide how to address your concern
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 work out your own resolution (with or without a support person such as an MPIO)
- to seek a mediated resolution with the help of a third person (such as a mediator)
- to seek a formal approach.

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 Complaints Officer
approach a relevant external agency such as an anti-discrimination or equal opportunity commission, for advice.

After receiving a formal complaint and based on the material the complainant has provided, the CEO (or nominee) will:

- decide whether he/she is the most appropriate person to receive and handle the Complaint
- the nature and seriousness of the complaint warrants a formal resolution procedure
- to take no further action because the complaint is improper, insignificant or vexatious, or has been adequately dealt with through informal or other processes
- to refer the complaint to mediation
- to appoint a person or persons to investigate the complaint
- to refer the complaint to a hearings committee constituted under this policy and described in Attachment D4
- to refer the matter to AusCycling Ethics and Integrity Committee
- to refer the matter to the police or other appropriate authority such as the National Sports Tribunal
- to implement any interim arrangements that will apply until the complaint process set out in these Procedures is completed.

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

- whether they have had any personal involvement in the circumstances which means that someone else should handle the complaint
- your wishes, and the wishes of the respondent, regarding the manner in which the complaint should be handled
- the relationship between you and the respondent (for example an actual or perceived power imbalance between you and the respondent)
- the views of any person who might have been subjected to the alleged improper conduct of the respondent (including for example the athlete in circumstances where another person has made a complaint on their behalf)
- whether the facts of the complaint are in dispute
- the urgency of the complaint, including the possibility that you will be subject to further unacceptable behaviour while the complaint process is underway.

If the CEO (or nominee) is the appropriate person to handle the complaint they will, to the extent that these steps are necessary:

- put the information they have received from the complainant to the respondent and ask them to provide their side of the story
- decide if they have enough information to determine whether the matter alleged in the Complaint did or did not happen, and/or
- determine what, if any, further action to take, including disciplinary action in accordance with this policy.

If the CEO (or nominee) is not the appropriate person to handle the complaint they will:

- refer the matter to another appropriate person within the organisation.

Step 5: Investigation / mediation / hearing

- A person may be appointed under Step 4 to conduct an investigation and provide a written report to the Complaints Officer who will determine what further action to take. Such investigation will be conducted in accordance with Attachment D3. It must be made clear to all parties that the investigator is not seeking to resolve the matter, nor to decide whether any breach of this policy has occurred, nor to impose any penalty.
- Any decision about disciplinary action must be referred to an independent committee, and wherever possible, mediations should be conducted by an independent mediator.
- If the complaint is referred to mediation, it will be conducted in accordance with Attachment D2 or as otherwise agreed by you and the respondent and the mediation provider.
- If the Complaint under this policy is referred to the Member Protection Hearings Committee, the hearing will be conducted in accordance with Attachment C5.
- If the complaint is referred to the police or other appropriate authority, AusCycling will use its best endeavours to provide all reasonable assistance required by the police or other authority.
- Any costs relating to the complaint process set out in this policy (eg investigation, mediation and/or a committee hearing) are to be met by the applicant unless otherwise stated.
Step 6: Reconsideration of initial outcome/investigation or appeal
If, under the formal complaint process, mediation is unsuccessful, the complainant may request that the CEO (or nominee) reconsider the complaint in accordance with Step 4.

Following a hearing, the complainant or the respondent(s) may be entitled to appeal.

The complainant may also appeal the decision of the CEO (or nominee) to dismiss a complaint or not reconsider the complaint under Step 4 in the case of an unsuccessful mediation.

Appeals are to be made in accordance with the Affiliate Club disciplinary process/policy. Where there is no process the grounds and process for appeals under this policy are set out in Attachment C5.

Step 7: Documenting the resolution
The Complaints Officer will document the complaint, the process and the outcome. This document will be stored in a confidential and secure place. If the Complaint was dealt with at an Affiliated Club the information will be stored securely by the Affiliated Club. If the matter is of a serious nature, or if the matter was escalated to and/or dealt with at the national level, the original document will be stored at the national office with a copy securely 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.

Once a complaint is received by the commission, it will investigate the matter. If it appears that unlawful harassment or discrimination has occurred, the commission will 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 committee will make a finding and decide what action, if any, will be taken. This could include an apology or financial compensation for distress, lost earnings or medical and counselling expenses incurred.

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. It is also common 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. [https://www.playbytherules.net.au/](https://www.playbytherules.net.au/)

Serious incidents, such as assault or sexual assault, should be reported to the police.
Attachment D2: Mediation

Mediation is a process that allows the people involved in a complaint to talk through the issues with an impartial person - the mediator - and work out a mutually agreeable solution.

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 make 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 (or nominee) will appoint a mediator to help resolve the complaint. This will be done under the direction of AusCycling and in consultation with the complainant and the respondent(s).
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 the CEO (or nominee) to request that the complaints officer reconsider the complaint in accordance with Step 4;
   • 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 will 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

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 is conducted will be fair to all people involved.

If an investigation needs to be conducted to gather more information the following steps will be followed:

1. We will provide a written brief to the investigator clarifying terms of engagement and roles and responsibilities.

2. The investigator may:
   • Interview the complainant and record the interview in writing.
   • Convey details of the complaint to the respondent(s) so that they can respond. This may be done via summary.
   • Interview the respondent to allow them to answer the complaint and record the interview in writing.
   • Obtain statements from witnesses and other relevant evidence to assist in a determination, 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 the CEO (or nominee) documenting the complaint, investigation process, evidence, finding and, if requested, recommendations.

3. We will provide a report to the complainant and respondent(s) documenting the complaint, the investigation process and summarizing key points from the investigation.

4. The complainant and the respondent(s) will be entitled to support throughout this process from their chosen support person/adviser.
Attachment D4: Hearings & Appeals Committee Hearing Procedure

1. The Ethics and Integrity Committee or a tribunal/committee specially constituted under Step 4 of this Policy may hear a complaint that has been referred to it following the rules in the AusCycling Disciplinary Policy.

2. The number of committee members required to be present throughout the hearing will be three.

3. The committee members will be provided with a copy of all the relevant correspondence, reports or information relating to the complaint/allegations.

4. The committee hearing will be scheduled as soon as practicable but must allow adequate time for the respondent to prepare their case for the hearing.

5. The CEO (or nominee) will inform the respondent(s) in writing that a committee hearing will take place.

   The notice will outline:
   - That the person has a right to appear at the committee hearing to defend the complaint/allegation;
   - Details of the complaint, and details of all allegations and the clause of any policy or rule allegedly breached;
   - The date, time and venue of the committee hearing;
   - That they can make either verbal or written submissions to the committee;
   - That they may arrange for witnesses to attend the committee in support of their position (statutory declarations of witnesses not available or from character witnesses may also be provided to the committee);
   - 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. [The respondent may be assisted by a support person at a committee hearing. For example, where the respondent is a minor, he or she should have a parent or guardian present. However, a person cannot be a support person if he or she has been admitted to the practice as a lawyer or worked as a trainee lawyer.] A copy of any investigation report findings will be provided to the respondent(s).

6. The CEO (or nominee) will notify the complainant in writing that a committee hearing will take place.

   The notice will outline:
   - That the person has a right to appear at the committee hearing to support their complaint;
   - Details of the complaint, including any relevant rules or regulations the respondent is accused of breaching
   - The date, time and venue of the committee hearing;
   - That they can make either verbal or written submissions to the committee;
   - That they may arrange for witnesses to attend the committee in support of their position (or provide statutory declarations from witnesses unable to attend); and
   - That legal representation will not be allowed.
   - If the respondent is a minor, they will be encouraged to have a parent or guardian present.

   A copy of all information / documents that have been given to the committee (e.g. investigation report findings) will also be provided to the complainant.

7. If the complainant believes the details of the complaint are incorrect or insufficient, they should inform the CEO (or nominee) as soon as possible so that the respondent and the committee panel members can be properly informed of the complaint.

8. It is preferable that the committee include at least one person with knowledge or experience of the relevant laws/rules (e.g. Discrimination).

Committee Hearing Procedure

1. The following people will be allowed to attend the committee hearing:
   - The committee members
   - The respondent(s)
   - The complainant
   - Any witnesses called by the respondent
   - Any witnesses called by the complainant
• Any parent / guardian or support person required to support the respondent or the complainant.

2. If the respondent(s) is not present at the set hearing time and the committee chairperson considers that no valid reason has been presented for their absence, the committee hearing will continue subject to the committee chairperson being satisfied that all committee notification requirements have been met.

3. If the committee chairperson considers that a valid reason for the non-attendance of the respondent(s) has been presented, or the committee chairperson does not believe the committee notification requirements have been met, then the committee will be rescheduled to a later date.

4. The committee chairperson will inform the CEO (or nominee) of the need to reschedule, and the CEO (or nominee) will organise for the committee to be reconvened.

5. The committee chairperson will read out the complaint, ask the respondent(s) if they understand the complaint and if they agree or disagree with the complaint.

6. 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 committee panel when determining any disciplinary measures.

7. 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(s) may question the complainant and witnesses.

8. The respondent(s) 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 witnesses.

9. Both the complainant and respondent may be present when evidence is presented to the committee. Witnesses may be asked to wait outside the hearing until required.

10. The committee 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 any 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/case before it.

11. Video evidence, if available, may be presented. The arrangements must be made entirely by the person/s wishing to offer this type of evidence.

12. If the committee considers that at any time during the committee hearing there is any unreasonable or intimidatory behaviour from anyone, the chairperson may deny further involvement of the person in the hearing.

13. After all of the evidence has been presented the committee will make its decision in private. The committee must decide whether the complaint has been substantiated on the balance of probabilities (i.e. more probable than not). As the seriousness of the allegation increases, so too must the level of satisfaction of the committee that the complaint has been substantiated. The respondent will be given an opportunity to address the Committee on disciplinary measures which might be imposed. Disciplinary measures imposed must be reasonable in the circumstances.

14. All Committee decisions will be by majority vote.

15. The respondent(s) will have the opportunity to make submissions to the Committee in relation to any sanctions that may be imposed.

16. The committee chairperson will announce the decision in the presence of all those involved in the hearing and will declare the hearing closed or may advise those present that the decision is reserved and will be handed down in written form at a later time.
17. Within 48 hours of the hearing, the committee chairperson will:
   • Forward to the CEO (or complaints officer) notice of the committee decision including any disciplinary measures imposed.
   • Forward a letter to the respondent(s) reconfirming the committee decision and any disciplinary measures imposed. The letter should also outline, if allowed, the process and grounds for an appeal. Where the matter is of unusual complexity or importance, the committee chairperson may inform the parties in writing within 48 hours that the decision will be delayed for a further 48 hours.

18. The Committee does not need to provide written reasons for its decision.

**Appeals Procedure**

Any appeals must follow the AusCycling Disciplinary Policy or relevant section of the Affiliated Club constitution and/or by-laws.
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