



MEMBER PROTECTION POLICY

OF

*BMX AUSTRALIA INCORPORATED*

**BMX Australia Member Protection Policy Effective from 1 January 2010**

## **PREFACE**

A central goal of BMX Australia (“BMXA”) is to develop the sport of BMX throughout Australia and internationally for the safety and enjoyment of its participating members.

BMXA is committed to providing a sport and work environment free of harassment and discrimination. BMXA aims to ensure the core values, good reputation and positive behaviours and attitudes of BMXA are maintained. BMXA believes that anyone who works for it, and everyone with whom it deals, has the right to be treated with respect and dignity. BMXA will not tolerate any type of behaviour, which will bring the sport of BMX into disrepute, and this policy is an essential part of BMXA’s proactive and preventative approach to tackling inappropriate behaviour. BMXA will therefore take all complaints seriously, and will ensure they are dealt with promptly, sensitively and with confidentiality.

BMXA is committed to ensure that everyone associated with the organisation complies with this policy.

Nicola Tyre  
GM

On behalf of the Board of BMX Australia

## MEMBER PROTECTION POLICY

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## **BMX AUSTRALIA (“BMXA”)**

### **1. Purpose of this policy**

This Member Protection Policy (policy) aims to ensure the core values, good reputation and positive behaviours and attitudes of BMXA are maintained. It assists us in ensuring that every person involved in our sport is treated with respect and dignity, and is safe and protected from abuse. This policy also ensures that everyone involved in our sport is aware of his or her legal and ethical rights and responsibilities. This policy also reflects our support and implementation of the sport industry principles and values outlined in The Essence of Australian Sport - principles of fairness, respect, responsibility and safety.

The policy also provides the procedures that support our commitment to eliminating discrimination, harassment, child abuse and other forms of inappropriate behaviour from our sport. As part of this commitment, BMXA will take disciplinary action against any person or organisation bound by this policy if they breach it.

This policy has been endorsed by the board of the BMXA and has been incorporated into our Disciplinary By-Laws which can be found in Attachment A. The policy starts on 1 September 2007 and will operate until replaced. This policy and/or its attachments may be amended from time to time by a resolution of the Board in accordance with the BMXA Constitution. Copies of the policy and its attachments can be obtained from our office, or website at [www.bmxaustralia.com.au](http://www.bmxaustralia.com.au).

This policy has been based on the Australian Sports Commission (ASC) template and has been approved by the ASC.

### **2. Who this Policy Applies To**

This policy applies to the following organisations and individuals:

- BMXA;
- Constituent Associations;
- Affiliated Clubs
- Persons appointed or sitting on boards, committees and sub-committees of BMXA or Constituent Associations;
- Employees, officials and volunteers appointed or elected by BMXA or a Constituent Association;
- Support personnel (e.g. managers, physiotherapists, psychologists, masseurs, sport trainers);
- Coaches (including assistant coaches) who
  - are appointed and/or employed by BMXA or Constituent Associations (whether paid or unpaid);or
  - have an agreement (whether or not in writing) with BMXA or a Constituent Association;

- Riders who enter or participate in any activity or event (including camps and training sessions) which are held or sanctioned by BMXA or a Constituent Association;
- Any person or organisation, who or which is a member of, or affiliated to, BMXA or a Constituent Association;
- Any other person or organisation who, or which agrees in writing or otherwise to be bound by this policy; and
- Parents, guardians, spectators and sponsors to the full extent that is possible.

This policy will continue to apply to a person even after they have stopped their association or employment with BMXA if disciplinary action relating to an allegation of child abuse against that person has commenced.

### 3. **Code of Conduct**

BMXA requires every individual and organisation bound by this policy to:

- (a) be ethical, fair and honest in all their dealings with other people and BMXA;
- (b) treat all persons with respect and courtesy and have proper regard for their dignity, rights and obligations;
- (c) always place the safety and welfare of children above other considerations;
- (d) comply with BMXA's constitution, rules and policies including this policy;
- (e) operate within the rules and spirit of the sport;
- (f) comply with all relevant Australian laws (Federal and State), particularly anti-discrimination and child protection laws;
- (g) be responsible and accountable for their conduct; and
- (h) abide by the Code of Conduct outlined in **Attachment B** to this policy.

### 4. **Organisational Responsibilities**

#### 4.1 BMXA must:

- (a) adopt, implement and comply with this policy;
- (b) publish, distribute and otherwise promote this policy and the consequences for breaching it;
- (c) promote appropriate standards of conduct at all times;
- (d) promptly deal with any breaches of or Complaints made under this policy in an impartial, sensitive, fair, timely and confidential manner;
- (e) apply this policy consistently without fear or favour;
- (f) recognise and enforce any penalty imposed under this policy;

- (g) ensure that a copy of this policy is available or accessible to the persons to whom this policy applies;
- (h) appoint or have access to appropriately trained people to receive and handle Complaints and allegations and display the names and contact details in a way that is readily accessible; and
- (i) monitor and review this policy at least annually.

#### 4.2 Constituent Associations must:

- (a) adopt, implement and comply with this policy;
- (b) publish, distribute and otherwise promote this policy and the consequences for breaching it;
- (c) promote appropriate standards of conduct at all times;
- (d) promptly deal with any breaches of or Complaints made under this policy in an impartial, sensitive, fair, timely and confidential manner;
- (e) apply this policy consistently without fear or favour;
- (f) recognise and enforce any penalty imposed under this policy; and
- (g) ensure that a copy of this policy is available or accessible to the persons to whom this policy applies.

### 5. Individual Responsibilities

Individuals bound by this policy must:

- (a) make themselves aware of the policy and complying with the standards of conduct outlined in this policy;
- (b) consent to a national police check if the individual holds or applies for a role that involves direct and unsupervised contact with people under the age of 18 years
- (c) comply with all other requirements of this policy;
- (d) co-operate in providing a discrimination, child abuse and harassment free sporting environment; and
- (e) understand the possible consequences of breaching this policy.

### 6. Policy Position Statements

#### 6.1 Child Protection Policy

Every person and organisation bound by this policy must always place the safety and welfare of children above all other considerations.

BMXA acknowledges that its staff and volunteers provide a valuable contribution to the positive experiences of its Junior participants. BMXA aims to ensure this continues and to protect the safety and welfare of its Junior participants. Several measures will be used to achieve this such as:

- prohibiting any form of abuse against children;
- providing opportunities for our Juniors to contribute to and provide feedback on our program development;
- carefully selecting and screening people whose role requires them to have direct and unsupervised contact with children. (Screening procedures are outlined in **clause 7**);
- ensuring our codes of conduct, particularly for roles associated with Junior sport, are promoted, enforced and reviewed;
- providing procedures for raising concerns or Complaints (our Complaints procedure is outlined in **clause 10**); and
- providing education and/or information to those involved in our sport on child abuse and child protection.

BMXA requires that any child who is abused or anyone who reasonably suspects that a child has been or is being abused by someone within its sport, to report it immediately to the police or relevant government agency and the Member Protection Information Officer (“MPIO”). Descriptions of the sorts of activity which may be abuse are in the Dictionary at **clause 13**.

All allegations of child abuse will be dealt with promptly, seriously, sensitively and confidentially. A person will not be victimised for reporting an allegation of child abuse and the privacy of all persons concerned will be respected. BMXA’s procedures for handling allegations of child abuse are outlined in **clause 9.1**.

If anyone bound by this policy reasonably suspects that a child is being abused by his or her parent/s, they are advised to contact the relevant government department for youth, family and community services in their state/territory.

## **6.2 Taking Images of Children**

Images of children can be used inappropriately or illegally. BMXA 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 and ensure that the parent knows the way the image will be used. BMXA also requires the privacy of others to be respected and disallows the use of camera phones, videos and cameras inside changing areas, showers and toilets.

If BMXA uses an image of a child it will not name or identify him/her or use both the first name and surname of the child unless it has first obtained consent to do so from the parent/guardian. BMXA will not display personal information such as residential address, email address or telephone numbers without gaining consent from the parent/guardian. BMXA will not display information about hobbies, likes/dislikes, school, etc as this information can be used as grooming tools by paedophiles or other persons. BMXA will only use appropriate images of a child, relevant to our sport and ensure that the child is suitably clothed in a manner that promotes the sport, displays its successes, etc.

BMXA requires its members and Constituent Associations to do likewise.

### 6.3 Anti-Discrimination and Harassment Policy

BMXA aims to provide a sport environment where all those involved in its activities are treated with dignity and respect, and without harassment or discrimination.

BMXA recognises that all those involved in its activities cannot enjoy themselves, perform to their best, or be effective or fully productive if they are being treated unfairly, discriminated against or harassed because of their age, disability, family responsibilities, gender identity, homosexuality or sexual orientation, irrelevant medical or criminal record, marital status, political belief, pregnancy or breastfeeding, race, religion, sex, social origin and/or trade union membership/activity.

BMXA prohibits all forms of harassment and discrimination based on personal characteristics listed in the Dictionary. Discrimination and harassment are extremely distressing, offensive, humiliating and/or threatening and create an uncomfortable and unpleasant environment. In most circumstances discrimination and harassment are against the law.

Descriptions of some of the types of behaviour which could be regarded as harassment or discrimination are provided in the Dictionary at **clause 13**.

If any person feels they are being harassed or discriminated against by another person or organisation bound by this policy, please refer to **clause 13** of the BMXA Constitution.

### 6.4 Sexual Relationships Policy

BMXA takes the position that sexual relationships between coaches and the adult athletes that they coach should be avoided. BMXA takes the view that such relationships while not necessarily constituting unlawful harassment can have harmful effects on the individual athlete involved, on other athletes and coaches, and on the sport's public image. Such relationships tend to be intentionally or unintentionally exploitative because there is usually a disparity between coaches and athletes in terms of authority, power, maturity, status and dependence. BMXA's policy position is similar to other organisations who disallow professionals such as teachers, doctors and counsellors to have sexual relationships with their clients or students.

Should a sexual relationship develop between an athlete and coach, BMXA will investigate whether any action against the coach is necessary. Factors that may be relevant to consider are the age and maturity of the athlete relative to the coach, the financial or emotional dependence of the athlete on the coach, and the likelihood of the relationship having any adverse impact on the athlete and/or other athletes. If it is determined that the sexual relationship is inappropriate, action may be taken to stop the coaching relationship with the athlete. Action may include transfer, a request for resignation or dismissal from coaching duties.

If an athlete attempts to initiate an intimate sexual relationship, the coach must take personal responsibility for discouraging such approaches, explaining the ethical basis for such action. The coach may wish to approach BMXA or a MPIO if they feel harassed.

The law is always the minimum standard for behaviour within BMXA and therefore sex with a child is a criminal offence.

## 6.5 Pregnancy Policy

BMXA is committed to providing an inclusive sporting environment for pregnant women involved in its activities. BMXA expects everyone bound by this policy to treat pregnant women with dignity and respect and to remove any unreasonable barriers to participation in our sport that disadvantage them. We will not tolerate any unlawful discrimination or harassment against pregnant women or women who may become pregnant.

Descriptions of some of the types of behaviour which could be regarded as pregnancy discrimination or harassment are provided in the Dictionary at **clause 13**.

If any person feels they are being harassed or discriminated against by another person or organisation bound by this policy, please refer to our Complaints procedure outlined in **clause 10**. This will explain what to do about the behaviour and how the BMXA will deal with the problem.

While many sporting activities are safe for pregnant women to participate in, there may be particular risks that apply to some women during pregnancy. Those risks will depend on the nature of the particular sporting activity and the particular pregnant woman's circumstances. BMXA 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 wellbeing, and that of their unborn children, are of utmost importance in their decision making about the extent and manner in which they participate in our sport.

We encourage all pregnant women to consult with their medical advisers, make themselves aware of the facts about pregnancy in sport, and ensure that they make informed decisions about participation in particular sporting activities.

We will only require pregnant women to sign a disclaimer if we require other participants to sign one in similar circumstances. We will not require women to undertake a pregnancy test.

## 6.6 Gender Identity Policy

BMXA is committed to providing an inclusive sporting environment where transgender or transsexual people involved in its activities are able to contribute and participate. BMXA expects everyone who is bound by this policy to treat people who identify as transgender or transsexual fairly and with dignity and respect. This includes acting with sensitivity and respect where a person is undergoing gender transition. We will not tolerate any unlawful discrimination or harassment against a person who identifies as transgender or transsexual or who is thought to be transgender or transsexual.

Descriptions of some of the types of behaviour which could be regarded as transgender or transsexual discrimination or harassment are provided in the Dictionary at **clause 13**.

If any person feels they are being harassed or discriminated against by another person or organisation bound by this policy, please refer to our Complaints procedure outlined in **clause 10**. This will explain what to do about the behaviour and how BMXA will deal with the problem.

BMXA recognises that the exclusion of transgender or transsexual people from participation in sporting events has significant implications for their health, well-being

and involvement in community life. In general BMXA will facilitate transgender or transsexual persons participating in our sport of the sex with which they identify.

BMXA also recognises there is debate over whether a male to female transgender person obtains any physical advantage over other female participants. This debate is reflected in the divergent discrimination laws across the country. If issues of performance advantage arise, BMXA will seek advice on the application of those laws in the particular circumstances.

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

BMXA notes that drug testing procedures and prohibitions also apply to people who identify as transgender or transsexual. 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.

## 7. Screening

BMXA will implement screening procedures for people who currently occupy or who apply for any work (paid or voluntary) that involves direct and unsupervised contact with people under the age of 18 years

Screening under this policy is not a replacement for any other procedure required by law. The requirements under the law of each State and Territory are set out in **Attachment D** and BMXA and member organisations must comply with these requirements. If State or Territory legislation sets an equivalent or higher standard of screening, the requirement to screen people need not be followed. A summary of requirements under relevant legislation is set out in **Attachment D**. This summary has been provided by the ASC and BMXA makes no warranties as to its accuracy or whether it is up to date.

Under this policy BMXA and Constituent Associations are required to comply with the screening process as set out in **Attachment D(1)** or the Working with Children Check laws in the relevant State or Territory as set out in **Attachment D(2)**.

## 8. Member Protection Information Officers (MPIOs)

- 8.1 BMXA and Constituent Associations shall be responsible for appointing such number of MPIOs as they consider appropriate. It is the role of a MPIO to:
- (a) provide a point of contact for persons wishing to make a Complaint under this policy;
  - (b) inform complainants of the options and procedures for resolution of Complaints under this policy;
  - (c) refer Complaints or allegations of breaches of this policy to the organisation which appointed him/her; and
  - (d) Carry out the functions assigned to MPIOs throughout this policy.

An MPIO is not an expert mediator or conciliator. The MPIO's principal roles are to implement this policy to ensure any Complaint under it is handled as impartially as practicable.

## 9. Child abuse procedures

9.1 An allegation of child abuse is a very serious matter and must be handled with a high degree of sensitivity. The following is a basic outline of the key processes to follow. More information can be obtained from the relevant State or Territory government agency.

- (a) Any Complaints, concerns or allegations of child abuse should be made or referred to a MPIO. The MPIO should obtain and clarify basic details (if possible) but should not elicit detailed information about the abuse. The initial response of the person that receives the Complaint from the child (or person on behalf of the child) is crucial to the well-being of the child. It is important for the person receiving the information to:
- Listen to, be supportive and do not dispute what the child says;
  - Reassure the child that what has occurred is not the fault of the child;
  - Ensure the child is safe;
  - Be honest with the child and explain that other people may need to be told in order to stop what is happening; and
  - Ensure that what the child says is quite clear but do not elicit detailed information about the abuse. You should avoid suggestive or leading questions.
- (b) Any individual or organisation to which this policy applies, should immediately report any incident of a serious or a criminal nature to the police and other appropriate authority. If the allegation is of a criminal nature, report the incident immediately to the police. If the allegation involves a child at risk of harm you may need to report to both the police and the relevant government agency.
- (c) The MPIO should assess the risks and take interim action to ensure the child's/children's safety. Some options could include redeployment of the alleged offender to a non-child related position, supervision of the alleged offender or removal/suspension from their duties until the allegations are finally determined. Any actions concerning the alleged offender's position of employment should be determined and made by the CEO of BMXA, not the MPIO. The support needs of the person against whom the Complaint is made should also be addressed.
- (d) Any further investigation by BMXA into allegations of a more serious or criminal nature should only be carried out upon advice from the police and relevant government agency.
- (e) For allegations of a less serious nature (e.g. verbal abuse) and independent person with appropriate expertise shall be appointed to make contact and meet with each of the people involved to obtain details of the allegation. Strict confidentiality, impartiality, fairness and due process must be maintained at all times.
- (f) If disciplinary action is to be taken, follow the procedures outlined in **clause 12**.

## 10. Complaints Procedures

### 10.1 Complaints

BMXA aims to provide an easy to use, confidential and trustworthy procedure for Complaints based on the principles of natural justice. Any person may report a Complaint (complainant) about a person/s or organisation bound by this policy if they reasonably believe that a person/s or a sporting organisation has breached this policy. A Complaint should be reported to a MPIO.

A Complaint may be reported as an informal or formal Complaint. The complainant decides whether the Complaint will be dealt with informally or formally unless the MPIO considers that the Complaint falls outside the parameters of this policy and would be better dealt with another way.

All Complaints will be dealt with promptly, seriously, sensitively and confidentially.

### 10.2 Informal Complaint Resolution Procedure

If a complainant makes an approach to BMXA, a Constituent Association, a Club or a person within these organisations, it is desirable that the complainant also seeks the advice of a MPIO. The MPIO will:

- (a) encourage the complainant as a first step to try and sort out the problem with the person or people involved if they are able to do so;
- (b) listen to the complainant in an empathetic, supportive manner;
- (c) inform the complainant about their possible options;
- (d) act as a support person for the complainant, including supporting them through any mediation process if the complainant wishes;
- (e) keep the matter confidential;
- (f) inform the relevant government authority, if required by law; and
- (g) consult by seeking advice from the relevant state or territory authority that administers the relevant law.

A complainant may seek to try and resolve the Complaint by mediation in accordance with **clause 10.4**.

If, following this informal Complaint procedure, the Complaint is not resolved, the complainant may make a formal Complaint to the CEO of BMXA. Formal Complaints will be dealt with in accordance with the procedure in **Attachment E**. Nothing in this policy prevents the complainant taking action under state or federal legislation.

### 10.3 Vexatious Complaints & Victimisation

BMXA aims to ensure our Complaints procedure has integrity and is free of unfair repercussions or victimisation. If at any point in the Complaint process the MPIO considers that a complainant has knowingly made an untrue Complaint or the Complaint is vexatious or malicious, the matter may be referred to the Council or the Judicial Committee of Council for appropriate action which may include disciplinary action against the complainant.

BMXA will also take all necessary steps to make sure that people involved in a Complaint are not victimised by anyone for coming forward with a Complaint or for helping to sort it out. Disciplinary measures will be imposed on anyone who victimises another person for making a Complaint.

#### 10.4 Mediation

BMXA aims to sort out Complaints with the minimum of fuss wherever possible. In many cases, Complaints can be sorted out by agreement between the people involved with no need for disciplinary action. The people involved in a formal Complaint - the complainant and the person complained about (respondent) - may also seek the assistance of a neutral third person or a mediator. Lawyers are not able to negotiate on behalf of the complainant and/or respondent.

Mediation may occur either before or after an investigation of a Complaint. If a complainant wishes to try and resolve the Complaint with the assistance of a mediator, the MPIO will, in consultation with the complainant, arrange for a mediator to mediate the Complaint.

#### 10.5 Tribunals

A hearings tribunal may be formed to hear a formal Complaint that has been referred by MPIO, or an alleged breach of the policy. BMXA's tribunal hearings procedure is outlined in the BMXA Disciplinary By-Laws which can be found in **Attachment A**.

Every organisation bound by this policy will recognise and enforce any decision made, and form of discipline imposed, by an appeals tribunal under this policy.

### 11. What is a Breach of this policy

It is a breach of this policy for any person or organisation to which this policy applies, to have been found to have:

- (a) done anything contrary to this policy;
- (b) breached the Code of Conduct;
- (c) brought BMXA into disrepute;
- (d) failed to follow BMXA policies and procedures for the protection, safety and welfare of children;
- (e) appointed or continued to appoint a person to a role that involves working with children and young people contrary to this policy;
- (f) discriminated against or harassed any person;
- (g) victimised another person for reporting a Complaint;
- (h) engaged in a sexually inappropriate relationship with a person that the person supervises, or has influence, authority or power over;
- (i) disclosed to any unauthorised person or organisation any BMXA information that is of a private, confidential or privileged nature;
- (j) made a Complaint they **knew** to be untrue, vexatious, malicious or improper;

- (k) failed to comply with a penalty imposed after a finding that the individual or organisation has breached this policy; or
- (l) failed to comply with a direction given to the individual or organisation during the discipline process.

## 12. Forms of Discipline

If an individual or organisation to which this policy applies breaches this policy, one or more forms of discipline may be imposed. These may include making a verbal or written apology, paying a fine, being suspended or de-registered or having a person's appointment or employment terminated. More information on the range of disciplinary measures and the factors that will be considered before imposing discipline is included in the BMXA Constitution.

## 13. Dictionary

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. State/Territory specific definitions and more detail on some of the words in this dictionary can be sourced from the relevant State/Territory child protection commissions or equal opportunity and anti-discrimination commissions.

**Abuse** 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.

**Child abuse** relates to children at risk of harm (usually by adults, sometimes by other children) and often by those they know and trust. It can take many forms. Children may be harmed by both verbal and physical actions and by people failing to provide them with basic care. Child abuse may include:

- Physical abuse by hurting a child or a child's development (e.g. hitting, shaking or other physical harm; giving a child alcohol or drugs; giving bad nutritional advice; or training that exceeds the child's development or maturity).
- Sexual abuse 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).
- Emotional abuse by ill-treating a child (e.g. humiliation, taunting, sarcasm, yelling, negative criticism, name calling, ignoring or placing unrealistic expectations on a child).
- Neglect (e.g. failing to give food, water, shelter or clothing or to protect a child from danger or foreseeable risk of harm or injury).

**Complaint** means a complaint made under **clause 10**.

**Complainant** means the person making a complaint.

**Constituent Association** means any Constituent Association recognised as such under the BMXA Constitution.

**Constitution** means the constitution of BMXA in force from time to time.

**Discrimination** means treating or proposing to treat someone less favourably than someone else because of a particular characteristic in the same or similar circumstances in certain areas of public life (this is Direct Discrimination). The law also covers **Indirect Discrimination**. This is imposing or intending to impose an unreasonable requirement, condition or practice that is the same for everyone, but which has an unequal or disproportional effect on individuals or groups with particular characteristics. The characteristics covered by discrimination law across Australia are:

- Age;
- Disability;
- Family/carer responsibilities ;
- Gender identity/transgender status;
- Homosexuality and sexual orientation;
- Irrelevant medical record;
- Irrelevant criminal record;
- Physical features;
- Political belief/activity;
- Pregnancy and breastfeeding;
- Race;
- Religious belief/activity;
- Sex or gender;
- Social origin;
- Trade union membership/activity;

Some States and Territories include additional characteristics.

Discrimination is not permitted in the areas of employment (including volunteer and unpaid employment); the provision of goods and services; the selection or otherwise of any person for competition or a team (domestic or international); the entry or otherwise of any player or other person to any competition; obtaining or retaining membership of an organisation (including the rights and privileges of membership).

Requesting, assisting, instructing, inducing or encouraging another person to engage in discrimination may also be discriminatory conduct.

**Harassment** is any type of behaviour that the other person does not want and does not return and that is offensive, abusive, belittling, intimidating or threatening – whether this is face-to-face, indirectly or via communication technologies such as mobile phone and computers. The behaviour is unwelcome and of a type that a

reasonable person would recognise as being unwelcome and likely to cause the recipient to feel offended, humiliated or intimidated.

Unlawful harassment includes the above but is either sexual or targets a person because of their race, sex, pregnancy, marital status, sexuality or other characteristic (see characteristic list under discrimination).

It does not matter whether the harassment was intended: the focus is on the impact of the behaviour. Whether or not the behaviour is harassment is determined from the point of view of the person receiving the harassment. The basic rule is if someone else finds it harassing then it could be harassment. Harassment may be a single incident or repeated. It may be explicit or implicit, verbal or non-verbal.

Discrimination and harassment are not permitted in the areas of employment (including volunteer and unpaid employment); the provision of goods and services including access to sporting facilities; when providing education and accommodation; the selection or otherwise of any person for competition or a team (domestic or international); the entry or otherwise of any player or other person to any competition; obtaining or retaining membership of clubs and organisations (including the rights and privileges of membership).

Some exceptions to state and federal anti-discrimination law apply: Examples include:

- holding a competitive sporting activity for females only who are 12 years of age or over where strength, stamina or physique is relevant; or
- 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 sporting activity.

Requesting, assisting, instructing, inducing or encouraging another person to engage in discrimination or harassment may also be against the law.

It is also a breach of discrimination law to victimise a person who is involved in making a complaint of discrimination or harassment. For example, a player is ostracised by her male coach for complaining about his sexist behaviour to another club official or for supporting another player who has made such a complaint.

Public acts of racial hatred which are reasonably likely in the circumstances 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 state and territories also prohibit public acts that vilify on other grounds such as homosexuality, gender identify, HIV/AIDS, religion and disability - see vilification.

**Junior** means a person under the age of eighteen (18) years who is participating in an activity of BMXA.

**Mediator** means a person appointed to mediate complaints made under this policy. It is preferable that the mediator has relevant skills, qualifications and/or training in mediation.

**Member protection** is a term used by the Australian sport industry to describe the practices and procedures that protect members – both individual members such as players, coaches and officials, and the member organisations such as clubs, Constituent Associations, other affiliated associations and the national body. Member protection involves:

- protecting those that are involved in sport activities from harassment, abuse, discrimination and other forms of inappropriate behaviour
- adopting appropriate measures to ensure the right people are involved in an organisation, particularly in relation to those involved with Juniors, and
- providing education.

**Member Protection Information Officer (MPIO)** means a person appointed under **clause 8.1** trained to be the first point of contact for a person reporting a complaint under, or a breach of, this policy. The MPIO provides confidential information and moral support to the person with the concern or who is alleging harassment or a breach of this policy. They help the complainant deal with any emotions they may have about what has happened and operate as a sounding board as the complainant decides what they want to do. The MPIO may accompany the complainant in anything they decide to do, if it feels appropriate and they are happy to do it.

**Natural justice** incorporates the following principles:

- a person who is the subject of a complaint must be fully informed of the allegations against them
- a person who is the subject of a complaint must be given full opportunity to respond to the allegations and raise any matters in their own defence
- all parties need to be heard and all relevant submissions considered
- irrelevant matters should not be taken into account
- no person may judge their own case
- the decision maker/s must be unbiased, fair and just
- the penalties imposed must not outweigh the 'crime'

**Police check** means a national criminal history record check conducted as a prudent pre-employment or pre-engagement background check on a person.

**Policy** and **this policy** mean this Member Protection Policy.

**Respondent** means the person who is being complained about.

**Sexual harassment** means unwanted, unwelcome or uninvited behaviour of a sexual nature which makes a person feel humiliated, intimidated or offended. Sexual harassment can take many different forms and may include unwanted physical contact, verbal comments, jokes, propositions, display 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.

**Sexual offence** means a criminal offence involving sexual activity or acts of indecency including but not limited to (due to differences under state/territory legislation):

- Rape

- Indecent assault
- Sexual assault
- Assault with intent to have sexual intercourse
- Incest
- Sexual penetration of child under the age of 16
- Indecent act with child under the age of 16
- Sexual relationship with child under the age of 16
- Sexual offences against people with impaired mental functioning
- Abduction and detention
- Procuring sexual penetration by threats or fraud
- Procuring sexual penetration of child under the age of 16
- Bestiality
- Soliciting acts of sexual penetration or indecent acts
- Promoting or engaging in acts of child prostitution
- Obtaining benefits from child prostitution
- Possession of child pornography
- Publishing child pornography and indecent articles.

**Victimisation** means subjecting a person or threatening to subject a person to any detriment or unfair treatment because that person has or intends to pursue their rights to make a complaint under government legislation (e.g. anti-discrimination) or under this policy, or for supporting another person to make a complaint.

**Vilification** involves a person or organisation doing public acts to incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons having any of the attributes or characteristics within the meaning of discrimination. Public acts that may amount to vilification include any form of communication to the public and any conduct observable by the public.

**Young People/person** means people in the 13 – 18 year age group.

## ATTACHMENT A

### BMXA DISCIPLINARY BY-LAWS

#### 1. DISCIPLINARY MATTERS – GENERAL PRINCIPLES

- 1.01 Pursuant to the provisions in Rule 13 of the BMXA Constitution the Board at its sole discretion may deal with any matter of discipline or complaint, broadly referred to as *misconduct*, in accord with the following procedures.
- 1.02 Allegations of *misconduct* by a member may be dealt with by
1. An *official* of the federation as defined in By-Law 2.02.
  2. A *disciplinary tribunal* appointed by the Board
- 1.03 In determining allegations of misconduct an official or disciplinary tribunal will provide all parties affected by the allegations a right to a fair hearing and will respect the following principles:
- a timely hearing;
  - a fair and impartial hearing;
  - the right to seek advice from counsel at the expense of each party;
  - the right to be fairly and timely informed of the allegations;
  - the right to respond to the allegations and resulting consequences;
  - the right of each party to present evidence, including the right to call and question witnesses;
  - a timely and reasoned decision
  - the right to an Appeal (Refer By-Law 6)
- 1.04 During a hearing of a disciplinary matter, the parties are not permitted to be represented by a qualified legal advocate. The parties may seek legal advice and assistance in presenting written submissions. The parties may be assisted in a hearing by another adult who is not legally trained. In the case of minors it is mandatory that they are accompanied by an adult who can assist in representing their interests.
- 1.05 The disciplinary tribunal or an official shall have the power to impose all or any of the following penalties on any member or members
- 1 A reprimand or warning
  - 2 Suspension from any competition or termination of membership of a team for a specified period of time
  - 3 Termination of membership of BMXA and its affiliates for a specified period of time
  - 4 Monetary fines of any specified amount payable within any specified period of time
  - 5 Forfeiture of any competition prizes as specified
  - 6 Any other disciplinary action in accordance with the objects of the BMXA Constitution.

1.06 During disciplinary proceedings a member may continue to participate in the sport subject to the provisions of the BMXA Constitution.

## **2. DISCIPLINARY MATTERS - DEFINITIONS**

2.01 "Misconduct": Without limiting the generality thereof, misconduct shall include:

- 1 Offences against the law of the Commonwealth of Australia or a State or Territory thereof
- 2 Offences against the law of a Country, State, Territory, Province, Town or Village beyond the shores of the Commonwealth of Australia
- 3 Conduct which, when committed beyond the shores of the Commonwealth of Australia (including conduct in aircraft or ships at sea) would, had it been committed within the Commonwealth of Australia, fall within sub clause 1 above
- 4 Conduct, which is detrimental to BMXA and/or contrary to the Code of Conduct of BMXA
- 5 Conduct, which is detrimental to the sport of bicycle motocross
- 6 A member who at any time disobeys the reasonable directions of an official and where such disobedience may lead to a breach of the Code of Conduct; or impede the conduct of the sport; or compromise the safety of members or other persons

2.02. "Official": means any person who for the purpose of the Disciplinary Matter is endorsed by the Board as an official, including;

- 1 The Office Bearers or Executive members of BMXA or a constituent association
- 2 The Chief Commissaire appointed to an event by BMXA or an affiliated body
- 3 A Manager of a State or National team
- 4 The General Manager (GM) of BMXA or a constituent association
- 5 An employee or member of BMXA who has been endorsed by the Board to hold a position of authority or responsibility over the behaviour or actions of other members

Disciplinary Tribunal": where an allegation of misconduct

- a) is unable to be dealt with by an official in accord with the principles of By-Law 1.03; or
- b) has been formally brought to the attention of the Board in regard to an individual member or members or an affiliated entity

the Board will appoint a disciplinary tribunal to adjudicate upon the allegations. The constitution of a disciplinary tribunal shall be:

- 1 An individual with a high level of legal training and experience in arbitration; or
- 2 A panel of two (2) or three (3) persons deemed suitable by the Board whereby a chairperson shall be appointed with experience in legal process or dispute resolution.

- 3 No member of the disciplinary tribunal pursuant to sub clauses 1 and 2 may have been a party to or directly interested in the matter under consideration
- 4 Members of the Board may be appointed to a disciplinary tribunal, subject to sub clause 3.

### **3. DISCIPLINARY MATTERS – PROCEDURE**

The procedure for dealing with allegations of misconduct shall be as follows when dealt with by:

#### **3.01 An Official**

- 1 An official may deal with an offence if;
  - a) He/she observes conduct which in the opinion of the official constitutes misconduct
  - b) A complaint is made either orally or in writing to him by a third person alleging an act of misconduct
- 2 On observing misbehaviour or on receipt of a complaint being made to him by a third person, the official may as soon as possible charge the member with an offence by informing the member of the offence and the facts constituting the offence. The member shall then be permitted to answer the charge
- 3 The official may then deal with the offence forthwith pursuant to the provisions and principles in By-Law 1
- 4 If, as the circumstances may be, the official is unable to deal with the matter within seven (7) days of the occurrence of the offence, they may then refer the matter to the Board to be dealt with pursuant to the provisions of By-Laws 2.03 and 3.02.
- 5 At the conclusion of the hearing the official shall:-
  - a) Dismiss the charge, or
  - b) Find the charges proven and impose a penalty within the provisions of By-Law 1.05; advise the parties of the reasons for the finding and penalty; and advise the person penalised of the right to an appeal.

#### **3.02 A Disciplinary Tribunal**

- 1 Formal advice to the Board of a complaint or allegations of misconduct shall be forwarded to the GM in writing. The GM will inform the Board without delay.
- 2 A disciplinary tribunal will be appointed in accord with By-Law 2.03 within seven (7) days of formal receipt of the allegations.
- 3 The disciplinary tribunal will schedule a date and venue for a hearing within twenty-one (21) days of receipt of the allegations. An extension beyond this period may be allowed with the mutual agreement of the parties.
- 4 If, as the circumstances may be, any party is unable to be present at a hearing, they may participate by tele-conference or other medium as determined by the disciplinary tribunal.
5. The parties will be advised of the charges brought as a result of the allegations and invited to lodge written submissions which must be received by the GM no later than

two business days prior to the scheduled hearing. The GM shall ensure that all written evidence and submissions are distributed to all affected parties and the disciplinary tribunal in a timely manner prior to the hearing.

- 6 The disciplinary tribunal may then deal with the offence forthwith pursuant to the provisions of By-Law 1.
  - 7 The disciplinary tribunal may adjourn a hearing to obtain further information or evidence, or if a charge of misconduct has been found proven, to seek further submissions before imposing a penalty.
  - 8 At the conclusion of the hearing the disciplinary tribunal shall:-
    - a) Dismiss the charges, or
    - b) Find the charges proven and impose a penalty within the provisions of By-Law 1.05; advise the parties of the reasons for the finding and penalty; and advise the person penalised of their right to an appeal.
- 3.03 An official or disciplinary tribunal must forward to the GM a written report outlining their determination of the matter within seven (7) days of the conclusion of the hearing.

#### **4. DISCIPLINARY MATTERS – IN COMPETITION**

- 4.01 In competition, the Chief Commissaire may issue a penalty to a member for an offence against the rules of racing (Technical Regulations) or in determining a protest in accord with the Technical Regulations.
- 4.02 At an Australian Championship, a member who has suffered a penalty pursuant to By-Law 5 during competition shall have the right of appeal to the Chairman of the Appeal Jury.
- 4.03 For all other events where an Appeal Jury has not been constituted, an appeal against a penalty issued in competition must be directed to the Race Jury, consisting of the Chief and Principal Commissaires.
- 4.04 A member who has suffered a penalty pursuant to By-Laws 4.01/02/03, may appeal to the BMXA Board in accordance with the provisions and procedures of By-Law 6.

#### **5. PENALTIES**

- 5.01 As a result of disciplinary procedure in accordance with these By-Laws penalties may be imposed upon members found guilty of misconduct or breach of technical regulations.
- 5.02 Each case shall be determined on its merit and circumstances and penalties shall be imposed giving consideration to the degree of intent or malice or any extenuating circumstances associated with the act of misconduct or breach of technical regulations.

##### **5.03 Monetary Fines**

1. A fine may be imposed to a maximum amount as determined by the Board.
2. The payment of fines shall be forwarded to the BMXA office by a date stipulated by an official or tribunal.

3. Any member who fails to pay a fine or penalty by the stipulated date will have their membership terminated for such period until the fine is paid.

#### **5.04 Termination of Membership of BMXA**

- 1 The start of a period of termination of membership shall commence from the date of the decision unless otherwise stipulated in accord with sub-clause 2 below.
- 2 The period of termination shall be enforced during a period of normal activity for the party concerned. For that purpose the period of termination may be spread over a period or periods of the year as stipulated by an official or tribunal.
- 3 A member upon receiving advice of a penalty including a termination of membership shall surrender their license to BMXA.
- 4 During the period of termination all membership rights are forfeited and the person concerned is not permitted to enter the field of play of a competition venue during competition periods.
- 5 The period of termination of membership must expire before the person concerned is permitted to compete or officiate again at any level.
6. If a further act of misconduct is alleged to have been committed during a period of termination of membership, the period of termination may be extended until the new allegations are dealt with in accord with the disciplinary provisions of these By-Laws.

#### **5.05 Suspended Penalties**

Where an official or a tribunal deem an offence to be as a result of or influenced by extenuating circumstances, all or part of the penalty imposed may be suspended and the person be required to enter into a stipulated period of good behaviour. Any further act of misconduct committed during such a period will automatically invoke the original penalty in addition to any further penalty imposed as a result of the subsequent act of misconduct.

- 5.06 BMXA will advise the Constituent Association of the respective member of any penalty imposed against that member as a result of a disciplinary process implemented in accord with these By-Laws.
- 5.07 When a Constituent Association fails to enforce a penalty imposed upon one of its members that Constituent Association shall be subject to such penalty as the BMXA Disciplinary Committee shall decide.

### **6. APPEALS**

- 6.01 An Appeal Tribunal may be appointed by the Board to hear and adjudicate on any appeal lodged by a member or an affiliated entity against the decision of:
  - 1 An official or disciplinary tribunal established pursuant to By-Laws 1 and 2.
  - 2 A Constituent Association or tribunal set up by a Constituent Association.
  - 3 An official or race jury regarding an offence in competition.

#### **6.02 Grounds for an Appeal**

An appeal may only be lodged by a party directly affected by a decision and where such an appeal is based on the following grounds;

- 1 A member or affiliated entity was not provided with a fair hearing or a proper process was not followed.
- 2 New information or evidence can be presented that was not available at the time of the original decision being appealed against.
- 3 Severity or leniency of the penalty imposed.

### **6.03 Appeal Tribunal**

The Board will appoint an appeal tribunal to determine an appeal lodged in accordance with the provisions of this By-Law. The constitution of an appeal tribunal shall be:

- 1 An individual with a high level of legal training and experience in arbitration; or
- 2 A panel of two (2) or three (3) persons deemed suitable by the Board whereby a chairperson shall be appointed with experience in legal process or dispute resolution.
- 3 No member of the appeal tribunal pursuant to sub clauses 1 and 2 may have been a party to or directly interested in the decision under appeal or the original matter brought for determination.
- 4 Members of the Board may be appointed to an appeal tribunal, subject to sub clause 3.

### **6.04 Appeals Process**

- 1 Formal advice to the Board of an appeal against a decision pursuant to By-Law 6.01 shall be forwarded to the GM in writing within fourteen (14) days of formal advice of the decision being appealed. The GM will inform the Board without delay.
- 2 The lodgement of appeal must be accompanied by payment of an appeal fee as determined by the Board. The fee shall be fully refundable if the appeal is successful.
- 3 The Board shall determine whether the appeal falls within the grounds for appeal pursuant to By-Law 6.02. If satisfied, an appeal tribunal will be appointed within seven (7) days of formal lodgement of the appeal.
- 4 The appeal tribunal will schedule a date and venue for a hearing as soon as possible and no later than twenty-one (21) days after formal lodgement of the appeal.
- 5 If, as the circumstances may be, all parties are unable to be present at an appeal hearing, they may participate by tele-conference or other medium as determined by the appeal tribunal.
6. The parties will be advised of the grounds for appeal and invited to lodge written submissions which must be received by the GM no later than two business days prior to the scheduled hearing. The GM shall ensure that all written submissions are distributed to all parties and the appeal tribunal in a timely manner prior to the hearing.

- 7 The appeal tribunal may then deal with the offence forthwith adhering to the principles of a fair hearing as broadly outlined in By-Laws 1.03/04.
- 8 The appeal tribunal may adjourn a hearing to obtain further information or evidence.
- 9 At the conclusion of the hearing the disciplinary tribunal shall:
  - a) Uphold the appeal and rescind the original decision, or
  - b) Dismiss the appeal; or
  - c) Dismiss the appeal and review the penalty within the provisions of By-Laws 1.05;
- 10 The decision of the appeal tribunal shall be final.
- 11 The appeal tribunal must forward to the GM a written report outlining their determination of the matter within seven (7) days of the conclusion of the hearing.

## **ATTACHMENT B**

### **CODE OF CONDUCT**

As a member of BMXA or of a Constituent Association or a person required to comply with BMXA's member protection policy you must meet the following requirements in regard to your conduct during any activity held or sanctioned by BMXA or a Constituent Association and in any role you hold within those organisations.

1. Respect the rights, dignity and worth of others.
2. Be fair, considerate and honest in all dealing with others.
3. Be professional in, and accept responsibility for, your actions.
4. Make a commitment to providing quality service.
5. Be aware of, and maintain an uncompromising adherence to, BMXA's standards, rules, regulations and policies.
6. Operate within the rules of the sport including national and international guidelines which govern BMXA.
7. Do not use your involvement with BMXA or with a Constituent Association to promote your own beliefs, behaviours or practices where these are inconsistent with those of BMXA.
8. Demonstrate a high degree of individual responsibility especially when dealing with any person under 18 years of age, as your words and actions are an example.
9. Avoid unaccompanied and unobserved activities with any person under 18 years of age, wherever possible.
10. Refrain from any form of harassment of others.
11. Refrain from any behaviour that may bring BMXA or a Constituent Association into disrepute.
12. Provide a safe environment for the conduct of the activity.
13. Show concern and caution towards others who may be sick or injured.
14. Be a positive role model.
15. Understand the repercussions if you breach, or are aware of any breaches of, this code of behaviour.

**ATTACHMENT C**

**MEMBER PROTECTION DECLARATION**

BMXA has a duty of care to its members and to the general public who interact with its employees, volunteers, members and others involved with its activities. As part of this duty of care and as a requirement of BMXA's Member Protection Policy, BMXA must enquire into the background of those applying for, undertaking or remaining in any work (paid or voluntary) that involved direct and unsupervised contact with people under the age of 18 years.

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 offences involving sexual activity, acts of indecency, child abuse or child pornography.
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, acts of violence, intimidation or other forms of harassment.
4. To my knowledge there is no other matter that BMXA may consider to constitute a risk to its members, employees, volunteers, athletes or reputation by engaging me.
5. I will notify BMXA of the organisation(s) engaging me immediately upon becoming aware that any of the matters set out in paragraphs 1 to 4 above has changed for whatever reason.

Declared in the State/Territory of ..... on

..... (date) Signature .....

**Parent/Guardian Consent (in respect of person under the age of 18 years)**

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 D

### SUMMARY OF STATE LEGISLATIVE REQUIREMENTS

#### SCREENING/WORKING WITH CHILDREN CHECK REQUIREMENTS

##### Background

Child protection is about keeping children safe from harm/abuse. Child abuse is illegal, and all States and Territories have their own systems and laws that cover screening and/or the reporting and investigation of cases of child abuse.

Working with Children Check (WWCC) laws aim to prevent people who pose a risk from working with children as paid employees or volunteers. In New South Wales, Queensland, Western Australia, Victoria and South Australia laws require individuals involved in areas such as sport and recreation to undertake a check to determine their suitability to work (in a paid or volunteer capacity) with children. This is done by checking certain criminal history and other matters. In some states this also involves reviewing relevant findings from disciplinary proceedings. There are also requirements placed on organisations.

The Northern Territory government has passed new law and screening will be compulsory from January 2010. The Australian capital Territory and Tasmania are currently reviewing their screening laws. New requirements and amendments will be added to this policy as they are introduced.

State and Territory WWCC requirements may also apply to individuals who visit states with screening laws. For example, if a Constituted Association takes players U18 into New South Wales for training camps, competition or other activities, those travelling with the teams must comply with NSW law.

The State WWCC requirements apply regardless of BMXA's Member Protection Policy or any similar policy adopted by a Constituted Association.

The following attachments provide:

- summary information on State and Territory WWCC requirements and where to obtain more information and relevant forms; and
- BMXA's screening requirements for people residing in ACT and Tasmania.

The BMXA Member Protection Declaration is provided at **Attachment B**.

**C(1) - SCREENING REQUIREMENTS - For States/Territories without Working With Children Checks such as ACT and Tasmania**

This attachment sets out the screening process for people in BMXA who work, coach, supervise or have regular unsupervised contact with people under the age of 18 years.

BMXA will, and also requires its Constituent Associations to:

1. Identify positions (paid or voluntary) that involve working, coaching, supervising or regular unsupervised contact with people under the age of 18 years.
2. Obtain a completed Member Protection Declaration (MPD) (**Attachment C**) from all people who are identified in the above step and keep it in a secure place.
3. Provide an opportunity for a person to give an explanation if a MPD is not provided or it reveals that the person does not satisfactorily meet any of the clauses in the MPD. BMXA (or the Constituent Association) will then make an assessment as to whether the person may be unsuitable to work with people under the age of 18 years. If unsatisfied, it will not appoint the person to the role/position.
4. Where possible, check a person's referees (verbal or written) about his/her suitability for the role.
5. Ask the people identified in step 1 (including people applying for a position and people who currently occupy a position that involves direct and unsupervised contact with people under the age of 18 years) to **sign a consent form** for a national police check.
6. Request (or ask the person to request) a national 'Part Exclusion' police check from the relevant police jurisdiction. This check excludes irrelevant records. If the police check indicates a relevant offence, BMXA (or the Constituent Association) will provide an opportunity for the person to give an explanation, and then it will make an assessment as to whether the person may pose a risk to or be unsuitable to work with people under the age of 18 years. If BMXA (or the Constituent Association) remains unsatisfied then it will not appoint the person to the role.
7. Make an assessment as to whether the person may be unsuitable to work with people under the age of 18 years if the person does not agree to a national police check after explaining why it is a requirement under BMXA's policy. If unsatisfied, BMXA (or the Constituent Association) will:
  - (a) in the case of an existing employee/volunteer, transfer the person to another role which does not require them to work directly and unsupervised with people under the age of 18 years. If this is not possible, then end the appointment; and
  - (b) in the case of someone applying for the position/role, not appoint them.
8. Decide whether to offer the person the position taking into account the result of the police check and any other information BMXA (or the Constituent Association) has available to it. Where it is not practical to complete the police check prior to the person commencing in the position, BMXA (or the Constituent Association) will complete the check as soon as possible, and if necessary, act immediately on the outcome.
9. Protect the privacy of any person who is checked and maintain confidentiality of any information obtained through the checking process.

10. Return information collected during screening (such as a completed MPD form, police records and referee reports) to the relevant person if that person is not appointed to the position, or otherwise destroy such records within 28 days of the date of the decision or the expiry of any appeal period, unless within that time the person requests that the documents be returned to him/her. For appointed persons, information will be kept on file in a secure location.

Where a national police check is obtained under this member protection policy, another organisation which is also required to screen may obtain a copy of the national police check provided that the consent of the relevant person is obtained and the national police check was performed in the immediately preceding two years.

## **C(2) – WORKING WITH CHILDREN CHILD PROTECTION REQUIREMENTS**

The following information was updated in April 2009. It is subject to change at any time.

### **QUEENSLAND**

A person will need a Working with Children Check, also known as the blue card, if they propose to work in a paid or voluntary capacity or to carry on a business in a child-related area regulated by the *Commission for Children and Young People and Child Guardian Act 2000*. Once a person is checked and approved they are issued with a “blue card.” Volunteers and paid employees employed in sporting organisations generally fall under the ‘churches, clubs and associations’ category of regulated employment. Volunteers and paid employees employed in private businesses may fall under the ‘sport and active recreation’ category of regulated employment. The check is a detailed national criminal history check including charges and investigations relating to children.

People such as those with previous convictions involving children are disqualified from applying for or renewing a blue card (refer to website below for details).

A blue card remains current for two years. Existing card holders will be notified by the Queensland Commission for Children and Young People and Child Guardian before their card expires.

In addition to obligations regarding the blue card, employers must develop and implement a written child protection risk management strategy and review it each year.

For more information on the blue card, including current forms: [www.ccyg.qld.gov.au](http://www.ccyg.qld.gov.au) or call 1800 113 611.

### **NEW SOUTH WALES**

All organisations within NSW that employ people in child-related employment (in a paid or unpaid capacity) must meet the requirements of the Working with Children Check (WWCC). Child related employment is work which primarily involves direct unsupervised contact with children. The WWCC involves three components:

1. Ensuring all paid and unpaid employees sign a Prohibited Employment Declaration which states they are not prohibited from working with children.
2. Submitting all applicants for paid employment to NSW Sport and Recreation for a WWCC background check. NSW Sport and Recreation only carries out checks for paid employees.
3. Reporting relevant employment proceedings for any paid and unpaid employees to the Commission for Children and Young People. A relevant employment proceeding involves any reportable conduct committed outside of work as well as in the workplace with or in the presence of a children.

Sporting organisations are responsible for managing the WWCC process. Individuals cannot apply for a WWCC directly. Sporting organisations should register with NSW Sport and Recreation, providing a contact who will receive the information on the background checks.

A WWCC is valid for employment in that position within the organisation. Short-term employees (where that person is being employed for periods of less than six months and returning for short periods throughout a 12 month period) only need to be checked once every 12 months.

For more information, including the required forms: [www.kids.nsw.gov.au](http://www.kids.nsw.gov.au) or call 02 9286 7219 or [www.dsr.nsw.gov.au/children/resources.asp](http://www.dsr.nsw.gov.au/children/resources.asp) or call 02 9006 3700.

## **WESTERN AUSTRALIA**

The Working with Children Check (WWC Check) is a compulsory and rigorous criminal record check for certain people who carry out 'child-related work' in WA. A person is in 'child-related work' if the usual duties of his/her work involves, or is likely to involve, contact with a child in connection with specified categories of work (see the website below for further details). It includes child-related work carried out by paid employees, volunteers, unpaid people and the self-employed. Parents volunteering in connection with their child's activity are exempt (although this does not apply to overnight camps); however they should still be required to complete the non-WWC Check screening process. There are other exemptions, for example volunteers under 18 years old. Further details about exemptions can be found on the website below. Only those in child-related work under the Act may apply.

Applicants will be issued with either:

- An Assessment Notice in the form of a WWC card enabling them to be in all types of child-related work for three years unless there are new offences of concern.
- An Interim Negative Notice, which prohibits them from child-related work until a final decision is made on their application.
- A Negative Notice, which prohibits them from child-related work.

There are set obligations and strong penalties for non-compliance including for employers and volunteer co-coordinators.

For more information: [www.checkwwc.wa.gov.au](http://www.checkwwc.wa.gov.au) or call 1800 883 979 (toll free).

## **VICTORIA**

The Working with Children (WWC) Check creates a mandatory minimum checking standard across Victoria. The *Working with Children Act 2005* requires that some people who work or volunteer in child-related work require a WWC Check. The check involves a national police records check and a review of relevant findings from prescribed professional disciplinary bodies (currently only the Victorian Institute of Teaching). There is an exemption for volunteers whose own children are involved in the particular activity; however they should still be required to complete the screening process.

A person who has no criminal or professional disciplinary history will be granted an assessment notice. This notice will entitle the person to undertake child-related work in Victoria and is valid for five years (unless revoked). A person deemed unsuitable to work or volunteer with children will be given a negative notice and cannot work in child-related work in Victoria.

For more information: [www.justice.vic.gov.au/workingwithchildren](http://www.justice.vic.gov.au/workingwithchildren) or call 1300 652 879.

## **SOUTH AUSTRALIA**

There are provisions under the *Children's Protection (Miscellaneous) Amendment Act 2005* that apply to non-government and volunteer organisations that are entrusted with the care of children or who regularly come into contact with children. These provisions require organisations to have strategies in place to prevent and minimise opportunities for abuse and to appropriately respond when abuse occurs or is suspected, and to implement guidelines and

processes that clearly outline effective and timely responses to child protection issues and steps of action.

Be aware that criminal history reports are likely to be introduced and mandatory for some positions in sporting organisations from 2010/2011.

Staff and volunteers who work with children are mandated notifiers and have a legal obligation to report any suspected child abuse and/or neglect.

For more information: [www.families.sa.gov.au/childsafe](http://www.families.sa.gov.au/childsafe) or call 08 8226 7000.

## **NORTHERN TERRITORY**

From January 2010, all persons employed in child related work, either paid or as a volunteer, must hold a valid clearance notice issued by the SAFE NT Screening Authority. There are penalties for failure to comply. Sports coaches, trainers, team administrators, officials and volunteers of Sporting Organisations that deal with children are caught.

Clearance notices are valid for two years from date of issue unless revoked, and are transferable within employment fields. As a part of the assessment process, SAFE NT will consider the applicant's criminal history record and other relevant information.

For more information contact 1800 SAFE NT (1800 723 368).

**ATTACHMENT E**  
**FORMAL COMPLAINT PROCEDURE**

**NOTE:**

In accordance with clause 2 of this Policy, its application encompasses all BMXA members and Constituents.

In the administration of this Policy, the processes for resolution of a complaint should be exhausted at Club level in the first instance. If unable to be resolved, the matter should then be referred to the respective State association and if subsequently required, to BMX Australia.

In situations where the matter is relevant to an incident or event under direct responsibility or auspices of a State or BMXA or the matter is directly related to an individual representing a State or BMXA, then the complaint should be directed to the respective State or BMXA (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 State or Club all references to 'BMXA' or 'CEO of BMXA' shall be read as the 'affiliated State or Club' or the 'principal administrator or Secretary of the respective affiliated State or Club'.

Where an affiliated State or Club deals with a complaint as an investigation or disciplinary matter, then the principles and procedures set out in BMXA (Disciplinary) By-Laws, will be applicable.

**If an informal Complaint under clause 10.2 is not satisfactorily resolved, a complainant may:**

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

If a complainant decides to make a formal Complaint in writing the CEO of BMXA will, on receiving the formal Complaint and based on the material provided, decide whether:

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

In making the decision(s) outlined above, the CEO of BMXA will take into account:

- whether they have had any personal involvement in the circumstances giving rise to the Complaint and, if so, whether their ability to impartially manage the Complaint is compromised or may appear to be compromised;
- whether, due to the nature of the Complaint, specific expertise or experience may be required to manage the Complaint;
- the complainant's wishes, and the wishes of the respondent, regarding the manner in which the Complaint should be handled;
- whether, due to the nature of the Complaint, the relationship between the complainant and the respondent and any other relevant factors, the Complaint should be referred (or should not be referred) to informal or formal mediation or to a hearings tribunal in accordance with BMXA's Constitution and By-Laws. Relevant factors may include an actual or perceived power imbalance between the complainant and the respondent, the nature of any ongoing working relationship between the complainant and the respondent, and the personal attributes of the complainant and the respondent (for example, if one party does not speak English fluently, some of the possible Complaints resolution mechanisms may not be appropriate);
- the nature and sensitivity of any information or other material that must be provided by the complainant, the respondent, and any of the other people involved in the Complaint;
- whether the facts of the Complaint are in dispute; and
- the urgency of the Complaint, including the likelihood and the consequences (if the Complaint is ultimately proven) that the complainant will be subject to further unacceptable behaviour while the Complaint process set out in these Procedures is being conducted.

If the CEO of BMXA is the appropriate person to handle the Complaint they will, to the extent that these steps are necessary:

- get full information from the complainant about the Complaint and how the complainant wants it resolved (if this information has not already been obtained through earlier steps);
- put the information received from the complainant to the respondent and ask them to provide their side of the story;
- decide whether they have enough information to determine whether the matter alleged in the Complaint did or didn't happen; and/or
- determine what, if any, further action to take. This action may include disciplinary action, appointing a person to investigate the Complaint, referring the Complaint to an informal or a formal mediation session or a hearings tribunal in accordance with BMXA's Constitution and By-Laws and/or referring the Complaint to the police or other appropriate authority.