

## **PREFACE**

Basketball Victoria is committed to the health, safety and well-being of all its members and participants and is dedicated to providing a safe environment for participating in the sport of basketball throughout Victoria.

The positive virtues of involvement in the sport of basketball are well heralded and evidenced by the thousands of young Australians participating in basketball activities and competition across the country each week. The value of regular exercise gained through basketball to an individual's personal health and fitness should not be underestimated, nor the role that social interaction provided through the basketball association environment can play in developing a young person's self esteem and involvement in their local community.

However, harassment in sport can serve to drastically undermine these intrinsic benefits of involvement in basketball. The unfortunate reality is that basketball, as a sport, is not immune from acts of discrimination, harassment and abuse, rather to the contrary, sport may provide an environment which in many cases lends itself to conduct which is not only inappropriate, but also unlawful.

Depending on the nature of the case, instances of harassment or abuse in sport can have devastating effects for not only the individuals involved, but also the sporting organisation itself. Apart from exposing the club or association to potential legal liability, officials may be faced with low morale, an unpleasant environment, higher turnover of personnel and the prospect of long-term damage to the organisation's image and reputation. These are all unnecessary harms which Basketball Victoria is anxious to avoid.

The adoption of the Basketball Victoria Member Protection By-Law reflects Basketball Victoria's dedication to serving and protecting its members and participants throughout all levels of the sport. However, the adoption of the Member Protection By-Law itself is just the first step in affording our members and participants the protection they deserve. The successful implementation and enforcement of this Member Protection By-Law requires the cooperation and commitment of Basketball Victoria members and participants at all levels.

The following Member Protection By-Law conveys a strong message to all Basketball Victoria members and participants, and prospective members and participants, that as a sport, we are committed to ensuring the safety of our most valuable asset well into the future.

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## **PART I – INTRODUCTION**

This Part sets out the purpose of this By-law, who it applies to, when it commences, what words mean and who has responsibilities under the By-law.

### **1. WHAT IS THE PURPOSE OF THIS BY-LAW?**

- 1.1 The purpose of this By-law is to provide guidelines for the protection of the health, safety and well being of all Basketball Victoria members and those who participate in the activities of Basketball Victoria, Governing and Delegate Bodies, Affiliated Associations and Clubs.
- 1.2 This By-law sets out the procedures to be followed in dealing with Harassment and other forms of inappropriate behaviour in an effective, appropriate and timely manner. The By-law provides a procedure for informal and formal resolution of complaints and a procedure for the appeal of such complaints. It also sets out a procedure for protection of minors in basketball by the establishment of proper screening procedures for persons working with minors and the establishment of a Prohibited Person's Register for proscribing certain persons from being in regular contact with minors.

### **2. WHO DOES THIS BY-LAW APPLY TO?**

2.1 This By-law applies to the following organisations and individuals:

- (a) persons appointed or elected to boards of directors, executives and/or committees (including sub-committees) of Basketball Victoria, Governing and delegated Bodies, Affiliated Associations and Clubs;
- (b) employees of Basketball Victoria, Governing and Delegated Bodies, Affiliated Associations and Clubs;
- (c) officials appointed or elected by Basketball Victoria, Governing and delegated Bodies, Affiliated Associations and Clubs in relation to players and/or teams which represent such organisations including coaches, team management personnel such as managers and physiotherapists;
- (d) referees, umpires and other officials involved in the regulation of the sport appointed by Basketball Victoria, Governing and Delegated Bodies, Affiliated Associations and Clubs;
- (e) players who enter any tournament, activity or events (including camps, training sessions, etc) which are held or sanctioned by Basketball Victoria, Governing and Delegated Bodies, Affiliated Associations and Clubs;
- (f) Governing and Delegated Bodies
- (g) Affiliated Associations
- (h) Clubs;
- (i) any other person or organisation, who or which is, a member of, or affiliated to, Basketball Victoria, Governing and Delegated Bodies, Affiliated Associations and Clubs; (including life members);
- (j) any other person or organisation (for example, a parent/guardian, spectator or sponsor) who or which agrees, in writing or otherwise (whether on a ticket, entry form, conditions of entry displayed at a venue etc) to be bound by this By-law.

### **3. WHAT IS THE STATUS OF THIS BY-LAW?**

- 3.1 This By-law is issued by the Board of Basketball Victoria under Article 10.2.2 of the Constitution.
- 3.2 This By-law comes into force on *1 January 2005*.
- 3.3 The reference to Complaints in Part IV shall only include complaints, which arise out of incident(s) occurring on or after *1 January 2005*.

#### 4. WHAT DO WORDS IN THIS BY-LAW MEAN?

Unless the context otherwise requires, in this By-law the following words shall mean:

“**Abuse**” means a form of Harassment.

“**Affiliated Associations**” means those basketball associations which are members of Basketball Victoria in accordance with the provisions of the constitution.

“**Clubs**” means those clubs or organisations (howsoever described), which are members of, or affiliated to, a Governing or Dekegated Body or an Affiliated Association.

“**By-law**” and “this By-law” means this Member Protection By-law.

“**CEO**” means the chief executive officer of an organisation, howsoever described (may include the executive officer, general manager or other similar title).

“**Codes of Behaviour**” means the codes of behaviour developed and issued by Basketball Victoria.

“**Complaint**” means a complaint made under this By-law.

“**Constitution**” means the statement of purposes and rules or constitution of Basketball Victoria as amended from time to time.

“**Discrimination**” means a form of Harassment, as more specifically set out in **Part IV** of this By-law.

“**Existing Appointee**” means a person currently elected, appointed or holding a position, whether by way of employment, contract or otherwise and whether paid or unpaid.

“**Harassment**” has the meaning set out in **Part IV** of this By-law.

“**Mediator**” means a person appointed to mediate disputes and concerns in relations to Complaints under this By-law.

“**Member Protection Declaration**” means a declaration as set out in **Attachment F**.

“**Member Protection Officer**” means a person who may be the first point of contact for someone bringing a Complaint under this By-law.

“**Member Protection Tribunal**” means the tribunal of Basketball Victoria established to hear and determine matters and appeals under this By-law.

“**Police Check**” means a police records check, which conducts a search on a national basis.

“**Preferred Applicant**” means a person short-listed for a position, whether by way of employment, contract or otherwise and whether paid or unpaid.

“**Prohibited Person**” means a person whose name has been entered on the Prohibited Persons Register.

“**Prohibited Person Register**” means the register of Prohibited Persons maintained by Basketball Australia in accordance with this By-law.

“**Registrar**” shall mean the Registrar of a Member Protection Tribunal.

“**their Nominee**” means the person who is, empowered to act in the President’s or the CEO’s absence or at their request.

“**Vilification**” may constitute a form of Harassment or Discrimination, as more specifically set out in **clauses 13.22** and **13.23**.

#### 5. RESPONSIBILITIES UNDER THIS BY-LAW

5.1 Basketball Victoria must:

(a) adopt and comply with the Member Protection By-law of Basketball Australia;

- (b) recognise and enforce any penalty imposed under that By-law;
- (c) publish, distribute and promote this By-law (and any amendments made to it from time to time) to persons under the jurisdiction of this By-law in the manner required by Basketball Australia and make this By-law available for inspection, or provide a copy;
- (d) use any forms, contracts and clauses prescribed by Basketball Australia in order to give effect to that By-law in such documents as contracts, entry forms and player registration forms, as directed by Basketball Australia;
- (e) appoint at least one Member Protection Officer and one Mediator to fulfil the functions set out in this By-law, and to publish and display the names and contact details of such persons to persons under the jurisdiction of this By-law;
- (f) appoint a Registrar to fulfil the functions set out in this By-law and publish and display the name of such person to their members; and
- (g) establish a Member Protection Tribunal in accordance with **clause 6**, to fulfil the functions set out in this By-law.

**5.2** Governing and delegated Bodies, Affiliated Associations and Clubs must:

- (a) comply with this By-law;
- (b) recognise and enforce any penalty imposed under this By-law;
- (c) publish, distribute and promote this By-law (and any amendments made to it from time to time) to persons under the jurisdiction of this By-law in the manner required by Basketball Australia and make this By-law available for inspection, or provide a copy;
- (d) make such amendments to their constitution, rules or by-laws in order for this By-law to be enforceable, as required by Basketball Australia;
- (e) use any forms, contracts and clauses prescribed by Basketball Australia in order to give effect to this By-law in such documents as contracts, entry forms and player registration forms, as directed by Basketball Australia.

**5.3** It is not mandatory for Affiliated Associations and Clubs to establish procedures for dealing with Complaints under this By-law. However, if an Affiliated Association wishes to establish procedures for dealing with Complaints under this By-law, it must appoint at least one Member Protection Officer and one Mediator to fulfil the functions set out in this By-law, and to publish and display the names and contact details of such persons to their members.

**5.4** All other organisations and persons (for example, administrators, employees, officials, coaches, players, parents) to which this By-law applies, must:

- (a) comply with this By-law;
- (b) comply with the Codes of Behaviour (as applicable)

**5.5** Basketball Victoria, Governing and Delegated Bodies, the Affiliated Associations and the Clubs are responsible for taking all reasonable steps to ensure implementation, compliance and enforcement of this By-law.

## PART II - MEMBER PROTECTION TRIBUNAL

### 6. ESTABLISHMENT OF MEMBER PROTECTION TRIBUNAL

- 6.1 Basketball Victoria, shall establish a Member Protection Tribunal, the purposes of which are to:
- (a) decide on the insertion of a person's name onto or removal from, the Member Protection Register in accordance with **clauses 8 and 10** of this By-law; and
  - (b) hear and determine complaints and allegations of discrimination, harassment or vilification referred to it in accordance with this By-law.
- 6.2 For the Member Protection Tribunal there shall be appointed a Registrar who should preferably be a barrister or solicitor or, if after reasonable attempts have been made to obtain one without success, then a person with considerable previous experience in the legal aspects of a disciplinary/hearings tribunal.
- 6.3 A hearing of the Member Protection Tribunal shall be conducted by three (3) persons appointed from a panel of tribunal members established by Basketball Victoria and shall consist of:
- (a) a barrister or solicitor (who shall be the Chairperson) or, if after reasonable attempts have been made to obtain one without success, then a person with considerable previous experience in the legal aspects of a disciplinary/hearings tribunal;
  - (b) a person with a thorough knowledge of the sport;
  - (c) one other person of experience and skills suitable to the function of the Hearings Tribunal,
- provided that** such persons do **not** include:
- (i) a person who is a member of the Board of Basketball Victoria; or
  - (ii) a person who would, by reason of their relationship with the complainant or the person complained about, be reasonably considered to be other than impartial.
- 6.4 The Member Protection Tribunal may conduct its hearings in whatever manner it believes appropriate and may set its own procedures and without limiting the manner in which the hearings may be conducted, may conduct them by teleconference, video conference or otherwise.
- 6.5 To the extent that the rules of natural justice are inconsistent with this By-law they do not apply to a hearing of the Member Protection Tribunal.
- 6.6 The parties to a hearing shall include the complainant, the person complained about and the relevant organisation (being Basketball Victoria, Governing or Delegated Body, Affiliated Association or Club).
- 6.7 Each member of each Member Protection Tribunal established under this By-law shall be indemnified by Basketball Victoria from any claim or action for loss, damages, or costs made against them arising out of, or in connection with, their function as a member of the Member Protection Tribunal under this By-law.
- 6.8 Except as otherwise provided in this By-law or for the purposes of it, all members of the Member Protection Tribunal shall keep all matters relating to the hearing (including but not limited to the nature of the matter, information obtained before and during the hearing and the decision of the Hearings Tribunal) confidential.
- 6.9 To the extent of any inconsistency between the hearing procedure set out in the constitution of Basketball Victoria, or Governing or Delegated Body or Affiliated Association (if applicable) and the hearing procedure set out in this By-law, this By-law shall prevail in relation to all matters under this By-law.

### PART III – PREVENTATIVE ACTION

This Part sets out the requirement for mandatory screening and declarations for certain roles.

#### 7. WHAT IS SCREENING?

- 7.1 One of the ways Basketball Victoria, the Governing and Delegated Bodies, the Affiliated Associations and the Clubs seek to protect the health, safety and well being of minors participating in their activities is to screen people for certain roles.
- 7.2 For the purposes of this By-law, screening shall mean:
- (a) Where practicable, checking the Preferred Applicant's referees;
  - (b) Checking the Prohibited Person Register to verify that the Preferred Applicant is not a Prohibited Person; and
  - (c) Subject to **clauses 8.4 and 8.5**, obtaining a Police Check of Preferred Applicants and Existing Appointees (provided the person is eligible to have such a Police Check conducted).
- 7.3 Checking the Preferred Applicant's referees includes making verbal or written inquiries of their nominated referees (preferably at least 2) as to the Preferred Applicant's suitability for the proposed role and their suitability for involvement with children under 18 years of age.
- 7.4 An individual who is required to be screened, shall arrange to have the Police Check conducted. The Police Check must be forwarded to the requesting organisation directly from the relevant police department. The cost of the Police Check shall, unless otherwise agreed to, be borne by the person who is being screened.

#### 8. WHO IS REQUIRED TO BE SCREENED?

- 8.1 Subject to **clauses 3.3, 8.4 and 8.5**, screening is mandatory for Basketball Victoria, Governing or delegated Bodies, Affiliated Associations and Clubs for Preferred Applicants and Existing Appointees in the following types of roles:
- (a) coaches (including assistant coaches) who are appointed or seeking appointment (whether employed or contracted) by Basketball Victoria, Governing or Delegated Bodies, Affiliated Associations or Clubs for reward;
  - (b) personnel appointed or seeking appointment by Basketball Victoria, Governing or Delegated Bodies, Affiliated Associations or Clubs, who will or are likely to travel away with persons **under** 18 years of age; and
  - (c) persons (including coaches, team managers, administrators, officials, drivers and any other person) appointed or seeking appointment by Basketball Victoria, Governing or Delegated Bodies, Affiliated Associations or Clubs to a role in which that person is likely at any time to have individual and unsupervised contact with persons under 18 years of age.
- 8.2 Screening is highly recommended, but not mandatory, for Preferred Applicants and Existing Appointees for volunteer coaches and team managers appointed or seeking appointment by Basketball Victoria, Governing or Delegated Bodies, Affiliated Associations or Clubs who will or are likely to travel away with teams of players over 18 years of age.
- 8.3 All persons to whom this By-law applies must agree to Basketball Victoria, Governing or Delegated Bodies, Affiliated Association or Club obtaining a Police Check of them if they apply for or currently hold a role of the type set out in **clause 8.1**.
- 8.4 For Preferred Applicants, the Police Check must be carried out:

- (a) in the case of Basketball Victoria, Governing or Delegated Bodies, as well as coaches of Affiliated Associations and Club teams participating in representative competitions conducted by these bodies, prior to the appointment;
- (b) in the case of Affiliated Associations and Clubs, at their discretion, however Basketball Victoria strongly recommends that all persons being appointed to roles set out in **clause 8.1** be subjected to a Police Check, prior to the appointment.

8.5 For Existing Appointees, the Police Check must be carried out:

- (a) in the case of Basketball Victoria, Governing or Delegated Bodies, as well as coaches of Affiliated Associations and Club teams participating in representative competitions conducted by these bodies or Basketball Australia, by **1 January 2005**;
- (b) in the case of Affiliated Associations and Clubs, at their discretion, however Basketball Victoria strongly recommends that all persons occupying roles set out in **clause 8.1** be subjected to a Police Check.

8.6 For the avoidance of doubt, in order to comply with this By-law, Affiliated Associations and Clubs must secure the consent to undergo a Police Check of all Preferred Applicants and Existing Appointees for positions set out in **clause 8.1**. It is highly recommended, but **not mandatory** for such Police Checks to be carried out unless:

- (a) the person is being appointed as coach of a representative team participating in competitions conducted by Basketball Australia, Basketball Victoria or a Governing or Delegated Body; or
- (b) the Police Check is otherwise required by state screening legislation.

## **9. RESULTS OF POLICE CHECKS**

9.1 Where a Police Check has been obtained under this By-law:

- (a) the same organisation may rely on the Police Check; or
- (b) another organisation which is required to screen may, for the purposes of **clause 7.2**, obtain a copy of the Police Check from the original requesting organisation,

provided the consent of the person is obtained and the Police Check was obtained in the last 2 years.

9.2 The purpose of a Police Check is to see whether the person has any previous criminal convictions.

9.3 If the Police Check reveals that the person has been convicted of any criminal offence a copy of the screening result must be forwarded immediately to the Registrar and in the meantime:

- (a) in the case of a Preferred Applicant, they must not be appointed to the role;
- (b) in the case of an Existing Appointee, steps must be taken to transfer the person to another role which does not involve regular contact with persons under 18 years of age or if no such alternatives exist to suspend the person from the role.

**Note: legal advice should be sought before the process of termination begins**

9.4 The Registrar, upon receiving the police check may require that the person who is subject to the check provide any further information about the conviction which the Registrar believes is necessary to make a decision on whether the person is a fit person to be appointed or continue in a role as outlined in **clause 8.1**.

9.5 If the Registrar believes that the person who is subject to the screening should not be precluded from performing the role he or she shall immediately notify the requesting organisation, which may appoint to or allow the person to resume the role.

- 9.6 If the Registrar believes that the person who is subject to the screening is not fit for the role he or she shall immediately notify the requesting organisation and the person, who may by notice in writing no later than seven (7) days after receiving advice, request that the matter be heard by the Member Protection Tribunal.
- 9.7 If the person notified of the Registrar's decision that he or she is not considered fit for the role fails within seven (7) days to request that the matter be heard by the Member Protection Tribunal, the Registrar shall notify the requesting organisation, Basketball Victoria and Basketball Australia and:
- (a) in the case of a Preferred Applicant, the requesting organisation shall not appoint the person to any of the roles;
  - (b) in the case of an Existing Appointee, steps must be taken to transfer the person to another role which does not involve regular contact with children or if no such alternatives exist, to end the appointment of the person.
- Note: legal advice should be sought before the process of termination begins;** and
- (c) Basketball Australia shall enter the person's name on the Prohibited Person's Register.
- 9.8 If a Preferred Applicant or Existing Appointee is not willing to agree to screening, Basketball Victoria, Governing or Delegated Body, Affiliated Association or Club shall:
- (a) in the case of a Preferred Applicant, not appoint the person to any of the roles outlined in **clause 8.1**;
  - (b) in the case of an Existing Appointee, steps must be taken to transfer the person to another role which does not involve regular contact with children or if no such alternatives exist, to end the appointment of the person.
- Note: legal advice should be sought before the process of termination begins .**
- (c) forward the name of the person to Basketball Australia which shall enter the person's name on the Prohibited Person's Register.
- The person must be warned that this will be the result of his or her refusal to undergo the screening**
- 9.9 All information obtained during the course of screening (including any Police Check) must be kept confidential to the persons or committee within Basketball Victoria, the Governing or Delegated Body, Affiliated Association or Club who has been delegated the task of investigating and/or making the appointment for the role, other than is required by or for the purposes of this By-law.
- 9.10 Successful Preferred Applicants or Existing Appointees must immediately advise, in writing, the President or the CEO (or in their absence their Nominee) of the organisation that appointed them if they are convicted of a criminal offence.
- 9.11 At a hearing of the Member Protection Tribunal to decide upon a screening issue, the person appearing before the Tribunal may be represented by a legal practitioner or an advocate.
- Upon hearing a screening matter the Member Protection Tribunal may:
- (a) rule that the person should not be precluded from the role for which they are seeking appointment; or
  - (b) rule that the person is not fit for the role and require that the person not be appointed and that the person's name be entered in the Prohibited Persons Register; and
- all persons shall give effect to the ruling.
- 9.12 A person whose name is on the Prohibited Person's Register may apply at any time to the Member Protection Tribunal that his or her name be removed from the Register. The Tribunal may refuse or grant the application and all persons will give effect to the Tribunal's decision. No person may make a second or subsequent such application within six (6) months of the previous application.

- 9.13 There shall be no appeal from a decision of the Member Protection Tribunal on a screening or Prohibited Persons Register matter.
- 9.14 Screening under this By-law is not a replacement for any similar requirement prescribed by law. If State screening legislation sets an equivalent or higher standard of screening to that set under this By-law, the requirement to screen under this By-law need not be followed as it would be superseded by requirements prescribed by law. Accordingly if a person is prohibited under State or territory law from acting in roles involving persons under 18 years of age, that person's name shall also be entered in the Prohibited Person's Register, upon Basketball Victoria being notified of this fact.

## **10. MEMBER PROTECTION DECLARATION**

- 10.1 In addition to screening, Basketball Victoria, Governing and Delegated Bodies, Affiliated Associations and Clubs require a Member Protection Declaration of all Preferred Applicants and Existing Appointees appointed to a role set out in **clause 8.1**.

Subject to **clause 3.3**, it is mandatory for Basketball Victoria, Governing and Delegated Bodies, Affiliated Associations and Clubs to obtain a Member Protection Declaration from Preferred Applicants and Existing Appointees from the persons who are required by these By-laws to be screened.

- 10.2 It is a breach of this By-law for a Governing or Delegated Body, Affiliated Association or Club to:
- (a) in the case of a Preferred Applicant, appoint the Preferred Applicant who is required by these By-laws to be screened without first obtaining a Member Protection Declaration or to appoint a Preferred Applicant who is a Prohibited Person;
  - (b) in the case of an Existing Appointee, to continue to appoint a Prohibited Person in the roles set out in **clause 8.1**.

- 10.3 The Member Protection Declaration must be obtained, in the case of:

- (a) a Preferred Applicant, prior to the appointment;
  - (i) an Existing Appointee by **30 June 2005**.

- 10.4 If the person required to be screened is unable to sign the Member Protection Declaration he or she may within seven (7) days of being requested to sign the declaration advise the Registrar in writing why the declaration cannot be signed.

- 10.5 If the Member Protection Declaration is not provided and the person fails to provide to the Registrar an explanation of why it cannot be signed within seven (7) days of being required to provide the declaration, Basketball Victoria, Governing or Delegated Body, Affiliated Association or Club must:

- (a) in the case of a Preferred Applicant, not appoint the person to any of the roles;
- (b) in the case of an Existing Appointee, steps must be taken to transfer the person to another role not involving contact with children or if no such alternatives exist, to end the appointment of the person.

**Note: legal advice should be sought before the process of termination begins ; and**

- (c) forward the name of the person to Basketball Victoria and Basketball Australia which shall enter the person's name in the Prohibited Person's Register.
- 10.6 If the person required to sign the Member Protection Declaration provides the Registrar with an explanation as to why he or she is unable to sign the declaration the matter shall be dealt with in the same manner as if the police check has revealed a conviction and the Registrar and the Member Protection Tribunal shall have the same powers and the person the same rights.

- 10.7 Successful Preferred Applicants or Existing Appointees must immediately advise, in writing, the President or the CEO (or in their absence their Nominee) of the organisation that appointed them, upon a matter arising, which would prohibit them from signing the Member Protection Declaration.
- 10.8 Obtaining a Member Protection Declaration under this By-law is not a replacement for any similar requirement prescribed by law. If State legislation sets an equivalent or higher standard to that set under this By-law the requirement to obtain a Member Protection Declaration under this By-law need not be followed, as it would be superseded by any similar requirement prescribed by law. If State legislation sets a lower standard, the Member Protection Declaration would be required to be signed.

## **PART IV – HARASSMENT, DISCRIMINATION AND VILIFICATION**

Basketball Victoria is committed to a policy of a sport, which is free of harassment, discrimination and vilification.

### **11. WHAT CONSTITUTES HARASSMENT, DISCRIMINATION OR VILIFICATION?**

- 11.1 Harassment is any behaviour by a person or organisation which is offensive, abusive, belittling or threatening and which is directed at a person or a group of people because of a particular characteristic of that person or group of people. The behaviour must be unwelcome and the sort of behaviour a reasonable person would recognise as being unwelcome and likely to cause the recipient to feel offended, humiliated or intimidated. Whether or not the behaviour is Harassment is determined from the point of view of the person receiving the Harassment.
- 11.2 Discrimination is treating or proposing to treat a person less favourably than someone else on the basis of an attribute or personal characteristic they have.
- 11.3 Vilification involves a person inciting hatred towards, serious contempt for, or severe ridicule of, a person or group of persons by public act. Public acts that may amount to vilification include any form of communication to the public and any conduct observable by the public.

### **12. TYPES OF HARASSMENT, DISCRIMINATION OR VILIFICATION**

- 12.1 Any form of harassment, discrimination or vilification based on the following grounds is prohibited by this By-law:
- (a) Age;
  - (b) Disability;
  - (c) Marital status;
  - (d) Parental/Carer status;
  - (e) Physical features;
  - (f) Political belief/activity;
  - (g) Pregnancy;
  - (h) Race;
  - (i) Religious belief/activity;
  - (j) Sex or gender;
  - (k) Sexual orientation;
  - (l) Sexual identity;
  - (m) Any other ground prohibited by Commonwealth or Victorian law.
- 12.2 It shall not be a breach of this By-law to discriminate against a person where discrimination is permitted by the relevant law of the Commonwealth or Victorian law or where the safety of the person or other persons may be placed in jeopardy if the person was not discriminated against. For example, relevant law may permit the prohibition of males playing sport against females above a certain age or persons of a certain age playing with older persons because of physical differences which may imperil persons playing. Similarly, persons in wheel chairs may constitute a danger to able bodied athletes.

### **13. EXAMPLES OF HARRASMENT, DISCRIMINATION AND VILIFICATION**

- 13.1 **Sexual Harassment** includes:
- (a) an unwelcome sexual advance; or

- (b) an unwelcome request for sexual favours; or
- (c) any unwelcome conduct of a sexual nature (including a statement, orally or in writing, of a sexual nature),

where the person being harassed felt offended, humiliated or intimidated and this was reasonable in the circumstances.

13.2 Sexual Harassment is often, but need not be, behaviour which either:

- (a) involves blackmail, in that the harassment is accompanied by a direct or implied threat, promise or benefit. For example, a coach who implies that a player's selection to a team is dependent on compliance with a sexual proposition; or
- (b) creates a hostile or sexually permeated environment, in that the harassment consists of crude remarks, jokes, the display of offensive material or makes the environment uncomfortable.

13.3 Examples of Sexual Harassment may include:

- (a) Uninvited touching, kissing, embracing, massaging;
- (b) Staring, leering, ogling;
- (c) Smutty jokes and comments;
- (d) Persistent or intrusive questions about people's private lives;
- (e) Repeated invitations to go out, especially after prior refusal;
- (f) The use of promises or threats to coerce someone into sexual activity;
- (g) The display of sexually explicit material, eg Internet use, computer screen savers, calendars, posters;
- (h) Getting undressed in front of others of the opposite sex;
- (i) Invading the privacy of others while showering or toileting;
- (j) Photographing others while undressing, showering or toileting.
- (k) Encouragement or coercion of a person to change sexual orientation or practices.

13.4 Sexual Harassment may be a criminal offence, for example indecent assault, rape, obscene telephone calls or letters. If you believe that a criminal offence may have been committed you should seek legal advice and/or notify the police. You can do this without divulging the name or identity of the complainant.

13.5 Racial Harassment includes harassment based on colour, descent, national or ethnic origin, cultural activity and sometimes religion.

13.6 Examples of Racial Harassment include:

- (a) Jokes in which race is a significant characteristic of the 'butt' of the joke;
- (b) Hostile comments about food eaten, dress or religious or cultural practices;
- (c) Inferences that all members of a racial or cultural group have particular negative characteristics, such as laziness, drunkenness, greed or sexual promiscuity;
- (d) Parodying accents.

13.7 Sexuality Harassment includes harassment based on actual or assumed homosexuality, heterosexuality, bi-sexuality or transsexuality.

13.8 Examples of Sexuality Harassment include:

- (a) Jokes in which sexuality is a significant characteristic of the 'butt' of the joke;
  - (b) Hostile comments about assumed sexual practices or social activities;
- 13.9 In severe cases, such as threats or acts of violence against a homosexual person, Sexuality Harassment may be a criminal offence. If you believe that a criminal offence may have been committed you should seek legal advice and/or notify the police. The name or identity of the complainant need not be divulged.
- 13.10 Disability Harassment includes harassment based on physical, mental or psychological disability or harassment of an associate or aide of a person with a disability.
- 13.11 Examples of Disability Harassment include:
- (a) Jokes where a particular disability is a significant characteristic of the 'butt' of the joke;
  - (b) Interfering with a disability aid, (eg hearing aid);
  - (c) Obstructing a person in a manner that compounds his or her disability, (eg putting obstacles in the path of a person with a vision impairment);
  - (d) Mocking a person's disability;
  - (e) Hostility based on assumed AIDS or HIV infection.
- 13.12 Abuse may be a form of Harassment. It includes:
- (a) Physical abuse, (eg assault);
  - (b) Emotional abuse, (eg blackmail, repeated requests or demands, excluding someone or 'bastardisation' practices);
  - (c) Neglect, (eg failure to provide the basic physical and emotional necessities of life);
  - (d) Abuse of power, which the harasser holds over the harassed.
- 13.13 Examples of relationships in **clause 13.12(d)** that involve a power disparity include a coach–player, manager–player, employer–employee, doctor–patient. People in such positions of power need to be particularly wary not to exploit that power.
- 13.14 Examples of abusive behaviour include:
- (a) Bullying and humiliation of players by coaches, spectators and parents;
  - (b) Verbal abuse and insults directed by players or parents at opposing participants;
  - (c) Verbal and/or physical abuse of coaches by players, spectators, umpires or parents;
  - (d) Verbal and/or physical abuse of umpires by players, coaches and spectators.
- 13.15 Some forms of Abuse may constitute a criminal offence, for example assault and child abuse. If you believe that a criminal offence may have been committed you should seek legal advice and/or notify the police. You can do this without divulging the name or identity of the complainant.
- 13.16 Basketball Victoria takes the view that intimate relationships (whether or not of a sexual nature) between coaches and players, while not necessarily constituting Harassment, can have harmful effects on the individual player involved, on other players, and on the sport's public image. Such relationships may be perceived to be exploitative because there is usually a disparity between coaches and players in terms of authority, maturity, status and dependence. Given there is always a risk that the relative power of the coach has been a factor in the development of such relationships, they should be avoided by coaches at all levels. In the event that a player attempts to initiate an intimate relationship, the coach must take personal responsibility for discouraging such approaches, explaining the ethical basis for such actions.
- 13.17 Whilst not necessarily constituting harassment, it is an offence under this By-law for any coach, official or other person to whom this By-law applies to be involved in an intimate relationship (of

any nature) with a player under the age of 18 years where that player is directly or indirectly under the control or supervision of that coach, official or other person.

- 13.18 The areas in which Discrimination under this By-law are not permitted are in:
- (a) employment (including unpaid employment) by Basketball Victoria, a Governing or Delegated Body, Affiliated Association or Club;
  - (b) the provision of goods and services by Basketball Victoria, a Governing or Delegated Body, Affiliated Association or Club;
  - (c) the selection or otherwise of any person for competition or a team by or on behalf of Basketball Victoria, a Governing or Delegated Body, Affiliated Association or Club;
  - (d) the entry or otherwise of any player or other person to any competition held or sanctioned by Basketball Victoria, a Governing or Delegated Body, Affiliated Association or Club;
  - (e) obtaining or retaining membership (including the rights and privileges of membership) of Basketball Victoria, a Governing or Delegated Body, Affiliated Association or Club.
- 13.19 Not only is Discrimination unlawful, but Basketball Victoria also considers it is unjust because it may deny people a chance by judging them on the basis of stereotypes or assumptions about what they can or cannot achieve.
- 13.20 Discrimination includes direct Discrimination and indirect Discrimination. Direct Discrimination occurs if a person treats, or proposes to treat, someone with an attribute or characteristic less favourably than someone else without the same attribute or characteristic, in the same or similar circumstances. Indirect Discrimination occurs where a person imposes or intends to impose a requirement, condition or practice, which on its face is not discriminatory, but has the effect of discriminating against a person(s) with a particular attribute.
- 13.21 Requesting, assisting, instructing, inducing or encouraging another person to engage in Discrimination, is also Discrimination.
- 13.22 Discrimination also includes victimisation. Victimisation is where a person is subject to, or is threatened to suffer, any detriment or unfair treatment, because that person has or intends to pursue their legal rights under anti-harassment legislation or under this By-law.
- 13.23 Some forms of Vilification may be a criminal offence, for example where harm is threatened. If you believe that a criminal offence may have been committed you should seek legal advice and/or notify the police. You can do this without divulging the name or identity of the complainant.

#### **14. CODES OF BEHAVIOUR**

To protect the health, safety and well being of all the people participating in basketball activities Basketball Victoria and others have developed and issued Codes of Behaviour.

#### **15. WHAT IS A BREACH OF THIS BY-LAW?**

- 15.1 It is a breach of this By-law for any person or organisation to whom this By-law applies to:
- (a) Fail to comply with any of the responsibilities with respect to screening or the Member Protection Declaration;
  - (b) Appoint, or continue to appoint a person to a role set out in **clause 8.1**:
    - (i) without first undertaking screening; and
    - (ii) obtaining a Member Protection Declaration; or
    - (iii) where the person's name is on the Prohibited Persons Register.
  - (c) Where the person's name is on the Prohibited Person Register, to work or seek work in any role which involves contact with children;

- (d) Engage in any form of harassment, discrimination or vilification;
- (e) Make a frivolous, vexatious or malicious complaint under this By-law;
- (f) Fail to enforce a penalty imposed by or comply with a direction of the Member Protection Tribunal or an appeal body.

15.2 Any circumstances that may be a breach may be the subject of a Complaint and/or referred to a hearing of the Member Protection Tribunal.

## **PART V - COMPLAINTS**

### **16. WHO MAY COMPLAIN?**

16.1 Any person or organisation may make a complaint about a person or organisation to whom this By-law applies, if they consider that person or organisation has, or may have, committed a breach of any part of this By-law (a "Complaint").

### **17. COMPLAINT RESOLUTION PROCEDURE**

17.1 It is not necessary to provide a written Complaint under this clause.

17.2 A person or organisation that has a Complaint ("a complainant") may make an initial approach to:

- (a) a Member Protection Officer;
- (b) the CEO or President (or in his absence his or her Nominee) of Basketball Victoria, a Governing or Delegated Body, Affiliated Association or an Club; or
- (c) another appropriate person within the organisation (eg team manager, coach etc).

17.3 If the person approached is not a Member Protection Officer then that person should advise the complainant of the procedures and of his or her rights under this By-law or refer the complainant to a Member Protection Officer.

17.4 If the person approached is a Member Protection Officer, they may:

- (a) listen to and inform the complainant about their possible options; and/or
- (b) act as a support person for the complainant, including supporting them through any mediation process undertaken to resolve the Complaint.

17.5 The Member Protection Officer will:

- (a) keep the matter confidential and only discuss it with those people whom the complainant has authorised them to speak to about the Complaint;
- (b) inform the relevant governmental authority, if required by law.

17.6 The complainant or the Member Protection Officer or other person to whom the complaint is made shall refer the matter to the Registrar if the complainant is not satisfied with the initial response to the complaint and wishes the complaint to be taken further. The complaint at this stage must be presented in writing to the Registrar.

17.7 If the complaint alleges harassment, discrimination or vilification, the Registrar will determine if the matter is suitable for mediation, taking into account the seriousness of the complaint and the wishes of the complainant.

17.8 If the Registrar believes the complaint may be able to be resolved by mediation, the Registrar shall immediately notify the Mediator of Basketball Victoria, or the relevant Governing or Delegated Body Affiliated Association (if applicable) that a complaint has been made and provide them with a copy of the written complaint.

17.9 If the Registrar does not believe the matter is suitable for mediation he or she shall refer the matter to a hearing of the Member Protection Tribunal.

17.10 The Mediator shall:

- (a) notify the person complained about, in writing, that a complaint has been made and provide them with a copy of the written complaint;
- (b) attempt to mediate a resolution between the complainant and the person complained about.

- 17.11 If an agreed resolution is reached between the complainant and the person complained about, the complaint shall be deemed to have been resolved and no further action in relation to that complaint may be taken (except for that which is agreed) under this By-law.
- 17.12 If the parties fail to reach an agreed resolution at the mediation the Mediator shall refer the complaint back to the Registrar for a hearing of the Member Protection Tribunal.
- 17.13 If a complainant withdraws the complaint (which alleges harassment, discrimination or vilification), no further action in relation to that complaint may be taken (unless required by law) under this By-law.
- 17.14 To avoid any doubt, any complaint relating to:
- (a) Basketball Victoria or a Governing or Delegated Body, shall be referred to the Member Protection Officer of Basketball Victoria and/or the Registrar. ;
  - (b) an Affiliated Association or Club, shall be referred to the Member Protection Officer of the Affiliated Association (if any). If the complaint is not resolved at this level it is then to be referred to the Registrar for resolution in accordance with this By-law. If the Affiliated Association or club has not appointed at least one Member Protection Officer the complaint shall be referred to the Member Protection Officer of Basketball Victoria.
- 17.15 Nothing in this By-law prevents the complainant taking action under State or Federal legislation.

## **18. SUSPECTED BREACHES**

- 18.1 If a Complaint is not received, but the CEO or President (or in their absence their Nominee) or a Member Protection Officer of Basketball Victoria, Governing or Delegated Body or Affiliated Association (if applicable) receives information (whether or not in writing) which gives them reasonable cause to suspect that a breach of this By-law may have been committed, then he or she shall use their reasonable endeavours to advise the person who is suspected of being subject to harassment, discrimination or vilification of the complaints procedure under this By-Law.
- 18.2 Basketball Victoria, Governing or Delegated Bodies or Affiliated Associations, or any official of them may refer a suspected instance of harassment, discrimination or vilification to the Registrar to be dealt with under this By-law, whether or not the person the subject of the harassment, discrimination or vilification has lodged a complaint and the Registrar shall deal with the matter as if a complaint had been made.
- 18.3 Except as otherwise provided in this By-law, all information obtained by the CEO, President, their Nominee, the Member Protection Officer, the Mediator or the Registrar in accordance with this **clause 18** must be kept confidential.

## **19. HEARINGS**

- 19.1 Where a matter is referred for a hearing of the Member Protection Tribunal the Registrar shall as soon as possible do the following:
- (a) Determine the composition of the Member Protection Tribunal;
  - (b) Send to the person complained about:
    - (i) a notice setting out the alleged breach including details of when/where it is alleged to have occurred; and
    - (ii) a notice setting out the date, time and place for the hearing of the alleged breach which shall be as soon as reasonably practicable after receipt of the complaint or information;
    - (iii) a copy of the complaint or the information received if in writing; (“referred to as Notice of Alleged Breach”);

- (c) Send to the complainant(s) and/or the person referring the matter to the Registrar and the Chairperson of the Member Protection Tribunal a copy of the Notice of Alleged Breach.

19.2 Frivolous, vexatious or malicious Complaints

- (a) If within 48 hours of sending the Notice of Alleged Breach, the person complained about alleges in writing to the Registrar that a complaint is frivolous, vexatious or malicious, the Chairperson shall as a preliminary issue, determine whether or not such complaint is frivolous, vexatious or malicious and shall advise the parties of his or her determination.
- (b) The Registrar shall provide to the other parties to the hearing a copy of the written allegation made by the person complained about, that the complaint is frivolous, vexatious or malicious.
- (c) The Chairperson shall determine such preliminary issue as soon as practicable and in whatever manner the Chairperson considers appropriate in the circumstances and in doing so is not bound by the principles of natural justice.
- (d) The decision of the Chairperson shall be final and there shall be no appeal from that decision.

19.3 The purpose of the hearing shall be to determine whether the person complained about has committed a breach of this By-law. If the Member Protection Tribunal considers that the person complained about has committed a breach of this By-law, it may impose any one or more of the penalties or make directions as allowed in this By-law.

19.4 If upon receipt of the Notice of Alleged Breach, the Member Protection Tribunal considers that pending the determination of the matter the person complained about may put at risk the safety and welfare of the complainant or others, it may order that the person complained about be:

- (a) suspended from any role they hold with Basketball Victoria, a Governing or Delegated Body, Affiliated Association or Club; and/or
- (b) banned from any event or activities held by or sanctioned by Basketball Victoria, a Governing or Delegated Body, Affiliated Association or Club; and/or
- (c) required not to contact or in any way associate with the complainant or other person about whom the alleged breach relates,

pending the determination of the hearing.

19.5 There is no right of appeal of the decision by a Member Protection Tribunal under **clause 19.4**.

19.6 Any party to the hearing may be represented at the hearing by any person, including a legal representative.

19.7 Each party to the hearing shall bear their own costs in relation to the hearing.

19.8 The Member Protection Tribunal shall give its decision as soon as practicable after the hearing and will deliver to the following a statement of its written reasons:

- (a) the President or the CEO of Basketball Victoria;
- (b) the complainant;
- (c) the person complained about; and
- (d) any other party represented in the hearing.

## 20. WHAT PENALTIES MAY BE IMPOSED?

20.1 If the Member Protection Tribunal considers that a person or organisation to whom this By-law applies, has breached this By-law, it may impose any one or more of the following penalties:

- (a) **For breaches committed by organisations** : If the Member Protection Tribunal considers that a Governing or Delegated Body, Affiliated Association, Club or any other organisation has breached this By-law, it may impose any one or more of the following penalties on the organisation:
- (i) direct that any funding granted or given to it by Basketball Victoria, a Governing or Delegated Body or Affiliated Association cease from a specified date;
  - (ii) impose a monetary fine for an amount determined by the Member Protection Tribunal;
  - (iii) impose a warning;
  - (iv) recommend to Basketball Victoria or Affiliated Association that its membership of such organisation be suspended or terminated in accordance with their applicable constitution;
  - (v) direct that any rights, privileges and benefits provided to that organisation by Basketball Victoria, a Governing or Delegated Body or Affiliated Association be suspended for a specified period and/or terminated;
  - (vi) direct that Basketball Victoria and/or a Governing or Delegated Body or Affiliated Association cease to sanction events held by or under the auspices of that organisation;
  - (vii) any other such penalty as the Tribunal considers appropriate.
- (b) **For breaches committed by individual persons** : If the Member Protection Tribunal considers that an individual person to whom this By-law applies has breached this By-law, it may impose any one or more of the following penalties on the organisation:
- (i) direct that the offender attend counselling to address their conduct;
  - (ii) recommend that Basketball Victoria, a Governing or Delegated Body, Affiliated Association or the relevant Club terminate the appointment to any role which the offender holds with such organisation;
  - (iii) direct that Basketball Victoria, Governing and Delegated Bodies, Affiliated Association or Club suspend and/or ban the individual from participating in further activities, fixtures, competitions or events a period determined appropriate by the Member Protection Tribunal;
  - (iv) where there has been damage to property, direct that the offender pay compensation to the relevant organisation which controls or has possession of the property,
  - (v) impose a monetary fine for an amount determined by the Member Protection Tribunal;
  - (vi) impose a warning;
  - (vii) in the case of a coach, direct the relevant organisation to de-register the accreditation of the coach for a period or indefinitely;
  - (viii) withdraw any awards, placings, records won in any tournaments, activities or events held or sanctioned by Basketball Victoria, a Governing or Delegated Body, Affiliated Association or an Club;

- (ix) direct the offender to repay all or part of any financial assistance (excluding any fee for service, wages or expenses) given to them by the Australian Sports Commission, any Federal or State funding agency, the Australian Olympic Committee, Basketball Australia, Basketball Victoria, Governing or Delegated Body, Affiliated Association, Club or any other organisation which has provided funding;
- (x) If the nature of the offence is such that the Member Protection Tribunal considers it appropriate, direct that the person's name be entered on the Prohibited Persons Register;
- (xi) any other such penalty as the Member Protection Tribunal considers appropriate.

20.2 If an organisation or individual commits a second or subsequent breach under this By-law then the Member Protection Tribunal shall have regard to the previous breach, the penalty imposed and any other relevant factors, in imposing a penalty for the second or subsequent breach.

20.3 Every organisation to which this By-law applies shall recognise and enforce any decision and penalty imposed by a Member Protection Tribunal under this By-law.

## **21. HOW CAN A DECISION BE APPEALED?**

21.1 Any person (including an organisation) about whom an adverse finding has been made by the Member Protection Tribunal may appeal a decision of the Member Protection Tribunal.

21.2 The appeal shall be made to an Appeals Tribunal established by Basketball Victoria and it shall be established and constituted in the same manner as the Member Protection Tribunal.

21.3 There is only one right of appeal following the decision of the initial Member Protection Tribunal. Any appeal must be solely and exclusively resolved by the Appeals Tribunal and the decision of such Appeals Tribunal is final and binding on the parties. It is agreed that no party to such appeal may institute or maintain proceedings in any court or tribunal other than the relevant Appeal Body. Note: This provision does not prevent any person or organisation taking action under State or Federal legislation.

21.4 The process for such appeal is as follows:

- (a) the party wishing to appeal ("the Appellant") shall within 72 hours of the Member Protection Tribunal delivering its decision to all parties involved advise, in writing, the Registrar of their intention to appeal ("Notice of Intention to Appeal").
- (b) for all appeals as soon as possible after receipt of the Notice of Intention to Appeal, the Registrar shall appoint and convene an Appeals Tribunal to hear and determine the appeal; and
- (c) within 5 days of lodging the Notice of Intention to Appeal, (or such shorter time as determined by the Appeals Tribunal if there is urgency) the Appellant shall:
  - (i) pay the appeal fee to the Registrar, which shall be \$110.00 (including GST) which is non-refundable; and
  - (ii) submit to the Registrar the grounds of the appeal in writing and the Registrar shall make available copies to all relevant persons.

If either of the requirements in this sub-clause are not met by the due time the appeal shall be deemed to be withdrawn;

- (d) on completion of the procedures in (a) to (c), the Chairperson of the Appeals Tribunal shall determine a place, time and date for the hearing of the appeal and as soon as possible thereafter notify all parties to the appeal in writing of such details; and

- (e) the procedure for the appeal shall be the same as the procedure for the Member Protection Tribunal.
- 21.5 Upon hearing the appeal, the Appeals Tribunal may do any one or more of the following:
- (a) dismiss the appeal;
  - (b) uphold the appeal, in whole or in part;
  - (c) impose any of the penalties or directions within the power of the Member Protection Tribunal;
  - (d) reduce, increase or otherwise vary any penalty imposed by the initial Member Protection Tribunal.
- 21.6 The Appeals Tribunal has no power to award costs and each party shall bear their own costs in relation to any appeal.
- 21.7 The President or the CEO of Basketball Victoria shall as soon as possible notify in writing Basketball Australia, each Governing and Delegated Body and each Affiliated Association of the outcome of the appeal. Notification to the Affiliated Association shall be deemed to be notification to all Clubs which are members of the Affiliated Association.
- 21.8 To the extent of any inconsistency between the hearing appeal procedure set out in the constitution of Basketball Victoria, a Governing or Delegated Body or Affiliated Association (if applicable) and the hearing appeal procedure set out in this By-law, this By-law shall prevail in relation to all Complaints under this By-law.
- 22. PROHIBITED PERSON REGISTER**
- 22.1 Basketball Australia shall establish and maintain a Prohibited Person Register for the purpose of giving effect to the objectives of this By-law.
- 22.2 The Prohibited Person Register shall be maintained in an electronic form accessible by authorised representatives of Constituent Associations, League Associations, Governing and Delegated Bodies affiliated associations and clubs via a secure intranet service.



**Statutory Declarations may be made before:**

- A Justice of the Peace or a Bail Justice
- A Notary Public
- A Barrister and Solicitor of the Supreme Court of Victoria
- A Clerk to a Barrister and Solicitor of the Supreme Court of Victoria
- The Prothonotary or a Deputy Prothonotary of the Supreme Court of Victoria
- Registrar or Deputy Registrar of the County or Magistrates' Courts, or of Probate
- Associate to a Judge of the Supreme or County Courts
- Secretary to a master of the Supreme or County Courts
- A Patent Attorney
- Member of the Police
- The Sheriff or a Deputy Sheriff
- Current or former Member of Parliament of Victoria or the Commonwealth
- Councillor or senior officer of a Council
- Medical Practitioner
- Dentist
- Veterinary Surgeon
- Pharmacist
- School Principal
- Manager of an approved deposit taking institution (bank)
- An Accountant who is a member of the Institute of Chartered Accountants, the Society of CPAs or the National Institute of Accountants
- The Secretary of a Building Society
- A Minister of Religion who is authorised to perform marriages
- A Senior Victorian Public Servant
- A Member of the Institute of Legal Executives