

Manly Warringah Basketball Association

Members' Protection Policy.

Sporting organisations have legal obligations in relation to harassment, discrimination and child protection. They also have moral obligations in relation to establishing standards of appropriate behaviour and in providing safe, respectful and appropriate sporting environments.

(Australian Sports Commission <http://www.ausport.gov.au/ethics/memprotpol.asp>)

Introduction

The primary purpose of having a members' protection policy is to provide as safe an environment as possible to ensure the welfare of children who are involved with Manly Warringah Basketball Association (MWBA). **Remember: *child abuse is a criminal offence and there is a mandatory reporting requirement for offences affecting children under the age of 16.***

A safe environment is a key foundation for MWBA's vision to: ***Encourage everyone to have fun and realize their potential through participating in basketball and contributing to a successful community. MWBA has a zero tolerance of illegal behavior.***

Our policy is based on some essential principles in Commonwealth and New South Wales legislation. Our obligation is to behave within these laws and we will do our utmost to provide a duty of care to see that our members do not become victims of, or intend to behave in a manner that is seen to be, an act of Discrimination, Harassment, causing or contributing to Child Abuse.

Any member can make a complaint to the MWBA, on behalf of their children, the children in their care or directly relating to their personal experiences. The MWBA has a Member Protection Officer (MPO) that will address complaints. Any matters that are considered possible breaches of the law will be referred to appropriate agencies. This may mean you will be advised to make your complaint directly with the Police or the Anti Discrimination Commissioner. It also means you might get a visit from these agencies if your behavior leads to allegations of serious misconduct.

The Board of MWBA want you, your family and friends to enjoy your basketball and to contribute to the successful community we belong to. Hopefully the policy based decisions and actions will rarely be required.

Principle based

MWBA's policy is principle based. We aren't laying down the letter of the law as we respect that you are intelligent people and can be guided by a sense of 'fair play'. We don't need to rewrite laws that are already in force but we will do our best to uphold them. **Remember: *discrimination and harassment on any grounds listed in anti-discrimination legislation are against the law.***

Who it applies to

The policy applies to you and a wide range of people including but not limited to:

- ✓ Players, Coaches, Managers, and other team officials participating in any fixture, game or training session organized or sanctioned by MWBA
- ✓ Referees, bench and statistics officials participating in any fixture, camp, trials, game or training session organized, held or sanctioned by MWBA
- ✓ Members of the Board of MWBA
- ✓ Staff members, paid or volunteer
- ✓ Contracted companies, partnerships or other entities whose employees, partners or directors perform direct responsibilities for MWBA
- ✓ Members and affiliates of the Association through BNSW and those who are required to register with BNSW under its bylaws, whether or not they have so registered.
- ✓ Persons participating in Development activities and, if under the age of 18, their parents or guardians
- ✓ Guests of any of the foregoing at any fixture, game, or training session organised , held or sanctioned by MWBA
- ✓ Spectators with or without tickets, at any fixture, game or training session organised by MWBA or in which representative of MWBA participate.
- ✓ Volunteers performing tasks on behalf of MWBA, any of its committees or teams within NSW

Alternative actions available

You are legally required to report any incidents of child abuse to Police. Current penalties are \$22,000 for failing to report. For more information contact DOCS Helpline on 132 111 or visit the DOCS website: www.community.nsw.gov.au.

The MWBA will exercise its discretion in appraising complaints and the decisions will be based on the principles of this policy. People are quite within their rights to seek advice regarding Discrimination and Harassment issues from the Human Rights & Equal Opportunities Commission (HEROC) website: www.humanrights.gov.au. For general inquiries phone 02 92849600 or the complaints info line 1 300 656 419.

Definitions

We have directly used the words from the main authorities in Australia.

Child means any person who is under the age of 16 years. (*Children and Young Persons (Care and Protection) Act 1998*) (*Note: **young person** means a person who is aged 16 years or above but who is under the age of 18 years.*)

Child abuse as defined by the Department of Community Services (DOCS)

There are different forms of child abuse. These include neglect, sexual, physical and emotional abuse.

Neglect

Child neglect is the continued failure by a parent or caregiver to provide a child with the basic things needed for his or her proper growth and development, such as food, clothing, shelter, medical and dental care and adequate supervision.

Sexual abuse

Sexual abuse is when someone involves a child or young person in a sexual activity by using their power over them or taking advantage of their trust.

Often children are bribed or threatened physically and psychologically to make them participate in the activity.

Child sexual abuse is a crime.

Physical abuse

Physical abuse is a non-accidental injury or pattern of injuries to a child caused by a parent, caregiver or any other person.

It includes but is not limited to injuries which are caused by excessive discipline, severe beatings or shakings, cigarette burns, attempted strangulation and female genital mutilation.

Injuries include bruising, lacerations or welts, burns, fractures or dislocation of joints.

Hitting a child around the head or neck and/or using a stick, belt or other object to discipline or punishing a child (in a non-trivial way) is a crime.

Psychological Abuse or Harm

Serious psychological harm can occur where the behavior of their parent or caregiver damages the confidence and self esteem of the child or young person, resulting in serious emotional deprivation or trauma.

Although it is possible for 'one-off' incidents to cause serious harm, in general it is the frequency, persistence and duration of the parental or carer behavior that is instrumental in defining the consequences for the child.

This can include a range of behaviors such as excessive criticism, withholding affection, exposure to domestic violence, intimidation or threatening behavior.

(www.community.nsw.gov.au)

NOTE: Examples of conduct that would not constitute *reportable conduct* include (without limitation) touching a child in order to attract a child's attention, to guide a child or to comfort a distressed child; a coach or manager raising his or her voice in order to attract attention or to restore order in the team; and conduct that is established to be accidental. (Adapted from *25A Ombudsman Act (NSW) 1974*)

Harassment has been defined by the NSW Government as:

In terms of anti-discrimination law, harassment is any form of behavior that:

- you do not want;
- offends, humiliates or intimidates you; and
- targets you because of your sex, pregnancy, race, age, marital status, homosexuality, disability, transgender (transsexual) status or carers' responsibilities.

If you would like more information we suggest you visit the NSW Government Anti Discrimination Board's website: www.lawlink.nsw.gov.au

Natural Justice the important point about extending natural justice to an individual is that it enables the person to participate meaningfully in the process of decision-making. The rules of natural justice incorporate fundamental ideas or values, including equality, non-discrimination, impartiality and basic fairness. The natural justice principle also has an inherent instrumental value which highlights the importance of fair procedures for securing accurate outcomes (Kneebone, Melbourne Law Review, www.austlii.edu.au). *Note: Natural Justice is not prescribed by any legislation.*

Racial Discrimination (HEROC www.humanrights.gov.au)

Racial discrimination happens when someone is treated less fairly because of their race, colour, descent, national origin or ethnic origin than someone of a different 'race' would be treated in a similar situation. This is known as 'direct discrimination'.

Racial discrimination can also happen when a policy or rule that treats everyone in the same way has an unfair effect on more people of a particular race, colour, descent, or national or ethnic origin than others. This is known as 'indirect discrimination'. Unlike direct discrimination, indirect discrimination may be justified if the policy or rule is reasonable and relevant to the particular circumstances.

The *Racial Discrimination Act 1975* (Commonwealth) makes racial discrimination unlawful in Australia. The legislation covers all of Australia and can be used to ensure everyone is treated equally, regardless of their race, colour, descent, or national or ethnic origin.

For the full definitions please refer to the *Racial Discrimination Act 1991* Part II—Prohibition of racial discrimination, Section 9: Racial discrimination to be unlawful. Ask the MWBA staff if you would like some assistance to obtain a copy of this. See also *Human Rights and Equal Opportunity Commission Act 1986*, Section 3: Interpretation.

Vexatious as defined in the *Judicial Officers Act* (Sect 38) “as any person habitually and persistently, and mischievously or without any reasonable grounds, makes complaints”.

Frequently Asked Questions (FAQs)

What is it?

The policy is a basis for administrative decisions to be made that will address people’s actions that are alleged to be inappropriate and have resulted in formal complaints of misconduct. The context of this policy is addressing behavior concerning:

- Child Abuse
- Discrimination
- Harassment

What it isn’t?

The policy does not cover behavior or events in the context of:

- Accidents
- Grievances relating to:
 - i. MWBA’s operational or business conduct
 - ii. Competency of officials and staff whether volunteer or paid
 - iii. Perceptions of unfair treatment, (but not illegal discrimination) during, preceding or otherwise pertaining to any game, training session, trials or other fixture or in the organization thereof.

How does MWBA promote a safe environment for children?

MWBA administration, including the Board, have put in place the following measures:

- Prohibiting *physical or verbal* abuse against children by anyone.
- Carefully selecting and screening persons whose role requires them to have regular contact with children in accordance with the relevant legislation.
- Ensuring our codes of conduct are promoted, enforced and reviewed. Promotion may include posting these policies on our website, or in the stadium (as allowed under our lease conditions) or through mailouts or other distributions to members.
- Delivering procedures for raising concerns or complaints with regard to the welfare and safety of children.

- Providing education and information on child protection all our staff, members, spectators and other supporters.
- Ensuring all its appointed administrators, coaches, managers and court officials whose duties may include working with children whether paid or volunteer to disclose whether or not they are a prohibited person under the *Child Protection (Offenders Registration) Act*
- Requiring coaches and managers of junior or miniball teams in the local competition to disclose whether or not they are a prohibited person.
- Rejecting applications for appointment or recommendations of a prohibited person to any role within the Association.

Why do we have it?

MWBA is required to conform to best practice in sporting organisations as decreed by the Australian Sports Commission (see www.ausport.gov.au). The Government agencies responsible for funding sport are requiring organisations to demonstrate their commitment to best practice in the administration of sport. MWBA acknowledges that for the most part people are well behaved and throughout the 50 plus years of MWBA there haven't been any actions requiring formal intervention from Police or Anti Discrimination agencies. We are planning to continue proud record.

What are the expectations?

We are all responsible for ensuring appropriate behavior at any venue under the administration of the MWBA. This includes our satellite court hires.

The main expectation is that MWBA will provide a safe environment for the participation in sport of players, coaches and managers, officials, volunteers and spectators.

Any complaints made to the MPO will be given appropriate consideration and formal complaints of a serious nature are likely to be referred to Police.

The MPO may dismiss at any stage any proceedings before it if it considers the proceedings to be frivolous, vexatious, not made in good faith or otherwise misconceived or lacking in substance.

Are there any guarantees of natural justice?

MWBA advocates natural justice and this means allegations of misconduct that directly involve your behavior will be addressed with you.

Who investigates serious complaints?

MWBA will provide full cooperation with an investigating authority and that may mean providing them with video recordings of games or anything else of assistance including access to information databases for addresses and personal details.

The *Human Rights & Equal Opportunities Act* (Commonwealth 1986) provides the HRECO Commission with very strong powers to compel people to give evidence or provide documents. (See Sections 22 – 26 of the HREOC Act)

What are the expectations of me?

It is simple and here are some things to keep in mind:

- ✓ Act with common sense and like a decent human being trying to fit into the community you are part of.
- ✓ Act in a responsible manner that displays consideration for the people that you are sharing your basketball experience with.
- ✓ Don't turn a blind eye or tolerate bad behavior.
- ✓ Tell your team mates to "pull their heads in" if they are abusing referees;
- ✓ Tell unruly spectators when their "enthusiasm" is over-stepping the mark – or identify them to the stadium management.
- ✓ You may be required to provide assistance to investigating bodies, whether it is the MPO or the Police.

What are the consequences?

The first consequence to expect if your behavior is perceived by someone else to be inappropriate is that you will be given feedback and asked to give an account of your behavior.

If the allegation or formal complaint is of such a serious nature that it is referred directly to Police then MWBA will have no role to play in how your behavior is addressed.

If your behaviour is found to be in breach of the law you can be prosecuted. This includes harassment, assault, discrimination. If you are found guilty in the law courts you will be convicted and subject to sentencing as determined by the courts.

If your behaviour is of such a nature to be the subject of an official complaint you may be suspended from playing, asked to leave the stadium and banned for a determined duration or any other action deemed to be reasonably applicable. These matters are taken seriously so expect that consequences will potentially be serious including the possibility of being expelled from MWBA.

Remember: ***MWBA will provide full cooperation with any investigating authority and in accordance with current legislation that means providing them with video recordings of games or anything else that may be of assistance or considered to be evidence. If after investigation, we find that serious disciplinary action is justified, we are required to report the name of the accused to a national database maintained by the Commission for Children and Young People.***

When can it happen?

Matters involving Child Abuse do not have a statute of limitations. That means that serious complaints can be made at any time.

How does it work?

If it is a report of child abuse it is your responsibility to report it directly to the authorities, you cannot transfer this responsibility to anyone else including the MWBA.

To commence this process you formally lodge your complaint in writing to the MWBA. Email is acceptable; SMS and Text messages are not. MWBA prefers signed hardcopy please. The MPO operates under a set of guidelines congruent with this policy. These are not explained in this policy, but are available upon request. The general process/procedure is shown in the flow chart.

Note: *If you choose to email you will need to put your contact details so your identity can be verified (e.g.: name@ispdomain.com.au doesn't tell us who you are).*

If I make a complaint, will it be kept confidential?

The MWBA respects people's right to privacy. If possible, the complaint will be kept confidential; however this is dependent on the nature of the allegation and the level of investigation it requires.

Can I appeal any decisions made by MPO?

Yes. There are limited avenues for appeal. These are through the local legal courts. Decisions and actions taken by the MPO are discussed with and sanctioned by the Board.

What is the policy on transgender participation?

If there are any complaints about this matter MWBA will abide by the *Anti-Discrimination Act (NSW)* which addresses conditional transgender participation.

What is the policy for people with disabilities?

This matter is addressed by the *Anti-Discrimination Act (NSW)* which states (Sect 49R):

Nothing in this Part renders unlawful discrimination against a person on the ground of disability, being discrimination consisting of the exclusion of the person from a sporting activity:

- (a) if the person is not reasonably capable of performing the actions reasonably required in relation to the sporting activity, or
- (b) if the persons who participate or are to participate in the sporting activity are selected by a method which is reasonable on the basis of their skills and abilities relevant to the sporting activity and relative to each other, or
- (c) if the sporting activity is conducted only for persons who have a particular disability and the person does not have that disability.

What are some examples of unacceptable behavior towards children?

Any treatment that may be considered to be not in the best interests of the welfare and safety of children can be considered as child abuse, but not to the extent of serious child abuse and includes, but is not limited to:

- Training that exceeds the child's development or maturity.
- Touching in a manner that embarrasses the child.
- Threatening physical abuse.
- Verbal abuse such as taunting, sarcasm, swearing, public negative criticism, name calling, comments of a sexual or threatening nature.
- General bullying such as repeated practical jokes.
- Placing unrealistic expectations on a child.

This applies to behavior of children to other children, not just the behavior of adults.

What are some examples of harassment?

The policy is congruent with MWBA's codes of conduct and you should be familiar with the behavioural requirements that they state.

The following behaviour is considered automatically as being harassment provided the actions are loud enough to be heard on court or are disruptive to the game or the spectators or officials of the game.

These are some common examples (but not limiting the scope of harassment):

- ✗ Chastising a referee's decision, performance, intelligence, or abilities (mental or physical).
- ✗ Threatening or insulting a referee
- ✗ Swearing
- ✗ Causing or participating in a disturbance among the spectators
- ✗ Entering upon the court or handling the ball in anyway except to restore it to the referee
- ✗ Condemning a coach's play plan, substitutions or other game related activity.
- ✗ Second guessing a coach by trying to influence his decisions during or relating to a game.
- ✗ Sledging a player's actions or ability.

Is this policy culturally/religiously sensitive?

MWBA acknowledge that there are many different cultures and religions and therefore different behaviours that have associated consequences. Many aspects of cultural and religious diversity aren't widely known by people from different cultures or religions. We would encourage you to help create an awareness of any specific requirements of the culture or religion you identify with.

Parents are encouraged to make the situation known to both the MPO and the coach or other people that may become involved, preferably before a situation that might be disrespectful or embarrass their children occurs.

What about normal stress of competition and coaching?

Basketball is considered to be a non-contact sport. Inevitably there is a lot of contact and one of the reasons why there are referees is to minimize unnecessary physical contact. In this context within basketballing activities the following would not normally be considered ill treatment of a child even though in the mind of a child or a parent, a child may have endured physical or emotional stress. These include:

- Failure of selectors to choose a child for a squad or a particular team for whatever reason.
- Failure of a coach to select a child to be on the starting team, or to play the child in a particular position for whatever reason or to give a child more or less playing time during games.
- Perceived failure of a coach to train a child to any particular standard.
- Decisions or repeated decisions by referees that seem to be unfair, or excessive to the complainant.
- Positive gestures, physical or otherwise, that normally would be seen to compliment, encourage or seek to improve the performance or skills of a child.
- Administrative decisions to refuse a team or a particular child the privilege of playing or training due to unpaid financial obligations on a child's or his/her team's behalf.

Are there any exceptions to discrimination?

Yes there are some exceptions to discrimination. These are categorized under the exemption provisions of the *Anti-Discrimination Act* (NSW). MWBA will address these issues on a case by case basis when and if they are brought to their attention.

There are some aspects of administration by MWBA that do not constitute discrimination but are sound safety decisions on behalf of any player or other participant. :

- ✓ That excluding a person's playing basketball on medical grounds does not constitute discrimination but rather a risk management and safety issue on behalf of the player and other participants. This applies to:
 - Medical conditions
 - Injuries whether caused by basketball play or not
 - Pregnancies.
- ✓ MWBA requires that it be informed by any person whose medical practitioner has advised against playing basketball. MWBA may require that those persons sign a special waiver if they elect to play against medical advice. MWBA may also require a medical practitioner's certificate of fitness to play before allowing participation.
- ✓ That in the event that a player knows he or she has a condition where a medical practitioner should be consulted for an opinion regarding playing the sport and fails to do so or fails to notify MWBA of the fact, the player will be totally responsible for any adverse outcome as if they had signed a waiver.
- ✓ In the event that MWBA becomes aware of the condition it may require either a signed waiver or medical practitioner's certificate of fitness to play before allowing participation.

Is there any protection for me against vexatious complaints?

All complaints are initially taken seriously. MWBA undertakes establishing the integrity of any complaint. As previously stated in this policy if the complaint is frivolous, vexatious or not made in good faith MWBA will decline to pursue the matter. If a complaint is vexatious and deceptive to later be exposed as vexatious MWBA will provide assistance to the victim of the complaint. This may result in that subject pursuing the matter in other legal arenas such as defamation courts. MWBA will also consider the ongoing relationship the vexatious complainant may have with the Association.

Where can I get more advice?

If you would like more information or are seeking advice please contact MWBA on 02 9913-3622 or email: mwba@manlybasketball.com.au. Also see the contacts listed throughout this policy document.

MEMBER PROTECTION POLICY PROCESS

