

Cricket Australia

Anti-Harassment Code for Players and Player Support Personnel

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ANTI-HARASSMENT CODE FOR PLAYERS AND PLAYER SUPPORT PERSONNEL

1 INTRODUCTION

- 1.1 Harassment is a form of discrimination. Harassment is prohibited by certain Commonwealth legislation including the *Human Rights and Equal Opportunity Act* and the *Sex Discrimination Act* as well as by particular legislation in effect in the States and Territories of the Commonwealth of Australia.
- 1.2 Harassment is offensive, degrading and threatening. In its most serious forms harassment can be an offence under state and federal law.
- 1.3 Bullying is repeated unreasonable or inappropriate behaviour by an individual towards another individual, that creates a risk to health and safety. It can be an offence under state and federal law.
- 1.4 Cricket Australia is committed to providing a sport environment free of harassment or bullying.
- 1.5 Harassment and bullying as defined in this Code is prohibited.
- 1.6 Cricket Australia encourages the reporting of all incidents of harassment or bullying, regardless of who the offender may be.
- 1.7 This Code applies to all persons subject to the Cricket Australia Code of Conduct.
- 1.8 This Code applies if a person is subjected to harassment or bullying which occurs during the course of any Cricket Australia business, activities, competitions, matches or events, including online conduct.

2 DEFINITIONS

- 2.1 Harassment takes many forms but can generally be defined as comment, conduct, or gesture directed toward an individual or group of individuals which is insulting, intimidating, humiliating, malicious, degrading or offensive. A single incident is enough to be harassment.
- 2.2 For the purposes of this Code a person sexually harasses another person (the '*person harassed*') if the person:
 - (a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
 - (b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed, including without limitation when:
 - (I) submission to or rejection of this conduct is used as the basis for making decisions which affect the person harassed;
 - (II) such conduct has the purpose or effect of interfering with the person harassed's athletic performance; or
 - (III) such conduct creates an intimidating, hostile or offensive environment for the person harassed, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated. In paragraph (ii), 'conduct of a sexual nature' includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.
- 2.3 Types of behaviour which constitute harassment include but are not limited to:
 - (a) written, verbal or physical abuse, threats or intimidation;
 - (b) the display of visual material which is offensive or which one ought to know is offensive;

- (c) unwelcome remarks jokes, comments, innuendo or taunting about a person's looks, body, attire, age, race, religion, sex or sexual orientation;
- (d) leering or other suggestive or obscene comments or behaviour;
- (e) condescending, paternalistic or patronising behaviour which undermines self esteem, diminishes performance or adversely affects working conditions;
- (f) practical jokes which cause awkwardness or embarrassment, endanger a person's safety or negatively affect performance;
- (g) unwanted physical contact including touching, petting, pinching or kissing;
- (h) unwelcome sexual flirtations, advance requests or invitations; or
- (i) physical or sexual assault.

2.4 Sexual harassment is proscribed by this Code. A single incident is enough to be sexual harassment.

2.5 Bullying is defined as repeated unreasonable or inappropriate behaviour by an individual towards another individual, that creates a risk to health and safety. Bullying can be obvious harm such as verbal abuse or physical assault. But it may also be subtle, such as psychological.

2.6 For the purposes of this Code bullying can include:

- (a) Physical or verbal abuse;
- (b) Yelling, screaming or offensive language;
- (c) Isolating, ignoring or excluding co-workers or team members;
- (d) Ganging-up on a team member;
- (e) Psychological harassment;
- (f) Intimidation;
- (g) Assigning meaningless tasks unrelated to the job;
- (h) Setting unrealistic targets that cannot reasonably be met
- (i) Calling someone names or using put-downs;
- (j) Homophobic, biphobic, transphobic or interphobic behaviour;
- (k) Undermining work performance by deliberately withholding information; and
- (l) Spreading rumours about co-workers or team members.

2.7 For the purposes of this Code retaliation against a person:

- (a) for having filed a complaint under this Code;
- (b) for having participated in any action under this Code; or
- (c) for having been associated with a person who filed a complaint or participated in any procedure under this Code,

will not be tolerated.

2.6 For the sake of clarity, the application of this Code is not limited to "sexual harassment" and will cover any circumstances or types of behaviour that can constitute harassment or bullying.

3 RESPONSIBILITY AND PROCEDURE

- 3.1 Cricket Australia in conjunction with the Conduct Commission (as established by Appendix 4 of the Cricket Australia Code of Conduct) shall be responsible for the implementation of this Code, including:
- (a) investigating formal complaints of harassment or bullying in a sensitive, responsible and timely manner and imposing appropriate disciplinary or corrective measures when a complaint of harassment or bullying has been substantiated, regardless of the position or authority of the offender (as set out in clauses 4 - 9 of this Code);
 - (b) providing advice to persons who experience harassment or bullying;
 - (c) informing both complainants and respondents of the procedures contained in this Code and of their rights under the law; and
 - (d) reviewing the terms of this Code at least annually to ensure that they adequately meet Cricket Australia's legal obligations and public policy objectives.
- 3.2 In the event that a Conduct Commissioner is involved in a complaint which is made under this Code, an alternative Commissioner shall be appointed for the purposes of dealing with the complaint.

4. LODGING A COMPLAINT

Where a person ("the **Complainant**") believes they or another person has been subjected to harassment or bullying under this Code, the Complainant may lodge a complaint with the Cricket Australia Head of Integrity.

5. WHAT MUST A COMPLAINT CONTAIN

5.1 A Complaint must:

- (a) be in writing;
- (b) outline the circumstances of the allegations made; and
- (c) if possible, be accompanied by supporting documentation.

6. PROCEDURE FOLLOWING RECEIPT OF COMPLAINT

6.1 The Cricket Australia Head of Integrity shall upon receipt of a complaint:

- (a) inform the person alleged to have contravened the Code ("the Respondent") of the complaint and provide that person with both a copy of the complaint and an opportunity to respond in writing; and
- (b) conduct or procure the conduct of an investigation into the allegations made in the complaint, which investigation may include, but is not limited to:
 - i. compiling a list of witnesses;
 - ii. obtaining a written statement from any available witness; and
 - iii. obtaining other evidence.

6.2 When the investigation is completed, the Cricket Australia Head of Integrity may:

- (a) dismiss the complaint if they believe it is frivolous or vexatious;
- (b) refer the matter to a process of conciliation, unless the Cricket Australia Head of Integrity determines, acting reasonably, either:
 - i. that the circumstances of the matter do no merit resolution by conciliation; or

- ii. there is a genuine and reasonable concern that a just and appropriate resolution of the matter will not be reached through a process of conciliation; or
 - (c) refer the complaint direct to a Cricket Australia Conduct Commissioner (“the Commission”) to determine the complaint pursuant to clause 8 of this Code.
- 6.3 The Cricket Australia Head of Integrity may delegate to an officer or agent of Cricket Australia any of their powers or functions under this Code.

7. CONCILIATION PROCESS

- 7.1 Following the determination to refer the matter to a process of conciliation under clause 6.2(b), the Cricket Australia Head of Integrity shall notify the following individuals of their entitlement to have the matter referred at the first instance to a process of conciliation and seek express written consent from each of them to proceed on that basis:
- (a) the Respondent; and
 - (b) the Complainant.
- 7.2 Where the Cricket Australia Head of Integrity is unable to obtain the express written consent from the persons described in clause 7.1 within a period of forty-eight (48) hours after receipt by those individuals of such notice, then the matter shall not be referred to a process of conciliation, instead it shall proceed in accordance with clause 8.
- 7.3 Where a matter proceeds to conciliation under clause 7 and with the express consent of both parties, then the case shall be referred to a Conciliator who shall be responsible for overseeing a process of conciliation to take place as soon as possible and, in any event, no later than seven (7) days after the receipt by the Cricket Australia Head of Integrity of the consents described in clause 7.1, in accordance with the following procedure:
- (a) Cricket Australia shall appoint one Conciliator who will oversee the conciliation sitting alone. The Conciliator will be independent expert, trained in mediation and, where possible, with specialist expertise in the area of harassment, sexual harassment or bullying (or such other expertise as may be relevant to the nature of any alleged offence), who is appointed by Cricket Australia to perform the functions assigned to the Conciliator under this Code.
 - (b) Unless exceptional circumstances apply, each of the parties identified in clause 7.1, together with: (a) a representative of Cricket Australia’s Integrity department, must attend any conciliation meeting that is scheduled by the Conciliator. Each individual shall have the right (at their or its own expense) to be represented at such conciliation meeting by such representative (including legal counsel) of their or its own choosing. Where any such individual has a compelling justification for their non-attendance, then they shall be given the opportunity to participate in the conciliation by telephone or video conference (if available).
 - (c) The Conciliator will exercise full discretion to determine the State or Territory and venue (including the option for telephone/video conference) in which the conciliation will take place, taking in consideration the location of the parties involved.
 - (d) All of the parties involved in the conciliation procedure must fully engage with the Conciliator and the conciliation procedure with an open mind and must act, at all times, honestly and in good faith.
 - (e) The procedure which is to be followed prior to, and during the conciliation meeting shall be entirely at the discretion of the Conciliator, provided that any such meeting is conducted in an open, inquisitive, non-adversarial and fair manner which enables all of the attending parties a reasonable opportunity to present any evidence that is deemed by the Conciliator to be appropriate and to address the Conciliator on any matter relevant to the alleged offence. All statements, submissions and evidence made, heard or disclosed during any part of the conciliation process shall be so made, heard or disclosed strictly (unless the relevant party agrees otherwise) on a ‘without prejudice’ basis and may only be used by any party for the purposes of the conciliation process only.
 - (f) During the conciliation meeting, the Conciliator will discuss the circumstances of the alleged offence with the relevant parties and explore the possibility of reaching a consensual solution for how to

resolve the matter without invoking the disciplinary procedure set out in clause 8. Such a solution may incorporate, without limitation, any of the following (or any combination of the following) outcomes: (a) the voluntary imposition of a period of suspension (which period must be determined having due regard to the range of permissible sanctions in clause 9 by the Respondent; and/or (b) a public apology and/or explanation as to the parties' conduct and circumstances surrounding the alleged offence; and/or (c) a private apology and/or explanation as to the parties' conduct and circumstances surrounding the alleged offence; and/or (d) a joint press statement being issued about the parties' conduct and circumstances surrounding the alleged offence and/or its resolution by conciliation; and/or (e) an agreement by the Respondent, to undergo a specified programme of education and/or counselling designed to promote the understanding and awareness of issues directly relevant to the offence that is alleged to have been committed.

- (g) At the end of the conciliation meeting, if the Conciliator is satisfied that all of the parties have reached a consensual resolution of the matter, then they shall document such resolution and arrange for the signature of all relevant parties to be attested to such document. Any consensual resolution reached by all parties during such conciliation meeting shall be the full, final and complete disposition of the matter and will be binding on all parties.
- (h) At the end of the conciliation meeting, if the Conciliator is not satisfied that all of the parties have reached a consensual resolution of the matter, then the conciliation process shall be terminated immediately and the matter shall proceed in accordance with clause 8.
- (i) All parties involved in the conciliation procedure shall treat such procedure as strictly confidential, save that nothing in this clause shall prevent either of the parties (or CA or any relevant State or Territory Cricket Association) publicly confirming the date of any conciliation meeting.

8. COMMISSION HEARINGS

8.1 Following referral of a complaint under clause 6.2(c) of this Code, the Commission will:

- (a) be sent all material arising from the investigation of the Cricket Australia Head of Integrity; and
- (b) promptly arrange a hearing after considering the availability of the persons affected.

8.2 Hearings conducted by the Commission into complaints will not be open to members of the public.

8.3 All persons required at the hearing shall attend punctually at the time and place designated.

8.4 The Commission will hear and decide the complaint in a manner to be determined by it.

9. PENALTY

9.1 If the Commission finds the complaint or any part of it proven it may apply any one or more of the following penalties:

- (a) the imposition of a suspension of between one (1) suspension point up to a maximum of a lifetime's suspension. Suspension points will be allocated in accordance with the principles set out in Article 7 of the Cricket Australia Code of Conduct;
- (b) the imposition of a fine of no more than \$10,000;
- (c) banning the person from holding (or continuing to hold) any position within Cricket Australia or a State or Territory Cricket Association (including any Big Bash League Team or Women's Big Bash League Team), including as an employee, contractor, official or officer;
- (d) require the person undergo counselling for a specified time;
- (e) require the person perform voluntary service to cricket or the community; and/or
- (f) reprimand the person.

- 9.2 The Commission will advise its decision and provide a written statement of the findings to the Respondent, the person who initiated the report and the Cricket Australia Head of Integrity as soon as practicable following the hearing.
- 9.3 Cricket Australia may, in its absolute discretion, issue a public announcement regarding any decision of the Commission made under this Code after the decision has been communicated to the parties pursuant to Article 9.2 (or following appeal). The public announcement of the decision may include details of the offences committed under this Code and of the sanctions imposed, if any. Until such time as a public announcement is published, all parties and participants in the proceedings shall treat such proceedings as strictly confidential.

10. APPEAL

Any person found to be in breach of this Code has the right of appeal against the decision of the Commission. The appeal will be conducted in accordance with the appeals process set out in Article 8 of the Cricket Australia Code of Conduct.