



**BASEBALL NSW (BNSW)  
NATIONAL INTEGRITY FRAMEWORK:  
MEMBER PROTECTION POLICY**

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## 1. Introduction

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1.1. BNSW is committed to ensuring that everyone involved with baseball is treated with respect and dignity and is protected from bullying, intimidation, discrimination, harassment and abuse.

1.2. This Policy aims to ensure the core values, good reputation, positive behaviours and attitudes of BNSW and Members Organisations are maintained and enhanced.

1.3. This Policy seeks to ensure that everyone involved in BNSW is aware of their legal and ethical rights

and responsibilities as well as the standards of behaviour expected of them.

## 2. Application of Policy

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This Policy is to be read with the provisions set out in the BNSW National Integrity Framework (**Framework**). Capitalised terms not defined in this Policy are defined terms in the Framework.

## 3. Scope

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### 3.1. To whom the Policy applies

This Policy applies to:

- (a) Members;
- (b) Participants; and
- (c) Any other person, including individuals and bodies corporate, who has agreed to be bound by this Policy.

### 3.2. When the Policy applies

- (a) All Relevant Persons must comply with this Policy (at all times while they are a Relevant Person):
  - (i) in relation to any dealings they have with BNSW and Member Organisations or their staff, contractors and representatives;
  - (ii) subject to clause 3.2(b), wherever there is a recognised baseball, BNSW or Member Organisation connection, including participation in programs or events sanctioned by BNSW and/or Member Organisations, and on social media where there is such a connection;
  - (iii) when dealing in their capacity as a Relevant Person with other Relevant Persons; and
  - (iv) in relation to their membership or standing as a Relevant Person in general.
- (b) The following is not within the scope of this Policy:
  - (i) interactions (including social media interactions) involving a Relevant Person and another Relevant Person where there is no direct or indirect link between

the interaction and any of BNSW, baseball or a Member Organisation (other than the fact that one or more individuals are Relevant Persons);

- (ii) where alleged Prohibited Conduct occurs in contravention of this Policy, any subsequent conduct or interaction(s) that, while related to the original Prohibited Conduct, no longer directly relates to any of BNSW, baseball or a Member Organisation (even where such conduct or interaction(s) would otherwise be Prohibited Conduct); and
- (c) Where BNSW or a Member Organisation (as applicable) determines, in their absolute discretion, that the alleged Prohibited Conduct would be more appropriately dealt with under a different policy, it may refer the alleged Prohibited Conduct for determination under that other policy.

## **4. Prohibited Conduct**

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### **4.1. Prohibited Conduct**

For the purposes of clause 12 of the Framework, a Relevant Person must not, either alone or in conjunction with another or others, breach this Policy by undertaking any of the following conduct against one or more Relevant Persons in the circumstances outlined in clause 3.2:

- (a) Abuse;
- (b) Bullying;
- (c) Harassment;
- (d) Sexual Misconduct;
- (e) Unlawful Discrimination;
- (f) Victimisation; or
- (g) Vilification.

Examples of conduct that may constitute Prohibited Conduct are outlined in Schedule 1.

### **4.2. Additional matters**

Nothing in this Policy prevents the Board from enforcing any other rules and regulations or referring any alleged Prohibited Conduct to a relevant law enforcement agency.

## **5. Complaints and Disputes Policy**

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Clauses 13, 14 and 15 of the Framework apply to alleged Prohibited Conduct under this Policy, including in relation to the reporting and investigation of the alleged Prohibited Conduct.

## 6. Other Obligations

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### 6.1. BNSW and Member Organisation responsibilities

BNSW and Member Organisations must:

- (a) publish, distribute and promote this Policy;
- (b) recognise and enforce any decisions and/or disciplinary measures imposed under this Policy;
- (c) ensure that a copy of this Policy is available or accessible to all people and organisations to whom this Policy applies; and
- (d) monitor and review this Policy in accordance with clause 6 of the Framework.

### 6.2. Relevant Person responsibilities

Relevant Persons bound by this Policy must:

- (a) make themselves aware of the contents of this Policy;
- (b) comply with all relevant provisions of the Policy;
- (c) be accountable for their behaviour; and
- (d) comply with any decisions and/or disciplinary measures imposed under this Policy.

## 7. Definitions

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In this Policy the following words have the corresponding meaning:

**Abuse** means any type of abuse (including physical, emotional, psychological, sexual and inappropriate use of power) that has caused, is causing or is likely to cause harm to a person's wellbeing, whether in person or as the result of a publication viewable by any other person by any means.

**Bullying** means a person or group of people repeatedly and intentionally using words or actions, or the inappropriate use of power, against someone or a group of people to cause distress and risk to their wellbeing.

**Harassment** means any type of behaviour (including one-off incidents) towards a person that they do not want and that is offensive, abusive, belittling or threatening and is reasonably likely to cause harm to the person who is the subject of the harassment.

**Member** means a member of BNSW admitted in any category of membership in accordance with the provisions of the BNSW Constitution.

**Policy** means this Member Protection Policy including any schedules and annexures.

**Prohibited Conduct** means conduct in breach of clause 4 of this Policy.

**Relevant Person** means any of the persons identified in clause 3.1.

**Sexual Misconduct** means:

- (a) **Sexual Harassment**, which is any unwanted or unwelcome sexual behaviour where a reasonable person would anticipate the possibility that the person being harassed would feel offended, humiliated or intimidated; and
- (b) **Sexual Offences**, which include any criminal offence involving sexual activity or actions of indecency.

**Unlawful Discrimination** includes:

- (a) **Direct Discrimination**, when a person or group of people is treated less favourably than another person or group, because of a personal characteristic; and
- (b) **Indirect Discrimination**, when an unreasonable rule or policy applies to everyone but has the effect of disadvantaging some people because of a personal characteristic they share,

where such personal characteristic is protected by applicable anti-discrimination legislation.

**Victimisation** means subjecting a person, or threatening to subject a person, to any unfair treatment because the person has made, or intends to pursue their right to make, a complaint or lawful disclosure, including under applicable legislation or this Policy, or for supporting another person to take such action.

**Vilification** means a public act, conduct or behaviour that incites hatred, serious contempt for, or revulsion or severe ridicule of, a person or group of people because of a particular characteristic they hold, as covered by applicable legislation, including their race or religion, or homosexuality, transgender or HIV/AIDS status.

## SCHEDULE

### Examples - Prohibited Conduct

1. **Abuse** may include:
  - (a) bullying or humiliation;
  - (b) physical abuse and assault including hitting, slapping, pushing, punching or scratching, kicking, destroying property and throwing things, sleep and food deprivation, forced feeding, physical restraint, spitting or biting;
  - (c) sexual abuse including rape and assault, using sexually degrading insults, forced sex or sexual acts, deliberately causing pain during sex, unwanted touching or exposure to pornography, sexual jokes, using sex to coerce compliance;
  - (d) emotional abuse such as intentional embarrassment in public, name calling, telling someone what to wear, preventing someone from seeing their friends and family, stalking, humiliation and intimidation;
  - (e) verbal abuse such as insults, name calling, continuous criticism, swearing and humiliation, attacks on someone's intelligence, body or parenting, yelling;
  - (f) financial abuse such as restricting access to bank accounts, taking complete control of finances and money, forbidding someone from working, taking someone's pay and not allowing them to access it;
  - (g) neglect of a person's needs; and
  - (h) stalking.
2. **Bullying** may include:
  - (a) keeping someone out of a group (online or offline);
  - (b) acting in an unpleasant way near or towards someone;
  - (c) giving nasty looks, making rude gestures, calling names, being rude and impolite, and constantly negative teasing;
  - (d) spreading rumours or lies, or misrepresenting someone (i.e., using their social media account to post messages as if it were them);
  - (e) silly behaviour that goes too far;
  - (f) harassing someone based on their race, sex, religion, gender or a disability;
  - (g) intentionally and repeatedly hurting someone physically;
  - (h) intentionally stalking someone; and
  - (i) taking advantage of any power over someone else,

but does not include legitimate and reasonable:

- (a) management action;
- (b) management processes;
- (c) disciplinary action; or
- (d) allocation of activities in compliance with agreed systems.

3. **Harassment** may include:

- (a) telling insulting jokes about particular racial groups;
- (b) sending explicit or sexually suggestive emails or text messages;
- (c) displaying racially offensive or pornographic images or screen savers;
- (d) making derogatory comments or taunts about someone's race;
- (e) asking intrusive questions about someone's personal life, including his or her sex life;
- (f) harassment or sexual harassment in the workplace by employers, co-workers and other workplace participants;
- (g) harassment in the workplace based on or linked to a person's disability or the disability of an associate; and
- (h) offensive behaviour based on race or racial hatred, such as something done in public that offends, insults or humiliates a person or group of people because of their race, colour or national or ethnic origin.

4. **Sexual Misconduct** may include:

- (a) unwelcome touching;
- (b) staring or leering;
- (c) suggestive comments or jokes;
- (d) showing or sharing sexually explicit images or pictures;
- (e) unwanted invitations to go out on dates;
- (f) requests for sex;
- (g) intrusive questions about a person's private life or body;
- (h) unnecessary familiarity, such as deliberately brushing up against a person;
- (i) insults or taunts based on sex;
- (j) sexually explicit physical contact;

- (k) sending or sharing sexually explicit or suggestive emails, texts or other electronic/social media messages;
- (l) displaying pornographic images or screen savers;
- (m) asking intrusive questions about someone's personal life, including about his or her sex life; and
- (n) criminal offences such as rape, indecent or sexual assault, sexual penetration or relationship with a child under the age of 16 and possession of child pornography.

5. **Unlawful Discrimination** may include unfair treatment based on a person's:

- (a) age;
- (b) disability;
- (c) race, colour, national or ethnic origin or immigrant status;
- (d) sex, pregnancy, marital or relationship status, family responsibilities or breastfeeding; and
- (e) sexual orientation, gender identity or intersex status.

6. **Victimisation** may include:

- (a) dismissal of an employee or disadvantage to their employment;
- (b) alteration of an employee's position or duties to his or her disadvantage;
- (c) discrimination between an employee and other employees;
- (d) repeated failure to select an individual on merit;
- (e) a reduction in future contract value; and
- (f) removal of coaching and other financial and non-financial support.

7. **Vilification** may include:

- (a) speaking about a person's race or religion in a way that could make other people dislike, hate or ridicule them;
- (b) publishing claims that a racial or religious group is involved in serious crimes without any evidence in support;
- (c) repeated and serious verbal or physical abuse about the race or religion of another person;
- (d) encouraging violence against people who belong to a particular race or religion, or damaging their property; or
- (e) encouraging people to hate a racial or religious group using flyers, stickers, posters, a speech or publication, or using websites or email.



**BASEBALL NEW SOUTH WALES  
(BNSW)  
NATIONAL INTEGRITY FRAMEWORK:  
COMPLAINTS AND DISPUTES POLICY**

Address for Complaints Manager:

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## Preamble

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This Policy is to be read with the provisions set out in the BNSW National Integrity Framework **(Framework)**.

This Policy:

- sets out the processes for resolving complaints and disciplinary action arising from an individual or organisation breaching an, or engaging in Prohibited Conduct under, an Eligible Policy of the sport;
- must be followed where an Eligible Policy states that policy breaches and/or Prohibited Conduct is to be dealt with under the Complaints & Disputes Policy; and
- can be adopted at the BNSW, Member Organisation and Affiliate (club / association) level without amendment.

A Process is chosen by the relevant organisation for resolving the issue (Alternative Dispute Resolution, Minor Breach Procedure or Breach Offer).

In certain cases (where a Respondent rejects a proposed Breach Offer), the matter can proceed to a Hearings Tribunal (either Internal or the National Sports Tribunal where permitted). Appeals from a Hearings Tribunal may be permitted.

## 1. Definitions

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Capitalised terms not defined in this Policy are defined terms in the Framework. In this Policy the following words have the corresponding meaning:

**Affiliate** means a member of a Member Organisation that is an incorporated association or company, including (as applicable) clubs, districts, regions and zones.

**Alleged Breach** includes both a Complaint and Disciplinary Action, as outlined in clause 2.1.

**Appeals Tribunal** means the tribunal established to hear appeals under clause 6.2, being either the NST or an Internal Appeals Tribunal as provided in this Policy.

**Alternative Dispute Resolution** means the attempted resolution of an Alleged Breach under the Alternative Dispute Resolution Process in clause 5.2.

**Child Safe Policy** means the child welfare policy applicable to each Sport Organisation.

**Complainant** means one or more persons who lodge a Complaint to Sport Organisation in accordance with this Policy.

**Complaint** means a complaint as defined in clause 2.2.

**Complaint Form** means the complaint form included in Schedule 1.

**Complaints Manager** means the person appointed by a Sport Organisation to manage Alleged Breaches under this Policy, who must not be the same person as the Decision Maker for the relevant Alleged Breach.

**Decision Maker** means the person appointed by a Sport Organisation to make certain decisions in relation to the resolution of Alleged Breaches under this Policy, who must not be the same person as the Complaints Manager for the relevant Alleged Breach.

**Disciplinary Action** means disciplinary action as defined in clause 2.3.

**Eligible Policy** means the constitution and all by-laws, rules, regulations, policies and procedures (howsoever named) and directions of a Sport Organisation except:

- (a) those outlined in Schedule 4; and
- (b) BNSW's anti-doping policy.

**Hearings Tribunal** means the first instance tribunal established under clause 6.1, being either the NST or an Internal Tribunal as provided in this Policy.

**Internal Appeals Tribunal** means an internal Appeals Tribunal established by a Sport Organisation under clause 6.2.

**Internal Tribunal** means an internal Hearings Tribunal established by a Sport Organisation under clause 6.1.

**Legal Practitioner** is a person holding a current practising certificate as a lawyer or BNSWrrister in any Australian jurisdiction.

**Member** means a member of BNSW admitted in any category of membership in accordance with the provisions of the BNSW Constitution.

**NST** means the National Sports Tribunal established under the NST Legislation.

**NST Eligible Matter** means an Alleged Breach that is a kind of dispute that falls within the jurisdiction of the NST.

**NST Excluded Matter** means an Alleged Breach that is a kind of dispute that is expressly excluded from the NST's jurisdiction.

**NST Legislation** means the *National Sports Tribunal Act 2019 (Cth) (NST Act)*, *National Sports Tribunal Rule 2020 (Cth)*, *National Sports Tribunal (Practice and Procedure) Determination 2020 (Cth)* and *National Sports Tribunal Act 2019 - Principles for Allocating a Member to a Dispute 2020*.

**Personal Grievance** means any form of grievance between two or more people (including individuals and body corporates) that does not concern or allege a breach of an Eligible Policy.

**Policy** means this Complaints and Disputes Policy, including any schedules and annexures.

**Process** means the chosen process for resolving an Alleged Breach under this Policy, with each option outlined in clause 5, including Alternative Dispute Resolution, Minor Breach Procedure and Breach Offer.

**Protected Disclosure** means, where Sport Organisation is a "regulated entity" under the whistleblower laws in the *Corporations Act 2001 (Cth)*, a disclosure of information to the Sport Organisation that qualifies for protection under those laws.

**Respondent** means the person(s) who is alleged to have breached an Eligible Policy and is the subject of an Alleged Breach, and who must be within a category of person listed in clause 2.4.

**Sanction** means a sanction imposed on a Respondent for breaching an Eligible Policy in accordance with clause 5.6.

**Sport** means the sport of BNSW or BNSWII, and a reference to Sport means collectively BNSW, Member Organisations and Affiliates.

**Sport Organisation** means either BNSW, or a particular Member Organisation or Affiliate that has adopted this Policy, and either commences Disciplinary Action, or is required to deal with a Complaint, at the level of the Sport mandated by clause 3.2.

## **2. Preliminary Matters**

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### **2.1. What is an Alleged Breach?**

An Alleged Breach includes both a Complaint and Disciplinary Action.

### **2.2. What is a Complaint?**

A Complaint means a complaint lodged with a Sport Organisation, using the Complaint Form, alleging that a Respondent has breached an Eligible Policy.

### **2.3. What is Disciplinary Action?**

- (a) Disciplinary Action means action brought against or proposed to be brought against a Respondent by the Sport Organisation, alleging a breach of one or more of its constitution, rules, regulations, policies or directions.
- (b) Disciplinary Action may arise from the Sport Organisation becoming aware of allegations against, or information concerning, a Respondent by any manner other than a Complaint (as defined in clause 2.2).

#### 2.4. What is not an Alleged Breach?

- (a) An Alleged Breach does not include allegations or information:
  - (i) that constitutes a Protected Disclosure;
  - (ii) to the extent that it is or involves a Personal Grievance;
  - (iii) that is mischievous, vexatious or knowingly untrue, as determined by the Complaints Manager in accordance with clause 4.2;
  - (iv) where the proposed respondent is excluded by clause 2.5; or
  - (v) that does not refer to a breach of an Eligible Policy.
- (b) If a proposed complaint or allegation against an *ineligible* respondent is submitted, the matter may proceed as an Alleged Breach under this Policy if (and when) the person becomes an *eligible* Respondent at a later date.

#### 2.5. Who can be a Respondent?

- (a) A Respondent must be a:
  - (i) Member;
  - (ii) a person otherwise bound by the Eligible Policy they are alleged to have breached.
- (b) A Respondent cannot be:
  - (i) a person that is neither a Member nor bound by the Eligible Policy they are alleged to have breached; or
  - (ii) a person that the relevant Sport Organisation has no legal jurisdiction over.

#### 2.6. Standard of Proof

- (a) The standard of proof that applies to decisions made by a Hearings Tribunal under this Policy is “BNSWlance of proBNSWbilities”.
- (b) For a Hearings Tribunal to find something has been proven on the BNSWlance of proBNSWbilities, it must be satisfied that on the evidence put before it the alleged fact or matter is more proBNSWble than not. In reaching this conclusion, the Hearings Tribunal must take into account all relevant factors including the:
  - (i) nature and seriousness of the allegations; and

- (ii) impact of the potential sanctions that may be imposed if the allegations are proven.
- (c) The Standard of Proof requires greater certainty for a more serious allegation compared with a less serious allegation.

## 2.7. Confidentiality

- (a) All Alleged Breaches (and all information disclosed in relation to them), will be kept confidential by the Sport Organisation, and will not be disclosed to any third parties, except for the Approved Purpose.
- (b) **Approved Purpose** means and includes the following disclosures by the Sport Organisation:
  - (i) to the parties to an Alleged Breach (Respondent and the Complainant) to ensure a fair process;
  - (ii) to any person to facilitate the proper handling of the Alleged Breach under this Policy;
  - (iii) to external agencies so they can deal with the alleged conduct (e.g., law enforcement or regulatory authorities, a child welfare department, State/Territory fair trading authority, the Australian Securities & Investments Commission);
  - (iv) to Members to inform them of relevant Sanctions imposed; and
  - (v) as required by law, any court or the NST.

## 2.8. Privilege

- (a) Subject to this clause 2.8, a Respondent who is interviewed, arrested or charged by an external agency referred to in clause 2.7(b)(iii) in respect of a criminal offence that is, or could be, a breach of an Eligible Policy is not required to produce any information, give any evidence or make any statement to Sport Organisation, an investigator, Hearings Tribunal or Appeals Tribunal, if they establish that to do so would breach any privilege against self-incrimination, or result in a waiver of legal professional privilege.
- (b) The Respondent's refusal in the circumstances outlined in clause 2.8(a) may be deemed by the Decision Maker, investigator, Hearings Tribunal or Appeals Tribunal, as an indicator of guilt in relation to the allegations against the Respondent in the Alleged Breach.
- (c) This clause does not limit a Sport Organisation from enforcing any other of its rules and regulations.

## 2.9. Failure to cooperate

- (a) Subject to clause 2.8, persons bound by this Policy must cooperate fully with the Process chosen to resolve an Alleged Breach.

- (b) The Decision Maker, an investigator or a Hearings or Appeals Tribunal may draw an inference adverse to the Respondent BNSWsed on a Respondent's failure or refusal, without compelling justification, after a request has been made in a reasonable time in advance, to answer any relevant question and/or participate in the relevant chosen Process.

#### 2.10. Individuals under 18 years of age

- (a) Where a Complainant or Respondent is under 18 years of age (**Minor**):
  - (i) a Complaint Form may be lodged by their parent/guardian on behalf of that Minor; and
  - (ii) a Minor's parent/guardian may attend any interview, or Hearings Tribunal or Appeals Tribunal, with the Minor.
- (b) This clause is at all times subject to clauses 6.1(d) and 6.2(h) and clause 15 of Schedule 6.

### 3. How to make a Complaint

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#### 3.1. Submitting a Complaint

- (a) A person may submit a Complaint by completing the Complaint Form located at Schedule 1 and submitting it to the Sport Organisation at the email address located on the front cover of this Policy.
- (b) A Complaint Form must be completed in full at the time of submission. Where it is not, the Sport Organisation is not obliged to process the Complaint. The Sport Organisation must return an incomplete Complaint Form to the Complainant.
- (c) The Complaints Manager must send the Complainant an acknowledgement of receipt, once a fully completed Complaint Form is submitted.

#### 3.2. Commencing Disciplinary Action

- (a) Where the Sport Organisation is advised or becomes aware of an allegation or considers that a Respondent has breached an Eligible Policy, it may commence Disciplinary Action.
- (b) Information or allegations leading to the Sport Organisation commencing Disciplinary Action under clause 3.2(a) may arise in any manner other than through lodgement of a Complaint Form.
- (c) The Sport Organisation is not obliged to undertake Disciplinary Action in response to any information or allegations under this clause.

#### 3.3. Who is the Proper Recipient?

- (a) A Complaint must be submitted at, and Disciplinary Action commenced at, the level of the Sport at which the allegations the subject of the Alleged Breach occurred.
- (b) For the purposes of (a), allegations the subject of an Alleged Breach occur at the:

- (i) National level where they relate to behaviour, an incident or circumstances that occurred at or involve individuals operating at the national level;
  - (ii) State level where they relate to behaviour, an incident or circumstances that occurred at or involve individuals operating at the State level; or
  - (iii) Affiliate level where they relate to behaviour, an incident or circumstances that occurred at or involve individuals operating at the Affiliate level.
- (c) The Complaints Manager may, upon receipt of a Complaint or information that may lead to Disciplinary Action, seek to refer it to a more appropriate level of the Sport in accordance with clause 4.4(d).
- (d) Alleged Breaches shall be dealt with by the level of the Sport at which they occurred unless referred by an Affiliate to a Member Organisation, or Member Organisation to BNSW, and accepted by the Member Organisation or BNSW in their absolute discretion.
- (e) Where a request is made to refer an Alleged Breach under clause 4.4(d), the Member Organisation or BNSW must consider:
- (i) any conflict of interest that may arise regarding resolution at the Affiliate/ State level;
  - (ii) the nature and seriousness of the Alleged Breach;
  - (iii) the length of time the Alleged Breach has been unresolved; and
  - (iv) whether the Affiliate or Member Organisation has made reasonable efforts to resolve the Alleged Breach.
- (f) A Member Organisation or BNSW is not obliged to deal with an Alleged Breach that occurred at a lower level of the Sport. In such instances, they may:
- (i) refer a Complainant to the correct level; or
  - (ii) forward the information concerning potential Disciplinary Action to the relevant Member Organisation or Affiliate.

## **4. How to handle Alleged Breaches**

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### **4.1. Initial Threshold Questions**

- (a) Upon receipt of a Complaint Form or information that may lead to Disciplinary Action, the Complaints Manager must initially determine whether it:
- (i) is a Protected Disclosure, in which case it must be dealt with under the Sport Organisation whistleblower policy and the Complainant or discloser notified under clause 4.5;
  - (ii) requires mandatory reporting to occur under child protection or other laws, in which case the Complaints Manager must do so and notify the Complainant or discloser under clause 4.5; and/or

- (iii) relates to child abuse, child welfare or the safety of a child or young person under 18 years of age, in which case it must be dealt with under the Child Safe Policy and the Complainant or discloser notified under clause 4.5,

(the **Initial Threshold Questions**).

- (b) In the case of (i), the process under this Policy is permanently discontinued. In the case of (ii) or (iii), the process under this Policy is suspended unless and until the matter is referred BNSWck to this Policy for resolution.
- (c) If the complaint does not satisfy (i) - (iii), the Complaints Manager must proceed to clause 4.4.

#### 4.2. **Investigation**

- (a) At any time after determining the Initial Threshold Questions, a Sport Organisation may investigate the Alleged Breach.
- (b) The Complaints Manager may choose whether to conduct an internal investigation (including by the Complaints Manager) or an external investigation using the Terms of Reference outlined in Annexure A.
- (c) An investigation may be conducted in such manner as determined by the investigator in their absolute discretion (provided it is consistent with any BNSW Standard Operating Protocol for the conduct of investigations) and may or may not make findings as to whether the allegations are proven to the Standard of Proof.

#### 4.3. **Initial Assessment - Disciplinary Action**

Upon determination of the Initial Threshold Questions, the Complaints Manager must determine whether Sport Organisation will:

- (a) proceed with Disciplinary Action under a Process in clause 5;
- (b) undertake Provisional Action under clause 4.6; or
- (c) refer the matter to a different level of the Sport under clause 3.3(c).

Clauses 4.4 and 4.5 do not apply to Disciplinary Action.

#### 4.4. **Initial Assessment - Complaint**

- (a) The Complaints Manager must determine whether a complaint:
  - (i) was lodged using a fully completed Complaint Form; and
  - (ii) is a Complaint for the purposes of this Policy,(the **Initial Assessments**).
- (b) The Complaints Manager has absolute discretion to determine whether a Complaint is excluded under clause 2.4, and their decision will be final and binding. In making a

determination under this clause, the Complaints Manager may seek any further information, or make such further enquiries, as necessary.

- (c) If either of the Initial Assessments are not satisfied, the Complaints Manager must proceed to clause 4.5(b).
- (d) If both the Initial Assessments are satisfied, Complaints Manager must determine whether the Complaint has been submitted to the correct level of the Sport, considering the factors outlined in clause 3.3(b), and then (if yes) proceed to clause 5.1 or (if not) clause 3.3(c).

#### **4.5. Communicate with Complainant**

If the Complaint:

- (a) satisfies any of the Initial Threshold Questions, the Complaints Manager must notify the Complainant of the applicable procedure to be used by the relevant Sport Organisation to deal with the Complaint; or
- (b) does not satisfy the Initial Assessment, the Complaints Manager must notify the Complainant of the defect(s) in the complaint, and whether or not it can proceed under this Policy after modification of the complaint,

as soon as reasonably possible after the Complaints Manager determines the Initial Threshold Questions.

#### **4.6. Provisional Action**

- (a) Where an Alleged Breach makes allegations concerning conduct that in the Complaints Manager's opinion:
  - (i) may result in, or cause, serious criminal charges (that is, a charge under any Commonwealth or State/Territory criminal law that is punishable by imprisonment for a maximum period of five years or more) to be laid against the Respondent; and/or
  - (ii) suggests there is a further or ongoing risk of harm being suffered by one or more persons involved in the Sport,

the Complaints Manager may refer the Alleged Breach to the Decision Maker to determine, in the Decision Maker's absolute discretion, whether any provisional action(s) will be undertaken by a Sport Organisation.

- (b) Provisional actions include, but are not limited to, suspension, restriction of duties or temporary redeployment of the Respondent, or any other action(s) at the discretion of the Decision Maker, including seeking advice from BNSW.

## **5. Resolving Alleged Breaches**

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### **5.1. Determine chosen Process**

- (a) If, upon completion of the Initial Threshold Questions and the Initial Assessment, the Complaints Manager determines that the Alleged Breach can properly be dealt with

under this Policy, the Complaints Manager must determine the Process that will initially be used to attempt to resolve the Alleged Breach under this clause 5:

- (i) Alternative Dispute Resolution;
- (ii) Minor Breach Procedure; or
- (iii) Breach Offer,

as well as whether External Referral is appropriate.

- (b) The Complaints Manager has sole and absolute discretion to determine the chosen Process under this clause 5.1, however may consult with other representatives of Sport Organisation (including the Decision Maker) as required.
- (c) The Complaints Manager may, at their absolute discretion, seek further information from any person, including conducting further investigation under clause 4.2.
- (d) For Complaints, the Complaints Manager must notify the Complainant of the Process as soon as practicable once decided. The Alleged Breach will then be dealt with under the applicable Process outlined in this clause 5, in addition to any provisional action taken under clause 4.6.
- (e) The Complaints Manager may at any time externally refer the Alleged Breach in accordance with clause 5.5.

## 5.2. Alternative Dispute Resolution

- (a) If the Complaints Manager considers the Alleged Breach may appropriately be resolved through Alternative Dispute Resolution, they may:
  - (i) for Complaints, seek the consent of both the Complainant and Respondent in writing; or
  - (ii) for Disciplinary Action, seek the consent of the Respondent in writing.
- (b) If the necessary parties under (a) agree to Alternative Dispute Resolution and:
  - (i) the Alleged Breach is at Affiliate or state level, the Complaints Manager may either:
    - (A) refer the Alleged Breach to internal or external mediation or conciliation; or
    - (B) seek the consent of BNSW to refer the Alleged Breach to mediation, conciliation or case appraisal in the NST and, if given:
      1. refer the matter if it is an NST Eligible Matter, failing which it will be dealt with under (i)(A); or
      2. apply to the NST CEO for approval if neither an NST Eligible or NST Excluded Matter, failing which it will be dealt with under (i)(A); or

- (ii) the Alleged Breach is at national level, the Complaints Manager may either:
  - (A) refer the Alleged Breach to internal or external mediation or conciliation; or
  - (B) if an NST Eligible Matter, refer the Alleged Breach to mediation, conciliation or case appraisal in the NST, which will be undertaken in accordance with the NST Legislation; or
  - (C) if neither an NST Eligible or NST Excluded Matter, apply to the NST CEO for approval to hear the matter in the NST, failing which it will be dealt with under (ii)(A).
- (c) Any mediation or conciliation (other than where conducted by the NST) will be undertaken in accordance with the rules prescribed by the Sport Organisation (internal) or the provider (external) as the case may be.
- (d) For external Mediation, the Complaints Manager may ask the Complainant (if any) and the Respondent to pay some or all of the mediator's fee.
- (e) If the Alleged Breach is resolved through Alternative Dispute Resolution under this clause, the Complaints Manager must proceed to clause 7.2.
- (f) If:
  - (i) either the Complainant or Respondent does not consent to Alternative Dispute Resolution;
  - (ii) the Alleged Breach is not an appropriate matter for Alternative Dispute Resolution; or
  - (iii) Alternative Dispute Resolution does not resolve the Alleged Breach,
 the Complaints Manager must choose another Process under this Policy.
- (g) Notwithstanding anything in this Policy, the Complaints Manager may, at any time with the consent of each of the Respondent and Sport Organisation (if Disciplinary Action) or the Respondent, Complainant and Sport Organisation (if a Complaint), refer the Alleged Breach for Alternative Dispute Resolution in accordance with clause 5.2(b).

### 5.3. Minor Breach Procedure

- (a) The Minor Breach Procedure may only be chosen where the Alleged Breach alleges a Minor Breach.
- (b) A Minor Breach means a breach of an Eligible Policy, if proven, that in the Decision Maker's absolute discretion, would likely only result in a warning (whether informal or formal) being imposed on the Respondent as the applicable Sanction.
- (c) The Decision Maker may, at their absolute discretion, require the Complaints Manager to seek further information from any person, including by conducting further investigation under clause 4.2.

- (d) The Complaints Manager must notify the Respondent of the Alleged Breach, in writing, using the letter set out in Schedule 2. The letter must contain the following information:
  - (i) details of the breach alleged in the Alleged Breach, including the alleged conduct and the section(s) of the Eligible Policy allegedly breached; and
  - (ii) that, without the Sport Organisation finding the breach to be proven, the Respondent is warned that the allegations would constitute a breach of the Eligible Policy, if proven.
- (e) The Sport Organisation must then comply with clause 7.

#### 5.4. Breach Offer

- (a) If the Complaints Manager has determined Breach Offer is the most appropriate Process, the Complaints Manager must refer the Alleged Breach to the Decision Maker, who must:
  - (i) determine the applicable Sanction that may in the Decision Maker's opinion be likely to apply if the Alleged Breach (or a complaint of a similar nature) was proven; and
  - (ii) determine a discounted (reduced) Sanction to be offered to the Respondent, if any.
- (b) The Decision Maker may, at their absolute discretion, require the Complaints Manager to seek further information from any person to assist them to decide the appropriate Sanctions under (a), including by conducting further investigation under clause 4.2.
- (c) The Complaints Manager must notify the Respondent of the Alleged Breach, in writing, using the letter set out in Schedule 3. The letter must contain the following information:
  - (i) details of the Alleged Breach, including the alleged conduct and relevant section(s) of the Eligible Policy;
  - (ii) the Sanction that may in the Decision Maker's opinion be likely to be imposed by the Sport Organisation if the Alleged Breach was fully proven;
  - (iii) a proposed Sanction that may be available to the Respondent (including any discount) if they accept their alleged breach and Sanction without a hearing;
  - (iv) that the Respondent may accept the proposed Sanction, or dispute the alleged breach and/or Sanction, in which case the Alleged Breach will be referred to a Hearings Tribunal under this Policy; and
  - (v) that the Respondent has 14 days, from the date of the letter, to advise the Sport Organisation of their choice under (iv), by submitting the "Acknowledgement" section of the letter to the Complaints Manager.
- (d) A Respondent is entitled to either accept the alleged breach and proposed Sanction, or dispute the breach and/or Sanction.
- (e) If the Respondent accepts the breach, Sport Organisation must comply with clause 7.

- (f) If the Respondent disputes the breach, the Complaints Manager must:
  - (i) if the Alleged Breach is at Affiliate or state level, either:
    - (A) refer the Alleged Breach to an Internal Tribunal; or
    - (B) seek the consent of NSO to refer the Alleged Breach to the NST General Division if an NST Eligible Matter; or
    - (C) apply to the NST CEO for approval if neither an NST Eligible or NST Excluded Matter, failing which it must be dealt with under (i)(A); or
  - (ii) if the Alleged Breach is at national level, either:
    - (A) refer the Alleged Breach to an Internal Tribunal; or
    - (B) if an NST Eligible Matter, refer the Alleged Breach to the NST General Division, which will be undertaken in accordance with the NST Legislation; or
    - (C) if neither an NST Eligible or NST Excluded Matter, apply to the NST CEO for approval to hear the matter in the NST General Division, failing which it must be dealt with under (ii)(A).

#### 5.5. External Referral

- (a) The Complaints Manager may, at any time before or while dealing with an Alleged Breach under this Policy, refer the Alleged Breach to an external organisation (such as a law enforcement or regulatory authority, a child welfare department, State/Territory fair trading authority, or the Australian Securities & Investments Commission).
- (b) If an external referral is made, the Complaints Manager may suspend the chosen Process pending external resolution. The Complaints Manager must notify the Complainant (if any) and Respondent in writing of any such decision.
- (c) If the Process is suspended due to an external referral, the Complaints Manager must refer the Alleged Breach to the Decision Maker to determine whether any provisional action should be taken against the Respondent under clause 4.6.
- (d) When the Decision Maker decides whether to impose provisional action under (c):
  - (i) in the circumstances described in clause 4.6(a), there is an automatic presumption that provisional action should be taken unless in exceptional circumstances; and
  - (ii) in any other circumstances, there is an automatic presumption that provisional action should not be taken unless in exceptional circumstances.

#### 5.6. Sanctions

- (a) The Decision Maker, Hearings Tribunal and the NST have absolute discretion to determine the sanction imposed on a Respondent, if they find that the Respondent has

committed a breach of an Eligible Policy, excluding any financial penalty or award of monetary damages.

- (b) Without limiting the discretion in clause 5.6(a), the Sanctions that may be imposed on a Respondent include, but are not limited to:
- (i) a reprimand or warning;
  - (ii) verbal or written apology;
  - (iii) direction to attend counselling or training to address their behaviour;
  - (iv) suspended sentence and/or good behaviour period;
  - (v) removal of accreditation;
  - (vi) removal of awards (such as life membership);
  - (vii) exclusion from a particular event or events, competition or activity;
  - (viii) suspension, from such activities or events held by or under the auspices of Sport Organisation, on such terms and for such period as the person imposing the sanction thinks fit;
  - (ix) suspension for a specified period and/or termination of any rights, privileges and benefits provided by Sport Organisation;
  - (x) expulsion from Sport Organisation; and/or
  - (xi) any other such sanction as the person imposing the sanction considers appropriate.
- (c) Without limiting the discretion afforded in clause 5.6(a), the person imposing the sanction may, but is not required to, consider the following factors:
- (i) the nature and seriousness of the behaviour or incidents;
  - (ii) the wishes of the Complainant;
  - (iii) the contrition of the Respondent;
  - (iv) the effect of the proposed Sanction on the Respondent including any personal, professional or financial consequences;
  - (v) if there have been relevant prior warnings or disciplinary action against the Respondent; and/or
  - (vi) if there are any mitigating circumstances.
- (d) A Sanction handed down under this Policy shall commence from the date of the decision, unless otherwise expressly directed by the person imposing the sanction, or otherwise provided for in this Policy.

- (e) Where the person imposing the sanction finds that more than one breach of an Eligible Policy has been proven, it will hand down a single Sanction in respect of all breaches. The Sanction will be determined having regard to the seriousness of the overall conduct in question, rather than by adding Sanctions that would otherwise be applicable to each individual breach.

## **6. Resolving Disputes**

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### **6.1. Hearings Tribunal**

- (a) If a Respondent chooses to reject a Breach Offer under clause 5.4(d), the Complaints Manager must comply with clause 5.4(f) and refer the Alleged Breach to a Hearings Tribunal.
- (b) If the:
  - (i) Complaints Manager refers the matter to an Internal Tribunal; or
  - (ii) NSO fails to consent to referral to the NST; or
  - (iii) NST CEO fails to approve a matter for determination in the NST,an Internal Tribunal must be established to hear the Alleged Breach. The Internal Tribunal will:
  - (iv) be established under and comply with the tribunal procedure outlined in Schedule 7; and
  - (v) arbitrate the Alleged Breach and may, if applicable, impose a Sanction in accordance with clause 5.6.
- (c) If a matter is to be determined by the NST, it:
  - (i) will apply the Standard of Proof in its arbitration of the Alleged Breach, and otherwise arbitrate in accordance with the NST Legislation; and
  - (ii) may, if applicable, impose a Sanction in accordance with clause 5.6.
- (d) Legal Practitioners are not permitted to appear before, or represent a party at, the NST unless:
  - (i) in their personal capacity as a Complainant or Respondent; or
  - (ii) with the agreement of all parties to the dispute.
- (e) Clause 6.1(d) does not prohibit a party seeking legal advice in relation to an Alleged Breach or engaging a Legal Practitioner to prepare materials to be used by that party at the NST.
- (f) The Hearings Tribunal will notify the parties of the outcome in accordance with Schedule 7 or the NST Legislation (as the case may be) and Sport Organisation must comply with clause 7.2.

- (g) Notwithstanding this clause 6.1, the Complaints Manager may, at any time after a referral to an Internal Tribunal, with the consent of each of the parties and the NSO, refer:
  - (i) an Alleged Breach that is an NST Eligible Matter for arbitration in the NST General Division; or
  - (ii) an Alleged Breach that is neither an NST Eligible or NST Excluded Matter, for approval by the NST CEO for determination in the NST General Division.
- (h) Upon a successful referral under clause 6.1(g):
  - (i) the Internal Tribunal under this Policy is terminated;
  - (ii) the NST will arbitrate the Alleged Breach applying the Standard of Proof, and otherwise in accordance with the NST Legislation, and may, if applicable, impose a Sanction in accordance with clause 5.6; and
  - (iii) after the NST reaches a decision, the Sport Organisation must comply with clause 7.2.

## 6.2. Appeals

- (a) The following persons have a right to appeal the decision of a Hearings Tribunal under this Policy, subject to compliance with this clause 6.2 (each an **Appellant**):
  - (i) a Respondent who is found to have breached an Eligible Policy, irrespective of whether a Sanction is imposed; or
  - (ii) a Sport Organisation if no Sanction is imposed on a Respondent.
- (b) There is no appeal right from any decision of a Hearings Tribunal except under the following grounds of appeal:
  - (i) the Hearings Tribunal failed to abide by this Policy and/or the NST Legislation (as the case may be) and such failure resulted in a denial of natural justice; and/or
  - (ii) no reasonable decision maker in the position of the Hearings Tribunal, BNSWsed on the material before them, could reasonably make such a decision,

(each a **Ground of Appeal**).
- (c) To submit a valid notice of appeal, an Appellant must, within 7 days of the date of receipt of the decision made by the Hearings Tribunal:
  - (i) if the Alleged Breach is at Affiliate or state level, or is an NST Excluded Matter:
    - (A) lodge with Sport Organisation a document stating they wish to appeal, which states in full their Grounds of Appeal;
    - (B) pay the Sport Organisation's appeal fee; and

- (C) serve on the other party to the appeal a copy of the appeal document; or
- (ii) if the Alleged breach is at national level and is either an NST Eligible Matter or neither an NST Eligible Matter or NST Excluded Matter:
  - (A) lodge an “Application for an Appeal” form with the NST, which must state in full their Grounds of Appeal;
  - (B) pay the NST’s application fee for hearing an appeal in the NST’s Appeals Division; and
  - (C) serve on the other party to the appeal a copy of the “Application for an Appeal”,

(together, a **Notice of Appeal**).
- (d) If an appeal is lodged under:
  - (i) clause 6.2(c)(i), the Affiliate or Member Organisation may seek the consent of BNSW to refer the appeal to the NST Appeals Division if it is an NST Eligible Matter, or apply to the NST CEO for approval if neither an NST Eligible or NST Excluded Matter, failing which it must be dealt with under clause 6.2(f)(i); or
  - (ii) clause 6.2(c)(ii) and it is neither an NST Eligible or NST Excluded Matter, and the NST CEO rejects the matter, it must be dealt with under clause 6.2(f)(i); or
  - (iii) clause 6.2(c)(ii) and it is an NST Eligible Matter, it must be dealt with under clause 6.2(f)(ii).
- (e) If the Appellant fails to lodge a Notice of Appeal in compliance with clause 6.2(c), the Appellant’s right of appeal is extinguished, and the Appeals Tribunal has no jurisdiction to hear the appeal.
- (f) A valid appeal in accordance with:
  - (i) clauses 6.2(d)(i) or 6.2(d)(ii) will be determined by an Internal Appeals Tribunal, which must be established under and comply with the tribunal procedure outlined clause 6.2(g) and Schedule 7; or
  - (ii) clause 6.2(d)(iii) will be determined by the NST Appeals Division in accordance with clause 6.2(g), and otherwise in accordance with the NST Legislation.
- (g) The Appeals Tribunal's arbitration of the appeal:
  - (i) must determine, to the Standard of Proof, whether one or both Grounds of Appeal (as applicable) are proven, and must not rehear the matter or the facts of the Alleged Breach; and
  - (ii) may result in the Appeals Tribunal removing or changing a Sanction imposed on a Respondent, or alternatively imposing a Sanction on a Respondent in accordance with clause 5.6.

- (h) Clauses 6.1(d) and 6.1(e) apply to any NST Appeals Division hearings under this clause.
- (i) After a decision is reached by the Appeals Tribunal, the Sport Organisation must subsequently comply with clause 7.2.

## **7. How to finalise an Alleged Breach**

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### **7.1. Notification of outcome**

- (a) Unless otherwise provided for under the Process, the Complaints Manager must notify the Complainant (if any) and Respondent of the outcome of an Alleged Breach, in writing, once the Process has concluded.
- (b) If at the:
  - (i) Affiliate level, the Complaints Manager must notify the relevant Member Organisation and BNSW; or
  - (ii) Member Organisation level, the Complaints Manager must notify BNSW.
- (c) A Sport Organisation may, as required, disclose the matters referred to in clause 2.7(b)(iv).
- (d) Once the applicable Process (including any appeal) under this Policy has concluded, the decision is final and binding on all parties involved and there is no further right of appeal to any external body or tribunal.

### **7.2. Recording Alleged Breaches**

- (a) Each Sport Organisation shall keep records of all Alleged Breaches in keeping with the template register provided in Annexure B, for a minimum of 7 years from resolution of the Alleged Breach under this Policy.
- (b) Records must be maintained in a secure and confidential place, which may be electronically.

## **8. Interpretation and other information**

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### **8.1. BNSW background**

- (a) All policies and regulations previously enacted by a Sport Organisation concerning the handling of Alleged Breaches are withdrawn and replaced by this Policy, subject to clause 8.1(d).
- (b) This Policy is made and implemented under the BNSW constitution (**Constitution**).
- (c) This Policy:
  - (i) commences on the date outlined on the front cover (**Commencement Date**); and
  - (ii) is subject to the Constitution and if there is any inconsistency, the Constitution will prevail.

- (d) Where a Complaint is submitted:
  - (i) prior to the Commencement Date, it must be dealt with under the policies and processes of the Sport Organisation existing at the time; or
  - (ii) after the Commencement Date, it will be dealt with under this Policy, irrespective of when the alleged conduct occurred.
- (e) Disciplinary Action commenced prior to the Commencement Date must be dealt with under the policies and processes of the Sport Organisation existing at the time. Disciplinary Action commenced after the Commencement Date will be dealt with under this Policy.

## **8.2. Requirements for Member Organisations and Affiliates**

Member Organisations and Affiliates must adopt and implement this Policy as their complaints management policy for complaints arising under:

- (a) BNSW's Member Protection Policy;
- (b) BNSW's Child Safeguarding Policy; and
- (c) any other policy of BNSW that applies to Member Organisations and/or Affiliates.

## **8.3. Interpretation and amendment**

- (a) Any document required to be provided under this Policy may be given by:
  - (i) sending it to an email or other electronic address nominated by the recipient party; or
  - (ii) post or hand delivering it to that party's registered office.
- (b) A document is taken to have been received under this Policy if sent by email or other electronic transmission, on the date of transmission, or if hand delivered, on the date of delivery or if sent by post, 3 business days after it was sent.
- (c) BNSW may amend this Policy from time to time and must make the new version available on its website as soon as possible.
- (d) Any Alleged Breach being dealt with at the time of an amendment to this Policy will continue to be processed under the version of this Policy in force at the time a Sport Organisation receives the Complaint Form or commences the Disciplinary Action.
- (e) Each reference to Complaints Manager and Decision Maker in this Policy is taken to include their authorised delegates from time to time.



Witnesses (if any)	<p>Did anyone else witness this alleged breach by the Respondent?</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No                      <input type="checkbox"/> Not Sure</p> <p>If 'Yes', please list the witnesses and their contact details (if known):</p> <p>1. Name: Phone: Email:</p> <p>2. Name: Phone: Email:</p> <p>3. Name: Phone: Email:</p>
Level of the Sport at which alleged breach occurred	<p><input type="checkbox"/> NSO level where they relate to behaviour, an incident or circumstances that occurred at or involve individuals operating at the NSO level;</p> <p><input type="checkbox"/> SSA level where they relate to behaviour, an incident or circumstances that occurred at or involve individuals operating at the State (Territory) Sporting Association level; or</p> <p><input type="checkbox"/> Affiliate level - where it relates to behaviour, an incident or circumstances that occurred at or involve individuals operating at the Affiliate level (Association/League/Club level).</p>
<p>Eligible policy of the Sport Organisation that Respondent has allegedly breached</p> <p>Sections allegedly breached</p>	
Does Complainant consent to alternative dispute resolution?	<p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>
Signed by Complainant	<p>Signature:</p> <p>Date:</p>

## SCHEDULE 2

### Letter - Minor Breach Procedure

[INSERT SPORT ORGANISATION NAME]

### COMPLAINTS & DISPUTES POLICY - MINOR BREACH PROCEDURE

#### Minor Breach

[insert name]

[address line 1]

[address line 2]

By email: [insert email address]

#### Referral

1. [insert Sport Organisation] (**Sport**) has received information (**Alleged Breach**) under its Complaints & Disputes Policy (**Policy**) alleging that you have breached an eligible policy of the Sport, as outlined below. A copy of the Policy is available at [insert link].
2. The complaints manager under the Policy has referred the Alleged Breach about you for resolution under the Minor Breach Procedure.

#### Allegations

3. The Alleged Breach was lodged by [insert name] and received by the Sport on [insert date]. **OR** The Sport was made aware of the Alleged Breach on [insert date].
4. It is alleged in the Alleged Breach that you:
  - a) [insert alleged conduct]; and
  - b) [+++++].
5. As a result of the above allegations, it is alleged that you have consequently breached the following eligible policies of the Sport:
  - a) [insert specific sections of eligible policies allegedly breached]; and
  - b) [+++++].

#### Warning

6. Without determining whether the allegations in the Alleged Breach are correct, or that the Alleged Breach is proven, Sport formally warns you that the allegations, if they were proven, would constitute a breach of the eligible policies outlined at paragraph 5.
7. Sport reserves its rights in relation to any separate or future allegations or complaints that you have breached an eligible policy of Sport.
8. If you have any questions in relation to this letter, the complaints manager can be contacted by telephone on [+++++] or by email at [+++++].

Yours faithfully

[insert signatory]

### SCHEDULE 3

#### Letter - Breach Offer

[INSERT SPORT ORGANISATION NAME]

#### COMPLAINTS & DISPUTES POLICY - BREACH OFFER

#### Breach Offer

[insert name]

[address line 1]

[address line 2]

By email: [insert email address]

#### Referral

1. [insert Sport Organisation] (**Sport**) has received information (**Alleged Breach**) under its Complaints & Disputes Policy (**Policy**) alleging that you have breached an eligible policy of the Sport, as outlined below. A copy of the Policy is available at [insert link].
2. The complaints manager under the Policy has referred the Alleged Breach about you for resolution under the Breach Offer Process.

#### Allegations

3. The Alleged Breach was lodged by [insert name] and received by the Sport on [insert date]. **OR** The Sport was made aware of the Alleged Breach on [insert date].
4. It is alleged in the Alleged Breach that you:
  - a) [insert alleged conduct]; and
  - b) [+++++].
5. As a result of the above allegations, it is alleged that you have consequently breached the following eligible policies of the Sport:
  - a) [insert specific sections of eligible policies allegedly breached]; and
  - b) [+++++].

#### Sanction

6. If a breach of the type outlined in the Alleged Breach was fully proven, Sport would ordinarily impose the following sanction:
  - a) [insert applicable sanction]; and
  - b) [+++++].
7. In accordance with the Policy, to resolve the Alleged Breach using the Breach Offer Process, if you accept the alleged breach occurred without a hearing, Sport will offer you a sanction as follows:
  - a) [insert applicable sanction]; and
  - b) [+++++].

**Decision**

- 8. You are entitled to decide either to accept your alleged breach occurred, and the proposed sanction that will be imposed by Sport set out at paragraph 7, or alternatively dispute the alleged breach and/or proposed sanction.
- 9. If you dispute the alleged breach and/or proposed sanction, the Alleged Breach will be referred to a hearings tribunal for determination under the Policy.

**Notification**

- 10. Please advise Sport's complaints manager of your decision to either accept the alleged breach and proposed sanction or dispute the breach and/or sanction and proceed to a hearings tribunal, by signing and returning the below 'Acknowledgement' to the complaints manager at [insert contact address].
- 11. You must advise the complaints manager of your decision within 7 days of the date of this letter, failing which you will be deemed to have accepted the breach occurred and the proposed sanction will automatically commence.
- 12. Unless you dispute the alleged breach and/or proposed sanction, the proposed sanction will commence on the earlier of the date you notify the complaints manager of your acceptance, or the end of the date 14 days from the date of this letter.
- 13. If you have any questions in relation to this Breach Offer, the complaints manager can be contacted by telephone on [+++++] or by email at [+++++].

Yours faithfully

[insert signatory]

**ACKNOWLEDGEMENT**

I, ....., confirm to [insert NSO], that in response to this Breach Offer I (tick one):

Accept my breach of the eligible policies occurred and the proposed sanction offered.

OR

Dispute my breach of the eligible policies occurred and/or the proposed sanction offered and wish the matter to be heard by a hearings tribunal.

Signed: .....

Dated: .....

## SCHEDULE 4

### Eligible Policies

#	Policy Name	Link
1.	[insert]	LINK
2.	[insert]	LINK
3.	[insert]	LINK
4.	[insert]	LINK
5.	[insert]	LINK
6.	[insert]	LINK
7.	[insert]	LINK
8.	[insert]	LINK
9.	[insert]	LINK
10.	[insert]	LINK
11.	[insert]	LINK
12.	[insert]	LINK
13.	[insert]	LINK
14.	[insert]	LINK
15.	[insert]	LINK

## SCHEDULE 5

### NST Eligible Matters

The following are NST Eligible Matters, as defined in clause 1 of the Policy.

If the NST Legislation is amended after the Commencement Date, the following definitions are automatically updated to reflect the NST Legislation, without the need for Sport Organisation to amend this Policy, to incorporate the new definitions.

#### **NST Eligible Matters for Alternative Dispute Resolution under clause 5.2 of the Policy:**

1. disputes about athlete eligibility or selection, however described in the constituent documents of the sporting body;
2. disciplinary disputes, including but not limited to disputes relating to disciplinary action taken, or proposed to be taken, under a member protection policy of the sporting body;
3. disputes about bullying, harassment or discrimination, however described in the constituent documents of the sporting body; and
4. disputes relating to disciplinary action taken, or proposed to be taken, by a sporting body against a constituent part of its sport, where the constituent part is a body corporate.

#### **NST Eligible Matters for Hearings Tribunals under clause 6.1 of the Policy:**

5. disputes about athlete eligibility or selection, however described in the constituent documents of the sporting body;
6. disciplinary disputes, including but not limited to disputes relating to disciplinary action taken, or proposed to be taken, under a member protection policy of the sporting body; and
7. disputes relating to disciplinary action taken, or proposed to be taken, by a sporting body against a constituent part of its sport, where the constituent part is a body corporate.

#### **NST Eligible Matters for appeals under clause 6.2 of the Policy:**

8. disputes about athlete eligibility or selection, however described in the constituent documents of the sporting body;
9. disciplinary disputes, including but not limited to disputes relating to disciplinary action taken, or proposed to be taken, under a member protection policy of the sporting body;
10. disputes relating to disciplinary action taken, or proposed to be taken, by a sporting body against a constituent part of its sport, where the constituent part is a body corporate.

## SCHEDULE 6

### Internal Tribunal Procedure

#### Interpretation

1. In this Schedule:

**Chair** means the chair of a particular Internal Tribunal in accordance with this Schedule.

**Legal Practitioner** is a person holding a current practising certificate as a lawyer or BNSWrrister in any Australian jurisdiction.

**Sports Administrator** means a person who currently, or within the previous five years, is or has been employed in the field of sports administration.

**Tribunal Member** means an individual person sitting on an Internal Tribunal.

2. Defined terms not otherwise defined in this Schedule have the meaning given to them in the Policy.
3. All clause references refer to this Schedule unless otherwise provided.

#### Convening Internal Tribunal

4. As required under clause 6.1(a) of the Policy, the Complaints Manager will convene an Internal Tribunal in accordance with this Schedule.
5. The Internal Tribunal shall be convened as soon as reasonably practicable after a referral under clause 6.1(a) of the Policy and shall endeavour to convene no later than two weeks after notification by the Complaints Manager.

#### Composition of Internal Tribunal

6. Subject to clause 8, each Internal Tribunal shall:
  - (a) comprise three Tribunal Members selected by the Complaints Manager;
  - (b) comprise at least one Legal Practitioner and one Sports Administrator;
  - (c) be chaired by the Chair, who shall be appointed by the Complaints Manager and shall be:
    - (i) a Legal Practitioner; and
    - (ii) a person of experience and skills suitable to the function of chairing a tribunal.
7. The Complaints Manager shall use reasonable endeavours to ensure that the Tribunal Members selected for any particular Internal Tribunal:
  - (a) do not have an actual or perceived conflict of interest in relation to the Alleged Breach that might reasonably call into question the impartiality of the Internal Tribunal; and

- (b) do not have any close personal connection to the Respondent(s) or the matters being considered by the Internal Tribunal.
- 8. Should a Tribunal Member become unable to sit on an Internal Tribunal following the convening of the Internal Tribunal for whatever reason, the Complaints Manager shall appoint a replacement Tribunal Member having regard to the requirements of clause 6(b).
- 9. Should a Respondent challenge the impartiality of any one or more Tribunal Member, the challenge will be determined by the Chair sitting alone, unless that challenge relates to the Chair in which case it will be determined by:
  - (a) the Complaints Manager; or
  - (b) if the Complaints Manager is unavailable or unable to act, the other members of the Internal Tribunal.
- 10. There shall be no right of appeal from a decision made under clause 9.
- 11. No Internal Tribunal decision shall be invalidated by any irregularity in the appointment of a Tribunal Member.

#### **Responsibilities of Chair**

- 12. Without limiting any other duties of the Chair set out under this Schedule, the person appointed as Chair of the Internal Tribunal shall have the following responsibilities:
  - (a) to chair hearings of the Internal Tribunal;
  - (b) to ensure accurate records are kept of all of the Internal Tribunal's proceedings and decisions, including at a minimum:
    - (i) particulars of the hearing, including date, time and location;
    - (ii) the names of each Tribunal Member, Complainant, Respondent, witnesses called, and any other parties permitted to attend by the Internal Tribunal;
    - (iii) the decision of the Internal Tribunal, including any Sanction imposed, whether given to the parties orally, in writing or a combination of both, and the date(s) of communication; and
  - (c) to communicate to all parties of an Internal Tribunal the results of such Internal Tribunal and provide a copy of the record of result to the Complaints Manager within seven days of the hearing.

#### **Attendance at Internal Tribunal**

- 13. The following persons shall be required to attend the Internal Tribunal hearing conducted under this Schedule:
  - (a) the Respondent; and
  - (b) the Complainant.

14. The following persons shall be entitled to attend an Internal Tribunal hearing as required by the Complainant, or the Respondent:
  - (a) witnesses called to give evidence by a Respondent;
  - (b) witnesses called to give evidence by the Complainant;
  - (c) any person that the Chair in their absolute discretion believes will assist the Internal Tribunal and invites to attend the Internal Tribunal for that purpose; and
  - (d) where the Respondent, the Complainant or a witness is under the age of 18 years, an adult adviser, which will in the absence of unavailability or other extraordinary circumstance be expected to be such person's parent or guardian.
15. Legal Practitioners are not permitted to appear before, or represent a party at, the Internal Tribunal unless in their personal capacity as a Complainant or Respondent. This clause does not prohibit a party seeking legal advice in relation to an Alleged Breach or engaging a Legal Practitioner to prepare materials to be used by that party at the Internal Tribunal.
16. Each party to the Internal Tribunal shall bear their own costs.

#### **Non-attendance by Respondent(s)**

17. If any Respondent (or representative of a Respondent organisation) fails to attend the Internal Tribunal hearing without reasonable cause, the hearing may proceed and a determination may be made by the Internal Tribunal in the absence of the Respondent, provided that the Internal Tribunal is satisfied that this Schedule have been complied with.
18. A Respondent or Complainant may apply to the Chair to have an Internal Tribunal hearing:
  - (a) adjourned; or
  - (b) convened in another way (eg teleconference),if there are compelling circumstances that warrant such steps being taken to avoid costs, hardship or significant inconvenience to one or more parties. The Internal Tribunal has sole discretion on whether or not to grant the application.
19. If the Complainant fails to attend an Internal Tribunal hearing without reasonable cause, the hearing may proceed and a determination may be made by the Internal Tribunal in the absence of that person, provided that the Internal Tribunal is satisfied that all notification procedures under this Schedule have been carried out.

#### **Procedure of Internal Tribunal**

20. The Internal Tribunal shall conduct the hearing in such manner as it sees fit and may in its absolute discretion:
  - (a) consider any evidence, and in any form that it deems relevant;
  - (b) question any person giving evidence;
  - (c) limit the number of witnesses presented to those who provide any new evidence; and

- (d) act in an inquisitorial manner in order to establish the truth of the issue/case before it.
21. Without limiting the Internal Tribunal's power to regulate its own procedure as it sees fit, the Internal Tribunal shall ordinarily proceed in accordance with the following steps:
- (a) If a body corporate, the NSO, an SSO or Affiliate is a party to an Internal Tribunal hearing, one member of that body corporate, NSO, SSO or Affiliate shall be appointed by the body corporate, NSO, SSO or Affiliate to act as spokesperson for such body at the Internal Tribunal.
  - (b) At the commencement of a hearing, the Chair will identify the Tribunal Members and determine whether the Respondent is present to answer the allegation(s) in the Alleged Breach.
  - (c) The Respondent and the Complainant will be notified of their right to remain in the hearing until all evidence is presented but not to be present while the Internal Tribunal considers its findings and determines an appropriate Sanction (if any).
  - (d) The Chair shall advise all those persons present of the method of recording the hearing (if any).
  - (e) The allegation(s) as contained in the Alleged Breach shall be read out in the presence of all persons eligible to be present.
  - (f) The Respondent shall be asked whether or not they intend to contest the allegation(s).
  - (g) If the Respondent does not contest the allegation(s), the Chair will provide the Complainant and the Respondent with an opportunity to make submissions as to the appropriate Sanction (if any) to be imposed. In such circumstances, the Complainant and/or the Respondent may, if they wish, call witnesses to give evidence regarding the seriousness or otherwise of the breach, and any other mitigating or aggravating factors.
  - (h) If the Respondent contests the allegation(s), then the Chair will ask all witnesses except the Complainant(s) and the Respondent (and their advisers, if appointed in accordance with this Schedule) to leave the room and to wait to be called to give their evidence.
  - (i) The Complainant shall proceed to give evidence and the witnesses (if any) called by the Complainant(s) shall be called upon to give their evidence in turn, subject to the approval of the number of witnesses to be called by the Internal Tribunal in its discretion. The Respondent (or, if they are a minor his/her adviser) may ask questions of the Complainant or any witness called.
  - (j) Each witness shall be entitled to leave the Internal Tribunal hearing after giving evidence unless otherwise directed by the Internal Tribunal. Witnesses shall be entitled to remain in the hearing room after giving evidence with the permission of the Internal Tribunal.
  - (k) The Respondent shall then be entitled to present their defence. Witnesses may be called subject to the approval of the number of witnesses to be called by the Internal

Tribunal in its discretion. Complainants or the adviser to a Complainant who is a minor may ask questions of the Respondent or any witness called.

- (l) Where a person under the age of 18 exercises his/her right to have an adult observer or adviser present in accordance with this Schedule, a reasonable opportunity for consultation between the minor and the adviser shall be provided by the Internal Tribunal.
  - (m) Where the Respondent makes video evidence available to the Internal Tribunal, it may, at the discretion of the Internal Tribunal, be presented. The onus of providing suitable viewing equipment shall lie with the person requesting that the evidence be presented.
  - (n) The Internal Tribunal may, so as to limit inconvenience to witnesses, allow evidence to be given by telephone or videoconference.
22. At the conclusion of all of the evidence and submissions the Chair shall ask the Respondent, the Complainant and all other persons present to leave the hearing room while the Internal Tribunal considers its findings.
23. If the Internal Tribunal is satisfied that a breach of an Eligible Policy has been proven using the Standard of Proof, it shall find the breach proven. Otherwise the Alleged Breach shall be dismissed.
24. If the Internal Tribunal is not satisfied that the particular alleged breach has been proved but is satisfied that a lesser breach of an Eligible Policy has been proven, then the Internal Tribunal may find such lesser breach proved.
25. Where it appears to the Internal Tribunal that the Complainant has made an error in making the wrong alleged breach of an Eligible Policy, or omitted alleged breaches that should have been made, the Internal Tribunal may amend the allegation(s), subject always to the requirement that the Respondent must be informed of the new allegations and given an opportunity to respond to such allegations.
26. The decision of the Internal Tribunal shall be given by the Chair in the presence of both the Respondent and Complainant, unless one or both choose not to remain. If:
- (a) one of the Respondent or Complainant are not present, the Chair may give the decision orally, and must communicate the decision to the non-attending party in writing as soon as practicable; or
  - (b) neither the Respondent nor Complainant are present, the Chair must communicate the decision to each of the Respondent and Complainant in writing as soon as practicable.
27. The Internal Tribunal may reserve its decision but if it does so, it will provide its decision within 14 days of the hearing.
28. The Internal Tribunal is not obliged to give oral or written reasons for any decision made by it under this Schedule but may do so if it wishes.
29. Where the Internal Tribunal finds that one or more alleged breaches of an Eligible Policy have been proven, it shall inform the parties of its decision and provide the Complainant and the

Respondent with an opportunity to make submissions as to any aggravating or mitigating factors, before the Internal Tribunal makes a decision on Sanction. The Internal Tribunal may, in its absolute discretion, decide that it is appropriate to:

- (a) receive oral submissions as to Sanction immediately after delivering its decision on liability; or
  - (b) adjourn the hearing to allow the parties to make Sanction submissions on some later date, in which case, the Internal Tribunal shall direct whether submissions on penalty should be made orally or in writing.
30. After considering the parties' submissions as to Sanction, the Internal Tribunal shall determine the Sanction to be imposed (if any) in accordance with clause 5.6 of the Policy, and shall advise the Respondent of the Sanction. The Chair shall also notify the Complaints Manager of the decision of the Internal Tribunal.

## SCHEDULE 7

### Internal Appeals Tribunal Procedure

#### Interpretation

1. In this Schedule:

**Appeal Chair** means the chair of a particular Internal Appeals Tribunal in accordance with this Schedule.

**Tribunal Member** means an individual person sitting on an Internal Appeals Tribunal.

2. Defined terms not otherwise defined in this Schedule have the meaning given to them in the Policy or Schedule 6, as the case may be.
3. All clause references refer to this Schedule unless otherwise provided.

#### Convening Internal Appeals Tribunal

4. As required under clause 6.2(c)(i) of the Policy, the Complaints Manager will convene an Internal Appeals Tribunal in accordance with this Schedule.
5. The Internal Appeals Tribunal shall be convened as soon as reasonably practicable after a referral under clause 6.2(c)(i) of the Policy and shall endeavour to convene no later than two weeks after notification by the Complaints Manager.

#### Composition of Internal Appeals Tribunal

6. Subject to clause 7, each Internal Appeals Tribunal shall
  - (a) comprise three Tribunal Members selected by the Complaints Manager;
  - (b) comprise at least one Legal Practitioner and one Sports Administrator; and
  - (c) be chaired by the Appeal Chair who shall be appointed by the Complaints Manager and shall be:
    - (i) a Legal Practitioner; and
    - (ii) a person of experience and skills suitable to the function of chairing an Internal Appeals Tribunal,

none of whom sat on or was involved in the original Hearings Tribunal for the Alleged Breach subject of the appeal.

7. Clauses 8 to 10 (inclusive) of Schedule 6 apply to an Internal Appeals Tribunal with any necessary amendments.

#### Procedure of Internal Appeals Tribunal

8. Subject to this Schedule, the Internal Appeals Tribunal and persons appearing before it are bound by the same procedures under this Policy as if the Internal Appeals Tribunal was the Internal Tribunal hearing a matter at first instance.

9. The Complaints Manager shall forward records of the Internal Tribunal hearing in which the matter the subject of the appeal was heard at first instance to the Appeal Chair.
10. The Internal Appeals Tribunal must limit its hearing to consideration of the Ground(s) of Appeal relied upon by the Appellant under clause 6.2(c)(i) of the Policy, in accordance with clause 6.2(g) of the Policy.
11. An Internal Appeals Tribunal has the power to:
  - (a) dismiss the appeal;
  - (b) uphold the appeal;
  - (c) impose any of the Sanctions set out in the Policy; or
  - (d) reduce, increase or otherwise vary any Sanction imposed by the Internal Tribunal under the Policy,in accordance with clause 10 but otherwise in such manner as it thinks fit.
12. At the conclusion of the appeal, the Appeal Chair shall ensure that the Appellant, Respondent and Sport Organisation are informed of the determinations of the Internal Appeals Tribunal. The Appeal Chair shall also notify the Complaints Manager of the decision of the Internal Appeals Tribunal.
13. The Internal Appeals Tribunal is not obliged to give oral or written reasons for its decision.
14. The Internal Appeals Tribunal has discretion to order the refund of the appeal fee and shall do so where the appeal results in the breach being dismissed or the Sanction reduced.

## ANNEXURE A

### External Investigation - Terms of Reference

[insert name]  
[address line 1]  
[address line 2]

By email: [insert email address]

#### BNSWckground

1. I write on behalf of [insert Sport Organisation] (**Sport**).
2. Sport is the peak body for the administration of [insert sport] in [insert jurisdiction]. It is a not-for-profit organisation whose members include [state associations / clubs] and individuals such as athletes, coaches and officials.
3. All members of Sport, and various others, must comply with the provisions of Sport's constitution, together with any by-laws, policies or resolutions made by Sport's board or any duly authorised committee.
4. One such policy is Sport's Complaints & Disputes Policy (**Policy**), which outlines the process for resolving complaints alleging persons within Sport have breached one or more policies of Sport. A copy of the Policy is available at [insert website link].

#### Allegations

5. A complaint was recently lodged by [insert Complainant name] and received by the Sport on [insert date] under the Policy (**Alleged Breach**). **OR** Information was recently received by the Sport on [insert date] under the Policy (**Alleged Breach**).
6. It is alleged in the Alleged Breach that [insert Respondent name] (**Respondent**):
  - a) [insert alleged conduct]; and
  - b) [+++++],(together, the **Allegations**).

#### Instructions

7. Under the Policy, Sport's complaints manager has elected to conduct an investigation into the Alleged Breach, to assist in determining whether it will proceed under the Policy, and which process is chosen to resolve the matter.
8. We accordingly ask that you please investigate the Allegations, including by:
  - a) conducting an interview with the Complainant (either by telephone, video conference or in person), or affording them an opportunity to provide submissions and supporting evidence if they refuse to be interviewed;

- b) conducting an interview (either by telephone, video conference or in person) with the Respondent, or affording them an opportunity to provide submissions and supporting evidence if they refuse to be interviewed, and beforehand providing them with full details of the Alleged Breach so they can respond;
  - c) providing an opportunity for the Respondent to make submissions as to the applicable sanction that should be imposed if the allegations are true; and
  - d) where you consider relevant, obtaining statements from witnesses.
9. While the way you structure your investigation is a matter for you (subject to paragraph 8), the investigation should make a finding as to whether each allegation in the Alleged Breach is:
- a) substantiated (there is enough evidence to support the allegations, on the standard of proof outlined in the Policy);
  - b) inconclusive (there is insufficient evidence either way);
  - c) unsubstantiated (there is enough evidence to show that the allegations are unfounded, or not enough evidence to substantiate the allegations, on the standard of proof outlined in the Policy); and/or
  - d) mischievous, vexatious or knowingly untrue.
10. After you have completed your investigations, we request that you please prepare and provide to us a final written report addressing the questions at paragraph 9, together with any other relevant matters.

### **Purpose of the Report**

11. The Allegations relate to matters that, if substantiated, may warrant sanctions being imposed on the Respondent.
12. Your report is therefore requested for the purpose of enabling Sport to determine, under the Policy, whether the Respondent has breached an eligible policy of Sport, and if so, the appropriate sanction to impose.
13. Many of the matters proposed to be covered by the report are of a sensitive nature. We request that you maintain confidentiality and exercise appropriate discretion when conducting your investigation to protect the interests and reputations of the Complainant and Respondent.
14. We look forward to receiving your report as soon as possible. Please contact Sport's complaints manager, [insert name] at [insert contact] if you have any queries.

Yours faithfully

[insert signatory]

## ANNEXURE B

### Record of Alleged Breach

Name of Complaints Manager		<input type="checkbox"/> Complaint Form attached
Process chosen to resolve Alleged Breach (if any)		
Was Provisional Action taken?  If so, what?	<input type="checkbox"/> Yes <span style="margin-left: 200px;"><input type="checkbox"/> No</span>	
Was Alleged Breach referred to external agency?	<input type="checkbox"/> Yes <span style="margin-left: 200px;"><input type="checkbox"/> No</span>	
Date Complaint Form received  Date Process undertaken	Please detail:	
Was Alleged Breach valid?  If not, why?	<input type="checkbox"/> Yes <span style="margin-left: 200px;"><input type="checkbox"/> No</span>	
<b>If Alternative Dispute Resolution (ADR)</b>	Date of referral to ADR:  Type of ADR:  Date of ADR:  Alleged Breach resolved at ADR: <input type="checkbox"/> Yes <span style="margin-left: 20px;"><input type="checkbox"/> No</span>  If no, alternative Process chosen:  If Yes, please detail:	
<b>If Minor Breach Procedure</b>	Date letter sent to Respondent:  Any further comments:	

