



## BCA POLICY 17 - VILIFICATION

Updated - July 2020

### BALLARAT CRICKET ASSOCIATION VILIFICATION POLICY AND GUIDELINES FOR RESOLUTIONS

This Vilification document should be read in conjunction with the Laws of Cricket, the BCA Constitution and Code of Behaviour and is not intended to replace them.

#### GENERAL

There are two elements to the Ballarat Cricket Association Vilification Policy and they are as follows:

- i) A Policy Statement; and
- ii) A Process for Resolution of Issues.

#### 1. Policy Statement

##### 1.1 Preamble

The Ballarat Cricket Association (BCA) is strongly committed to ensuring that all Club officials and members, umpires and other representatives are able to participate in cricket in an environment free of racial and religious harassment.

Racial or religious harassment at any level of our cricket, both on and off the field of play, will not be tolerated under any circumstances. Club officials and members have a responsibility to create and maintain a playing environment in which participants feel comfortable and where people respect and tolerate the rights, views and opinions of others.

Individuals who experience racial or religious harassment are entitled to the support of the BCA Board, other officials and representatives of the Association and of its Clubs and members.

All complaints of such harassment will be treated seriously and will be investigated promptly and tactfully, including action being taken to ensure that the harassment stops.

The BCA will also take action to ensure that any person who lodges a complaint or who assists the investigation of a complaint, is not victimised or disadvantaged in any way. Where such a situation occurs, the individual or club found to be in breach of this policy will be required to appear before a Conciliation Committee to provide an explanation, and appropriate disciplinary action will be taken against any person or club deemed to have breached the policy.

Where it is found that the harassment alleged did not occur, all necessary action will be taken to ensure that the reputation of the accused person/s or club is not affected or impugned.

Furthermore, any individual who deliberately fabricates or falsifies a complaint or falsely supports such a complaint of harassment will be required to appear before the BCA Board to provide an explanation, and if proven, subject to appropriate disciplinary action.

Any person who falsely lays a complaint should also be aware that the accused person/s or club has the right to pursue legal action for defamation.

## **1.2 Definitions and Terms**

### **What is Harassment?**

Harassment is any form of behaviour which is uninvited, unwelcome and which humiliates, offends or intimidates another person, or makes the environment uncomfortable or unpleasant.

### **What is Racial Harassment?**

Racial Harassment is the derogatory and offensive use of language and/or behaviour aimed at a person or groups of people based on their:

- Colour;
- Race;
- Ethnic or Cultural background; or
- Migration.

Racial Harassment is unlawful and will not be tolerated by the BCA under any circumstances. It can involve and affect players, umpires, club officials and supporters.

### **Examples of Harassment or Discrimination**

Examples of behaviour which could form the basis for a complaint include:

- Distribution or display of offensive racist or racially oriented material;
- Jokes or derogatory comments referring to ethnicity or racial characteristics;
- Racially oriented verbal abuse;
- Repeated irrelevant references to a person's race, cultural or ethnic background;
- Practical jokes based on race or directed only at members of a particular ethnic group;
- Isolation or segregation of those from a particular racial or ethnic background;
- Campaigns of hate or silence based on race; and
- Physical assault based on race.

### **Making a Complaint**

If you wish to lodge a complaint or require information on the complaint process, refer to the Complaint Guidelines Policy attached (Attachment A).

## **2. Process for Resolution of Complaints**

i) The process for resolution of complaints should proceed along the following lines:

Umpires, Captains, Administrators or Officials should immediately attempt to resolve the issue.

Prompt action as soon after the incident occurs as is possible will often result in resolution of the matter, before other parties can become involved.

If the matter cannot be immediately resolved to the satisfaction of those concerned, then any further action should be deferred until the conclusion of the proceedings to allow a "cooling-off" period on both sides.

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ii) Umpires, Captains, Administrators or Officials should attempt to resolve the issue before formal lodgement of a complaint.

Action in mediating on the issue should be undertaken BEFORE any formal complaint proceeds, and if the matter can be satisfactorily dealt with then no report or further action is required.

If the matter cannot be resolved it proceeds to the next stage.

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iii) A Formal Complaint is laid by the Umpire using the normal report form, or if by an Official or Administrator then it should be in writing/email the Operations Officer of the BCA.

The complaint should set out the particulars of the incident, the names of the persons involved, any witnesses to the incident and any other considered pertinent to the matter.

Copies of the document will be provided to the Club Executive of the person alleging the harassment, the Club Executive of the person alleged to have committed the harassment and the Executive of the BCUA (if relevant).

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iv) The BCA Operations Officer shall advise the Chairperson of the Conciliation Committee of the complaint and after consultation with the Chairman of the Committee proceed to arrange a meeting involving the Committee, the complainant, the defendant and the person who filed the report.

v) The BCA Operations Officer shall act as the liaison person in setting up the Conciliation Meeting arrangements including forwarding all necessary information and advice to the parties, arranging the meeting time, location with the attending persons.

The BCA Operations Officer shall also provide formal advice to the BCA Board at the following meeting of the issues concerning the incident.

vi) The Conciliation Committee shall convene and review the issues surrounding the alleged incident, hear the evidence from the respective parties and endeavour to reconcile the views with a primary intent to resolve the issue in the most amicable way possible: if there can be resolution by mediation without involving a penalty then this should occur.

In the event that the matter cannot be resolved to the satisfaction of all parties and particularly the complainant, then the Conciliation Committee should, provided that it believes that there is sufficient justification, impose a penalty within the rules as set down in the Guidelines for the Proceedings.

The Complainant or Defendant may, if dissatisfied with the decision of the Conciliation Committee, by notice in writing to the BCA Operations Officer request a review of the decision.

Where that occurs the review shall involve consideration of the request by a BCA Sub-Committee of three persons selected by the BCA Board to review the decision and proceedings, and, subject to the Guidelines for the Proceedings, uphold, amend, or overturn the decision of the Conciliation Committee.

**Guidelines for Proceedings of Conciliation Committee and Executive Appeals Committee are below (Attachment A).**

## **COMPLAINT GUIDELINES POLICY**

Guidelines for Conduct of Hearings for Hearing of Complaints

### **How to Make A Complaint**

Any individual/s experiencing racial vilification and/or harassment should take action immediately to address the situation if he/she believes that the action was directed at him/her.

There are two approaches available in such a situation once the person has clearly established in their mind that the incident has occurred and they are as follows:

- By Direct Approach, which if unresolved can lead to an Informal Complaint, which if still unresolved can lead to a Formal Complaint; OR
- By an Informal Complaint which if unresolved can lead to a Formal Complaint.

#### **1. Direct Approach**

Direct action by speaking directly to the person involved, or contacting them confidentially, can put a stop to the offensive behaviour.

This course of action is to be preferred as it will usually ensure that the matter remains between the two parties, and avoids the involvement of third parties, which can often lead to greater difficulties in resolving the matter.

Alternatively, if the person experiencing the harassment/vilification is not comfortable with this approach, then they may seek to have the matter addressed by either of the other two approaches.

The person experiencing the harassment/vilification should explain to the other person, that their behaviour is offensive and distressing, and that they are requesting the person offending, to stop.

If the behaviour continues, the person experiencing the harassment/vilification should again request that the offending person stop, and indicate that unless the behaviour stops immediately, could lead to a complaint being lodged with an official representative of the BCA.

If the request to stop does not result in the harassment/vilification ceasing, then the person experiencing the harassment should decide if the matter is to be pursued, and if so should contact an Umpire, Captain, BCA Official or Club Administrator to assist in submitting an Informal Complaint.

#### **2. Informal Complaint**

An Informal Complaint may be made to any of the following:

- Any member of the BCA Board or Pennant Committee; or
- Any official appointed by the BCA to act on behalf of the BCA in a match or function organised by the
- BCA eg an umpire; or
- An official of any club affiliated with the BCA.

It is the responsibility of the person ("Official") on receipt of the complaint to act immediately in response to the person making the complaint, to assist the person making the complaint in ensuring that the harassment/vilification stops.

The Official should discuss the concerns and issues involving the incident/s with the person making the complaint and explore the possible options with both parties for resolving the complaint informally.

It is the official policy of the BCA that the Official is required to assist the person making the complaint to resolve the situation in a manner satisfactory to that person, and to treat the complaint as private and confidential between the Official, the person with the complaint and the person who has allegedly offended.

If notified that a person wishes to make an Informal Complaint, an Official should make brief notes of the following:

- Name of the person lodging the complaint;
- Name/s of the persons alleged to be offending;
- Date, Time and Location;
- Match or Function;
- Brief points relating to the alleged incident/s.

**Note:** If after mediation the person who has complained, determines that the outcome is acceptable, and indicates that the complaint will not proceed any further the notes are to be kept confidential, but should be retained for 14 days and may then be destroyed. In the event that the person who has complained decides to proceed to a formal complaint, then the Official will be requested to appear before the Conciliation Committee, (and BCA Appeal Sub-committee) and the notes of the mediation will be useful in the recollection of the issues discussed.

If the above process fails to satisfy the person who has made the complaint and the problem remains unresolved, then the person who has lodged the complaint should be advised that he/she may lodge a formal complaint and has a further 72 hours from that time to decide whether to proceed with a formal complaint.

### **3. Formal Complaint**

A formal complaint may ONLY be made to a member of the BCA Board, BCA Pennant Committee or through the BCA Operations Officer.

Where a Formal Complaint is being lodged by an umpire then such complaint is to be lodged on the normal report form, and the BCA Operations Officer will refer it to the Conciliation Committee.

In all other circumstances where a Formal Complaint is being lodged it is preferred, although not essential, that the complaint be lodged in writing.

The complaint should outline the following:

- Particulars as to date, time and location;
- The names of the individual/s involved, including the name of the Official who conducted the mediation at the Informal meeting;
- The nature of the incident/s, preferably in chronological order;
- Any witnesses; and
- Other issues or matters including any supporting documents.

**Note:** In the interests of fairness, the person who is alleged to have committed the offence will be contacted and informed of the offence/s alleged, and may be given a copy of any written complaint.

That person/s alleged to have been involved will be entitled to respond to the complaint/s and to have an opportunity to respond to the allegations.

The BCA Operations Officer will be responsible for:

- Advising the BCA Board of the Formal Complaint;
- Collating all material relevant to the complaint and providing copies to the Conciliation Committee;
- Arranging and liaising with all parties as to a suitable meeting time and location.

#### **4. Conciliation Committee**

The Conciliation Committee is to consist of at least three persons who are not currently members of the BCA Board nor are members of any of the clubs who are involved with the persons to the alleged complaint/s.

**Note:** The members of the Conciliation Committee are to be selected by the BCA Board, and may be drawn from the ranks of the BCA, Central Highlands Region or its affiliated clubs, or may be from areas outside the cricket community. Ideally, at least one person of the Committee would have knowledge of, or experience in dealing with the issue of Racial Harassment/Vilification.

The Convenor (Chair) of the Conciliation Committee is to be selected by the BCA Board.

The investigation by the Conciliation Committee will establish whether the complaint is:

- Substantiated (ie the incident did happen);
- Unsubstantiated (ie there is insufficient proof to determine whether the alleged incident did happen);
- Disproven (ie the alleged incident did not happen).

Persons appearing before the Conciliation Committee (ie those laying a complaint or those alleged to have offended) may bring a person to assist them at the hearing. That person may be a friend, club official or other relevant party however must not be a legal representative.

Persons appearing at the hearing may also bring witnesses to the alleged incident/s.

Persons who are not appearing as witnesses will not be permitted into the hearing at any time.

Depending on the outcome of the investigation the Conciliation Committee has the power to suspend the offending person/s, issue a suspended sentence to the offending person/s or issue a caution to the offending person/s.

In all cases where there has been a finding which substantiates the complaint there is a mandatory requirement that all parties are to be counselled.

In cases where a complaint is unsubstantiated the Conciliation Committee has the power to recommend that either party to a Formal Complaint be counselled.

The Convenor of the Conciliation Committee is required to appoint a person to keep a brief written summary of the meeting proceedings which shall be kept confidential.

The Convenor of the Conciliation Committee is required to advise the BCA Operations Officer of the outcome of the hearing, who is to then advise in writing all parties of the decision.

The Convenor of the Conciliation Committee is required to provide a short written report to the BCA Board within 14 days of the conclusion of any hearing (but should not provide any copies of the notes of the hearing in the event of an appeal).

Where a party to the proceedings does not wish to accept the finding/s of the Conciliation Committee, that persons/s has 14 days from the date of the notice from the BCA Operations Officer to reply with an appeal to the decision.

#### **5. Appeals Committee**

The Appeals Committee is to consist of at least three persons who have been selected by the current BCA Board, but shall not include any member whose club or former club is involved in the complaint being reviewed.

The BCA Operations Officer is an ex-officio member of the Committee and will act as Minute Secretary for the Appeal hearing.

The Appeal Committee may call such witnesses and review evidence as it deems necessary including the Convenor of the Conciliation Committee and may also seek guidance from a person who is expert in the area of race relations and related legislation.

Persons appearing before the Appeals Committee (ie those laying a complaint or those alleged to have offended) may bring a person to assist them at the hearing. That person may be a friend, club official or other relevant party however must not be a legal representative.

Persons appearing at the hearing may also bring witnesses to the alleged incident/s.

Persons who are not appearing as witnesses will not be permitted into the hearing at any time.

The decision of the Appeal Committee is final and may not be further appealed on any grounds.

The decision of the Appeals Committee is to be communicated in writing within 14 days to the BCA Board, the Convenor of the Conciliation Committee, and the parties to the complaint.

## **6. Confidentiality and Defamation**

The allegation of a complaint of harassment or vilification is a serious issue for all concerned.

Such an allegation has the potential to cause great harm to a person's reputation and should not be taken unless there is a genuine belief that the incident/s has/have occurred.

Equally where such instances occur they should not be dismissed lightly or ignored, and need to be dealt with sensitively and confidentially.

Confidentiality is necessary to protect the integrity of the complaint process, and of the individual/s concerned; obviously the more widely the issue is known about in the early stages the more difficult is the process of reconciliation as third parties become involved.

Under no circumstances should the complaint be known to any media outlets and all parties are to strictly avoid social media platforms at all stages of the process. Failure to do so could compromise the process, cause undue distress to any party involved and have serious legal ramifications.

The records and documents of all aspects relating to the hearing and any appeal process are to be kept strictly confidential and to only be seen by any person on a need to know basis.

If a person should lodge a complaint, or become involved in the investigation of a complaint (eg as a witness), they should be cautioned that any discussion that they may have in regard to the complaint should ONLY be with persons who are considered to be of assistance in the resolution of the complaint.

If a person is indiscreet or has discussed the complaint with other parties not directly involved in the complaint, the person/s alleged to have been the offender/s in the incident, may have grounds for legal action for defamation.