



BASEBALL CANBERRA GUIDE TO HARASSMENT, DISCRIMINATION, AND UNACCEPTABLE SEXUAL BEHAVIOUR

1 INTRODUCTION

Everyone has a basic right to play sport in an environment free from harassment and discrimination. Everyone also has an individual responsibility to treat others fairly. Any behaviour that constitutes, accepts, or promotes harassment (including sexual harassment and sexual offences) and discrimination is unacceptable. However, in saying this we must understand that what one person believes is or may be harassment is not necessarily the way another person may view the situation. The ACTBA is committed to providing an environment free from harassment and discrimination.

2 AIM

The aim of this document is to state the ACTBA policy on harassment, discrimination, and unacceptable sexual behaviour and to provide guidelines for dealing with such behaviour.

3 COVERAGE

Includes club training areas, and any other location or situation in which a coach, player, or official is engaged in training, courses or playing for a club, senior/junior representative or Academy squads within the ACT and social functions.

4 ACTBA POLICY ON HARASSMENT, DISCRIMINATION AND UNACCEPTABLE SEXUAL BEHAVIOUR

- [a] Any person who is associated with baseball within the ACT must refrain from behaviour which:
- (1) undermines a person's ability;
 - (2) is contrary to, or inconsistent with, the standards of conduct required by the ACTBA and/or is unlawful under civil or criminal law.
- [b] Any behaviour that constitutes harassment, discrimination, or unacceptable sexual behaviour is not tolerated in the ACTBA. Incidents will normally warrant disciplinary and/or administrative action, where such behaviour:
- (1) is prejudicial, or is likely to be prejudicial, to a person or team;
 - (2) takes advantage of or threatens a person or that person's personal integrity;
 - (3) brings, or is likely to bring, discredit on the ACTBA and/or is unlawful under civil or criminal law.

5 BEHAVIOUR THAT CONSTITUTES HARASSMENT, DISCRIMINATION, AND UNACCEPTABLE SEXUAL BEHAVIOUR

- [a] Any behaviour that is offensive, belittling, or threatening and is directed at an individual or group is unacceptable. It may be the result of some real or perceived attribute or difference (such as disability, race, gender, sexual preference, age or religion). The behaviour may also be unwelcome, unsolicited, unreciprocated and usually, but not always, repeated. It is behaviour that a reasonable person, having **regard to all the circumstances**, would have anticipated, and would offend, humiliate or intimidate the person being harassed.
- [b] This behaviour **must not be** confused with legitimate comment and advice (**including negative comment or feedback**) from managers and or coaches on the performance or behaviour of an individual or group, which is intended to assist that individual or group to **improve their performance or behaviour**, both on or off the field.
- [c] The Racial Discrimination Act 1975 provides that it is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on grounds of race, colour, descent, national or ethnic origin or immigrant status.
- [d] The Sex Discrimination Act 1984 makes unlawful both sexual harassment and discrimination on the grounds of sex, gender identity, intersex status, sexual orientation, marital or relationship status (including same-sex de facto couples), family responsibilities, pregnancy status, or because you are breastfeeding.
- [e] The Disability Discrimination Act 1992 provides that it is unlawful for a person to discriminate or harass another person in relation to disability. Disability discrimination also occurs when people are treated less fairly because they are relatives, friends, carers, co-workers, or associates of a person with a disability. Disability is defined in the Interpretation Section of the Act.
- [f] The Age Discrimination Act 2004 ensures that people are not treated less favourably on the ground of age in various areas of public life including employment, provision of goods and services, education, and administration of Commonwealth laws and programs. The Act also provides positive actions, which assist people of a particular age who experience a disadvantage because of their age. It also provides for exemptions in the following areas: superannuation; migration, taxation, and social security laws; state laws and other Commonwealth laws; and some health programmes.
- [g] Under the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, and the Disability Discrimination Act 1992, the Australian Human Rights Commission can make determinations that are binding on individuals and agencies. Discrimination is defined within Section 3(1) of the Australian Human Rights Commission Act 1986, with additional grounds listed under the Australian Human Rights Regulations 1989 that constitute discrimination under the Act.
- [h] In addition to the above Acts, the Australian Human Rights Commission Act 1986 includes in its grounds of discrimination: race, colour, sex, religion, political opinion, national extraction, social origin, age, medical record, criminal record, impairment, marital status, mental, intellectual or psychiatric disability, nationality, physical disability, trade union activity, or sexual preference.

6 EXAMPLES OF HARASSMENT

Harassment within the ACT Baseball Association can include but is not limited to:

- [a] derogatory comments or behaviour based on an individual's or group's colour, race, descent, national, ethnic or social origin;
- [b] derogatory comments based on a individual's religion, political opinion, age, medical record, criminal record, impairment, mental, intellectual or psychiatric disability, nationality, physical disability, marital status or sexual preference;
- [c] insulting comments about the physical characteristics, abilities or mannerisms of a person;
- [d] disparaging or unnecessary comments about a persons performance or attitude;
- [e] the spreading of malicious rumours or public statements of a derogatory nature about a person;
- [f] interference with a persons equipment or property;
- [g] continuous exclusion of a person, or group, from normal conversation or team activities;
- [h] persistent teasing;
- [i] sexual harassment; or
- [j] any other forms of victimisation.

7 SEXUAL HARASSMENT

- [a] Sexual harassment is defined in the Sex Discrimination Act 1984. In brief, sexual harassment is unwanted or unwelcome sexual behaviour where a reasonable person would have anticipated the possibility that the person harassed would feel offended, humiliated or intimidated. It has nothing to do with mutual attraction or consensual behaviour.
- [b] Sexual harassment is not limited to specific acts directed to particular people. 'Noni directed' acts, such as the display of printed materials, which could give offence, may constitute harassment. Behaviour, which may be acceptable in other contexts, e.g. between friends in a social context, can be inappropriate in other environments. Sexual harassment in the workplace can include but is not limited to:
 - (1) directly offensive verbal comments or innuendo of a sexual nature;
 - (2) sexually offensive jokes;
 - (3) repeated comments about a persons alleged sexual activities or private life;

- (4) comments regarding a person's sexual orientation;
- (5) offensive gestures;
- (6) comments to a colleague regarding their sexual appeal;
- (7) physical contact such as patting, pinching, touching or putting an arm around another person;
- (8) provocative posters, calendars or like material with a sexual connotation;
- (9) an unwelcome sexual advance;
- (10) an unwelcome request for sexual favours;
- (11) unwelcome conduct of a sexual nature, including oral or written statements, which a reasonable person would anticipate would offend, humiliate or intimidate the person harassed; or
- (12) encouraging junior members to accept participation in sexual relationships and activities.

[c] Conduct may appear innocent to one person and be perceived quite differently by another. This difference in perception can lead to a complaint of sexual harassment. To avoid such situations, conduct must be above reproach not only while training, playing, or participating in a course/lecture, but also during ACTBA/club social events wherever they occur.

8 OTHER UNACCEPTABLE SEXUAL BEHAVIOUR

Other unacceptable sexual behaviour cannot be closely defined. Ultimately, it will be a matter of judgement that certain sexual behaviour, which is not unlawful, has the potential to reflect negatively upon the ACTBA.

9 GENDER HARASSMENT

[a] Gender harassment is behaviour that stereotypes a person according to gender or sexual preference, rather than judging on individual merit. It includes openly discussing views in which the other sex is portrayed as inferior or subordinate, or using gender-based or sexist derogatory terms. Depending on circumstances, this type of behaviour may also constitute sexual harassment. Examples of such behaviour includes but is not limited to:

- (1) derogatory references to male and female physiological functions;
- (2) derogatory language about men and women who do not fit the male or female stereotype; and
- (3) unjustified inequitable treatment of males and females.

10 MISUSE OF AUTHORITY

It is the legitimate right of the ACTBA Executive, Directors, any other person in authority or who is engaged in the employment of the ACTBA and the Directors of the Umpires and Scorers Associations to direct and correct the behaviour of individuals or groups where warranted. However, we are to ensure that the methods used to direct and correct behaviour are fair, yet firm and not likely to give rise to complaints of harassment or amount to a misuse of authority or an abuse of power. Misuse of authority or abuse of power can take the form of offensive, abusive, belittling, threatening or bullying words, or behaviour or bastardisation. People should be properly counselled and disciplined if appropriate. Such actions would not be a misuse of authority or an abuse of power, nor constitute victimisation.

11 ADVICE AND SUPPORT MECHANISMS

Where a person wishes to seek confidential advice or support with regard to unacceptable behaviours, including those outlined in this document, a number of options are available. Contact the ACTBA office for more information.

12 MANAGEMENT OF HARASSMENT, DISCRIMINATION AND UNACCEPTABLE SEXUAL BEHAVIOUR

The most effective way to prevent the continuation of harassment, discrimination or unacceptable sexual behaviour is through the informal approach. The person offended should state clearly to the perpetrator that the behaviour is offensive and to demand that it cease immediately. It is recognised, however, that this may not always be possible. All parties involved are to be assured that, should a complaint proceed to a formal internal complaint, the allegation will be investigated thoroughly and with sensitivity.

13 RESOLUTION OF COMPLAINTS

- [a] Various options are available to resolve complaints of harassment, discrimination, or unacceptable sexual behaviour. Inevitably, the issue will require tact and sensitivity, and possibly intervention by a third party.
- [b] The quickest way to resolve problems associated with harassment, discrimination or unacceptable sexual behaviour is by dealing with them within the ACTBA. Options available for resolving complaints internally are by self-resolution or formally through a person's club or the ACTBA.
 - (1) **Self-Resolution:** This option involves the complainant approaching the perpetrator and requesting that the unacceptable behaviour stop. This informal approach makes it clear to the perpetrator that their actions are offensive to the complainant and allows the situation to be remedied without taking formal steps. It is recommended that where possible this option be attempted in the first instance. The complainant should be given practical advice and encouragement to enable them to successfully undertake this approach. Where self-resolution of a situation is not possible, or is unsuccessful, a member may wish to complain formally.

- (2) Formal Resolution: Where a formal complaint is to be made, the matter should, whenever possible, be dealt with by the complainant's club as this is likely to be the most effective option. If this is not possible, the matter may be dealt with by the ACTBA.
- (i) Where possible mediation should be used to resolve the situation. This is a voluntary and confidential meeting, where all participants have agreed to attend and cooperate in good faith to resolve the dispute between them. A mediator external to the dispute assists the parties to discuss, negotiate and achieve a solution for themselves. All negotiations during a mediation session are confidential. Any agreement reached as a result of a mediation session is reduced to writing and signed by all parties. Any breach of the agreement by any party may result in the commencement of alternative administrative or disciplinary action.
 - (ii) Where mediation is inappropriate either due to the nature of the situation, or the complainant or the respondent being unwilling to participate, a preliminary inquiry should be undertaken to ascertain the facts of the matter and appropriate action taken to ensure the unacceptable behaviour ceases. In some circumstances, the nature of the unacceptable behaviour may be such that punitive action is required. Depending on the circumstances, this will involve either formal administrative or disciplinary action.
 - (iii) Should a person be dissatisfied with the outcome or handling of a complaint, a written response may be lodged with the member's club director or appointed person. This avenue of complaint places a legal onus on the club director or appointed person to have the matter investigated swiftly and, if the grievance is substantiated, for it to be actioned without victimising, penalizing, or prejudicing the complainant.

14 DISCIPLINARY ACTION

Where an offence has occurred, and doubt exists as to whether it is a civil offence or an offence that may be heard by an ACTBA tribunal, the ACTBA will obtain legal advice to determine any further action either by the ACTBA or by other external agencies.

15 FALSE ALLEGATIONS

[a] The giving of false or misleading information by any person who knows that the information is false or misleading during an investigation will be subject to disciplinary action. A member of the ACTBA Executive or other officer, appointed to investigate an allegation of unacceptable behaviour, who believes or is satisfied that false or misleading information has been deliberately given, may wish to seek legal advice or advice from external agencies as to the appropriate course of action to be taken.

- [b] All persons involved in a complaint are required to be honest and accurate in their evidence. A person who furnishes information or makes a statement knowing that the information or statement is false or misleading will be subject to a penalty. The ACTBA, under the guidance of the following publications of which we base our policy (the Sex Discrimination Act, the Disability Discrimination Act, the Age Discrimination Act, and the Racial Discrimination Act) also provide for the dismissal of a complaint that is considered to be frivolous, vexatious, misconceived, or lacking in substance.

16 REPORTING OF INCIDENTS

- [a] Reporting of all incidents of unacceptable sexual behaviour involving sexual harassment, harassment, or discrimination is to be **in writing** (via email or hard-copy letter). Records are to be maintained of both administrative and any legal action resulting from incidents of such behaviour. **Hearsay reports will not be acted upon.**
- [b] When any incident occurs, the first point of contact after your Club Director /HCO is the ACTBA HCO. They will in turn pass, in confidence, this information to the respective personnel identified in the chain.

17 RESPONSIBILITIES REGARDING HARASSMENT, DISCRIMINATION, AND UNACCEPTABLE SEXUAL BEHAVIOUR

- [a] To assist in the provision of an environment free from harassment, discrimination, and unacceptable sexual behaviour, it is the responsibility of every person to ensure that complaints about such behaviour involving any aspect of baseball in the ACT are reported promptly for investigation and resolution. Club directors are to ensure that a member lodging a complaint will not be subjected to retribution.
- [b] Responsibilities of clubs and other associated officials. Club, senior and associated officials within the ACTBA are required to take all measures to eliminate harassment, discrimination and unacceptable sexual behaviour. Thus, any official who fails to deal promptly and effectively with any complaint may be in breach of a duty of care to members.
- [c] Responsibilities of club directors and designated club officials:
- (1) Club directors and/or designated club officials for disciplinary purposes, are to ensure that all members in their club are aware of the policy contained in this instruction together with club/association sources of advice, counselling and information regarding management of complaint procedures.
 - (2) It is the responsibility of all club directors and/or designated club officials/other officials to:
 - [i] foster integration, and take all possible action to prevent or eliminate prejudice, unjustified discrimination and harassment, fraternisation and unacceptable sexual behaviour;

- [ii] maintain an environment where complainants and witnesses are confident they will receive support; and
 - [iii] respond promptly, treat seriously but with sensitivity to allegations of harassment, discrimination, fraternisation and unacceptable sexual behaviour.
- (3) Victimisation and recurrence. Any measures aimed at resolution must include firm steps necessary to ensure there is no recurrence of the behaviour or victimisation of either party. Follow up action must be undertaken by the club to ensure that the behaviour has not recurred or victimisation has not resulted. All must be alert to the possibility of members who may be repeat offenders. While a complaint may be resolved at club level, it is possible that a member may develop a history of unacceptable behaviour over a period of time.
- (4) Individual personal development needs. Club Directors and/or designated club officials/other officials, for disciplinary purposes, are to ensure that the personal development needs of both individual complainants and members who are the subject of complaints are considered in the process of resolving a complaint. The following options are to be made available to those involved in every incident, depending on the specifics of each case:
- (5) Complainant:
- [i] Counselling. The complainant is to be provided with at least one session of counselling, preferably by a qualified person. The type of counselling is to match the severity of the incident and its impact on the complainant. The desired outcome required of counselling is for the complainant to return to being a functioning member of the team as quickly as possible.
 - [ii] Interpersonal Communication. Depending on individual needs and the circumstances of the incident, the desired outcome required of the interpersonal communication is for the complainant to be empowered to resolve an incident of unacceptable behaviour as far as possible by themselves.
- (6) The member who is the subject of the complaint:
- [i] Individual Harassment Awareness Training. The outcomes required of individual harassment awareness training are for the member to understand why the behaviour is unacceptable and to be aware of the need to change their behaviour patterns.
- (7) Follow Up Action. Other action also should be considered by the club directors and/or designated club officials/other officials in certain circumstances:

- (8) Incidents where the allegations have not been substantiated. In the situation where those allegations have not been substantiated, the member who is the subject of the complaint is to be offered counselling, preferably by a qualified person. The desired outcome of counselling is for the member who is the subject of the complaint to become a functioning member of the team as quickly as possible.
- (9) Incidents where the allegations have been substantiated. In every incident where the allegations have been substantiated, the person who is the subject of the complaint is to be warned by the club director and/or designated club official/ other officials of the consequences of their unacceptable behaviour. Depending on the severity of the incident, this may take the form of an administrative warning or be part of disciplinary action. The specific outcomes required of an administrative warning and/or disciplinary action are to ensure that the member is aware of the consequences should the unacceptable behaviour recur, and to educate them about their unacceptable behaviour.

18 TRAINING AND EDUCATION

[a] The ACTBA is involved in training on harassment, discrimination, and unacceptable sexual behaviour and will pass information with regard to training and educational guidance material for use by clubs through the club directors.

[b] The ACTBA will implement policy and procedures appropriate to its requirements.

19 CONCLUSION

Everyone involved with baseball in the ACT is to act in accordance with the general standards of community decency. They must be conscious of the fact that **individual perceptions may differ from their own** and exercise **common sense**, maturity, and clear judgement as to what is considered acceptable behaviour. Any difference in perception should ideally be resolved informally between the individuals involved, or through a process of complaint resolution. Harassment, discrimination, fraternisation and unacceptable sexual behaviour of a more serious nature will result in disciplinary action or charges under criminal law.

ATTACHMENT 1: GUIDANCE NOTES AND FORMAT FOR REPORTING UNACCEPTABLE SEXUAL BEHAVIOUR INCIDENTS INVOLVING SEXUAL HARASSMENT, SEXUAL OFFENCES AND HARASSMENT OR DISCRIMINATION INCIDENTS

[a] Reporting is required for any incident where it involves:

- (1) sexual harassment/offences and unacceptable behaviour;
- (2) discrimination; or
- (3) harassment.

- [b] Reports are to and include the following details:
- (1) what type of report;
 - (2) date of incident;
 - (3) reporting person (include name and address);
 - (4) keywords to be used are:
 - [i] verbal - spoken word;
 - [ii] voyeur - looking;
 - [iii] exposure - showing;
 - [iv] minor physical contact - patting/touching/hugging etc;
 - [v] physical contact - molestation (including the deliberate use of force);
 - [vi] sexual assault; and
 - [vii] other – including discrimination and/or harassment;
 - (5) a brief description of the incident (this –if involving Serial 1 [a] - is to include the precise location of where the incident occurred and the gender of personnel involved should also be included here); and
 - (6) final outcome (this is to show the end result of the complaint; eg. offender charged and punishment awarded or referred to another authority - ie. ACTBA/legal representation/external agency, complaint unproven, counselling of personnel involved undertaken etc).

ATTACHMENT 2: GUIDELINES FOR CLUB DIRECTORS, DESIGNATED CLUB OFFICIALS AND OTHER ASSOCIATED OFFICIALS

- [a] When a member's behaviour is unacceptable but not unlawful, the matter should be investigated. The official may subsequently consider taking administrative and /or disciplinary action.
- [b] The decision on whether to act on information regarding a member's behaviour will not be easy and the official may consider it prudent to seek advice from an external agency before acting, if only to ensure that the officials personal beliefs and opinions will not unduly influence considerations.
- [c] Officials are to observe the following requirements:
- (1) the matter is to be handled sensitively and discreetly;

- (2) the Rules of natural justice are to be applied, in particular the member concerned is to be informed promptly of any investigation and is to be given adequate opportunity to respond to allegations;
 - (3) the member should be counselled against repetition of the behaviour in question where it is found to be unacceptable;
 - (4) where formal counselling is required, it is to be recorded in writing; and
 - (5) each case is to be considered on its merits using only factual evidence and considering all relevant factors.
- [d] In more serious cases, the behaviour of the member may warrant consideration of disciplinary action, as well as seek advice from a legal officer or an external agency.
- [e] In cases of a sexual complaint, where the complainant is under 18 years of age, the wishes of the complainant on informing parents or next of kin are to be respected.
- [f] Where possible, mediation should be used to resolve harassment complaints. This is a voluntary and confidential meeting, where all participants have agreed to attend and cooperate in good faith to resolve the dispute between them. A mediator external to the dispute assists the parties to discuss, negotiate, and achieve a solution for themselves. All negotiations during a mediation session are confidential. Any agreement reached as a result of a mediation session is written down, signed by all parties and is enforceable. Any breach of the agreement by any party may result in the commencement of alternative administrative or disciplinary action.
- [g] All complaints should be resolved as quickly as possible. To achieve this, any investigation (formal or informal) which is to be carried out should commence as soon as possible and be completed within 28 days of the complaint being made.
- [h] A member may choose to lodge a complaint with an external agency regardless of action already taken. The ACTBA must be notified in writing, detailing why they choose to lodge a complaint with an external agency.
- [i] For this reason, it is essential that adequate records of the initial complaint, unit investigation and consequential action be taken, ensuring in particular that conversations and interviews are properly recorded. Similarly, in the event of the possibility that a member may develop a history of such behaviour over a series of time, it is imperative that accurate records are maintained.

ATTACHMENT 3: QUESTIONS FOR A COMPLAINANT

This following provides a suggested checklist for use when questioning a complainant. As this is a guide to deal with all offences, some questions would not be relevant. Ensure that you obtain details from the complainant in writing to assist in resolving the matter with the member who is the subject of the complaint and for record purposes.

- [a] When and where did the incident happen?

- [b] Who did it?
- [c] What was said and done?
- [d] What did you do? (eg. did you confront the person, say anything to them?)
- [e] What was their response?
- [f] Has this happened before? If so, how did you deal with it then?
- [g] What are your feelings about the person?
- [h] What is your work relationship with the person?
- [i] In what way is this affecting you?
- [j] Were there any witnesses?
- [k] To your knowledge, have others had similar experiences?
- [l] Who else have you told?
- [m] Do you want to see a counsellor, legal officer or any other person?
- [n] Do you wish me to inform your parents or next of kin (only if complainant is under 18 years of age and it has to do with any sexual inferences)?
- [o] What would you like to do about it? How can this situation be resolved now? Find out the outcome from the complainant i.e. seeks an apology.
- [p] Inform the complainant, if you have the expertise, on the legal processes if they take the complaint to an outside agency, so that an informed decision on whether to proceed with the complaint can be made

ATTACHMENT 4: DEALING WITH THE MEMBER WHO IS THE SUBJECT OF THE COMPLAINT

The following provides a suggested checklist for use when interviewing the member whom is the subject of the complaint.

- [a] Actions:
 - (1) conduct the interview in private;
 - (2) emphasise that this is not a formal disciplinary investigation;
 - (3) inform the member of the nature of the complaint, giving as much detail as possible;
 - (4) give them the opportunity to respond;

- (5) listen to the member's statement without interrupting and then try to corroborate facts;
- (6) explain what the unacceptable behaviour is and draw attention to the ACTBA policy;
- (7) point out that the unacceptable behaviour is unlawful (where appropriate);
- (8) if there is agreement that the incident took place, suggest some informal remedies, with the prior consent of the complainant, such as apologising; and
- (9) if there is denial that anything took place and there remains a live allegation, hand the matter over for formal investigation.

[b] Outcomes:

- (1) you must obtain an undertaking that the unacceptable behaviour will cease immediately;
- (2) if there is denial or disagreement, advise that the matter may need to be further investigated;
- (3) direct that the issue not be discussed with other members or with the complainant;
- (4) inform the member that any victimisation of a complainant will lead to disciplinary action; and
- (5) inform the member that they have the right to seek legal advice and any other support and guidance, which they may need, within the ACTBA and externally.

ATTACHMENT 5: GENERAL PRINCIPLES OF COMPLAINT INVESTIGATION

This attachment provides guidelines on the general principles for conducting a complaint investigation:

- [a] deal with all complaints seriously, sensitively and swiftly;
- [b] do not make assumptions about the complainant or the member who is the subject of the complaint;
- [c] interview all concerned to obtain accurate information;
- [d] interview witnesses;
- [e] obtain written statements;

- [f] keep factual records of the investigation;
- [g] ensure that no one is victimised or disadvantaged during the investigation;
- [h] ensure, as far as possible, that confidentiality is maintained;
- [i] determine appropriate action for resolution of the complaint in consultation with those concerned;
- [j] ensure that the outcome is appropriate and meets the needs of the parties; and
- [k] if at any stage it is evident that a criminal offence has occurred, the appointed Investigating Officer is to immediately report back to the ACTBA with a view to ascertaining advice from an external agency.