

## P3 MEMBER PROTECTION POLICY – PART C: COMPLAINT PROCEDURES

Scheduled Reviewed Triennially or as required

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### Background

To ensure consistency and that the principles of Natural Justice are followed in all aspects of handling or conducting Complaints, allegations, investigations into child abuse KA will follow and implement the following procedures:

- Appendix 1: Complaints Procedure
- Appendix 2: Mediation Procedure
- Appendix 3: Investigation Procedure for allegations of Child Abuse

### Appendix 1: Complaints Procedure

A Complaint can be about an act, behaviour, omission, situation or decision that falls within this Policy. Complaints will always vary. They may be about individual or group behaviour; they may be extremely serious or relatively minor; they may be about a single incident or a series of incidents; and the person about who the allegation is made may admit to the allegations or emphatically deny them.

Given all of the variables that can arise, KA provides a step-by-step Complaint procedure. Individuals and organisations to which this Policy applies may also pursue their Complaint externally under anti-Discrimination, Child-protection or other relevant legislation.

We will endeavour to deal with complaints on a confidential basis. We will not provide information about the complaint to another person without the complainant's consent, except if the law requires us disclose this information or it is necessary to properly deal with the complaint. To ensure fairness for everyone involved, we will provide the full details of the complaint to the person or people against whom the complaint has been made and ask for their response. As a result, it may be difficult for us to resolve complaints made anonymously.

#### Step 1

As a first step you (the Complainant) should try to sort out the problem with the person or people involved if you feel able to do so. You can if you wish approach a relevant external agency such as an equal opportunity commission, for advice or to make a complaint.

#### Step 2

If:

- Step 1 is not possible/reasonable; or
- you are not sure how to handle the problem by yourself; or
- you just want to talk confidentially about the problem with someone and get some more information about what you can do; or
- the problem continues after you tried to approach the person or people involved; then talk with one of our MPIOs.

To speak to a MPIO please **contact the KA National Office on 02 4721 1522**.

The MPIO will:

- take notes about your Complaint (which the MPIO will keep in a secure and confidential place);
- try to sort out the facts of the problem;
- ask what outcome/how you want the problem resolved and if you need support;
- provide possible options for you to resolve the problem;
- explain how our Complaints procedure works;
- act as a support person if you so wish;
- refer you to an appropriate person to help you resolve the problem, if necessary; and
- inform the relevant government authorities and/or police if required by law to do so.

#### Step 3

After talking with the MPIO you may decide:

- there is no problem;
- the problem is minor and you do not wish to take the matter forward;
- to try and work out your own resolution (with or without a support person such as a MPIO), or
- to seek an informal mediated resolution with the help of a third person (such as a mediator or a Manager).

If you wish to remain anonymous KA may not be able to assist you to resolve your Complaint. We have to follow the principles of Natural Justice and be fair to both sides. This means that KA or you may be required to provide the

person/people you have complained about with details of the Complaint, so they have a fair chance to respond to all the allegations.

## Step 4

If your Complaint is not resolved to your satisfaction, you may:

- make a formal Complaint in writing to the CEO; or
- approach a relevant external agency such as an equal opportunity commission, for advice.

## Step 5

If you decide to make a formal Complaint in writing under Step 4, the CEO will, on receiving the formal Complaint and based on the material you have provided, decide whether:

- the Complaint falls within the Policy or whether it is a matter for a Club to address;
- they are the most appropriate person to receive and handle the Complaint and if not will appoint the appropriate person in their place;
- the nature and seriousness of the Complaint warrants a formal resolution procedure. (Some Complaints may be of a minor and/or purely personal nature with no connection to the activities of KA. In these cases, the CEO may determine that the Complaint does not warrant a formal resolution procedure);
- to appoint a person, and/or a tribunal to investigate the Complaint;
- to refer the Complaint to an informal or formal mediation session;
- to refer the Complaint to a tribunal;
- to refer the matter to the police or other appropriate authority; and/or
- to implement any interim administrative or other arrangements that will apply until the Complaint process set out in these Procedures is completed.

In making the decision(s) outlined above, the CEO or their appointee will take into account:

- whether they have had any personal involvement in the circumstances giving rise to the Complaint and, if so, whether their ability to impartially manage the Complaint is compromised or may appear to be compromised;
- whether, due to the nature of the Complaint, specific expertise or experience may be required to manage the Complaint;
- your wishes, and the wishes of the Respondent, regarding the manner in which the Complaint should be handled;
- whether, due to the nature of the Complaint, the relationship between you and the Respondent and any other relevant factors, the Complaint should be referred (or should not be referred) to informal or formal mediation or to a hearing's tribunal. Relevant factors may include an actual or perceived power imbalance between you and the Respondent, the nature of any ongoing working relationship between you and the Respondent, and the personal attributes of you and the Respondent (for example, if one party does not speak English fluently, some of the possible Complaints resolution mechanisms may not be appropriate);
- the nature and sensitivity of any information or other material that must be provided by you, the Respondent, and any of the other people involved in the Complaint;
- whether the facts of the Complaint are in dispute; and
- the urgency of the Complaint, including the likelihood and the consequences (if the Complaint is ultimately proven) that you will be subject to further unacceptable behaviour while the Complaint process set out in these Procedures is being conducted.

If the CEO or their appointee is the appropriate person to handle the Complaint they will, to the extent that these steps are necessary:

- get full information from you (the Complainant) about your Complaint and how you want it resolved (if this information has not already been obtained through earlier steps);
- put the information they've received from you to the person/people you're complaining about and ask them to provide their side of the story;
- decide whether they have enough information to determine whether the matter alleged in your Complaint did or didn't happen; and/or
- determine what, if any, further action to take. This action may include disciplinary action in accordance with Attachment C6, appointing a person to investigate the Complaint, referring the Complaint to an informal or a formal mediation session or a hearings tribunal and/or referring the Complaint to the police or other appropriate authority.

## Step 6

If:

- a person is appointed to investigate the Complaint under **Step 5**, the investigator will conduct the investigation and provide a written report to the CEO or his appointee who will determine what, if any, further action to take. This

action may include a direction to the investigator to make further enquiries and obtain additional information, disciplinary action in accordance with Attachment C6, and referring the Complaint to an informal or a formal mediation session, a hearings tribunal and/or the police or other appropriate authority;

- the Complaint is referred to an informal or a formal mediation session under **Step 5**, the mediation session will be conducted in accordance with Attachment C2 or as otherwise agreed by you and the Respondent;
- the Complaint is referred to a hearing's tribunal under **Step 5**, the hearing will be conducted in accordance with the procedure for the KA Tribunal.
- the Complaint is referred to the police or other appropriate authority under **Step 5**, KA will use its best endeavours to provide all reasonable assistance lawfully required by the police or other appropriate authority; and
- interim administrative or other arrangements are implemented under **Step 5**, KA will periodically review these arrangements to ensure that they are effective.

## Step 7

If, under **Step 6**, an informal or formal mediation session is conducted, and you and the Respondent(s) can not reach a mutually acceptable mediated solution to the Complaint, you may request that the CEO or his appointee reconsider the Complaint in accordance with **Step 5**.

If the internal Complaints processes set out in this Policy do not achieve a satisfactory resolution/outcome for you, or if you believe it would be impossible to get an impartial resolution within KA you may choose to approach an external agency such as an equal opportunity commission to assist with a resolution.

## Step 8

The CEO or their appointee will document the Complaint, the process followed and the outcome. This document will be stored in a confidential and secure place. If the Complaint was dealt with at a State/district level, the information will be stored in the State association office. If the matter is of a serious nature, or if the matter was escalated to and/or dealt with at the national level, the original document will be stored at the national office with a copy stored at the State office

## External Procedure

There may be a range of external options available to you depending on the nature of your Complaint. If you feel that you have been Harassed or Discriminated against, you can seek advice from your State or Territory equal opportunity commission without being obliged to make a formal Complaint. If the commission advises you that the problem appears to be a type of Harassment that comes within its jurisdiction, you may then make a decision as to whether or not to lodge a formal Complaint with the commission.

Once a Complaint is received by an anti-Discrimination commission, an investigation will be conducted. If it appears that unlawful Harassment or Discrimination has occurred, there will usually be an attempt to conciliate the Complaint confidentially first. If this fails, or is inappropriate, the Complaint may go to a formal hearing where a finding will be made as to whether unlawful Harassment or Discrimination occurred. The tribunal will decide upon what action, if any, will be taken. This could include financial compensation for such things as distress, lost earnings or medical and counselling expenses incurred.

An anti-Discrimination commission can decline to investigate a Complaint or dismiss a Complaint at any point in the investigation, conciliation or public hearing stages.

If you do lodge a Complaint under anti-Discrimination law, you may use an appropriate person (e.g. an MPIO) as a support person throughout the process. It is also common to have a legal representative, particularly at the hearing stage of a Complaint.

## Appendix 2: Mediation

Mediation is a process by which people who are in conflict can be helped to communicate with each other about what is important for them and how to make decisions about resolving their dispute.

Mediators provide a supportive atmosphere and method of talking to one another, to assist in sorting out the issues, coming up with acceptable solutions and making mutually satisfactory agreements.

This attachment outlines the general procedure of mediation that will be followed by KA.

- The people involved in a formal Complaint (Complainant and Respondent(s)) may work out their own resolution of the Complaint or seek the assistance of a neutral third person or a mediator. Mediation may occur either before or after an investigation of the Complaint. The costs of the mediation will be agreed between the parties prior to the

commencement of the process.

- Mediation (getting those involved to come to a joint agreement about how the Complaint should be resolved) will only be recommended:
  - after the Complainant and Respondent have had their chance to tell their version of events to MPIO on their own;
  - the MPIO does not believe that any of the allegations warrant any form of disciplinary action - proven serious allegations will not be mediated, no matter what the Complainant desires; and
  - mediation looks like it will work (i.e. the versions given by the Complainant and Respondent tally or almost tally and/or at the very least, it looks as though it will be possible for each party to understand the other party's point of view).
- Mediation will **not** be recommended if:
  - the Respondent has a completely different version of the events and they won't deviate from these;
  - the Complainant or Respondent are unwilling to attempt mediation;
  - due to the nature of the Complaint, the relationship between you and the Respondent(s) and any other relevant factors, the Complaint is not suitable for mediation; or
  - the matter involves proven serious allegations, regardless of the wishes of the Complainant.
- If mediation is chosen to try and resolve the Complaint, the MPIO or other designated person will, in consultation with the Complainant and the Respondent(s), arrange for a mediator to mediate the Complaint.
- The MPIO or other designated person will notify the Respondent(s) that a formal Complaint has been made, provide them with details of the Complaint and notify them KA has decided to refer the matter to mediation to resolve the Complaint.
- The mediator's role is to assist the Complainant and Respondent(s) reach an agreement on how to resolve the problem. The mediator, in consultation with the Complainant and Respondent(s), will choose the procedures to be followed during the mediation. At a minimum, an agenda of issues for discussion will be prepared by the mediator.
- The mediation will be conducted confidentially and without prejudice to the rights of the Complainant and the Respondent(s) to pursue an alternative process if the Complaint is not resolved.
- At the end of a successful mediation the mediator will prepare a document that sets out the agreement reached between the Complainant and Respondent(s) and it will be signed by them as their agreement.
- If the formal Complaint is not resolved by mediation, the Complainant may:
  - write to the CEO to request that the CEO reconsider the Complaint in accordance with Step 5; or
  - approach an external agency such as an anti-Discrimination commission.

## Appendix 3: Investigation Procedure - Child Abuse

**If you believe a child is in immediate danger or a life-threatening situation, contact the Police immediately on 000.**

Fact sheets on reporting allegations of child abuse in different states and territories are available at [www.playbytherules.net.au](http://www.playbytherules.net.au).

An allegation of Child Abuse is a very serious matter and must be handled with a high degree of sensitivity. The initial response to a Complaint that a Child has allegedly been abused should be immediate if the incident/s are serious or criminal in nature while less serious/urgent allegations should be actioned as soon as possible.

All people working with KA in a paid or unpaid capacity have a duty to report any concerns to the appropriate authorities, following the steps outlined below.

The following is a basic outline of the key processes to follow. More information can be obtained from your relevant State or Territory government agency.

### Step 1 - Clarify basic details of the allegation

- Any Complaints, concerns or allegations of Child Abuse should be made or referred to the MPIO.
- The initial response of the person that receives the Complaint from the Child (or person on behalf of the Child) is crucial to the well-being of the Child. It is important for the person receiving the information to:
  - Listen, stay calm, be supportive and do not dispute what the Child says;

- Reassure the Child that what has occurred is not the fault of the Child;
  - Ensure the Child is safe;
  - Be honest with the Child and explain that other people may need to be told in order to stop what is happening;
  - Promptly and accurately record the discussion in writing;
  - Do not discuss the details with any other person other than in accordance with these procedures;
  - Do not contact the alleged offender; and
  - Ensure that what the Child says is quite clear but do not elicit detailed information about the Abuse. You should avoid suggestive or leading questions.
- The person receiving the Complaint should obtain and clarify basic details (if possible) such as:
    - Child's name, age and address;
    - Person's reason for suspecting Abuse (observation, injury or other); and
    - Names and contact details of all people involved, including witnesses.

## Step 2 – Report allegations of a serious or criminal nature

- Any individual or organisation to which this Policy applies, should immediately report any incident of a serious or a criminal nature to the police and other appropriate authority.
- Immediately report any allegation of child abuse or neglect, or any situation involving a Child at risk of harm to the police or other appropriate child protection agency. You may need to report to both the police and the relevant child protection agency.
- The relevant child protection agency or police should be contacted for advice if there is **any** doubt about whether the Complaint should be reported.
- If the allegation involves a person to whom this policy applies, then also report the allegation to the MPIO so that he or she can manage the situation.
- If the Child's parent/s are suspected of committing the Abuse, report the allegation to the relevant government agency.

## Step 3 – Protect the Child

- The MPIO should assess the risks and take interim action to ensure the Child's/Children's safety and the safety of other children. Some options could include redeployment of the alleged offender to a non-Child related position, supervision of the alleged offender or removal/suspension from their duties until the allegations are finally determined. Legal advice should be sought before any interim steps are made if the person is in paid employment with KA.
- The MPIO should also address the support needs of the person against whom the Complaint is made. Supervision of the person should ideally occur with the knowledge of the person. If stood down, it should be made clear to all parties that are aware of the incident that this does not mean the person is guilty and a proper investigation still needs to be undertaken.
- The MPIO will consider what services may be most appropriate to support the child and his or her parent/s.
- The MPIO will put in place measures to protect the child and the alleged offender from possible victimisation and gossip.

## Step 4 – Further clarify and investigate allegation

- Up to three different investigations could be undertaken to examine allegations that are made against a person to whom this policy applies, including:
  - a criminal investigation (conducted by the police).
  - a child protection investigation (conducted by the relevant child protection agency).
  - a disciplinary or misconduct inquiry/investigation (conducted by KA).
- Regardless of the findings of any polices and/or child protection agency investigations, KA will carry out its own internal investigation to decide whether the alleged offender should return to his or her position, be dismissed, be banned or face any other disciplinary action, including but not limited to in accordance with Step 6 below.
- The appointed investigator should consider all information relevant to the matter – including any findings made by the police, the child protection authority and/or court – and then set out a finding, recommend actions and the rationale for those actions in accordance with Step 5 below.
- The information collected during the investigation should be made available to the relevant authorities.
- Strict confidentiality, impartiality, fairness and due process must be maintained at all times.

## Step 5 – Record and analyse all information

- If an internal investigation was conducted under Step 4, the investigator will provide a report to the CEO.
- The decision-maker(s) will be the CEO of KA and will remain separate and at arm's length from the investigator.
- The CEO of KA will consider all the information and determine a finding. It will also recommend action and its rationale for the action.

## Step 6 – Undertake disciplinary action

- For incidents of a serious or criminal nature, consideration must be given to the findings of the police and/or the government agency before making a decision on disciplinary proceedings.
- Implement any disciplinary decision recommended by the CEO in accordance with By-laws 7 and 8. The action should be immediate.
- Provide the relevant government agency with a report of any disciplinary action taken by KA, where that is required.
- Check with the relevant State government authority to see if you need to forward a report (e.g. the NSW Commission for Children and Young People requires notification of relevant employment proceedings).

## Contact Details for Advice or to Report an Allegation of Child Abuse

<b>Australian Capital Territory</b>	
ACT Police Non-urgent police assistance Ph: 131 444 <a href="http://www.afp.gov.au">www.afp.gov.au</a>	Office for Children, Youth and Family Services <a href="http://www.dhcs.act.gov.au/ocyfs/services/care_and_protection">www.dhcs.act.gov.au/ocyfs/services/care_and_protection</a> Ph: 1300 556 729
<b>New South Wales</b>	
New South Wales Police Non-urgent police assistance Ph: 131 444 <a href="http://www.police.nsw.gov.au">www.police.nsw.gov.au</a>	Department of Community Services <a href="http://www.community.nsw.gov.au">www.community.nsw.gov.au</a> Ph: 132 111
<b>Northern Territory</b>	
Northern Territory Police Non-urgent police assistance Ph: 131 444 <a href="http://www.pfes.nt.gov.au">www.pfes.nt.gov.au</a>	Department of Children and Families <a href="http://www.childrenandfamilies.nt.gov.au">www.childrenandfamilies.nt.gov.au</a> Ph: 1800 700 250
<b>Queensland</b>	
Queensland Police Non-urgent police assistance Ph: 131 444 <a href="http://www.police.qld.gov.au">www.police.qld.gov.au</a>	Department of Communities <a href="http://www.communities.qld.gov.au/childsafety">www.communities.qld.gov.au/childsafety</a> Ph: 1800 811 810
<b>South Australia</b>	
South Australia Police Non-urgent police assistance Ph: 131 444 <a href="http://www.sapolice.sa.gov.au">www.sapolice.sa.gov.au</a>	Department for Communities and Social Inclusion <a href="http://www.dcsi.sa.gov.au">www.dcsi.sa.gov.au</a> Ph: 131 478
<b>Tasmania</b>	
Tasmania Police Non-urgent police assistance Ph: 131 444 <a href="http://www.police.tas.gov.au">www.police.tas.gov.au</a>	Department of Health and Human Services <a href="http://www.dhhs.tas.gov.au/children">www.dhhs.tas.gov.au/children</a> Ph: 1300 737 639
<b>Victoria</b>	
Victoria Police Non-urgent police assistance Ph: (03) 9247 6666 <a href="http://www.police.vic.gov.au">www.police.vic.gov.au</a>	Department of Human Services <a href="http://www.dhs.vic.gov.au">www.dhs.vic.gov.au</a> Ph: 131 278
<b>Western Australia</b>	
Western Australia Police Non-urgent police assistance Ph: 131 444 <a href="http://www.police.wa.gov.au">www.police.wa.gov.au</a>	Department for Child Protection <a href="http://www.dcp.wa.gov.au">www.dcp.wa.gov.au</a> Ph: (08) 9222 2555 or 1800 622 258