



*Basketball Australia
Whistleblowing Policy*

Date adopted by BA Board:

25 March 2013

Date Effective:

25 March 2013

Copyright

This document is © Basketball Australia and is confidential. Copyright in the whole and every part of this document belongs to Basketball Australia, and cannot be used, transferred, copied or reproduced in whole or in part in any manner or form or in any media to any person other than with the prior written consent of Basketball Australia. Basketball Australia otherwise reserves its rights.

Environment

Basketball Australia asks that you consider the environment before printing this document.

Document Control

This document is controlled by Basketball Australia and is a part of Basketball Australia's policies and procedures system.

Contents

1	Purpose & Scope	4
1.1	Purpose	4
1.2	Scope	4
1.3	Definitions.....	5
2	Policy Guidelines.....	6
2.1	Investigation of a Report of Misconduct	6
2.2	Natural Justice	6
3	Reporting Process	6
3.1	Normal Reporting Channels Favoured	6
3.2	Internal Whistleblower Protection Officers	6
3.3	External Whistleblower Protection Officers	7
3.4	Links to the Grievance Procedure	7
4	Actions that may Invoke a Formal Investigation	7
5	Role and Responsibility of Whistleblower Investigation Officers.....	8
6	Investigation Process	8
6.1	General.....	8
6.2	Anonymous Reporting.....	9
6.3	False Reporting by a Person Purporting to be a Whistleblower	10
6.4	Trivial or Vexatious Reports	10
7	The Rights of the Respondent.....	10
7.1	Communication with the Respondent	10
7.2	Interviews with the Respondent.....	11
8	Independent Representative	11
9	Support for Investigation Witnesses.....	11
10	Post-Investigation Actions	12
11	Related Policies, Procedures and Legislation.....	12
12	Document History.....	12

1 Purpose and Scope

1.1 Purpose

Basketball Australia's core values enshrine the principle it will carry out its activities legally and ethically and that people connected with Basketball Australia, such as its staff, players, referees, volunteers and coaches must also act legally and ethically and in accordance with Basketball Australia's policies and procedures. Basketball Australia recognises that the most common method of detecting conduct that breaches identified standards is by notification of the wrongdoing by its own staff, volunteers and contractors.

The purpose of this policy is to:

- Help detect and address wrongdoing;
- Protect and support persons who report (anonymously or otherwise) actual and suspected Misconduct; and
- Set out the process that Basketball Australia will undertake when conducting an investigation of disclosed Misconduct.

This policy is intended to complement the Basketball Australia Grievance Policy¹ and will be invoked where Misconduct has been reported.

1.2 Scope

This policy applies to Basketball Australia, its member organisations, staff, volunteers, all players and other persons bound by Basketball Australia's policies and procedures, as well as to members of the public who make disclosures of Misconduct relating to Basketball Australia and persons associated with it. This policy must not be used for trivial or vexatious matters (being matters that the reporter knows, or ought to know have no substance).

This policy is not intended to replace other reporting structures such as those for dispute resolution, grievances, equal opportunity, discrimination, harassment or bullying except where the issue is of a serious matter where existing reporting systems have failed to process the issue or processed it in an inappropriate, unfair or biased manner.

¹ HR Policy and Procedures Manual p32

1.3 Definitions

In this Policy:

"**Corporations Act**" means the *Corporations Act 2001* (Cwth).

"**Disclosure**" means an allegation made in good faith by a person who believes on reasonable grounds that a person or persons involved with Basketball Australia has engaged, is engaging or intends to engage in Misconduct.

"**Misconduct**" means conduct that shows an intentional or reckless disregard of the law, or of Basketball Australia rules, policies and procedures, or of good and prudent standards of conduct in general.

"**Natural Justice**" for the purpose of investigating alleged Misconduct means:

- The person who is the subject of the disclosure is informed of the allegations made against them and has the right to respond;
- If the investigator is planning to make a report that will adversely affect any person, that person must be given the opportunity to respond. Any additional information received is to be detailed in the final report and considered before the report is finalised;
- All relevant parties to a matter are heard and all submissions are considered;
- A decision is not made till reasonable enquiries have been made;
- The investigator or decision maker does not have a personal or direct interest in the matter being investigated;
- All proceedings are carried out fairly and without bias, and care is taken to exclude perceived bias from the process; and
- The investigator is impartial in assessing the credibility of the whistleblower and any witnesses. Where appropriate conclusions as to credibility are included in the investigation report.

"**Respondent**" means a person who is the subject of alleged Misconduct in a Disclosure made by a Whistleblower.

"**Whistleblower**" means an individual who makes a Disclosure about Misconduct within Basketball Australia or related to Basketball Australia with a view to the matter being investigated and appropriate action being taken.

"**WIO**" means Whistleblower Investigation Officer, and may be internal or external to Basketball Australia.

"**WPO**" means Whistleblower Protection Officer, and may be internal or external to Basketball Australia and, for the purposes of s. 1317AA(1)(b)(iv) of the Corporations Act is a person authorised by Basketball Australia to receive disclosures.

2 Policy Guidelines

2.1 Investigation of a Report of Misconduct

All reports of Misconduct must be investigated appropriately and in accordance with this policy.

2.2 Natural Justice

Internal investigations should uphold the principles of natural justice, transparency of process and accountability; and assist the organisation to maintain a high level of professional standards in meeting its responsibilities to the community, staff, members and other stakeholders.

3 Reporting Process

3.1 Normal Reporting Channels Favoured

Any person who detects or has reasonable grounds for suspecting Misconduct is encouraged to raise any concerns through normal reporting channels. Basketball Australia officers or employees who receive Disclosures must report Disclosures to either, the CEO or the Chairman of the Board, who are responsible for ensuring the matter is properly dealt with. This may include appointing an investigator independent of the area of operations to inquire into the allegations.

3.2 Internal Whistleblower Protection Officers

If a Whistleblower does not believe reporting to their immediate manager through normal reporting channels is appropriate given the circumstances of the Misconduct, under this policy the report may be made directly to the designated internal WPO:

Bastien Wallace

(t) 02 83965516 (m) 0477550990 (e) bastien.wallace@basketball.net.au

A WPO appointed by Basketball Australia or by the internal WPO under clause 3.3 below, is required to maintain the confidentiality of the person making the Disclosure at all times during and after the reporting process, unless authorised by either:

- a) A law enforcement agency; or
- b) The written permission of the person making the Disclosure.

3.3 External Whistleblower Protection Officers

In the case that the above reporting options are considered inappropriate, under this policy the Whistleblower may contact one or both designated external whistleblower protection officers below. This reporting avenue could be used where the Whistleblower reasonably believes any of the avenues involving Basketball Australia management would not provide an independent assessment and/or investigation and that the allegation ought to be handled external to Basketball Australia management.

This avenue is generally only appropriate in the instance of alleged or suspected Misconduct involving senior Basketball Australia management. External whistleblower protection officers designated to receive reports of alleged or suspected wrongdoing are:

EXTERNAL WPO TBC

3.4 Links to the Grievance Procedure

This policy is concerned with disclosure of information in the public interest. The process under this policy must not be used for trivial or vexatious matters. Further, this policy is not intended to replace the Grievance Policy and associated procedures, which are in place for all staff, volunteers, players and others to raise any matter they may have in relation to their work or their work environment, other person, or decision affecting their employment or involvement with Basketball Australia.

4 Actions that may Invoke a Formal Investigation

Basketball Australia will investigate any Misconduct reported via the reporting mechanisms described in this Policy, however, the internal WPO retains discretion as to whether an internal investigation will be conducted and the appointment of WIOs.

WIOs may be internal or external depending on the circumstances involved. WPOs will liaise with the Chairman of Basketball Australia on matters pertaining to any investigation.

In matters of a serious nature that may affect the safety of any person, the WPO will immediately confer with the CEO or Chairman as is appropriate (but not disclose the identity of the Whistleblower).

5 Role and Responsibility of Whistleblower Investigation Officers

- a) The WPO may determine the role and responsibility of WIOs, including any timeframe for reports;
- b) WIOs will be provided with a copy of this policy;
- c) The lead WIO is directly accountable to the WPO. Any other investigator is accountable to the lead WIO;
- d) The WIO must maintain professional standards throughout any investigation and fully comply with all legal and ethical practices;
- e) Matters that are identified as criminal offences during the course of an investigation will be referred to the relevant police service;
- f) The lead WIO will cooperate and assist members of the relevant police service and other law enforcement agency in their investigations if required;
- g) Basketball Australia will liaise with those law enforcement agencies at the conclusion of their (law enforcement agencies) investigations in order to determine if an internal administrative action or further internal investigation is required. If further action is deemed necessary the matter will be referred to the Chairman or the CEO for a determination, as is appropriate given the subject matter of the Disclosure. If both Chairman and CEO are associated with the subject matter of the disclosure, then the WIO will determine an appropriate person to whom reference to take action is required;
- h) All stages of the investigative process must be recorded in writing. In circumstances of a protracted investigation, progress reports must be provided at such times determined by the WPO;
- i) Each investigation must conclude with a written 'final' report that is submitted to the WPO within an agreed time-frame; and
- j) External WIOs must hold a current investigators licence for the Australian State in which the investigation is conducted.

6 Investigation Process

6.1 General

- a) Internal investigations will be conducted in accordance with all relevant legislation, common law and ethical practices;
- b) WIOs are expected to interview all persons believed by the WIO as having, or suspected of having, any relevance to the particular investigation;
- c) WIOs will do such other things, in accordance with the law and Basketball Australia policies and procedures, reasonably considered necessary for the efficient and effective conduct of the investigation;

- d) WIOs will co-operate fully with law enforcement or other related agencies in the conduct of all investigations in which the agency has a statutory interest;
- e) WIOs will maintain confidentiality at all times. All persons involved in the investigation, including respondents, complainants, witnesses, independent representatives and support persons must maintain confidentiality at all times and must not discuss or divulge matters associated with an investigation unless it is for the purposes of the investigation in accordance with approved procedures, obtaining legal advice or is required by law; and
- f) All whistleblowing reports will be investigated discretely, and only those persons who need to know the facts and the details of a report, as determined by the WPO, will be informed of the report. During an investigation, the following activities may need to take place:
 - i. Details of time, dates, places and monies received and by whom, how recorded, how any monies were disbursed and, if possible, from where the monies were misappropriated;
 - ii. Accurate reconciliation of the books of accounts showing fraudulent entries or in some cases, where an entry is omitted from the books;
 - iii. Contact a designated external expert who understands the potential issues and who will guide relevant management through the process;
 - iv. Interviewing of relevant witnesses (both internal and external);
 - v. Obtaining, reviewing and identifying documentary evidence;
 - vi. Computer forensic examination of computers and associated IT systems
 - vii. Review of telephone records;
 - viii. Enquiries with third parties including banks, vendors, customers and, if relevant, regulators; and
 - ix. Preparation of a report on the alleged Misconduct.

6.2 Anonymous Reporting

Anonymous reports of wrongdoing have significant limitations that inhibit a proper and appropriate inquiry or investigation and, therefore, reports are to contain full details of persons involved where possible.

If the person making a disclosure is an officer or employee of Basketball Australia or a contractor or contractor's employee engaged by Basketball Australia, then the WIO must inform that person, to the extent that it is reasonably practicable, that in order to attract legal protection under the Corporations Act, they must provide their name to the WIO before making the disclosure.

6.3 False Reporting by a Person Purporting to be a Whistleblower

Any disclosure made under this policy must be undertaken in good faith and the person making the disclosure must have reasonable grounds upon which they make the disclosure. A person purporting to be a whistleblower has knowingly made a false report of Misconduct may be subject to disciplinary action including dismissal.

6.4 Trivial or Vexatious Reports

This policy is intended to apply to reports of alleged or suspected Misconduct which is serious in nature. Generally, such reports would be regarded as being in the public interest. The policy must not be used for trivial or vexatious matters.

7 The Rights of the Respondent

7.1 Communication with the Respondent

The Respondent will be advised in writing of the nature of the allegation and advised that an investigation has commenced into that allegation, provided that, in doing so, the identity of the person making the Disclosure is not revealed or likely to be revealed on the basis of the information provided to the Respondent. The particular circumstances of a Disclosure may require a delay in informing the Respondent, to maintain the confidentiality of the person making the Disclosure or where in circumstances the Respondent is suspected of engaging in criminal conduct.

The Respondent will be provided with an opportunity to respond to the allegation prior to completion of the investigation. The Respondent is not obliged to participate in the investigation process or to participate in an interview.

If the Respondent agrees to be interviewed, he/she will:

- a) Be given notice of the date, time and location of the interview;
- b) Be advised that he/she may, if he/she chooses, have an independent representative, capable of providing advice to the Respondent, present for the duration of the interview;
- c) Be provided with a copy of any document or documents to be examined during the interview before the commencement of the interview; and
- d) Be advised that if he/she believes he/she does not have the capacity to effectively speak on his/her own behalf due to language, cultural or medical reasons, he/she may request the assistance of an interpreter or other suitable person during any interview (**Independent Representative**). Arrangements for the

attendance of any such person at the interview must be made in consultation with the investigators.

7.2 Interviews with the Respondent

Where practical:

- a) An audiotape recording of an interview provides an indisputable record of interview;
- b) All interviews will be recorded on audiotape or noted with comprehensive notes, and all parties subject to an interview, including the Respondent shall be so advised;
- c) At the commencement of the interview the Respondent will be advised that he/she has the right to claim a privilege against self incrimination;
- d) The Respondent is not obliged to answer any question, or to provide any information or document to the WIO; and
- e) The Respondent is entitled to end the interview at any time.

At the completion of the interview:

- a) The Respondent will be provided with a copy of the audiotape of the interview if applicable. The Respondent is entitled to a copy of the interview transcript (if available) upon request; and
- b) If the Respondent has any complaints about the manner in which the interview was conducted he/she should lodge their complaint with the WPO.

8 Independent Representative

The Independent Representative cannot themselves be in any way involved in the matter under investigation either as a witness or co-Respondent.

9 Support for Investigation Witnesses

Basketball Australia is committed to supporting and protecting Whistleblowers who may be subject to reprisal from their fellow employees, player or others. This support and protection is coordinated through the WPO, and may be required for Corporations Act compliance. The WPO is contactable by email or telephone via details contained on Basketball Australia's intranet.

10 Post-Investigation actions

The lead WIO is responsible for submitting a 'final' investigation report. The report must comprise:

- Covering letter;
- Title page;
- Table of contents;
- Background including any definitions;
- Relevant elements of the investigation;
- Conclusion;
- Recommendation(s);
- References; and
- Appendices.

The report must remain strictly confidential and must not be copied or distributed without authority.

All original notes and other evidence related to the investigation must be securely stored as agreed in writing by WPO. External investigators must provide a written undertaking that all original notes and other evidence will be securely retained for a minimum of 7 years.

11 Related Policies, Procedures and Legislation

Code of Conduct

Grievance Policy Corporations Act

12 Document History

Version	Date	Amended By	Description of Changes