

## PART C – COMPLAINTS PROCEDURE

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## Attachment C1: COMPLAINTS PROCEDURE

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A Complaint can be about an act, behaviour, omission, situation or decision which is in breach of 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, Motorsport Australia provides a step-by-step Complaint procedure. Relevant Persons may also pursue their Complaint externally under anti-Discrimination, Child- protection or other relevant legislation.

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### Step 1

As a first step the Complainant should try to sort out the problem with the person or people involved if they feel able to do so. As a general rule, Complaints are more likely to be settled where they are:

- dealt with immediately at the time of the event, or as soon as is practicable thereafter;
- discussed with the person or entity the subject of the Complaint; or
- at a Motorsport Australia Event, raised with the steward or clerk of course in an effort to assist to resolve the Complaint.

There is always a risk that a Complainant may not achieve the outcome they want when the resolution of a Complaint is left to a third party. Accordingly Motorsport Australia recommends that all Complainants, where reasonable, take all steps to try to resolve a Complaint at the time of the relevant incident so that the prospects of achieving a mutually agreeable outcome are enhanced.

In addition to the above, the Complainant can approach a relevant external agency such as an equal opportunity commission, for advice or to make a complaint.

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### Step 2

If:

- Step 1 is not possible/reasonable;
- the Complainant is not sure how to handle the problem by themselves and there is no-one else the Complainant can approach at the time of the incident to assist;
- the Complainant just wants to talk confidentially about the problem with someone and get some more information about what the Complainant can do; or
- the problem continues after the Complainant tried to approach the person or people involved,

the Complainant can approach a MPIO. To speak to a MPIO please contact the Motorsport Australia National Office on 1300 883 959.

The MPIO will take reasonable steps to:

- take notes about your Complaint;
- advise the Complainant whether the Complaint falls under the MPIO and, if not, other avenues the Complainant may have to try to resolve the Complaint;
- try to sort out the facts of the problem;
- ask what outcome/how the Complainant wants the problem resolved and if the Complainant needs support;
- provide possible options for the Complainant to resolve the problem;
- explain how our Complaints procedure works;
- act as a support person if the Complainant so wishes during this step;
- refer the Complainant to an appropriate person to help the Complainant resolve the problem, if necessary; and
- inform the relevant government authorities and/or police if required by law to do so.

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### Step 3

After talking with the MPIO the Complainant may decide:

- there is no problem;
- the problem is not significant and the Complainant does not wish to take the matter forward;
- to try and work out the Complainant's 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 another person who can assist as an intermediary to assist the Complainant to resolve the Complaint).

If the Complainant wishes to remain anonymous, Motorsport Australia may not be able to assist to resolve the Complaint. Motorsport Australia will follow the principles of Natural Justice to the extent reasonable given the nature and seriousness of the Complaint and be fair to both sides. Among other things, this means that Motorsport Australia may be required to provide the person/people the Complainant has complained about with details of the Complaint so they have a fair chance to respond to all the allegations.

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### Step 4

If the Complaint is not resolved to the Complainant's satisfaction, the Complainant may:

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

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### Step 5

If the Complainant decides to make a formal Complaint in writing under Step 4, the CEO (or its appointee) will, on receiving the formal Complaint and based on the material the Complainant has provided, make a decision in relation to the Complaint. In making a decision, the CEO (or its appointee) may take any necessary steps required to reach that decision including but not limited to the following:

- determine if the Complaint falls within the Policy;
- determine if they are the most appropriate person to receive and handle the Complaint and, if not, will appoint an appropriate person in their place. Note: Where a person is appointed by the CEO to receive and handle the Complaint, the appointee will have all of the rights and obligations which the CEO would otherwise have in accordance with this Policy, including but not limited to the right to make a decision in relation to the Complaint;
- determine if the nature and seriousness of the Complaint warrants a formal resolution procedure. Note: some Complaints may be of a minor, commercial or purely personal nature with no connection to the activities of Motorsport Australia. In these cases, the CEO may determine that the Complaint does not warrant a formal resolution procedure and dismiss the Complaint;
- appoint a person to investigate the Complaint;
- refer the Complaint to an informal or formal mediation session;
- refer the Complaint to a hearings tribunal;
- refer the matter to the police or other appropriate authority;
- implement any interim administrative or other arrangements that will apply until the Complaint process set out in these Procedures is completed; and/or
- based on the nature and significance of the Complaint, dismiss the Complaint.

In making the decision(s) outlined above, CEO (or its appointee) may take into account the following:

- 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;
- the nature and significance of the Complaint and its significance to motor sport;
- OHS & safety;
- the connection between the Complaint and a Motorsport Australia Event;
- whether, due to the nature of the Complaint, specific expertise or experience may be required to manage the Complaint;
- the wishes of the Complainant and the Respondent regarding the manner in which the Complaint should be handled;
- whether the Complainant or the Respondent have acted in a manner which is vexatious, frivolous or for improper purposes;
- whether, due to the nature of the Complaint, the relationship between the Complainant 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 hearings tribunal. Relevant factors may include an actual or perceived power imbalance between the Complainant and the Respondent, the nature of any ongoing working relationship between the Complainant and the Respondent, and the personal attributes of the Complainant 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 the Complainant, 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 the Complainant will be subject to further unacceptable behaviour while the Complaint process set out in this Policy is being conducted.

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

- get information from the Complainant about the Complaint and how the Complainant wants it resolved (if this information has not already been obtained through earlier steps);
- put the information they've received from the Complainant to the Respondent and ask the Respondent to provide their side of the story;
- decide whether they have enough information to determine whether the matter alleged in the Complaint did or didn't happen; and/or
- make a decision in relation to the Complaint, as above.

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## 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 its 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 C5, 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 the Complainant and the Respondent;
- the Complaint is referred to a hearings tribunal under Step 5, the hearing will generally be conducted in accordance with the procedure for Motorsport Australia tribunals as set out in the Motorsport Australia Manual of Motor Sport, *Section 5 - Judicial*;
- the Complaint is referred to the police or other appropriate authority under Step 5, Motorsport Australia 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, Motorsport Australia will periodically review these arrangements to ensure that they are effective.

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### Step 7

**IF, UNDER STEP 6, AN INFORMAL OR FORMAL MEDIATION SESSION IS CONDUCTED, AND THE CLAIMANT AND THE RESPONDENT CAN NOT REACH A MUTUALLY ACCEPTABLE MEDIATED SOLUTION TO THE COMPLAINT, THE COMPLAINANT MAY REQUEST THAT THE CEO (OR ITS APPOINTEE) RECONSIDER THE COMPLAINT IN ACCORDANCE WITH STEP 5.**

### Step 8

Motorsport Australia will keep a record of the Complaint, the process followed and the outcome. These records will be kept confidentially.

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### External procedure

If the Complainant does not consider that the internal Complaints processes set out in this Policy cannot achieve a satisfactory resolution or outcome to the Complaint, or if the Complainant believes it would be impossible to get an impartial resolution within Motorsport Australia, the Complainant may choose to approach an external agency (such as an equal opportunity commission) to assist with a resolution.

There may be a range of external options available to the Complainant depending on the nature of the Complaint. For example, Complaints concerning:

- Harassment or Discrimination may be able to be made to a State or Territory equal opportunity commission or to the courts.
- Child Abuse should be raised with the police or the appropriate Child protection authorities.

Further information in relation to this is in part B of this Policy.

- Criminal activity should be raised with the police or other relevant authority depending on the nature of the crime.

## **Attachment C2: MEDIATION**

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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.

Where a matter is referred to a mediator, or where the parties to a Complaint agree to the appointment of a mediator to assist in the resolution of a Complaint, the mediator may determine which procedures and rules will apply to the mediation. If no procedures or rules are stipulated by the mediator, the following general guidelines should be used to assist with the conduct of the mediation:

1. The Complainant and Respondent 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.
2. Mediation can only occur by agreement between all parties involved. The costs of the mediation will be borne by and agreed to by the parties prior to the commencement of the process. The parties may be required to equally share the costs of mediation.
3. Mediation (getting those involved to come to a joint agreement about how the Complaint should be resolved) will only be recommended or directed by Motorsport Australia:
  - a. after the Complainant and Respondent have had their chance to tell their version of events to Motorsport Australia on their own;
  - b. Motorsport Australia does not believe that any of the allegations warrant any form of significant disciplinary action; and
  - c. Motorsport Australia considers that the mediation has reasonable prospects of being successful.
4. Mediation will generally not be recommended if:
  - a. the Respondent has a completely different version of the events and Motorsport Australia considers that there is little prospect of the parties being able to achieve any middle ground;
  - b. the Complainant or Respondent are unwilling to attempt mediation;
  - c. due to the nature of the Complaint, the relationship between the Complainant and the Respondent and any other relevant factors, the Complaint is not suitable for mediation; or
  - d. the matter involves proven serious allegations, regardless of the wishes of the Complainant.
5. If mediation is chosen to try and resolve the Complaint, Motorsport Australia will, in consultation with the Complainant and the Respondent, arrange for a mediator to mediate the Complaint. The Complainant and the Respondent may be required to equally share the costs of mediation.
6. Motorsport Australia will notify the Respondent that a formal Complaint has been made, provide them with details of the Complaint and notify them Motorsport Australia has decided to refer the matter to mediation to resolve the Complaint.
7. The mediator's role is to assist the Complainant and Respondent reach an agreement on how to resolve the problem. The mediator, in consultation with the Complainant and Respondent, 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.
8. The mediation will be conducted confidentially and without prejudice to the rights of the Complainant and the Respondent to pursue an alternative process if the Complaint is not resolved.
9. At the end of a successful mediation the mediator will prepare a document that sets out the agreement reached between the Complainant and Respondent and it will be signed by them as their agreement.
10. If the formal Complaint is not resolved by mediation, the Complainant will advise Motorsport Australia of the outcome of the mediation.

## Attachment C3: INVESTIGATION PROCESS

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There will be times when a Complaint may need to be investigated and evidence gathered as part of the Policy process.

An investigation can help determine the facts relating to the incident, as well as possible findings and recommendations.

Any investigation that is conducted will be fair to all people involved.

If an investigation needs to be conducted the following are a guideline for the conduct of the investigation:

1. A written brief should be provided to the investigator to ensure the terms of engagement and scope of the investigator's role and responsibilities are clear.
2. Where there are issues which are not adequately dealt with in the brief, the Complainant should be interviewed and the Complaint documented in writing.
3. The details of the Complaint will be conveyed to the person/people complained about (Respondent). The Respondent should be given sufficient information to enable them to properly respond to the Complaint.
4. The Respondent should be interviewed and given the opportunity to respond. The Respondent response to the Complaint should be documented in writing.
5. If there is a significant and material dispute over the facts, then statements from witnesses and other relevant evidence should be obtained to assist in a determination.
6. The investigator will make a finding as to whether the Complaint is:
  - substantiated (there is sufficient evidence to support the Complaint);
  - inconclusive (there is insufficient evidence either way);
  - unsubstantiated (there is sufficient evidence to show that the Complaint is unfounded); and/or
  - mischievous, vexatious or knowingly untrue.
7. A report documenting the Complaint, investigation process, evidence, finding and, if requested, recommendations, should be given to the CEO (or its appointee) for action.
8. A report documenting the Complaint and summarising the investigation process and key points that were found to be substantiated, inconclusive, unsubstantiated and/or mischievous should be provided to the Complainant and the Respondent.

## Attachment C4: 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 Motorsport Australia 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 relevant State or Territory government agencies. Consider whether it is appropriate to obtain legal advice before commencing this process (or any stage throughout.)

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### 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. Suggestive or leading questions should be avoided.
- 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.

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

- Any Relevant Person 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. There may be a 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 Relevant Person, 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.

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### 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 Motorsport Australia.
- 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.

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### Step 4 – Further clarify and investigate allegation

- Several 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); or
  - a disciplinary or misconduct inquiry/investigation (conducted by Motorsport Australia).
- Regardless of the findings of any polices and/or Child protection agency investigations, Motorsport Australia 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.

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### 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 (or its appointee).
- The decision-maker(s) will be the CEO (or its appointee) and will remain separate and at arm's length from the investigator.
- The CEO (or its appointee) 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. Motorsport Australia may make a decision regardless of whether or not an external investigation or decision has been made.

- Implement any disciplinary decision recommended by the CEO (or its appointee) in accordance with Attachment C5 below. The action should be immediate.
- Provide the relevant government agency with a report of any disciplinary action taken by Motorsport Australia, where that is required.
- Check with the relevant State government authority to see if a report is required to be forwarded (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="https://www.communityservices.act.gov.au/">https://www.communityservices.act.gov.au/</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 Child Protection <a href="http://www.childprotection.sa.gov.au">www.childprotection.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="https://www.communities.tas.gov.au/children">https://www.communities.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

## Attachment C5: DISCIPLINARY MEASURES

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Any disciplinary measure imposed by CEO (or its appointee) under this Policy must:

- observe any contractual and employment rules and requirements;
  - conform reasonably to the principles of Natural Justice;
  - be fair and reasonable;
  - be based on the evidence and information presented or obtained; and
  - be within the powers of the CEO (or its appointee) to impose the disciplinary measure.
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### Individual

Subject to contractual and employment requirements, if a finding is made that a Relevant Person has breached this Policy (including the Code of Conduct), one or more of the following forms of discipline may be imposed by the CEO (or its appointee).

1. a direction that the Relevant Person make a verbal and/or written apology;
2. a written warning;
3. a direction that the Relevant Person attend counselling to address their behaviour;
4. a withdrawal of any awards, placings, records, achievements bestowed in any tournaments, activities or events held or sanctioned by Motorsport Australia;
5. a demotion or transfer of the Relevant Person to another location, role or activity
6. a suspension of the Relevant Person's Membership or participation or engagement in a role or activity;
7. termination of the Relevant Person's Membership, appointment or engagement;
8. recommend that Motorsport Australia terminate the Relevant Person's Membership, appointment or engagement; or
9. any other form of discipline that the CEO (or its appointee) considers appropriate.

When imposing any form of discipline, it may be accompanied by a warning that a similar breach of Policy by that Relevant Person in the future may result in the imposition of a more serious form of discipline.

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### Factors to consider when imposing discipline

The form of discipline to be imposed on a Relevant Person will depend on factors such as:

- nature and seriousness of the behaviour or incidents;
- in a case where action is taken concurrently with or in lieu of a resolution of a formal Complaint, the wishes of the Complainant;
- if the Relevant Person knew or should have known that the behaviour was a breach of the Policy;
- level of contrition of the Respondent;
- the effect of the proposed disciplinary measures on the Respondent including any personal, professional or financial consequences;
- if there have been relevant prior warnings or disciplinary action; and
- if there are any mitigating circumstances such that the Respondent shouldn't be disciplined at all or not disciplined so seriously.