

Keeping children safe in sport

A summary of the findings of the
Royal Commission into Institutional Responses to Child Sexual Abuse

Feature articles

- **Transparency and privacy in sport**
- **Maccabi Australia's commitment to Member Protection**

Plus

ANZSLA Sports Law events

Football Victoria's 'Respect The Game'

Inclusion and Diversity Forum presentation videos

Update: Quick Reference Guide

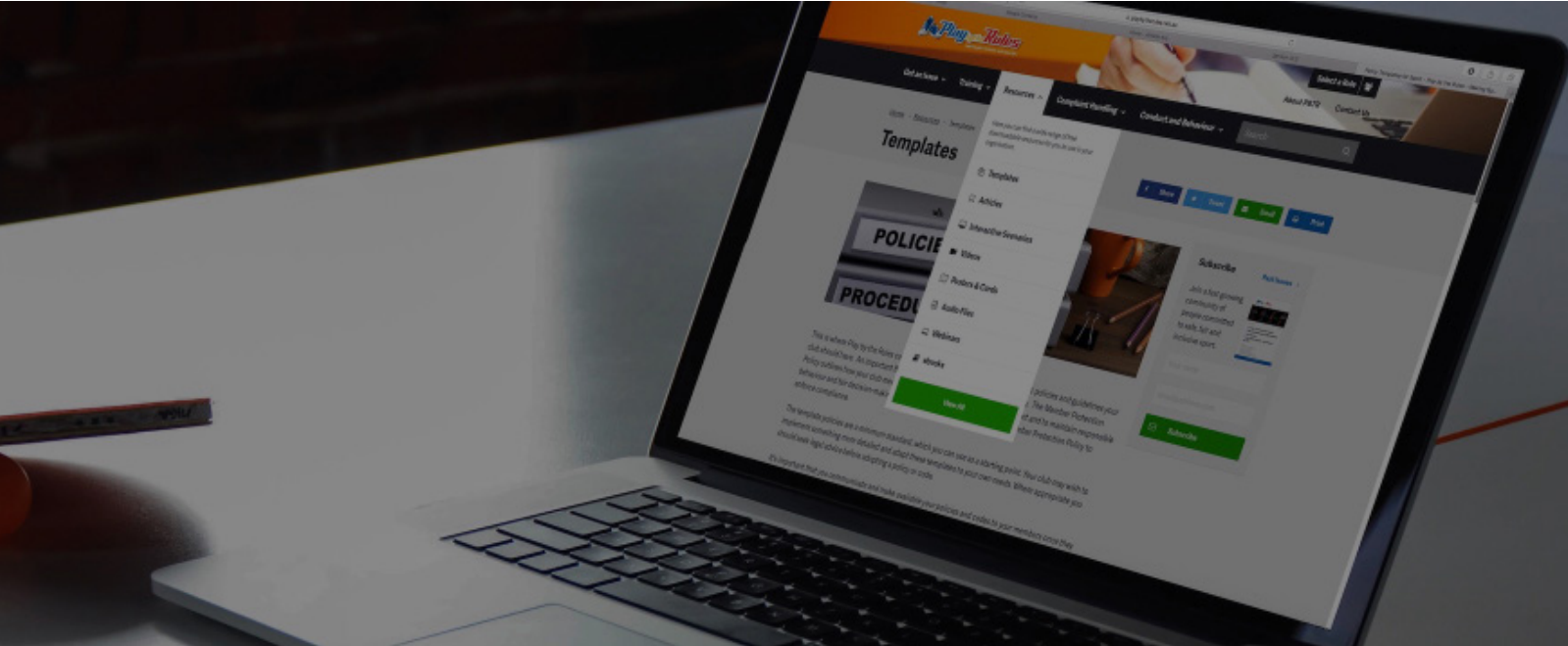


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THE EDITOR

Welcome to the first 2019 issue of the Play by the Rules magazine. Issue 28 actually! All the back issues, containing a host of great articles, can be found at www.playbytherules.net.au/magazines

In this issue, we focus on subjects that nearly always get a gig at sport development conferences, workshops and meetings across the country—culture, child safety, privacy and member protection. I was recently at the Football Victoria Club Conference and saw the enthusiasm around their Respect The Game initiative, great work that's aimed at creating a positive culture in the club network. You can read about the initiative in this issue.

Also, sports lawyer Paul Horvath summarises the Royal Commission findings into child abuse as they relate to sports organisations. Clyde Rathbone looks at the conflict between transparency and privacy issues from a player's perspective. And we look at Maccabi Australia, which has done great work on member protection!

And we have our usual platform and resource updates—enjoy, and thanks!



Peter Downs
Manager - Play by the Rules

News:

ANZSLA Sports Law Events



Good governance by a club or association is a pathway to success

Tuesday, 2 April, 6pm to 8pm at Law Society of Tasmania, Staffordshire House, 56 Charles St, Launceston

Wednesday, 3 April, 6pm to 8pm at Law Society of Tasmania, 28 Murray St, Hobart

Join ANZSLA and guests for a presentation by Andy Gibson (ANZSLA Life Member & Senior Lecturer, Southern Cross University). The pathway to success for a club or association in 2019, and into the future, is good governance. A well run club or association will not only be successful off the field but also on the field. Today this can only be achieved by, at the very least, having an awareness of how the law is having an impact on sport today.

These are some of the issues that this seminar will address. Please feel free to join the speaker and guests for a networking opportunity after the presentation.

Establishing a National Sports Tribunal

Canberra – 1 May; Melbourne – 2 May; Sydney – 8 May; Brisbane – 9 May; Adelaide – 15 May; Perth – 16 May

ANZSLA and the Sports Integrity Taskforce invite you to attend a seminar addressing the recommendation from the Review of Australia's Sports Integrity Arrangements to establish a National Sports Tribunal.

The seminar will be held in Canberra, Melbourne, Sydney, Brisbane, Adelaide and Perth, with expert speakers:

Bill Turner, Head of National Sports Integrity Taskforce; Assistant Secretary, Population Health and Sport Division; or Jonathan Bray, Director, Sports Integrity Taskforce
Please feel free to join the speaker and guests for a networking opportunity after the presentation.

For full details and to register please visit www.anzsla.com.

Football Victoria's 'Respect The Game' - keeping the game strong, safe and enjoyable for all

On most weekends, tens of thousands of girls, boys, women and men can be found playing and officiating football matches across Victoria, watched and supported by thousands more parents, family members, club officials and volunteers.

Over time, a minority of these people have unfortunately decided that it is okay to:

- abuse referees, both official and volunteers
- scream and yell at players, coaches and officials
- criticise performance rather than celebrate effort
- ignore, manipulate and question rules and decisions.

The impact this behaviour has on the game of football cannot be understated. People stop playing the game, referees stop officiating, tensions between clubs rise. In order to make a genuine difference to the behaviour of everyone involved in the game, a cultural shift needs to occur at all levels. We need to Respect The Game.

Football Victoria has created Respect The Game, a campaign to raise awareness of issues that we all need to work on to keep the game strong, safe and an enjoyable

environment that protects participants, match officials, club administrators, volunteers and spectators.

At the Club Development Conference in February, all clubs under the Football Victoria umbrella were asked to sign a pledge to Respect The Game.

'We will call out behaviour that undermines this pledge and drive a culture of respect within our football community. We will not tolerate abuse in our game, directed towards referees, players, coaches, spectators, officials or volunteers. We will provide a safe environment for all Victorians to unite through football.'

This pledge unifies everyone to stamp out bad behaviour within football communities. It is the first step of an ongoing program Football Victoria has undertaken to work closely with clubs to improve the football experience for all Victorians. #WeRespectTheGame



Feature article:

Keeping children safe in sport: A summary of the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse



Paul Horvath, Principal Sports Lawyer
www.sportslawyer.com.au

This summary of the findings of the Royal Commission highlights the recommendations in the report, the issues caused by child sexual abuse that were identified during the hearings, and ways this can be addressed within sporting organisations.

Importantly, the report notes that there may be some liability attached to members of organisations who fail to act on or report child abuse or child sexual abuse when they were aware of it, were reckless as to its occurrence, or were negligent about it occurring in their organisation. A reverse onus of proof is recommended for child sexual abuse committed by members of the sports organisation or its employees.

The report also recommends that there be criminal offences created of a 'failure to protect' a child by an employee or officer of a sports organisation. There would also be a 'failure to report' criminal offence which would apply to any owner, manager, staff

member or volunteer who requires a Working with Children Check clearance for the purposes of their role in the organisation who fails to report known or suspected abuse to the police. This would apply even where the person should have reasonably known that the abuse was occurring or had occurred.

We note that child abuse has been identified in the report as commonly occurring in a sporting context, and steps need to be taken by responsible sporting organisations to minimise the likelihood and opportunity for this to occur. Working with Children Checks are required now for any coach/team manager, etc. who works with and has responsibility for children. These confirm essentially an absence of any previous or relevant criminal history of the person.

We would emphasise the need for following a carefully thought-out process in investigating and determining allegations of child abuse and/or child sexual abuse.

As these tend to be highly emotive issues, great care and caution needs to be taken to ensure that a complainant is not motivated by malice or some other improper reason to lodge a complaint against a respondent (person complained of).



It is possible for the respondent to be stood down (suspended) from the sport during an investigation, only to be cleared following a proper investigation, but the effect of the stand down may have substantial (sometimes irreversible) adverse consequences for the respondent's reputation. This could lead to legal action (such as an action for defamation or compensation) for a suspension not based on proper or substantial information. All steps in such cases need to be carefully taken and not rushed, and proper advice obtained.

We remind you also of the importance of requiring that any person seeking to obtain membership of your sporting organisation—whether as an athlete, coach, administrator or other person bound by your rules, by-laws, Member Protection Policy or other codes of conduct—be required to disclose any previous criminal or disciplinary offence that could impact upon their ability to operate within the sport, or which the organisation may deem relevant in meeting their duty of care to athletes, and in particular athletes under 18 years of age.

Membership forms should state that: 'All members must be aware that these disclosure

obligations relating to adverse criminal and disciplinary offences are ongoing'.

The report is particularly important in the wake of recent legal developments regarding child sexual abuse within sporting organisations related to gymnastics in the United States. In May 2018, Michigan State University agreed to pay USD\$500 million in settlement to 332 sexual abuse victims of the university's former sports doctor, Larry Nassar.

The university had repeatedly protected Nassar against complaints of inappropriate medical treatments, even labelling his methods a 'liability that exposed patients to unnecessary trauma', but continued to employ him and allowed him to have access to young athletes, including junior Olympic athletes. The settlement figure does not include lawsuits against USA Gymnastics, the US Olympic Committee, or other involved parties.

Cases such as the above highlight the importance of having comprehensive risk management policies for organisations because of potential civil and criminal liability arising from a failure to report or protect.

It is important to develop policies which are child-focused and foster a culture where children feel empowered and protected by the adults around them.

Feature article:

Transparency and privacy in sport

In a post-internet world, news has never travelled faster. Where once scandals were confined to mainstream media, today they spill out into the tentacles of social media where they are amplified by the snowball effect of 'shares', 'likes' and 'tweets'.

This new landscape has important implications for leaders and decision makers involved in sport at all levels. How do governing bodies and individuals determine which information should remain private, and which rightly deserves to be aired in the public sphere?

In 2009, during the Brumbies tour of South Africa, Shawn Mackay passed away due to injuries suffered when he was hit by a vehicle while crossing the road to board the team bus.

Shawn passed away while we were airborne between South Africa and Australia, so the team did not receive the news until our plane landed in Sydney.

The news hit everyone hard, but none more so than Shawn's flat-mate and

then 19-year-old, Matt Toomua. When we landed in Canberra the news media swarmed around Matt as he tried to make his way to the team bus.

I remember thinking that there was something deeply unethical about the disregard for Matt's privacy during a tragic time in his life.

On the one hand I understood that Matt was a public figure of sorts, but was it really in the interests of the public to have his grief beamed across the world?

And how did the experience of being forced to wade through a media gauntlet affect a young man still learning to cope with life in the spotlight?

I didn't have good answers to these questions at the time and I'm not sure I have better ones now. What I am certain of is that it's not always clear when privacy should be given precedence over transparency.

In many ways, disagreements over what should remain private and what should be disclosed highlights a tension between a desire to respect our



common humanity without losing sight of the greater good.

I remember watching South African middle-distance runner Caster Semenya front a throng of media after the International Association of Athletics Federations insisted she submit to a sex verification test to ascertain whether she was female.

It was difficult to watch someone's privacy so blatantly ignored. Conversely, the primacy of fairness in sport made the conversation about Semenya's participation unavoidable and important.

It's a conversation that continues to this day and one I'm glad is happening out in the open, much as I decry the personal harm it must cause Semenya and other

athletes in similar situations.

American politician and lawyer, Joseph Andrew once stated:

'The hardest decisions in life are not between good and bad or right and wrong, but between two goods or two rights.'

And so it is with the endless strain between privacy and transparency.

It's from this perspective that we can most honestly investigate our own integrity. Whenever we find ourselves in possession of sensitive information and tasked with the burden of deciding how, and perhaps if, it should be disseminated, perhaps the best we can do is to embrace the uncertainty of difficult decisions, and to realise that there are no perfect solutions, only imperfect trade-offs.



Clyde Rathbone
www.karmawiki.com

Feature article:

Maccabi Australia's commitment to Member Protection



For the past three years, Maccabi Australia has made a concerted commitment to member protection training with a focus on child safety, which has led to over 1000 people participating in training.

This represents over 75 per cent of the organisation's officials, and around one-sixth of its 6000 members nationally.

As part of the organisation's commitment, it has:

- created a bespoke Maccabi member protection policies online training
- formed a volunteer member protection policy (MPP) subcommittee that oversees the governance of the policies
- engaged a wider group of volunteers who form part of a wider MPP Working Party and have taken on

roles including Integrity Officers, Tribunal Chairs and Appeals Chair

- developed a toolkit for use by integrity officers and club compliance officers to address grievances and escalation processes
- created a Working With Children Check register which is linked to an automated verification process
- rolled out member protection policies through their leaders, staff and volunteers
- written an easy-to-read MPP document for children and all abilities participants
- conducted face-to-face training for compliance officers and other officials.

In developing these initiatives, Maccabi Australia has engaged the assistance of experts, including legal advisers and child safety advocates.

It has also referred to existing literature, including that developed by Athletics Australia, Play by the Rules, Child Safe Standards resources, Child Wise, the Commission for Children and Young People, and Sport and Recreation Victoria.

The organisation holds regular workshops of its large working party and ensures

feedback from these workshops is integrated into the continual development of its documents and processes, along with engaging experts to regularly review systems and documents.

Why did Maccabi Australia do it?

The motivation to create and implement this program came from several sources. Importantly, following the Royal Commission into Institutional Responses to Child Sexual Abuse, leaders in the organisation saw the value in being at the forefront of the upcoming changes, rather than waiting to see what the outcomes would be.

As a national federated organisation, this initiative was driven by the national office to ensure all affiliated states and clubs were well positioned to support their members, rather than policies being developed piecemeal across the organisation.

This has allowed the entire organisation to be across any changes to current child safety standards and changing laws, and to constantly strive for best practice; aiming to not just meet the legal minimum, but provide a safe and welcoming environment for everyone.

Has it worked?

Maccabi Australia can see the impact of its policies and processes being implemented by looking at instances of complaints handling and issues management across the organisation. There are several cases which have been brought forward and handled in a clear manner, which may have been handled differently—had they even come to light—if the policies had not been in place.

The organisation knows from its regular working party workshops that there are situations that have been handled in a fair and confidential manner as a result of having these policies, and the learnings are shared so that it can constantly improve its processes.

Maccabi Australia's commitment to member protection is impressive and a model of good practice. The work invested in processes and policies at the beginning has given it a foundation for complaint handling and child safety for years to come.

For more case studies on models of good practice to keep sport safe, fair and inclusive, visit www.playbytherules.net.au/resources/case-studies.

Website Update:

Inclusion and Diversity Forum video presentations

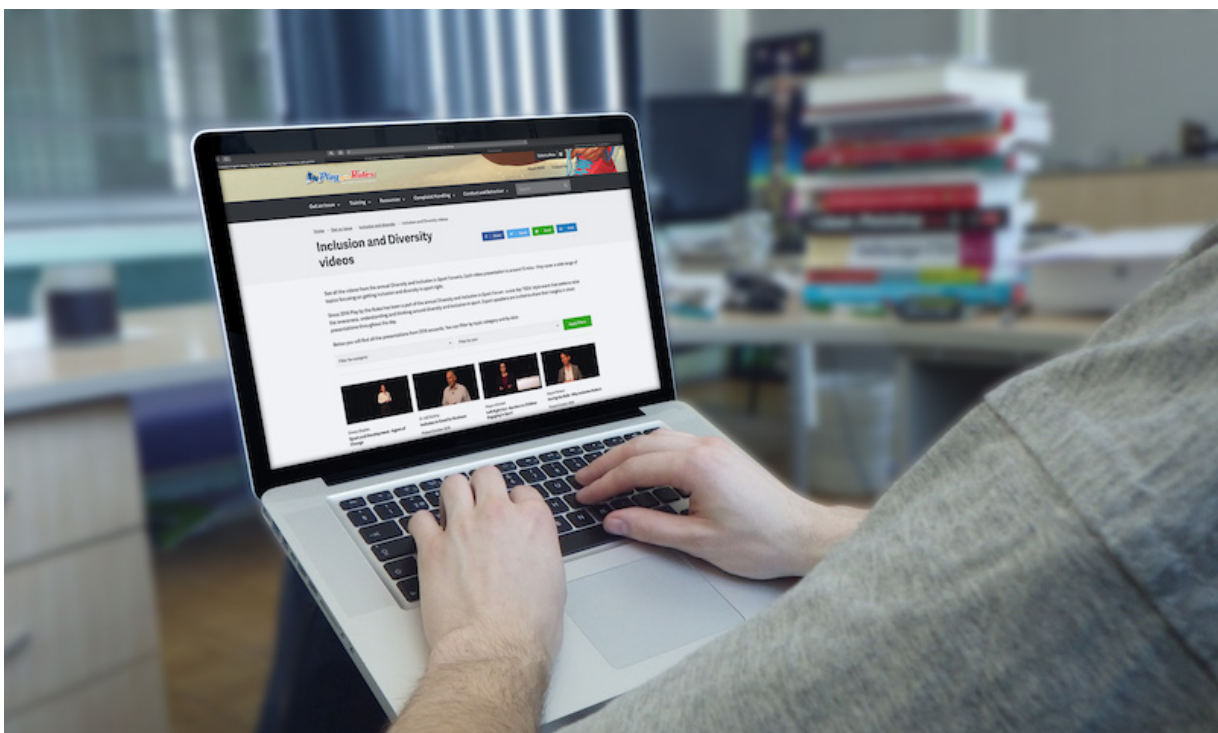
All the video presentations from the 2018 Diversity and Inclusion in Sport Forum are now on the Play by the Rules website. This TEDx style event was another sell out at the Melbourne Park Function Centre last October.

There was a great variety of topics on the day, from Dr Jeff Walkley's showcase of Belgravia Leisure's work on making inclusion good for business, to Julia Symon's Churchill Fellowship synopsis on cultural diversity in women's sport and Wayne Herbert's provocative presentation on why inclusion matters.

The 2018 videos are now in the same library as the 2017 and 2016 Forum presentations, creating a significant catalogue of 40 presentations dealing with inclusion and diversity issues in sport.

The forum video presentations can be found at: www.playbytherules.net.au/got-an-issue/inclusion-and-diversity/inclusion-and-diversity-videos

Planning is underway for the 2019 Diversity and Inclusion in Sport Forum, and information will be on Play by the Rules soon.



Resource Profile:

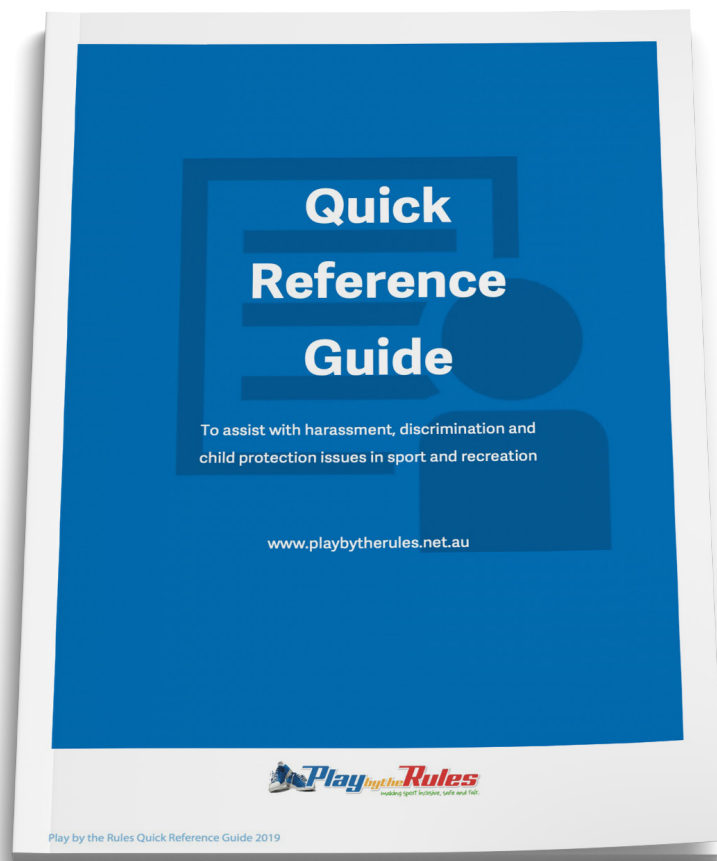
Quick Reference Guide

The Play by the Rules ebooks section is undergoing a bit of a revamp. Part of that is updating one of our most popular and useful resources—the Quick Reference Guide.

The Quick Reference Guide is a free downloadable resource that provides sporting organisations with information on services that will help resolve issues, including unlawful behaviour, child safety and handling complaints.

It's a handy resource if you are looking for help in any of these areas and includes a Complaints Flowchart that should help you find out who to contact, from local to state and even national level.

To access the Quick Reference Guide, go to www.playbytherules.net.au/resources/ebooks



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Share and spread the word

One easy way to keep up to date and support safe, fair and inclusive sport is to share Play by the Rules across social media. We post every day on Facebook and Twitter and have audio files on Soundcloud and an extensive collection of videos on YouTube and Vimeo.



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Did you know that Play by the Rules is one of the best examples of a Collective Impact approach to addressing sport issues in the country? If not the best. Play by the Rules is a collaboration between multiple partners.



To make Play by the Rules possible, we also work with

