

NATIONAL VILIFICATION & DISCRIMINATION POLICY



June 2013

1. Policy Statement

The Australian Football League (**AFL**), State and Territory Bodies that are affiliated with the AFL (**Affiliated State & Territory Bodies**) and leagues and bodies that are affiliated with (or licensed by) Affiliated State & Territory Bodies (**Community Bodies**) are committed to fostering and maintaining a sporting environment which promotes understanding, accepts the unique differences of all persons affiliated with or interested in Australian Football, and recognises the need to prohibit certain discriminatory or vilifying conduct. This document establishes the means of redress for members who are aggrieved by what they reasonably consider to be vilification or discrimination based on their individuality (**Policy**).

2. Application & Scope of Policy

Affiliated State & Territory Bodies and Community Bodies are bound by applicable provisions of State-based legislation as well as the:

- a) *Racial Discrimination Act 1975* (Cth);
- b) *Sex Discrimination Act 1984* (Cth);
- c) *Human Rights & Equal Opportunity Commission Act 1986* (Cth); and
- d) *Disability Discrimination Act 1992* (Cth) (**Legislation**).

This Policy is consistent with the *AFL Rules & Regulations* (specifically Rule 30) and is not in substitution of, the Legislation. This Policy is not in substitution of the *AFL Rules & Regulations* insofar as they apply to conduct within the scope of this Policy.

Nothing in this Policy prevents a person lodging a Complaint in relation to vilification or discrimination under the Legislation. In the event a Complaint is made under this Policy the League shall ensure that the parties are informed of their rights.

3 Definitions

“Affiliated State & Territory Body” means the State and Territory bodies affiliated with the AFL, including:

- NSW/ACT: AFL (NSW/ACT) Commission Ltd (ACN 086 839 385)
- NT: AFL (Northern Territory) Ltd (ACN 097 620 525)
- QLD: AFL (Queensland) (ACN 090 629 342)
- SA: South Australian Football League Inc (ABN 59 518 757 737)
- TAS: AFL (TAS) (ACN 135 346 986)
- Victoria: Australian Football League (Victoria) (ACN 147 664 579);
- WA: West Australian Football Commission Inc (ABN 51 167 923 136)

“Australian Football” means the contest between two teams competing in accordance with the *Laws of Australian Football*.

“Community Body” means any organisation or body that exists for the purposes of playing Australian Football, or for purposes that are reasonably incidental to the playing of Australian Football, and is affiliated with, or a member of, or a licensee of, an Affiliated State & Territory Body.

“Complaint” means an allegation, contention or assertion made by a Participant or Participants in relation to the conduct of another Participant or Participants which the first

Participant or Participants claim is Prohibited Conduct. Complaints will be either an Intra-Club Complaint or an Inter-Club Complaint, and must be made in accordance with the *National Complaint Guidelines*.

"Complaints Process" means the procedure outlined in sections 3, 4, 5, 6, 7, 8, 9 and 10 of this Policy.

"Conciliation" means a method of alternative dispute resolution to which a third party (the "conciliator") attempts to facilitate an agreed resolution of the dispute through active input and advice to Participants about the best way to resolve the Complaint.

"Club" means any football Club that is a member of the League.

"Club Complaints Officer" means a person appointed by the Club to oversee this *National Vilification & Discrimination Policy*, the education of Participants, and to liaise with all persons relevant to the Complaints Process to the extent that it involves a Complaint made in respect of a Participant of the Club, and to act in accordance with section 5.2 and 5.3.

"Club Official" includes committee members, coaches, coaching staff, trainers, runners, persons involved in the every-day administration of the Club and any person who may reasonably be perceived to hold an official Club position.

"Conciliation Deed of Resolution" means the document contained in Appendix 1 to this Policy

"Disciplinary Tribunal" means a tribunal convened in accordance with the *National Disciplinary Tribunal Guidelines*.

"engage in conduct" is defined with reference to the ordinary meaning ascribed to the phrase but also expressly includes use of the internet, Social Media or email to publish or transmit statements or other material.

"Informal Resolution" means an informal arrangement, understanding or agreement that, in the reasonable opinion of the League Complaints Officer/s or the Club Complaints Officer, has been reached in relation to either an Inter-Club Complaint or an Intra-Club Complaint between the Participant or Participants alleged to have engaged in the Prohibited Conduct and the Participant or Participants alleged to have been the subject of the Prohibited Conduct. Such informal arrangements or agreements may involve an oral apology or a retraction and may be memorialised in the Conciliation Deed of Resolution.

"Inter-Club Complaint" means a Complaint by a Participant or Participants from one Club involving an allegation of Prohibited Conduct directed at a Participant or Participants from a second Club.

"Intra-Club Complaint" means a Complaint by a Participant or Participants from one Club involving an allegation of Prohibited Conduct directed at a Participant or Participants from within the same Club.

"Investigation Officer" means an independent person selected by the League in accordance with section 8 of this Policy to investigate a complaint and to provide a recommendation to the League Complaints Officer/s.

"Leagues" means the Australian Football League, Affiliated State & Territory Bodies and any other member, licensee or affiliate of an Affiliated State & Territory Body, as the context requires.

"League Complaints Officer/s" means either the League CEO, League President, League General Manager or such other person as thought fit and proper to hold the position, having regard to the obligations as set out in section 5 and in the Complaints Process.

"Member" means a Participant.

“Participate” means to engage in any activity or behaviour which is either directly or indirectly related or reasonably incidental to Australian Football as that term is understood under the Laws of Australian Football.

"Participant" includes a player, spectator, umpire, employee, volunteer to and agent of a Football Club that Participates in the League that is part of a Community Body or Affiliated State & Territory Body.

“Prohibited Conduct” means the conduct outlined in section 4 of this Policy

“Social Media” has the meaning ascribed to it by the *National Social Media Engagement Policy*.

4. Prohibited Conduct

4.1 No League Participant or Club Official shall engage in conduct which may reasonably be considered to incite hatred towards, contempt for, ridicule of or discrimination against a person or group of persons on the ground of their:

- race;
- religion;
- gender;
- colour;
- sexual preference, orientation or identity; or
- special ability or disability

(Vilification & Discrimination).

4.2 No League Participant or Club Official shall engage in conduct which may reasonably be considered to be offensive, abusive, belittling or threatening, or which is otherwise unwelcome and a reasonable person would recognise it as being unwelcome and likely to cause the recipient to feel offended, humiliated or intimidated (**Harassment**).

5 Appointment of League Complaints Officer/s & Club Complaints Officer

5.1 The League shall appoint a League Complaints Officer/s to ensure that any breach of this Policy is responded to in an equitable and prompt manner in accordance with this Policy.

5.2 The League shall ensure that all Clubs have a Club Complaints Officer to whom all vilification and discrimination Complaints are initially directed.

5.3 The League Complaints Officer/s is responsible for liaising between Club Complaints Officers, in the case of an Inter-Club Complaint, or with a single Club Complaints Officer, in the case of an Intra-Club Complaint, in an attempt to achieve Informal Resolution of the Complaint.

5.4 The Club Complaints Officer and the League Complaints Officer/s shall liaise directly over incidents which in the reasonable opinion of the Club Complaints Officer or League Complaints Officer/s are contrary to Section 4.

6 Preliminary Resolution Process

6.1 In the event that it is alleged that a person subject to section 4.1 or 4.2 has engaged in Prohibited Conduct, a Participant may by 5.00pm on the first working day following the day on which the Prohibited Conduct is alleged to have occurred, or such other time as determined by the League, lodge a Complaint with the Club Complaints Officer.

6.2 In the case of an Inter-Club Complaint, the Club Complaints Officer where the Complaint was made shall by 5.00pm on the next working day following the day on which the Complaint was lodged with the Club, lodge the Complaint with the League's Complaints Officer. The Club Complaints Officer shall take no further action once the Complaint has been lodged with the League unless otherwise instructed by the League's Complaints Officer. In the case of an Inter-Club Complaint, the League Complaints Officer/s shall take reasonable steps within the next three (3) days following the day on which the Complaint was lodged with the League Complaints Officer/s to achieve an Informal Resolution if, in the reasonable opinion of the League Complaints Officer/s, the Complaint is capable of an Informal Resolution.

6.3 In the case of an Intra-Club Complaint, the Club Complaints Officer shall take reasonable steps within the next three (3) days following the day on which the Complaint was lodged with the Club to achieve an Informal Resolution if, in the reasonable opinion of the Club Complaints Officer, the Complaint is capable of an Informal Resolution. If an Informal Resolution is not achieved or it is reasonably believed that the Complaint is incapable of an Informal Resolution, the Club Complaints Officer shall as soon as is reasonably practicable lodge the Complaint with the League's Complaints Officer. The Club Complaints Officer shall take no further action

once the Complaint has been lodged with the League unless otherwise instructed by the League's Complaint's Officer.

- 6.4 In circumstances where in the reasonable opinion of the League Complaints Officer/s a Complaint cannot be resolved by way of Informal Resolution, the League Complaints Officer/s shall proceed to Conciliation in accordance with section 8 below.

7 Confidentiality and Records

- 7.1 Confidentiality must be maintained throughout the Complaints Process. All parties to a Complaint, the League's Complaints Officer, the Club Complaints Officer, any witnesses and the conciliator must all agree to the maintenance of confidentiality. No person involved in the Complaints Process shall publicly comment on any aspect of the Complaints Process without the prior written agreement of all parties.
- 7.2 The League shall ensure that any documents relating to a Complaint shall remain confidential and be retained for 7 years from the date that the Complaint is made.

8 Conciliation Process

- 8.1 The League Complaints Officer/s shall make every effort to ensure that confidentiality is maintained at all times during the Complaints Process and that the outcome of the Complaints Process remains confidential. The Complaints Officer shall also refer any breach of confidentiality to the League Tribunal no later than 5pm on the next working day following the day that the breach is discovered, with the Tribunal to be convened within 7 days from the day on which the referral is made;
- 8.2 The League Complaints Officer/s shall:
- (a) ensure the person alleged to have contravened the Policy is informed of the Complaint Process and provide that person with an opportunity to respond to the Complaint;
 - (b) inform the President or CEO of the League or his or her nominee that a Complaint has been received by the League Complaints Officer/s;
 - (c) obtain statements from any witnesses identified by the parties to the Complaint;
 - (d) where available, obtain any other relevant evidence;
 - (e) make available to both parties any witness statements or any other evidence obtained in the course of conciliating a Complaint, with an opportunity to comment, as part of the Conciliation process;
 - (f) appoint a conciliator to conciliate the Complaint; and
 - (g) ensure all steps necessary for the Complaint to be conciliated are taken within 10 working days from the day on which the Prohibited Conduct is alleged to have occurred.
- 8.3 Participants subject to Conciliation who are under 18 years of age must be accompanied at the Conciliation by a Club Official over 18 years of age.

9 Investigation

- 9.1 In circumstances where a Complaint is not resolved in accordance with section 8 above, the League Complaints Officer/s may refer the matter to investigation in accordance with the *National Complaint & Investigation Guidelines* (if applicable) if in the reasonable opinion of the League Complaints Officer/s, further investigation is required to resolve the Complaint
- 9.2 The Investigation Officer shall report to the League Complaints Officer/s on any information or evidence obtained in accordance with section 9.1. Any information or evidence obtained by the Investigation Officer and provided to the League Complaints Officer/s shall be provided to all parties to the Complaint as part of the Complaint Process.

9.3 The Investigation Officer shall otherwise comply with the *National Complaint & Investigation Guidelines* (if applicable).

10 Tribunal Referrals, Process & Appeal

10.1 Following an investigation under section 9, if any, or following a failed Conciliation under section 8, the League Complaints Officer/s may refer the Complaint to a Disciplinary Tribunal, constituted in accordance with the *National Disciplinary Tribunal Guidelines* (if applicable), for determination. The League Complaints Officer/s shall take all steps necessary to make a decision about the referral of the Complaint to the Disciplinary Tribunal as soon as is reasonably practicable.

10.2 The League shall determine who is responsible for prosecuting the Complaint at the Disciplinary Tribunal.

10.3 Where the referral to the Disciplinary Tribunal is made pursuant to section 10.1 of this Policy, the Tribunal will hear the Complaint within 5 working days of the Complaint referral being made.

10.4 The Disciplinary Tribunal has the power to order any reasonable penalties or directions for breaches of this Policy as are allowable under the rules and regulations of the League in force at the time of the hearing.

10.5 Where a party to a Complaint is dissatisfied with the decision made by the Disciplinary Tribunal, they may ask the Club's Officer to request that the League establish a panel to hear an appeal from the decision in accordance with the appeal provisions in the *National Disciplinary Tribunal Guidelines* (if applicable).

APPENDIX 1

Conciliation Deed of Resolution

[insert] Football League

ACN [insert]

and

Player 1#

[insert Football Club]

and

Player 2#

[insert Football Club]

Parties

1. **[#] Football League** ACN [#] of [#] (**League**)
2. **Player 1** of [#] Football Club (**Complainant**)
3. **Player 2** of [#] Football Club (**Respondent**)

Recitals

- A. On or about # the League received a Complaint lodged in accordance with the *AFL National Complaint & Investigation Guidelines* (**Complaint**).
- B. The League referred the Complaint for an Investigation in accordance with the *AFL National Complaint & Investigation Guidelines* (**Investigation**).
- C. As a result of the Investigation into the Complaint, the League determined that it should convene a Conciliation in accordance with the *AFL National Vilification & Discrimination Policy*, to be attended by the Complainant and the Respondent (**Conciliation**).

Now this Deed witness as follows:

1. Respondent Resolution Obligations

- 1.1. In consideration of the covenants by the complainant Contained in this Deed, the Respondent agrees:
 - a) to acknowledge personal responsibility for the conduct giving rise to the complaint (**Acknowledgement**);
 - B) to make the Acknowledgement in writing together with the following apology via letter addressed to the Complainant on or before [insert date];

[insert agreed form of apology]

(**Apology**)

- C) to pay [#] to the [insert name of charity] on or before [insert date] (**Charitable Donation**);
- 1.2. Subject to the other provisions of this Deed, the Resolution Obligations will be performed by the Respondent within 14 days of execution of this Deed.

2. Release by the Complainant

- 2.1. The Complainant absolutely and unconditionally releases and forever discharges the Respondent and the League from all claims (subject to the terms and conditions of this Deed).

- 2.2. The Complainant indemnifies and shall keep indemnified the League from and against any claims (including legal costs and expenses) which may be made or brought against the League or which the League may sustain or incur arising from or in connection with any breach of, or default under this Deed by the Complainant or by reason of or related to the Resolution Obligations.
- 2.3. This Deed may be pleaded or tendered in evidence by the League as a bar to any proceedings, claim or demand brought by the Complainant against the Respondent or League arising out of or in any way connected to the Complaint, the Investigation, the Conciliation or this Conciliation Deed of Resolution relating to the Complainant's Complaint or releases granted under this Deed, save for any proceeding, claim or demand brought by the Complainant to enforce the terms of this Deed.

3. Confidentiality

- 3.1. Subject to clause 3.2, the parties shall keep secret and confidential the terms of this Deed, save only where disclosure is required by law or is made to the parties' respective legal or financial advisors for the sole purpose of advice or enforcing this Deed.
- 3.2. The Complainant authorises the League to make the following statement in relation to the Complaint:

The [insert] League wishes to advise that the Complainant and the Respondent attended a Conciliation at [insert address] on [insert date]. The Respondent made a confidential acknowledgement as part of the Conciliation and the parties and the League are pleased to advise that a successful resolution to the matter has now been reached.

4. General

- 4.1. Each party to this Deed enters into this Deed in its own capacity and on behalf of its Related Bodies and respective servants, agents, heirs, successors and assigns.
- 4.2. The parties warrant that they are empowered to enter into and to perform this Deed and have obtained or had the opportunity to obtain legal advice in relation to this Deed.
- 4.3. Each party to this Deed warrants to each other party to this Deed that:
- A) he or it has full power to execute, deliver and perform its obligations under this Deed;
 - B) he or it will exercise reasonable skill, care and diligence in performing its obligations under this Deed;
 - C) he or it has all necessary approvals and permits required to perform its obligations under this Deed;
 - D) he or it will comply with all applicable laws in performing its obligations under this Deed;

- E) this Deed constitutes a valid and legally binding obligation of it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally);
- F) he or it has taken all action required and obtained or been granted all consents, approvals, permissions, and authorisations necessary to enable it to enter into and perform its obligations under this Deed;
- G) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or (to its knowledge after due inquiry) threatened which, if adversely determined, could have a material adverse effect on its ability to perform its obligations under this Deed; and
- H) each party acknowledges that it has received valuable consideration for entering into this document.

- 4.4. Each of the representations and warranties contemplated by this Deed is to be construed independently of the others and is not limited by reference to any other representation or warranty.
- 4.5. This Deed may be executed in any number of counterparts, each of which shall be deemed an original and all such counterparts together shall be deemed to constitute one and the same instrument.
- 4.6. The rights and obligations under this Deed are personal and shall not be assigned without the express permission of the other parties (at their absolute discretion).
- 4.7. This Deed shall be governed by the laws of Victoria and the parties submit to the exclusive jurisdiction of the Courts in that State and the Courts with jurisdiction to hear appeals therefrom.
- 4.8. If any provision or part of any provision of this Deed is held by a court of competent jurisdiction to be void, invalid or otherwise unenforceable, then such provision or part shall be deemed eliminated or modified to the extent which the court's opinion is necessary to make the remainder enforceable.
- 4.9. The rights and obligations of the parties in this Deed shall not merge in any way and shall survive for the benefit of the parties.
- 4.10. The parties shall bear their own legal costs in and about the negotiation, preparation, execution and completion of this Deed.

EXECUTED AS A DEED

SIGNED by [COMPLAINANT] in the presence of:)
)

.....

Signature of witness

.....

Signature of Employee

.....

Name of witness
(please print)

.....

Name of Employee
(please print)

SIGNED by [RESPONDENT] in the presence of:)
)

.....

Signature of witness

.....

Signature of Employee

.....

Name of witness
(please print)

.....

Name of Employee
(please print)

SIGNED for and on behalf of **[INSERT]**)
FOOTBALL LEAGUE by its duly authorised)
representative/agent in the presence of:)
)
)

.....

Signature of witness

.....

Signature of authorised
representative/agent

By executing this agreement the
representative/agent states that he/she has
received no notice that his/her authority to
do so has been revoked.

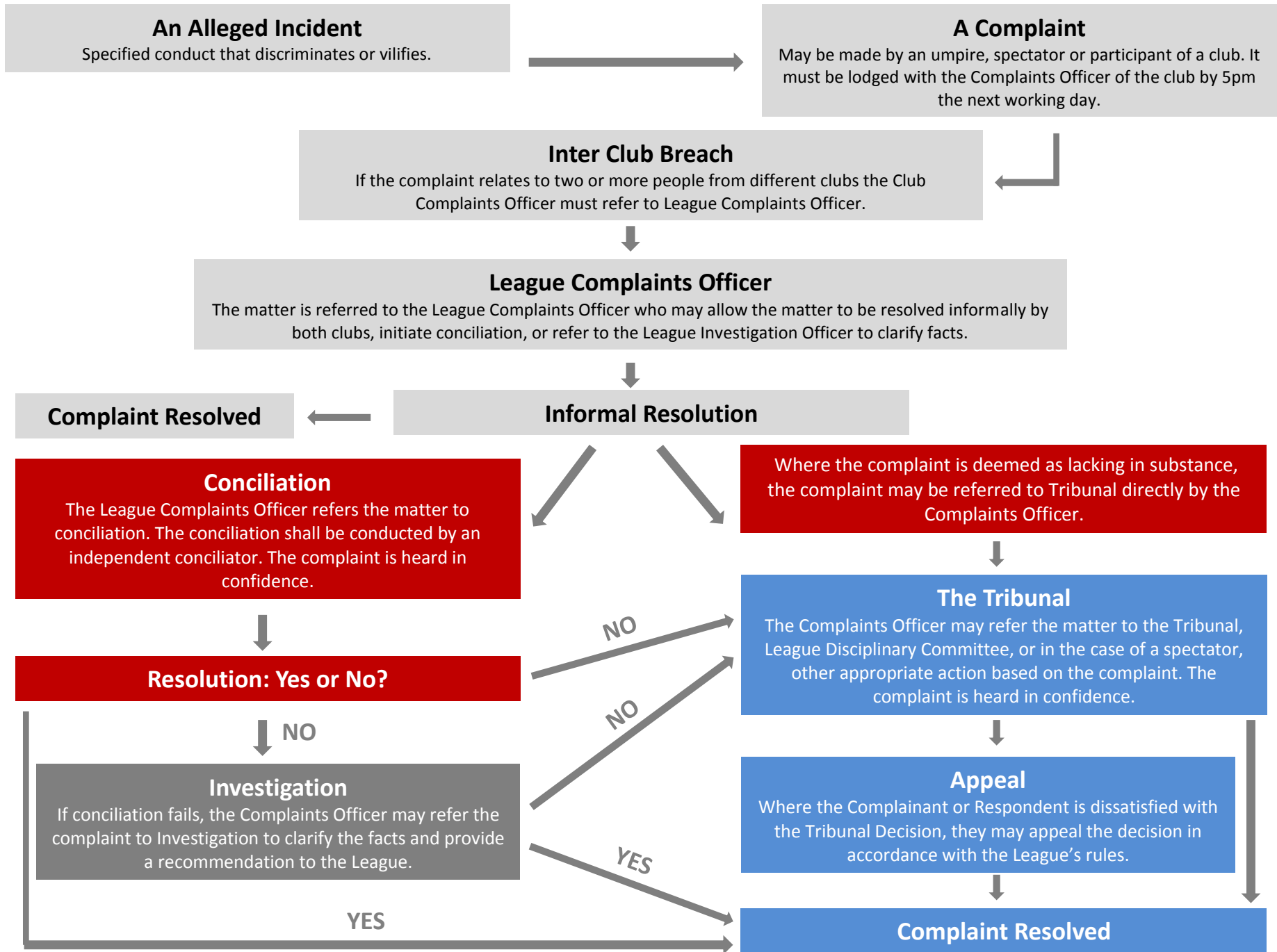
.....

Name of witness
(please print)

.....

Name of authorised representative/agent
(please print)

Inter Club Complaint Process



Intra Club Complaint Process

