



# **OLINDA FERNY CREEK FOOTBALL NETBALL CLUB**

## **VILIFICATION AND DISCRIMINATION TOLERANCE POLICY**

**June 2014**

## COMMITMENT

The Olinda Ferny Creek Football Netball Club (the Club) is committed to an environment, which promotes racial, religious and transgender tolerance by prohibiting certain conduct and providing a means of redress for victims of racial, religious or Transgender vilification and/or discrimination.

The Club is bound by the Equal Opportunity Act 2010 – the primary anti discrimination legislation in Victoria – and the Racial and Religious Tolerance Act 2001. This Policy is consistent with the relevant legislation and also strives for consistency with the Victorian Charter of Human Rights and Responsibilities Act 2006, the Australian Football League's Rule 30 and the Victorian Football League's Rule 7.3. This Policy is not intended as a substitute for legislation and AFL/VFL policy.

The Club will ensure that this Policy is communicated to spectators and participants at the Club. It will also ensure that participants of the Club receive anti-racial and religious vilification and discrimination training on an annual basis, including transgenderism.

Nothing in this Policy prevents a person lodging a complaint in relation to racial, religious or transgender vilification and/or discrimination under the legislation. In the event a complaint is made under this policy the Club shall ensure that the parties are informed of their rights.

## DEFINITIONS

In this Policy-

**"complaints process"** means the procedure for processing complaints outlined in this Policy.

**"Club"** means the Olinda Ferny Creek Football Netball Club

**"engage in conduct"** includes use of the internet or email to publish or transmit statements or other material.

**"League"** means the Yarra Valley Mountain District Football League.

**"detriment"** includes humiliation and denigration.

**"discrimination"** means for the purpose of this Policy, conduct based on a person's race, religion, colour, descent, national or ethnic origin or gender identity. Discrimination may be direct or indirect. Direct discrimination means treating or proposing to treat another person less favourably on the basis of a person's race, religion, colour, descent, national or ethnic origin or gender identity. Indirect discrimination means imposing or intending to impose a requirement that a person of a particular race, religion, colour, descent, national or ethnic origin or gender identity cannot comply with, but which a higher proportion of people without that attribute (or with a different attribute) can, when it is not reasonable in the circumstances to do so.

**"participant"** includes a player, committee member, officer, employee, volunteer and/or agent of the Club.

**"spectator"** is a person that attends a football game or event conducted by the Club or the League.

**“Transgender or Transgenderism”** means a state or condition in which a person’s identity does not conform unambiguously to conventional ideas of male or female gender. It is an umbrella term used to describe the state of one’s gender identity not matching one’s assigned sex.

## **PROHIBITED CONDUCT**

- **Racial and Religious Vilification**

No person in his/her capacity as a spectator or participant in the League in the course of carrying out his/her duties or functions as or incidental to being a participant in the League shall engage in conduct that offends, humiliates, intimidates, contempts, ridicules, incites, threatens, disparages, vilifies or insults another person on the basis of that person’s race, religion, colour, descent or national or ethnic origin.

- **Serious Racial and Religious Vilification**

No person in his/her capacity as a spectator or participant in the Club in the course of carrying out his/her duties or functions as or incidental to being a participant in the Club shall intentionally engage in conduct that he/she knows is likely to incite hatred against another person, or threaten physical harm or incite hatred in others to cause physical harm to a person or to a person’s property because of that person’s race, religion, colour, descent or national or ethnic origin.

- **Racial and Religious Discrimination**

No person in his/her capacity as a spectator or participant in the Club in the course of carrying out his/her duties or functions as or incidental to being a participant in the Club shall engage in conduct that discriminates, directly or indirectly against another person on the basis of that person’s race, religion, colour, descent or national or ethnic origin.

- **Gender Identity/Transgenderism**

Consistent with the obligations arising under this policy, all those associated with the Club must not discriminate against, vilify or harass any person associated with the Club who identify with and/or behave in a manner that is inconsistent with the gender they were assigned at birth.

The exclusion of Transgender Members from participation in sporting events and activities may have significant adverse implications for their health, wellbeing and involvement in community life and in sport. In general, all those associated with the Club must facilitate the participation by Transgender persons in Club sponsored sporting activities with which they identify.

There is debate over whether a male to female transgender person obtains any physical advantage over other female participants. This debate is reflected in the divergent Discrimination laws across the country. If issues of performance advantage arise, the relevant Club will seek advice on the application of those laws in the particular circumstances, having regard to the principles laid down in *AB v State of Western Australian* [2011] HCA 62.

Drug testing procedures and prohibitions also apply to people who identify as transgender in accordance with the *AFL Anti-Doping Code*. A person receiving treatment involving a Prohibited Substance or Method, as described on the World Anti-Doping Agency's Prohibited List, should apply for a standard Therapeutic Use Exemption.

Any person associated with the Club who believes that they have been vilified, discriminated against or harassed on the basis of their Transgenderism may make a complaint in accordance with the procedures outlined in this policy.

- **Victimisation**

No person in his/her capacity as a spectator or participant in the Club in the course of carrying out his/her duties or functions as or incidental to being a participant in the Club shall victimise another person.

A person will victimise another person (the victim) if:

- the person subjects or threatens to subject the victim to any detriment because the victim (or a person associated with the victim) intends to or has lodged a complaint in contravention of this Policy; or
- the person assists, requests, induces, encourages or authorises another person to subject the victim to any detriment because the victim (or a person associated with the victim) intends to or has lodged a complaint in contravention of this Policy.

## **AUTHORISED PERSONS**

The Club will appoint a Complaints Officer (the Club's Complaints Officer) to ensure that any breach of this Policy is responded to in an equitable and prompt manner.

The President of the Club (the President) is the senior decision-maker in the Club's Complaints Process. Therefore, should the President be absent for a significant period, he/she must nominate a person to act on his/her behalf should the process need to be enacted.

## **CONFIDENTIALITY AND RECORDS**

Confidentiality must be maintained throughout the complaints process. All parties to a complaint, the President (or Delegate), the Club's Complaints Officer, any witnesses and the Conciliator must all agree, in writing, 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.

The Club 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.

## **INTER CLUB BREACH OF THE POLICY**

In the event that it is alleged that a spectator or participant from another Club has contravened this Policy:

- an Umpire, spectator or participant of the Club may by 5.00pm on the first working day following the day on which the contravention is alleged to have occurred, lodge a complaint in writing with the Club's Complaint's Officer;
- the Club's Complaint's Officer shall, by 5.00pm on the next working day following the day that the complaint was lodged with the Club, lodge the complaint with the League's Complaints Officer;
- the Club's Complaints Officer will take no further action once the complaint has been lodged with the League unless otherwise instructed by the League's Complaints Officer.

## **INTRA CLUB BREACH OF THE POLICY**

In the event that it is alleged that a participant of the Club has contravened this Policy an umpire, spectator or participant may by 5.00pm on the first working day following the day on which the contravention is alleged to have occurred, lodge a complaint in writing with the Club's Complaints Officer.

## **MANAGEMENT OF INTRA CLUB COMPLAINTS**

The Club's Complaints Officer 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;
  - any breach of confidentiality is referred to the League's Tribunal no later than 5pm on the next working day following the day that the breach was discovered;
- inform the person alleged to have contravened the Policy (the respondent) of the complaint and provide the respondent with an opportunity to respond to it;
- inform only the President of the Club or Nominee, that a Complaint has been received;
- obtain written statements from any witnesses identified by both parties to the complaint;
- where available, obtain any other evidence;
- arrange for the complaint to be conciliated, by an independent conciliator agreed upon by both parties;
- take all steps necessary for the complaint to be conciliated within 5 working days from the day on which the incident is alleged to have occurred;
- refer the complaint to the League's Tribunal:
  - when the complainant informs the Complaints Officer that the matter has not been resolved through conciliation. The Complaints Officer will, if requested by the complainant, take all steps necessary for the complaint to be referred to the League's Tribunal within 5 working days from when the conciliation failed;
  - directly when a respondent has previously taken part in conciliation as a respondent of a complaint;

- when both the Club's Complaints Officer and President have determined that the complaint was lacking in substance and was made vexatiously;
- when both the Club's Complaints Officer and President determine that under relevant legislation the complaint could be considered as "serious", he/she will take all steps necessary for the complaint to be referred to the League's Tribunal within 5 working days from the day on which the incident is alleged to have occurred;
- ensure that the Club may extend any time limit referred to in this Policy if in the opinion of the President of the Club it is just and equitable to do so;
- ensure that where a matter is resolved by conciliation the only public statement that shall be made shall be agreed to by both parties to the complaint and the Club's President and that the terms of any settlement are finalised to the satisfaction of the complainant and respondent and signed by the parties and the conciliator.

## **CLUB'S LIABILITY**

The Club may be vicariously liable for conduct engaged in by a participant in contravention of this Policy, if the Club is unable to establish that it took reasonable precautions to prevent the participant from engaging in that conduct.

## **POLICY COMMENCEMENT**

This Policy was passed by the Club's Committee on XX June 2014 and will take effect from that date.

## **MONITORING AND REVIEW OF THE POLICY**

This policy will be monitored on an ongoing basis by the Club's committee and reviewed annually to ensure it remains relevant to club operations and reflects both community expectations and legal requirements.