

CHILD PROTECTION AND SPORT

An overview of legislation and sports' obligations

What is child abuse?

Child abuse is a term used to describe ways in which children are harmed, usually by adults and often by those they know and trust. Child abuse means:

- Assault (including sexual assault) of a child;
- Ill treatment or neglect of a child, or
- Exposing or subjecting a child to behaviour that psychologically harms the child.

In its most serious forms, abuse can lead to death or long-term harm to the physical or emotional wellbeing of a child or young person. It also has long-term consequences for the child's family, friends and sometimes the community – including the sport community.

Research indicates that:

- 1:4 girls and 1:8 boys under the age of 18 will be sexually abused
- child abuse is significantly under reported
- only 10% of abusers appear in court
- every abuser will impact upon the lives of between 70 and 100 children during his/her life time

The reporting of abuse against children has increased significantly over recent years. This is due in part to programs designed to educate young people to come forward and report incidents of suspected abuse; greater community awareness; organisations implementing tighter checking processes and the introduction of new child protection legislation in some states.

Is child protection and child abuse an issue for sport?

Sport is a particularly vulnerable area for potential child abuse because it:

- involves a large number of people under the age of 18;
- frequently involves overnight trips (e.g. training camps or competitions); and
- usually involves close relationships between adults and children, where the adults are in positions of trust and able to assert authority and power over children.

The most common characteristics of all forms of abuse against children are an abuse of power or authority, or a breach of trust.

Unfortunately there have been several reported incidents of child abuse in sport. Some of the most recent include:

- 2002 – former Australian Olympic swimming coach jailed for 15 months in England for unlawful sexual intercourse on a number of occasions with a 15 year old student.
- 2001 - former magistrate found guilty on nine child sex abuse charges – the abuse was of junior lifesavers (nippers) aged 7-13 when the accused was a state and club junior lifesaving coach.
- 2001 - retired professional female jockey alleges males working within the horse racing industry sexually assaulted her for 11 years – the abuse began when she was 11 years old.
- 2000 - junior soccer coach jailed for 11 years after pleading guilty to 104 paedophile offences against four of his young players (aged between 10 and 12).
- 2000 - hockey coach pleaded guilty to allegations of indecent assault on a player under his care.
- 1999 - Olympic Assistant Softball coach charged for numerous sexual offences against a 17-year-old under his supervision and care.
- 1999 - triathlon coach pleads guilty to molesting a 13-year-old female swimmer he was training 11 years previously.
- 1999 - rugby league coach (and senior policeman) jailed for sexually assaulting a 14-year-old rugby league player he had been coaching.
- 1999 - athletics coach jailed for sexually assaulting a 14-year old girl he was coaching.
- 1998 – Ruby League international Peter Jackson dies from drug overdose. Family state drug abuse was due to his being sexually abused by his football coach as a schoolboy.
- 1997 - Sydney swimming coach committed to stand trial for sexually assaulting one of his 15-year-old male athletes.
- 1997 - Australian cycling team assistant coach at Paralympic Games pleads guilty to two charges of indecently dealing with a 12 year old.
- 1996 - Former Australian Football Club coach jailed for sexual offences against young boys he coached.

There have also been reported incidents of sexual abuse of juniors in swimming, cycling, kayaking, rowing, baseball, gymnastics and other sports.

Child Protection Enforcement Agencies and Police in many states have also indicated a dramatic increase in paedophilia activity in sport particularly as other areas involving children, such as Scouts and schools, have tightened up their checking, control and preventive mechanisms.

In addition to these reported incidents of sexual abuse, results from a doctoral study conducted by a Senior Psychologist at the AIS in 2000/2001 indicate that:

21% of male athletes and 31% of female athletes, in both club and the elite sport, reported experiencing sexual abuse at some point in their lives. These statistics are similar to other community prevalence data, as mentioned earlier, but what is relevant to sport is that of these sexually abused athletes 46% of the elite group and 25% of the club group reported being sexually abused within sport.

The above involve sexual abuse of children – there are many more, mainly unreported, incidences and behaviours that can amount to child abuse. These include:

- Inappropriate training techniques that give extra physical loads to children as ‘punishment’. This can be dangerous to the health of children who are already physically tired. Children should be emotionally prepared for any activity in order to perform it confidently, safely and without anxiety.
- Giving children illegal or inappropriate drugs that may affect their physical or psychological development.
- Talking to children in a derogatory way or demeaning their performance in front of others.
- Inappropriate touching when demonstrating techniques.
- Physical aggression when disciplining a child.

Child protection is, therefore, an issue and a responsibility for the sport industry – and people working in sport need to be clear about their moral and legal obligations to protect the well being and safety of children participating in their activities.

Child Protection Legislation

Child abuse is illegal in all states and territories of Australia with each having their own laws that cover the reporting and investigating of cases of child abuse and the protection of victims.

Mandatory reporting of child abuse (also called notification), where some professions are legally required to report any abuse they suspect or notice, applies in all states and territories, although the professions involved are different.

As at 2002, New South Wales and Queensland were the only states to introduce new child protection and intervention legislation that applies to the sport and recreation industry.

Basically, the legislation in both states broadens and strengthens the checking process of those who want to work with children. The principle behind the laws is simple. Children should be safe wherever they are and who ever they are with. They should be safe at home and when they are in places of learning, sport or play.

NEW SOUTH WALES LEGISLATION

The relevant child protection legislation in NSW is:

- *Ombudsman Amendment (Child Protection and Community Services) Act 1998*
- *Commission for Children and Young People Act 1998*
- *Child Protection (Prohibited Employment) Act 1998*

The above Acts set out the responsibilities in relation to:

- Employing a person in child-related employment;
- Allegations of child abuse made against an employee; and
- Reporting particular kinds of inappropriate behaviour of employees.

UNDER NSW LEGISLATION EMPLOYERS MUST:

- Ask all existing **paid** and **unpaid** staff engaged in positions which primarily involve direct and unsupervised contact with children, if they are a '*prohibited person*'.
 - A *prohibited person* is a person convicted of committing a serious sex offence which is an offence involving sexual activity or acts of indecency which is or was punishable by penal servitude or imprisonment for 12 months or more in NSW.
- Ensure that all applicants prior to employment for a child-related position declare whether they are a prohibited person.
- Not employ a prohibited person in child-related employment.
- Ensure that once a position has been identified as child-related, all information regarding the position clearly states that prohibited persons are not eligible to apply.
- Register with an Approved Screening Agency* to enable employment screening to be undertaken for prospective employees in child-related employment.

- Conduct a screening process through an Approved Screening Agency* for all people commencing **paid** work that primarily involves direct unsupervised contact with children. The screening process incorporates:
 - A relevant national criminal record check;
 - A check of relevant Apprehended Violence Orders; and
 - A review of completed disciplinary proceedings the applicant may have had in previous employment.

Should any relevant information in relation to an applicant be revealed, an assessment of the risk that person may pose to children will be undertaken based on the information obtained through the screening process. The results of the risk assessment will be provided to employers to assist them in making a decision as to whether or not the person should be employed in child-related employment.

- Notify the NSW Commission for Children & Young People of any employee against whom '*relevant disciplinary proceedings*' have been completed. This relates to actions where a person, who has the authority to do so, enquires into an allegation of:
 - Child abuse;
 - Sexual misconduct that had a child as its victim or was directed at children or occurred in the presence of children; or
 - Violent acts committed by the employee in the course of employment that had a child as the victim or was directed at children or occurred in the presence of children,

and a finding is reached, regardless of whether the matter is sustained or not sustained. Employers are not required to report disciplinary proceedings to the NSW Commission where completed disciplinary proceedings have proven the allegations to be **false, vexatious** or **misconceived**.

Under the Act employers **may** also screen current employees engaged in child-related employment and unpaid workers, such as volunteers. Screening these people however is not mandatory.

Where an existing employee notifies that they are a prohibited person they may remain in child-related employment for up to three months after the commencement of these procedures provided they comply with any requirements of the employer concerning unsupervised contact with children. Employers may consider transfers to other positions that are not child-related within the organisation. If no such alternative exists, the employee will be required to terminate their services with the employer.

There are also requirements for **employees**. An employee is any person who is engaged in employment where at least one of the essential duties must involve direct unsupervised contact with children in any of the following capacities in any of the following ways:

- paid employment,
- sub-contractor,
- volunteer for an organisation,
- Minister of religion,
- member of religious organisation,
- foster carer,
- trainee in educational or vocational course.

UNDER NSW LEGISLATION **EMPLOYEES MUST:**

- not apply for child-related employment;
- not accept child-related employment offered to them;
- declare whether they are a prohibited person or not. If they are a prohibited person they must cease child-related employment within one month.

A prohibited person may apply to the Industrial Relations Commission or the Administrative Decisions Tribunal for an exemption for the Child Protection (Prohibited Employment) Act 1998. An exemption will not be given unless it is considered that the person does not pose a risk to the safety of children.

* In NSW, sporting organisations need to request screening checks through an approved screening agency. The relevant agency for sport is the NSW Department of Sport and Recreation. Organisations must register with the Department to obtain an employer ID number for work conducted in NSW in order to be able to request the relevant checks. National and state organisations based outside NSW may also apply for an employer ID number for when they conduct camps, competitions and other junior sporting activities in NSW.

There is no cost to associations for mandatory checks. The turn around time on checks is a minimum of 24 hours to a maximum of 10 working days (if you are requesting a large number of checks).

The issue of **screening volunteers and existing staff** has been a contentious one since the introduction of the child protection legislation in NSW. Originally volunteers were to be screened from January 2001. The NSW Commission for Children and Young People will advise NSW sporting organisations, and those who are registered with the Department, when it will be mandatory to conduct screens for volunteers and for existing staff.

The NSW Department of Sport and the NSW Commission for Children and Young People can provide relevant forms, advice and more detailed information regarding the NSW legislation and your responsibilities.

QUEENSLAND LEGISLATION

The relevant child protection legislation in Queensland is the *Commission for Children and Young People Act 2000 (Qld)*.

UNDER QUEENSLAND LEGISLATION **EMPLOYERS MUST:**

- Undertake a criminal history check, prior to appointment, for **new paid employees and all volunteers** in regulated employment who work within a 12 month period:
 - o at least once a week over the course of one month; or
 - o at least once a fortnight over the course of two months; or
 - o at least once a month over the course of six months.

People working in regulated employment which is “one-off” or on a “short-term” basis (where the duration of their employment is less than the above formula) are not required to undergo a criminal history check. An employer, however, may still apply to the QLD Commission for a criminal history check of these people.

Paid employees who began in regulated employment before 1 May 2002 are not required to undergo a criminal history check by the Commission. Where the employer knows or reasonably suspects that an existing employee has a criminal history that may make the employee unsuitable for child-related employment, then the employer may apply to the Commission for a suitability notice for the employee.

'Regulated employment' is any paid or voluntary work that falls under following categories:

- Residential facilities;
- Schools – boarding facilities;
- Schools – employees other than teachers and parents;
- Churches, clubs and associations involving children;
- Counselling and support services; or
- Private teaching, coaching and tutoring.

The cost of a criminal history check in Queensland is \$40.00 for applicants in paid employment. This can be paid by the employer or passed onto the employee. It is anticipated the checks on volunteers will be free.

Once the check is done, the QLD Commission for Children and Young People will assess the person's suitability for employment and issue a **'suitability notice'** stating whether the person is suitable or not suitable for child-related employment. A suitability notice that states a person is suitable is valid for two years. A notice that states a person is not suitable is valid indefinitely.

What if your organisation is not based in NSW or QLD?

The Qld and NSW laws are also applicable to sports originating outside of these two states. If a sporting organisation sends junior players to NSW or QLD for camps, competition or other activities, the adults travelling with those teams, if they meet the criteria mentioned previously, will also have to undergo the relevant checks.

For example, if the national junior championships is being conducted in NSW or QLD, state associations will have to have the relevant screening checks done on and have forms signed by the coaches, managers and other people over the age of 18 who are travelling with the junior team and who are likely to have direct unsupervised contact with juniors – prior to the teams arriving in QLD or NSW.

If organisations based outside NSW and QLD want to conduct police checks on applicants for child-related positions, they will need to get advice from the Australian Federal Police or the relevant state police force's information and records bureau as to whether the organisation can request the checks and if so, the procedure to be followed.

Checklist for minimising the risk of child abuse

Legislation alone isn't enough to protect children – and given it is limited to only a few states and is limited in who you can screen, other measures need to be considered. To provide a safe environment for children in an organisation and to minimise the risk of child abuse occurring, sporting organisations will also need to implement a range of policies, practices and strategies. Such strategies provide additional security for junior members and also protect adult members from false accusations of abuse.

Effective strategies include:

- **Adoption of a child protection policy** - this can be a clear statement that child abuse is not acceptable and is criminal behaviour, and listing the actions your organisation will take in such instances. It can be incorporated into a broader policy, such as a member protection or anti-harassment policy, or as a separate policy. Ensure your organisation's constitution, regulations and by-laws support the policy and allow it to be enforced.
- **Adopting a code of conduct** for all personnel/members and parents. Require everyone to sign it and to renew his or her pledge on a regular basis (e.g. with annual membership registration, at AGM). Encourage positive behaviours in your sport.
- **Adopting thorough recruitment practices** such as having job descriptions for all delivery roles (paid or voluntary) – this can be a half page of main responsibilities; interviewing applicants and checking references for paid and voluntary positions.
- **Using a screening procedure** whereby *high-risk positions* (paid and volunteer) are identified and appropriate screens on the applicants for these positions are conducted.
- **Appointing a contact officer (member protection officer)** and developing procedures to ensure that allegations of abuse of children are dealt with appropriately and effectively. Ensure that the person selected receives training in child protection issues and **let members know who the person is**.
- **Using accredited coaches and officials** and check that their accreditation is current.
- **Providing information to coaches** and others working with children about how to recognise child abuse and give them directions on what to do if abuse is reported or suspected. Conduct an education and training program to increase awareness of child abuse (various agencies in each state that can assist with this)

'High-risk' positions include people who go on tour or on road trips with children, or who are likely to have direct unsupervised contact with children.

An organisation's ability to use all the processes recommended above will depend on available resources. However the most effective resource is informed people. Increasing an adult's awareness of how abuse can happen, what to look for, and fostering a sense of responsibility for the welfare of children under his/her care are the most effective strategies an organisation can implement.

For more information

Australian Sports Commission

www.activeaustralia.org/hfs

Tel: (02) 6214 1960

Queensland Commission for Children and Young People

www.childcomm.qld.gov.au

Tel: 1800 113611 or (07) 3247 5525

NSW Commission for Children and Young People

www.kids.nsw.gov.au

Tel: (02) 9286 7276

NSW Department of Sport and Recreation

www.dsr.nsw.gov.au

Child Protection Infoline: 1300 366 407

Employment Screening Coordinator: (02) 9006 3773

National Association for Prevention of Child Abuse and Neglect (NAPCAN)

www.napcan.org.au

Useful resources

Australian Sports Commission (2000) *Harassment-free Sport: Protecting Children from Abuse in Sport*. Canberra: Australian Sports Commission

Australian Sports Commission (updated 2002) *Harassment-free Sport: Guidelines for Sport and Recreation Organisations*. Canberra: Australian Sports Commission

(Documents can be downloaded www.activeaustralia.org/hfs or a hard copy ordered from the ASC Publications Unit on 02 6214 1915 for \$4.00 plus postage)

ECPAT Australia (2001) *Choose With Care – Building Child Safe Organisations: Information and Training Kit*. Melbourne: ECPAT Australia
Telephone: (03) 9645 8911