



Tennis Australia  
Member  
Protection  
By-Law

Information Kit



[www.tennisaustralia.com.au](http://www.tennisaustralia.com.au)





# Introduction

Tennis Australia is committed to the health, safety and well-being of all its members and participants and is dedicated to providing a safe environment for participating in the sport of tennis throughout Australia.

The adoption of the Tennis Australia Member Protection By-Law reflects Tennis Australia's dedication to serving and protecting its members and participants throughout all levels of the sport. However, the adoption of the Member Protection By-Law itself is just the first step in affording our members and participants the protection they deserve. The successful implementation and enforcement of this Member Protection By-Law requires the cooperation and commitment of Tennis Australia members and participants at all levels.

The Member Protection By-Law conveys a strong message to all Tennis Australia members and participants, and prospective members and participants, that as a sport, we are committed to ensuring the safety of our most valuable asset well into the future.

This Information Kit has been developed to assist Regional Associations and Affiliated Clubs with implementing and understanding the Member Protection By-Law. We trust that you will find it a useful resource.

Geoff Pollard AM  
President  
Tennis Australia

This Information Kit is divided into five parts:

### Part I

#### Overview of the By-Law

Provides a brief outline of the contents of the By-Law and what it means.

### Part II

#### The Implementation Process

Outlines the steps to be undertaken by Regional Associations and Affiliated Clubs to implement the By-Law.

### Part III

#### Preventative Action

Outlines the screening process, Police Checks and Prohibited Person Declaration.

### Part IV

#### Complaints Procedure, Hearings and Appeals

Outlines the complaints procedure, hearings and appeal process applicable to Regional Associations and Affiliated Clubs.

### Part V

Attachments and Useful Information

*Note: This Information Kit has been developed to assist Regional Associations and Affiliated Clubs with implementing and understanding the Tennis Australia Member Protection By-Law. The Information Kit provides a summary of the By-Law – it does not act as a replacement to the By-Law, nor is it intended to alter any of the meanings or provisions of the By-Law.*

# Table of contents

page

## 3) Part I – Overview of the By-Law

What is Member Protection?

What is the purpose of the By-Law?

## 4) Why have the By-Law?

Who does the By-Law apply to?

How is the By-Law constructed?

Disclosure and enforcement of the By-Law

## 5) What does the By-Law cover?

What is Harassment?

Confidentiality

## 6) Part II – The Implementation Process

## 8) Part III – Preventative Action

Who must be screened?

What is the purpose of a Police Check?

## 9) Prohibited Person Declaration

Who must provide a Prohibited Person

Declaration?

## 10) Part IV – Complaints Procedure, Hearings and Appeals

To whom is the complaint made?

What is the role of the Member Protection Officer?

## 11) What is the role of the Disciplinary Officer?

Hearings and Appeals

The Member Protection Officer

The Disciplinary Officer

## 12) Part V – Attachments and Useful information

For More Information

Further Information

Useful Resources

## 22) Discrimination in Sport – Obligations under Federal Legislation

## 24) Discrimination in Sport – Obligations under State Legislation

# Part I – Overview of the By-Law

The By-Law has been developed as part of Tennis Australia's ongoing commitment to the health, safety and well-being of its members and participants.

The By-Law uses the words "Regional Associations" and "Affiliated Clubs". Regional Associations are defined to mean those regional tennis associations, which are members of, or affiliated to, a Member Association. Affiliated Clubs means those tennis clubs which are members of, or affiliated to, a Regional Association and/or Member Association.

In summary, the By-Law:

- Makes it mandatory from 1 October 2002, for Regional Associations and Affiliated Clubs to screen potential and existing appointees in certain roles.
- Makes it mandatory from 1 October 2002, for Regional Associations and Affiliated Clubs to obtain a prohibited person declaration from potential and existing appointees in certain roles.
- Requires Regional Associations and Affiliated Clubs to promote and distribute the By-Law and enforce and recognise any penalties imposed under it.
- Makes it an offence to engage in harassment, including engaging in sexual harassment, abuse, discrimination and vilification.
- Sets out various Codes of Conduct.
- Sets out the process for making a complaint about a possible breach of the By-Law, processes for investigating a possible breach and the process for a hearing about an alleged breach of the By-Law.

Please note that it is **not mandatory** for Regional Associations and Affiliated Clubs to establish procedures for dealing with complaints. This is at the discretion of the Regional Association and Affiliated Club.

*See Part IV for further information*

## What is Member Protection?

Member Protection is all about practices and procedures, which protect a sports organisation's members including athletes, administrators, coaches and officials.

Particular issues that are addressed in the Tennis Australia Member Protection By-Law include:

- Protection of individuals from harassment and inappropriate behaviour
- Preventative measures such as screening and declarations to ensure that the right people are involved in tennis.

Member Protection is more commonly referred to as protecting members physically and emotionally from harassment. Some forms of harassment, such as sexual harassment and racial discrimination, are unlawful and can result in action being taken against an organisation.

At its extreme harassment can constitute a criminal offence. For example, softball coach Kevin Henderson was found guilty of four counts of sexual penetration of a girl under 17 years under his care, supervision and authority. He received a 3 year suspended sentence.

Other forms of harassment are not unlawful but they can drive away members and do not fit in with the ethic of "fair play" in tennis. For example, bullying and humiliation of athletes and abuse of umpires.

## What is the Purpose of the By-Law?

Tennis Australia believes everyone who participates in its and its Members activities has the right to be treated with respect and dignity. Individuals also have the right to have any complaints dealt with in a fair, confidential and sensitive manner and to be given the opportunity to be heard before any penalties are imposed.



# Part I – Overview of the By-Law

## Why have the By-Law?

The benefits of adopting the By-Law includes:

- providing for consistency in the process with which issues and complaints are dealt with
- ensuring that complaints can be dealt with quickly, responsibly and effectively
- promoting awareness of Tennis Australia's philosophy on what is appropriate behaviour
- It may act as an effective deterrent to harassment within the tennis environment
- good risk management
- helps establish and maintain a good reputation in the community.

## Who does the By-Law apply to?

The By-Law applies to the following:

- Tennis Australia
- Member Associations
- Affiliated Organisations
- Member Affiliated Organisations
- Regional Associations
- Affiliated Clubs.

*Definitions are outlined in Clause 5 – What do words in this By-Law mean?*

The By-Law also applies to the following individuals involved in tennis:

- Administrators and board members of Tennis Australia, Member Associations, Affiliated Organisations, Member Affiliated Organisations, Regional Associations and Affiliated Clubs
- Appointed Officials
- Coaches
- Umpires
- Players
- Members of Member Associations, Affiliated Organisations, Member Affiliated Organisations, Regional Associations and Affiliated Clubs.
- Any other person or organisations which agrees in writing to be bound by the By-Law ( e.g. sponsors, ticket holders).

## How is the By-Law constructed?

The By-Law is divided into three parts and Attachments

- **Part I** – Introduction – outlines the purpose, coverage, application, status and definitions
- **Part II** – Preventative Action – outlines the screening process, Prohibited Person Declaration and disclosure and enforcement of the By-Law
- **Part III** – Offences – outlines offences under the By-Law, how to make a complaint, complaint process, investigation, hearings, penalties and appeal process.

### Attachments

- Flow Chart – Preventative Action
- Flow Chart – Offences, Complaints and Appeals
- Tennis Australia Codes of Conduct for:
  - General
  - Administrators
  - Coaches
  - Players
  - Parent/Guardians
- Prohibited Person Declaration
- Summary of Grounds & Contacts for Notification of Abuse.

## Disclosure and Enforcement of the By-Law

Regional Associations and Affiliated Clubs must formally adopt the By-Law, and must promote and distribute the By-Law and enforce and recognise any penalties imposed.

# Part I – Overview of the By-Law

## What does the By-Law Cover?

The Tennis Australia Member Protection By-Law covers:

- Harassment
- Sexual harassment
- Discrimination
- Abuse
- Vilification

### The By-Law also deals with:

- Complaints Procedure
- Tribunal Hearings
- Appeals process.

## What is Harassment?

*"Harassment consists of offensive, abusive belittling or threatening behaviour directed at a person or persons because of a particular characteristic of that person or persons (including the person or persons' level of empowerment relative to the harasser).*

*The behaviour must be unwelcome and the sort of behaviour a reasonable person would recognise as unwelcome."*<sup>1</sup>

The law does not recognise or prohibit harassment per se. However, state and federal legislation prohibits harassment on particular grounds. For example harassment against people with disabilities is prohibited under the Disability Discrimination Act 1992 (Cth) and sexual harassment is prohibited under various state and federal laws including, the Sex Discrimination Act 1984 (Cth).

*See Attachment C  
Discrimination in Sport –  
Obligations under Federal  
Legislation*

*See Attachment D  
Discrimination in Sport –  
Obligations Under State  
Legislation*

### Harassment can be broken down into four main categories:

- Sexual Harassment
- Abusive Behaviour
- Vilification
- Discrimination

*Part III – Offences – includes definitions and examples relating to Harassment, Discrimination and Other Misconduct*

## Confidentiality

The By-Law requires information to be obtained on a wide range of people. The By-Law requires that information obtained on appointees, potential appointees, alleged offenders, complainants and others remain confidential.

Only those persons delegated by the organisation may receive information and they must abide by the By-Law in regard to confidentiality.

Organisations should ensure that only a select group have access to personal information. Members should be aware that their personal information will be treated with respect and sensitivity.

*Clauses 6.10, 7.7, 15.1, 16.3  
and 17.13 deal with  
confidentiality of information  
obtaining under the By-Law*

<sup>1</sup> Australian Sports Commission – Harassment Free Sport Guidelines for Sports Administrators.

# Part II – The Implementation Process

The following steps must be undertaken by Regional Associations and Affiliated Clubs to ensure effective implementation and enforcement of the By-Law. Regional Associations and Affiliated Clubs must:

- 1** Formally adopt and comply with the By-Law;
- 2** If necessary make appropriate amendments to their constitution to adopt the By-Law;
- 3** Ensure that their members are aware of the By-Law and make the By-Law available for inspection.

In adopting the By-Law as their own, Regional Associations and Affiliated Clubs will need to consider the following:

- 1** Regional Associations and Affiliated Clubs should review their Constitution to ascertain whether they have a direct power to implement By-Laws under their Constitutions. The requirements under these clauses should be complied with (it will be necessary to ascertain whether the board or the members at a general meeting, must adopt the By-Law and the procedures set out in the clause should be adhered to).

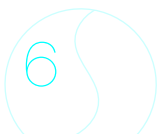
If an express power exists to implement By-Laws, then the following wording may be used in adopting the By-Law:-

"In accordance with {insert Rules/Clause number} of the {insert Statement of Purposes and Rules or Constitution} of {insert name of organisation} the {insert body adopting the By-Law i.e. Board or members at a general meeting} adopts the Tennis Australia Member Protection By-Law as amended from time to time, as the By-Law of {insert name of organisation}."

This wording is suggested wording only. Regional Associations and Affiliated Clubs should ensure that the wording satisfies the requirements under their Constitution.

- 2** If there is no express power in the Constitution of the Regional Association or an Affiliated Club to adopt a By-Law, two options exist:-
  - a** The Constitution may be amended to include an express power to adopt By-Laws (thereafter the steps set out in point 1 above may be followed). Any amendment to the Constitution must be in accordance with the organisation's Constitution and any requirements under the Corporations Act or the Associations Incorporation Act (which the Regional Association or Affiliated Club is incorporated under).
  - b** Subject to an express inability to adopt or implement By-Laws (which is unlikely), the members at a general meeting may adopt the By-Law. This assumes that the objects or purposes of the Regional Association or Affiliated Club are not inconsistent with the purpose of the By-Law. Regional Associations and Affiliated Clubs will be required to call a general meeting in accordance with their Constitution for the purposes of considering a motion to adopt the By-Law. The wording of the motion may be as follows:

"The Members of {insert name of organisation} adopt the Tennis Australia Member Protection By-Law as amended from time to time, as the By-Law of {insert name of organisation}."





## Part II – The Implementation Process

Again, the wording is suggested wording only. Regional Associations and Affiliated Clubs should ensure that the wording satisfies the requirement under their Constitution.

Regional Associations and Affiliated Clubs must ensure that their members are aware of the existence of the By-Law and must make the By-Law, and any amendments, easily accessible. This does not mean that every member of the Regional Association or Affiliated Club is to be supplied with a copy of the By-Law. This could be done by having a copy in the Club House and available at competitions and events. Further, the By-Law should be recognised and referred to in the organisations publications, entry forms, fixtures/handbook and competition rules. Some examples are provided below.

### **Example:- Fixtures/handbook/competition rules**

#### **Conditions of Play**

All matches shall be played under the laws of the game as adopted by {insert name of organisation}. The Tennis Australia Code of Conduct and Member Protection By-Law shall apply to the {insert name of competition}.

#### **Example:- Entry Forms**

The following can be in the form of a tick box.

You acknowledge that as a participant in the {insert name of competition} you are required to comply with various rules and policies. You agree to comply with and confirm that you understand:

#### **Please tick**

- {Insert name of competition} Rules of Play
- Tennis Australia Code of Conduct
- Tennis Australia Member Protection By-Law.

If you do not understand the above rules and policies and/or your obligation under them, you should seek clarification from {insert title} before you complete this form.

# Part III – Preventative Action

Tennis Australia has included preventative measures in the By-Law. This takes the form of mandatory screening and declarations for individuals in certain roles within tennis.

It will be mandatory from 1 October 2002 for Regional Associations and Affiliated Clubs to screen potential and existing appointees in certain roles.

#### **Screening includes:**

- Checking referees
- Interviewing potential appointees for positions
- Obtaining a police check of potential and existing appointees.

## Who must be Screened?

- Paid Coaches
- Volunteer coaches who may travel with players under 18 years of age
- Persons who are likely to have individual and unsupervised contact with players under 18 years of age.

*See Clause 6 for screening process*

**NOTE:** Whilst the screening procedures of the By-Law are comprehensive, organisations may need to comply with State Legislation in regard to screening. Your Member Association will be able to assist in this area.

*See Clause 6.12 re compliance with State Legislation screening process*

## What is the purpose of a Police Check?

The purpose of a Police Check is to ascertain whether a person has any previous criminal convictions. The Police Check will provide written information about all criminal convictions or findings of guilt. Checks are generally limited to findings of guilt which have occurred in the last ten years. However, there are certain circumstances where a record over ten years may be released.

The written consent of the applicant must be obtained prior to undertaking a Police Check. The applicant may also be required to provide photographic proof of identification e.g. drivers license or passport. Organisations will be required to complete the appropriate Police Department form. These can be obtained through the Police or designated authority in your State. Fees for a Police Check vary from State to State.

The cost of the Police Check may be borne by the applicant if the Regional Association or Affiliated Club wishes, although the applicant should be made aware of this prior to undertaking the screening process.

Information obtained from a Police Check should only be used for screening purposes and limited to a select group of people within the organisation.

## Part III – Preventative Action

### Prohibited Person Declaration

#### What is a Prohibited Person Declaration?

A prohibited person declaration involves obtaining a declaration from people in certain roles listed below that they are not a prohibited person (which is defined to be a person who has committed a serious sex offence).

It will be mandatory from 1 October 2002, for Regional Associations and Affiliated Clubs to obtain a prohibited person declaration from potential and existing appointees in certain roles.

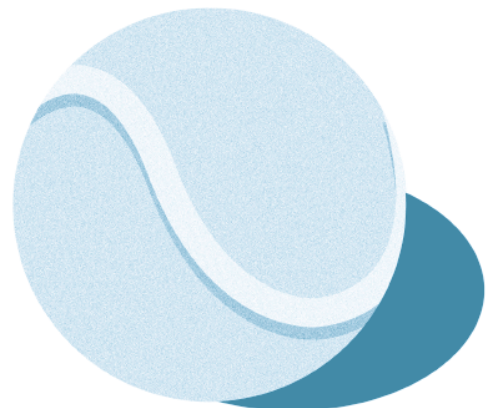
*See Clause 7 – Prohibited Person Declaration*

### Who Must Provide a Prohibited Person Declaration?

- Paid Coaches
- Volunteer coaches who may travel with players under 18 years of age
- Persons who are likely to have individual and unsupervised contact with players under 18 years of age.

Organisations should be aware that having a criminal history should not automatically rule out the applicant from being considered for a position.

*See Clause 6.7 – The purpose of a Police Check*



# Part IV – Complaints Procedure, Hearings and Appeals

Please note that it is **not mandatory** for Regional Associations and Affiliated Clubs to establish procedures for dealing with complaints. This is at the discretion of the Regional Association and Affiliated Club.

If the Regional Association and Affiliated Club has decided to establish procedures for dealing with complaints then they must:

- Appoint two Member Protection Officers
- Set up procedures as outlined in the By-Law
- Appoint a Disciplinary Officer
- Establish a Disciplinary Tribunal
- Set up an Appeals procedure as set out in the By-Law (if applicable)
- Ensure that all members are aware of who the organisation's appointed Member Protection Officers and Disciplinary Officer are.

*See Clause 8.3 re establishment of procedures to deal with complaints*

If the Regional Associations and Affiliated Clubs do not wish to establish procedures for dealing with complaints, complaints must be referred to the Member Protection Officers and/or Disciplinary Officer of the Regional Association (if any) or the Member Association.

*A Complaint can be made in writing or made verbally see clause 14.1*

## To Whom is the Complaint made?

If the complaint relates to harassment, discrimination, abuse or vilification of a sexual or physical nature, then the complaint must be made to the organisations Member Protection Officer.

*See Clause 15 – What is the Process if a Complaint is made?*

If the complaint relates to a type not listed above then the complaint must be made to the organisations Disciplinary Officer.

*See Clause 15.6 (a) & (b) – Other Complaints*

If an organisation is made aware of information that gives them reasonable cause to suspect an offence under the By-Law has occurred, then they must act in accordance with the procedures set out in the By-Law.

*See Clause 16 – Investigation of Suspected Offences*

## What is the Role of the Member Protection Officer?

The Member Protection Officer must investigate the complaint thoroughly and act according to the procedures outlined in the By-Law. The Member Protection Officer can also act as a mediator.

*See Clauses 15.1 and 15.2*

# Part IV – Complaints Procedure; Hearings and Appeals

## What is the role of the Disciplinary Officer?

The Disciplinary Officer, on receipt of a complaint shall act according to the procedures set out in the By-Law.

*See Clause 17 – Hearings*

## Hearings and Appeals

The By-Law outlines the process and procedures for:-

- Appointing the Disciplinary Tribunal
- Powers of the Disciplinary Tribunal
- The conduct of a hearing
- Imposing penalties
- Notification of penalties imposed
- Appeals to the Appeal body
- Powers of the Appeal Body
- Notification of the outcome of the appeal.

*See Clause  
17 – Hearings  
18 – What Penalties May be Imposed  
19 – How can a Decision be Appealed*

## The Member Protection Officer

When considering appointees for the positions of Member Protection Officer and Disciplinary Officer, the following should be considered.

The Member Protection Officer<sup>2</sup> should represent all levels of the organisation. The Member Protection Officer can be a salaried staff member or a volunteer. They should be trusted and capable of being relied on. The Member Protection Officer should be a person who is not likely to discourage genuine complaints because of conflicting loyalties to the person making the complaint, the alleged offender, or the organisation about whom the complaint has been made.

The Member Protection Officer does not have to be someone with high educational qualifications. The right personal qualities are more important. The technical knowledge needed for the role can be gained through training.

To be suitable for appointment as a Member Protection Officer, a person:

- Must have integrity, be trustworthy and discreet

- Should be dependable, easily accessible and approachable
- Should have good listening skills, be non-judgmental, supportive, patient and sensitive
- Should be able to communicate openly and honestly with a broad cross-section of people
- Must understand and comply with the procedures set out in the Tennis Australia Member Protection By-Law.

### Qualities of an effective Member Protection Officer

*The ideal Member Protection Officer should be:*

- Empathic
- Trustworthy
- Approachable
- Caring
- A good listener
- Calm (especially when the complainant is not)
- Logical
- Knowledgeable and experienced (to come up with valuable solutions)
- Equipped with a sense of humour (when required/if necessary)
- Patient
- Non-judgmental (and won't bring preconceived ideas to bear on the problem)
- Respectful (treating all people as equals)
- Supportive (and so will take the problem seriously)
- Relied on to maintain complete confidentiality
- Honest.

## The Disciplinary Officer

The Disciplinary Officer<sup>3</sup> is required to carry out the tasks and procedures outlined in the By-Law in relation to the disciplinary process. The Disciplinary Officer can be a salaried staff member or a volunteer.

### The Disciplinary Officer should:

- Have integrity, be trustworthy and discreet
- Be dependable, easily accessible and approachable
- Have good listening skills, be non-judgmental, supportive, patient and sensitive
- Be able to communicate openly and honestly with a broad cross-section of people
- Be well organised
- Understand the mechanisms involved in organising a Disciplinary Hearing
- Must understand and comply with the procedures set out in the Tennis Australia Member Protection By-Law.

<sup>2</sup> Adapted from the ASC Harassment- Free Sport Guidelines for Sports & Recreation Organisations.

<sup>3</sup> Ibid.

# Part V – Attachments and Useful Information

The By-Law includes the following Tennis Australia Codes of Conduct:

- Tennis Australia General Code of Conduct
- Tennis Australia Administrators Code of Conduct
- Tennis Australia Coaches Code of Conduct
- Tennis Australia Players Code of Conduct
- Tennis Australia Parent/Guardian Code of Conduct.

Other attachments include:

- Prohibited Person Declaration.
- Summary of Grounds and Contacts for Notification of Abuse

## For More Information

Contact your State Tennis Association – see back page for contact details.

### Important contacts

Attachment K gives a Summary of Grounds and Contacts for Notification of Abuse.

## Further Information

### Australian Sports Commission

[www.activeaustralia.org/hfs](http://www.activeaustralia.org/hfs)

### Queensland Commission for Children and Young People

[www.childcomm.qld.gov.au](http://www.childcomm.qld.gov.au)

Tel: 1800 113611 (freecall) or 07 3247 4145

### NSW Commission for Children and Young People

[www.kids.nsw.gov.au/check/](http://www.kids.nsw.gov.au/check/)

### NSW Department of Sport and Recreation

[www.dsr.nsw.gov.au](http://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](http://www.napcan.org.au) and [www.childsafe.net.au](http://www.childsafe.net.au)

### Equal Opportunity Commission of South Australia and the South Australian Office of Recreation and Sport

[www.playbytherules.net.au](http://www.playbytherules.net.au)

## Useful Resources

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

(can be downloaded for free from the above website or hard copy available from the Publications Unit on 02 6214 1915.)

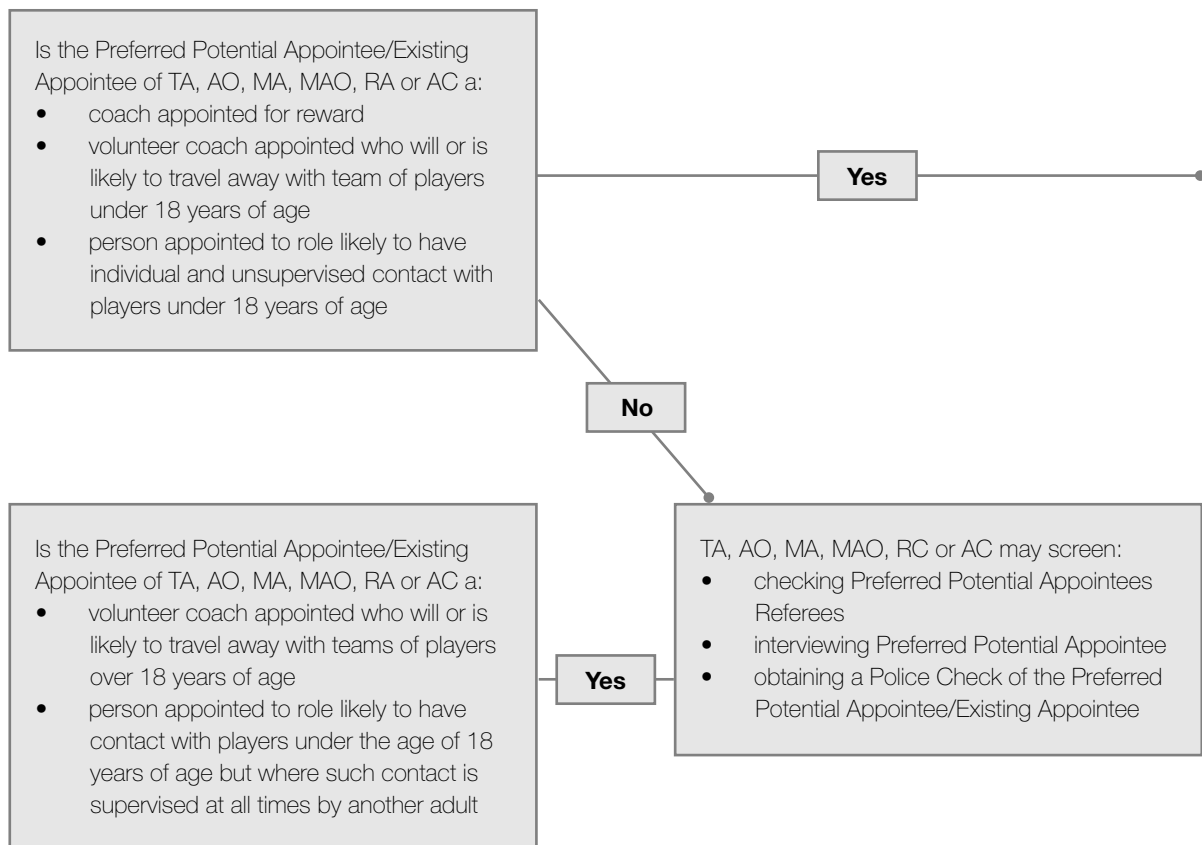
ECPAT Australia (2001) Choose With Care - Building Child Safe Organisations: Information and Training Kit. Melbourne ECPAT Australia Telephone: (03) 9645 8911

# Part V – Attachments and Useful Information

## Attachment A

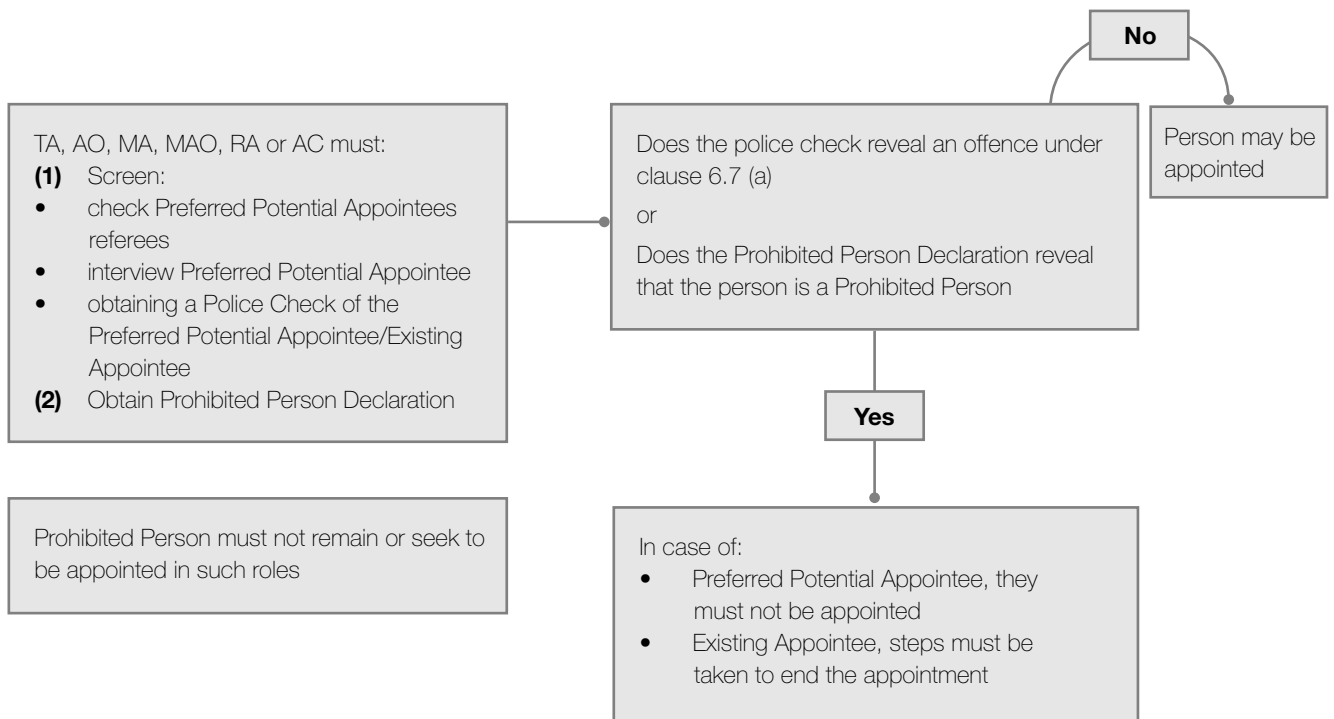
Attachment A has been included in this By-Law by way of summary and it is not to be used for the interpretation of this By-Law.

## Tennis Australia - Member Protection By-Law Preventive Action (Part II)



# Part V – Attachments and Useful Information

## Attachment A – continued



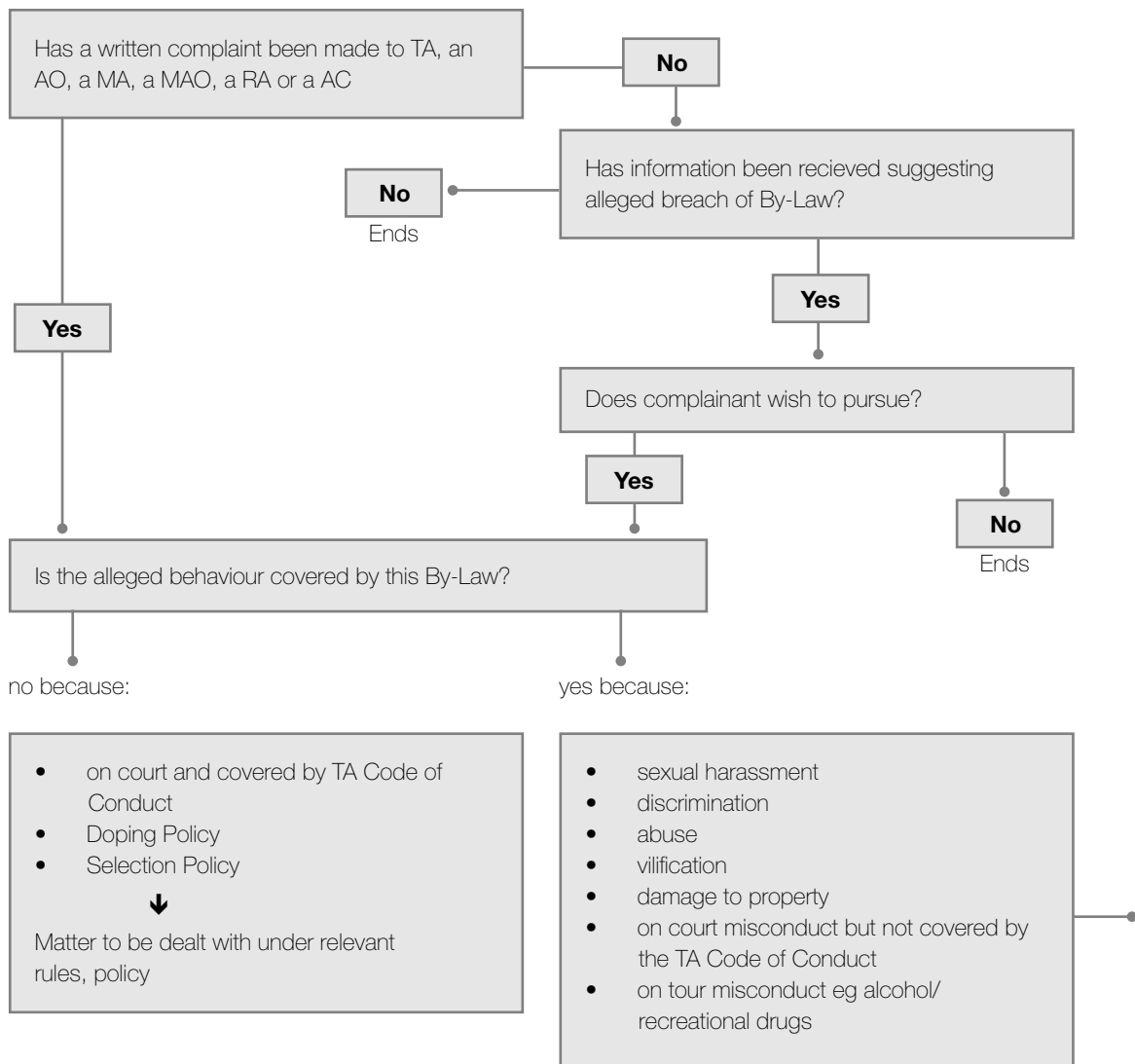


# Part V – Attachments and Useful Information

## Attachment B

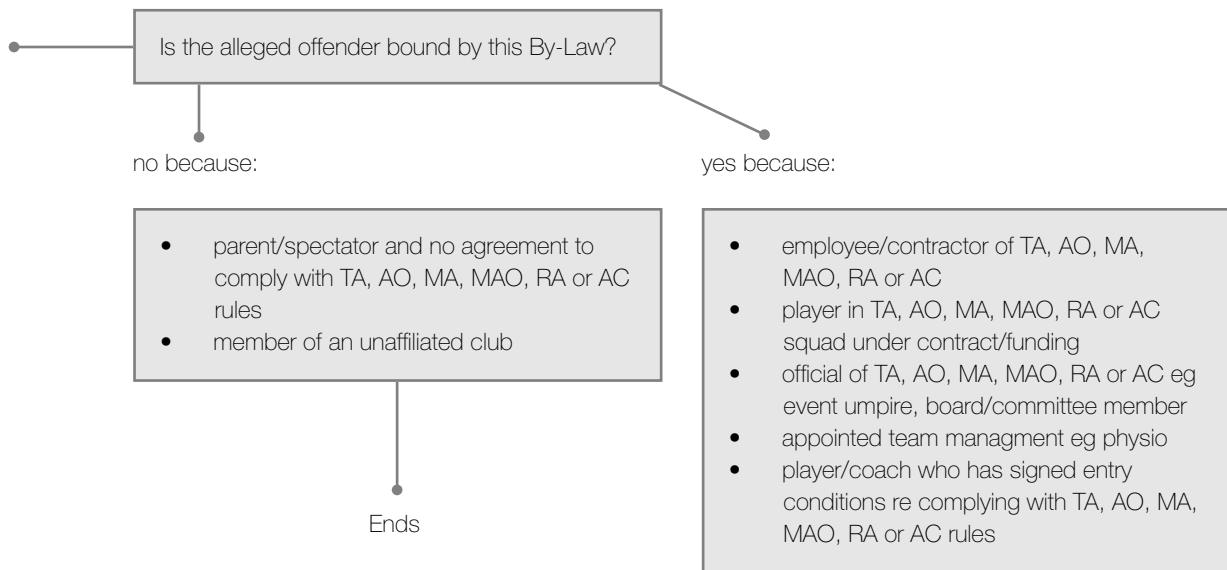
Attachment B has been included in this By-Law by way of summary and it is not to be used for the interpretation of this By-Law.

## Tennis Australia - Member Protection By-Law Complaints and Appeals (Part III)



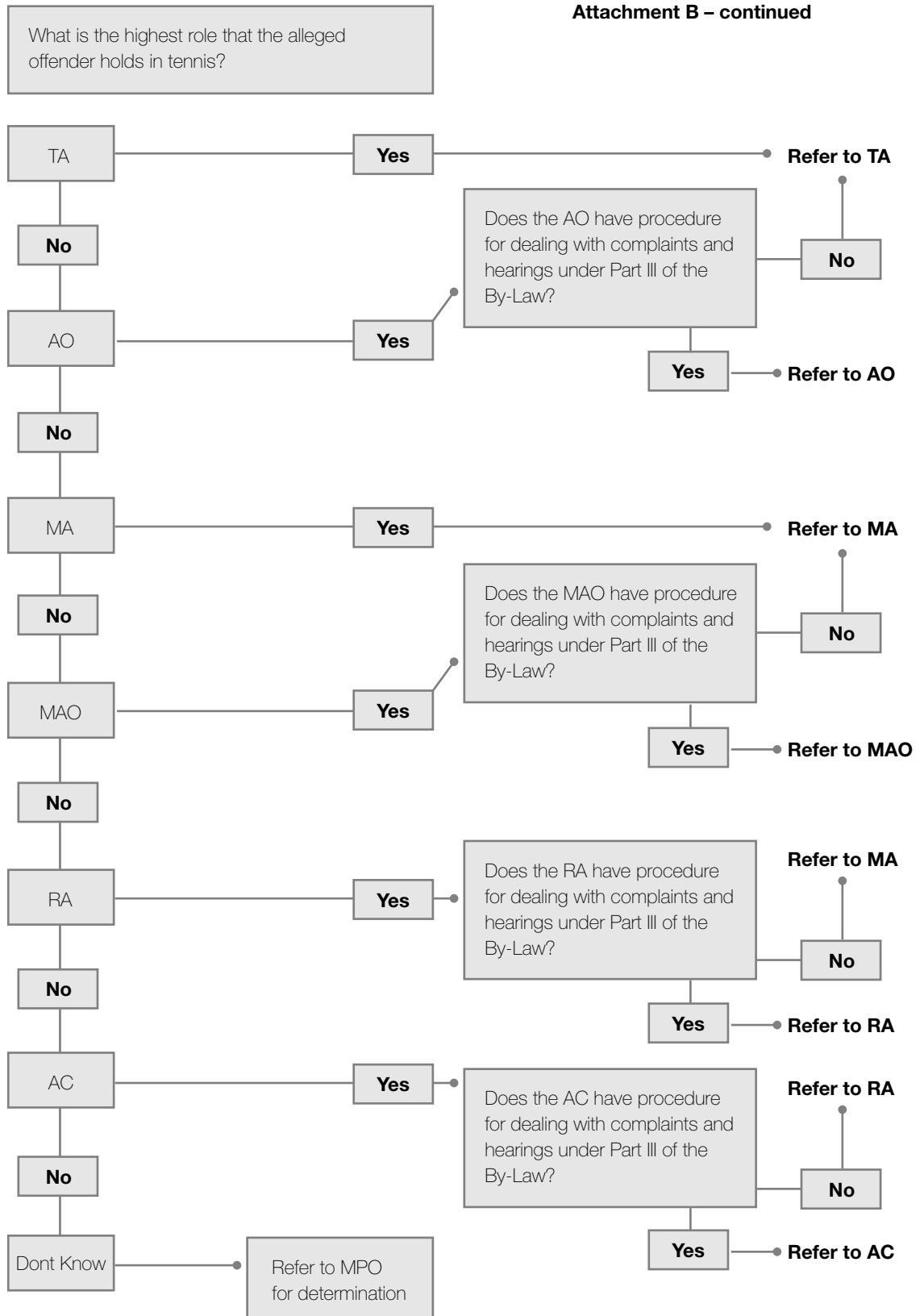
# Part V – Attachments and Useful Information

## Attachment B – continued



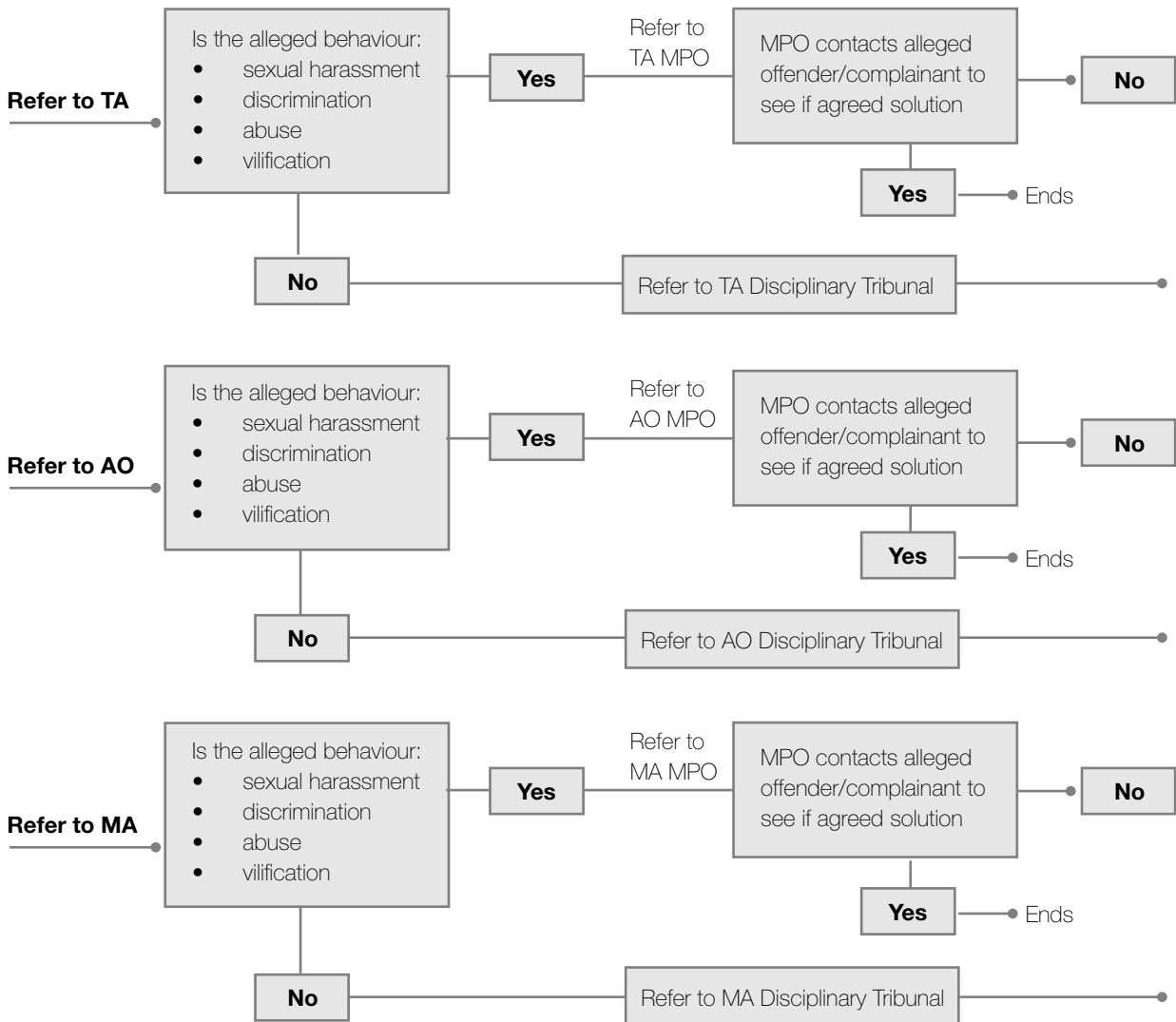
# Part V – Attachments and Useful Information

## Attachment B – continued



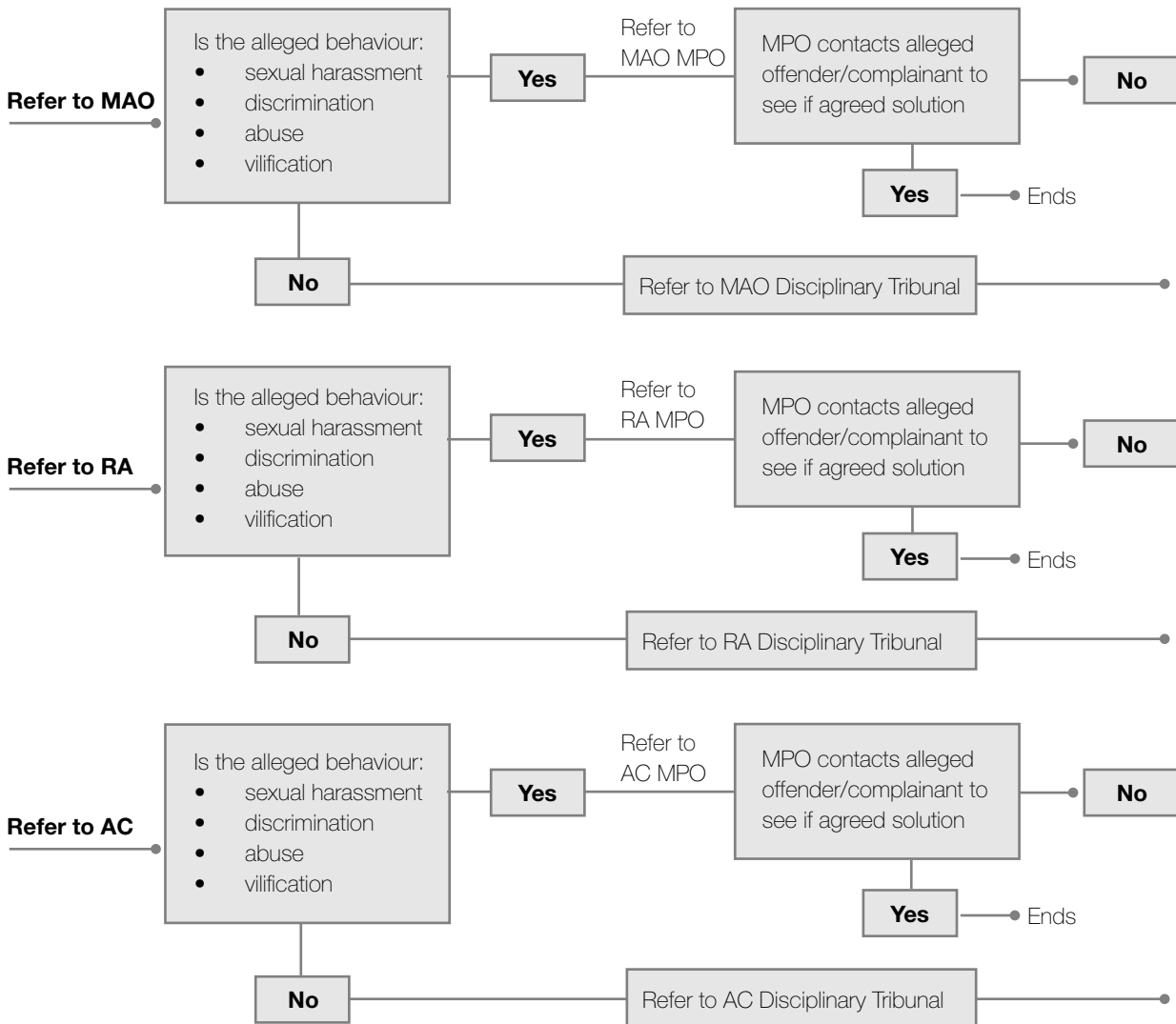
# Part V – Attachments and Useful Information

## Attachment B – continued



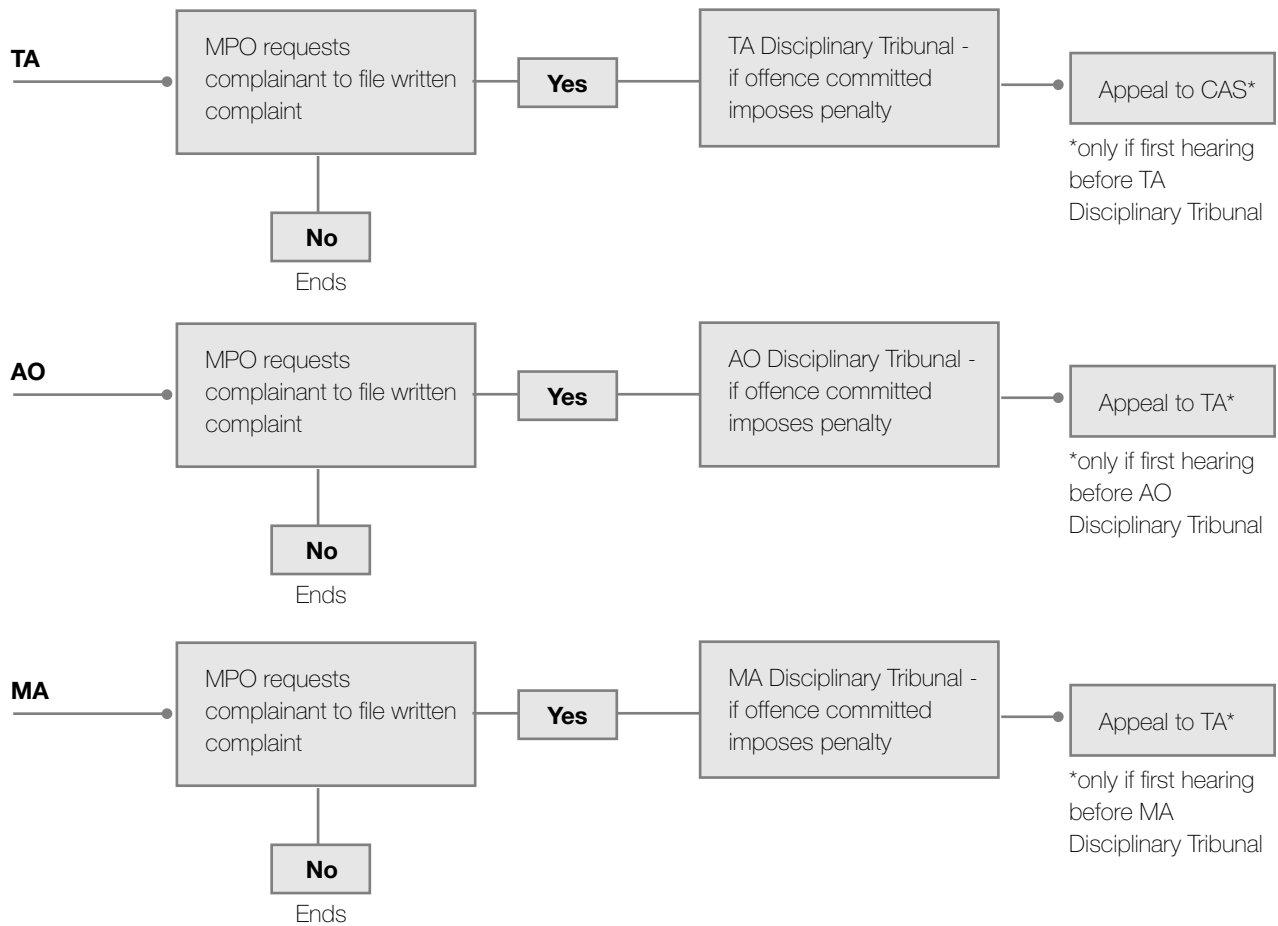
# Part V – Attachments and Useful Information

## Attachment B – continued



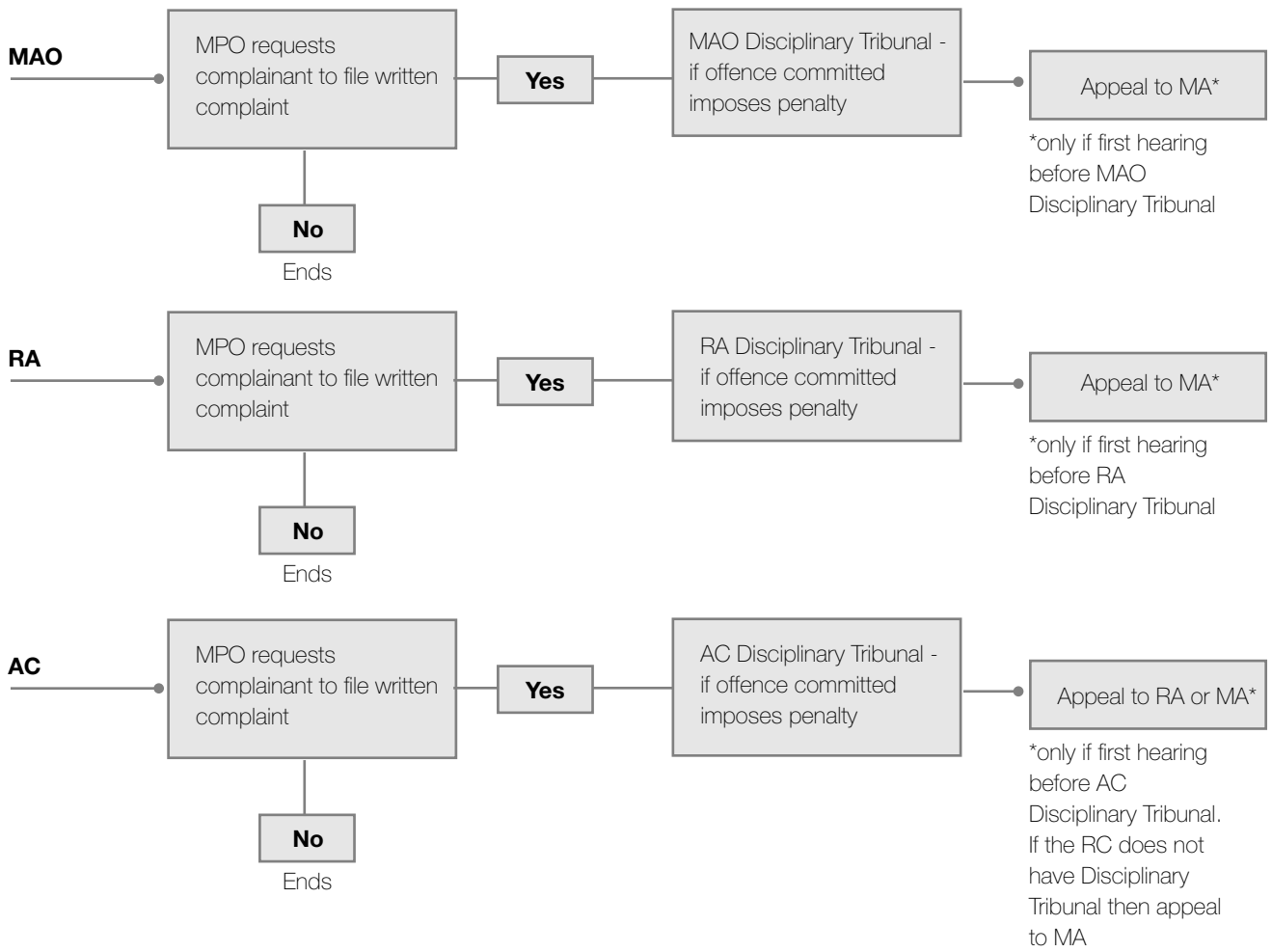
# Part V – Attachments and Useful Information

## Attachment B – continued



# Part V – Attachments and Useful Information

## Attachment B – continued



# Part V – Attachments and Useful Information

## Attachment C

# Discrimination in Sport – Obligations under Federal Legislation

## 1 Disability Discrimination Act 1992 (Cth)

### 1.1 What is a disability?

The term “disability” is broadly defined under the Act, to mean:

- a** total or partial loss of the person’s bodily or mental functions; or
- b** total or partial loss of a part of the body; or
- c** the presence in the body of organisms causing disease or illness; or
- d** the presence in the body of organisms capable of causing disease or illness; or
- e** the malfunction, malformation or disfigurement of a part of the person’s body; or
- f** a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- g** a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

Further, “disability” includes any of the above conditions that:

- a** presently exists; or
- b** previously existed but no longer exists; or
- c** may exist in the future; or
- d** is imputed to a person.

### 1.2 When will discrimination on the ground of disability occur?

Discrimination can occur directly or indirectly.

Direct disability discrimination occurs where a person treats, or proposes to treat, someone with a disability, less favourably than a person without the disability, in circumstances that are the same or similar.

Indirect disability discrimination occurs where a person requires someone with a disability to comply with a requirement or condition -

- a** with which a substantially higher proportion of persons without the disability comply or are able to comply; and
- b** which is not reasonable having regard to the circumstances of the case; and

- c** with which the aggrieved person does not or is not able to comply.

### 1.3 Discrimination by Clubs and Incorporated Associations

It is unlawful for a club or incorporated association, or a member of the committee of management of a club or incorporated association, to discriminate against a person on the ground of the person’s disability in any of the following ways:

- a** refuse to accept membership;
- b** offer different terms on which they are prepared to accept membership;
- c** refuse membership of a particular class;
- d** deny or limit a member access to a benefit;
- e** vary the terms of membership; or
- f** subject a member to detriment on the basis of that person’s disability.

A club may discriminate against a person on the ground of the person’s disability if membership of the club or incorporated association is restricted only to persons who have a particular disability and the person does not have that disability.

### Unjustifiable hardship exception

A club may deny or limit a member’s access to any benefit provided by the club or association because of the person’s disability, where the person requires the benefit to be provided in a special manner, and the benefit cannot be so provided without placing an unreasonable burden upon the club.

### 1.4 Discrimination in Sports Participation

It is unlawful to discriminate against a person with a disability by excluding such a person from a sporting activity on the basis of their disability.

Sporting activity includes a reference to an administrative or coaching activity in relation to any sport.

However, a person may exclude another on the basis of their disability where -

- a** the person is not reasonably capable of performing the actions required in relation to the sporting activity; or
- b** if the persons who participate or are to participate in the sporting activities are selected by a method which is reasonable on the basis of their skills and abilities relevant to the sporting activity and relative to each other; or
- c** if a sporting activity is conducted only for persons who have a particular disability and the person does not have that disability.



# Part V – Attachments and Useful Information

## 1.5 Infectious Diseases Exception

It will be lawful for a person to discriminate against another person on the ground of the other person's disability if:

- a** the person's disability is an infectious disease; and
- b** the discrimination is reasonably necessary to protect public health.

## 1.6 Vicarious Liability

Sporting organisations may be liable for the discriminatory acts of their officers, employees or agents where it can be shown that:

- a** the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- b** the director, servant or agent had the state of mind.

It will be a defence for a sporting organisation to show that it took reasonable precautions and exercised due diligence to avoid the discriminatory conduct.

## 2. Racial Discrimination Act 1975 (Cth)

### 2.1 What type of conduct will amount to Racial Discrimination?

The legislation prohibits discrimination on grounds of race, colour, descent or national or ethnic origin in circumstances where:

- a** a person requires another person to comply with a term, condition or requirement which is not reasonable having regard to the circumstances of the case; and
- b** the other person does not or cannot comply with the term, condition or requirement; and
- c** the requirement to comply has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, by persons of the same race, colour, descent or national or ethnic origin as the other person, of certain human rights and fundamental freedoms.

There is no specific provision in the legislation dealing with sporting clubs or sporting activities, however sport is included within the scope of the legislation by provisions which extend the prohibition of racial discrimination to protect certain human rights such as the right to equal participation in cultural activities.

### 2.2 Offensive Behaviour

The legislation makes it unlawful for a person to do an act, otherwise than in private, if:

- a** the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and

- b** the act is done because of the race, colour, national or ethnic origin of the other person or of some or all of the people in the group.

Anyone affected by an unlawful act under this section may make a complaint to the Human Rights and Equal Opportunity Commission.

An act is taken not to be done in private if it:

- a** causes words, sounds, images or writing to be communicated to the public; or
- b** is done in a public place; or
- c** is done in the sight or hearing of people who are in a public place.

A public place includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

## 3. Sex Discrimination Act 1984 (Cth)

### 3.1 What type of conduct will constitute sex discrimination?

Sex discrimination can occur either directly or indirectly.

Direct Discrimination occurs if a person discriminates against another on the ground of the sex of the aggrieved person if, by reason of:

- a** the sex of the aggrieved person;
- b** a characteristic that appertains generally to persons of the sex of the aggrieved person; or
- c** a characteristic that is generally imputed to persons of the sex of the aggrieved person;

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of the opposite sex.

Indirect Discrimination occurs if a person discriminates against another person on the ground of the sex of the aggrieved person if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of the same sex as the aggrieved person.

### Exception

A person does not discriminate against another person by imposing, or proposing to impose, a condition, requirement or practice that has a disadvantaging effect due to sex, marital status or pregnancy, if the condition, requirement or practice is reasonable in the circumstances.

In deciding whether a condition or requirement is reasonable, the following matters are taken into account:

# Part V – Attachments and Useful Information

- a** the nature and extent of the disadvantage resulting from the imposition, or proposed imposition, of the condition, requirement or practice; and
- b** the feasibility of overcoming or mitigating the disadvantage; and
- c** whether the disadvantage is proportionate to the result sought by the person who imposes, or proposes to impose, the condition, requirement or practice.

## 3.2 Discrimination by Clubs

*It is unlawful for a club, or a member of the committee of management of a club, to discriminate against a person on the ground of the person's sex, marital status, pregnancy or potential pregnancy in any of the following ways:*

- a** refuse to accept membership;
- b** offer different terms on which they are prepared to accept membership;
- c** refuse membership of a particular class;
- d** deny or limit a member access to a benefit;
- e** vary the terms of membership; or
- f** subject a member to detriment on the basis of that person's disability.

A club may discriminate against a person on the ground of the person's sex if membership of the club is available to persons of the opposite sex only.

*A club may also discriminate against a person on the ground of the person's sex if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the club where:*

- a** it is not practicable for the benefit to be used or enjoyed simultaneously or to the same extent by both men and women; and
- b** either the same, or an equivalent, benefit is provided for the use of men and women separately from each other, or men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit.

## 3.3 Discrimination on the ground of Marital Status, Pregnancy or Potential Pregnancy

A person discriminates against a person on the ground of the aggrieved person's marital status, pregnancy or potential pregnancy if, because of:

- a** the aggrieved person's marital status, pregnancy or potential pregnancy; or
- b** a characteristic that appertains generally to persons of that marital status or women who are pregnant or potentially pregnant; or
- c** a characteristic that is generally imputed to persons of that marital status or women who are pregnant or potentially pregnant;

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of a different marital status or someone who is not pregnant or potentially pregnant.

A person discriminates against a person on the ground of the aggrieved person's marital status, pregnancy or potential pregnancy if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of the same marital status as the aggrieved person or who are also pregnant or potentially pregnant.

## 3.4 Exemption in certain sporting activities

A person may exclude persons of one sex from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant. However it is unlawful to exclude a person from participation in:

- a** the coaching of persons engaged in any sporting activity;
- b** the umpiring or refereeing of any sporting activity;
- c** the administration of any sporting activity; or
- d** sporting activities by children who have not yet attained the age of 12 years.

## 3.5 Prohibition of Sexual Harassment

### 3.5.1 What is Sexual harassment?

A person sexually harasses another person if:

- a** the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- b** engages in other unwelcome conduct of a sexual nature in relation to the person harassed; in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.

### 3.5.2 Harassment in Clubs

A member of the committee of management of a club may not sexually harass a member of the club or a person seeking to become a member of the club.

## Discrimination In Sport – Obligations under State Legislation

Please see enclosure for information on State legislation in regard to discrimination in sport.



# Contact Details

## Tennis Australia

Tel: (03) 9286 1177  
 Fax: (03) 9650 2743  
[info@tennisaustralia.com.au](mailto:info@tennisaustralia.com.au)  
[www.tennisaustralia.com.au](http://www.tennisaustralia.com.au)  
 Private Bag 6060  
 RICHMOND SOUTH VIC 3121  
 Melbourne Park  
 Batman Avenue  
 MELBOURNE VIC 3000

## Tennis NSW

Tel: (02) 9763 7644  
 Fax: (02) 9763 7655  
[tennis@tennisnsw.com.au](mailto:tennis@tennisnsw.com.au)  
[www.tennisnsw.com.au](http://www.tennisnsw.com.au)  
 PO Box 6204  
 SILVERWATER NSW 1811  
 Sydney International Tennis Centre  
 Rod Laver Drive  
 HOMEBUSH BAY NSW 2127

## Tennis Victoria

Tel: (03) 9286 1285  
 Fax: (03) 9650 6003  
[tvreception@tennisvic.com.au](mailto:tvreception@tennisvic.com.au)  
[www.tennisvic.com.au](http://www.tennisvic.com.au)  
 Private Bag 6060  
 RICHMOND SOUTH VIC 3121  
 Melbourne Park  
 Batman Avenue  
 MELBOURNE VIC 3000

## Tennis Queensland

Tel: (07) 3871 8555  
 Fax: (07) 3371 2635  
[info@tennisqueensland.com.au](mailto:info@tennisqueensland.com.au)  
[www.tennisqueensland.com.au](http://www.tennisqueensland.com.au)  
 PO Box 1145  
 MILTON QLD 4064  
 Level 1, 349  
 Coronation Drive  
 MILTON QLD 4064

## Tennis West

Tel: (08) 9361 1112  
 Fax: (08) 9361 1500  
[info@tenniswest.com.au](mailto:info@tenniswest.com.au)  
[www.tenniswest.com.au](http://www.tenniswest.com.au)  
 PO Box 786  
 VICTORIA PARK WA 6979  
 Bolton Avenue  
 BURSWOOD WA 6100

## Tennis SA

Tel: (08) 8212 6777  
 Fax: (08) 8212 6518  
[info@tennissa.com.au](mailto:info@tennissa.com.au)  
[www.tennissa.com.au](http://www.tennissa.com.au)  
 PO Box 43  
 NORTH ADELAIDE SA 5006  
 Memorial Drive Tennis Club  
 War Memorial Drive  
 ADELAIDE SA 5000

## Tennis Tasmania

Tel: (03) 6334 4237  
 Fax: (03) 6334 4564  
[tennistas@tennistasmania.com.au](mailto:tennistas@tennistasmania.com.au)  
[www.tennistasmania.com.au](http://www.tennistasmania.com.au)  
 PO Box 260  
 NEWSTEAD TAS 7250  
 Level 1, 23  
 Racecourse Crescent  
 LAUNCESTON TAS 7250

## Tennis ACT

Tel: (02) 6247 8804  
 Fax: (02) 6247 2029  
[tennis@tennisact.com.au](mailto:tennis@tennisact.com.au)  
[www.tennisact.com.au](http://www.tennisact.com.au)  
 PO Box 44  
 DICKSON ACT 2602  
 National Sports Centre  
 Ellenborough Street  
 LYNEHAM ACT 2602

## Tennis NT

Tel: (08) 8981 5609  
 Fax: (08) 8981 3890  
[info@tennisnt.com.au](mailto:info@tennisnt.com.au)  
[www.tennisnt.com.au](http://www.tennisnt.com.au)  
 GPO Box 1756  
 DARWIN NT 0801  
 Sports House  
 Waratah Crescent  
 FANNIE BAY NT 0820